

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

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

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

TRANSCRIPT OF PROCEEDINGS

SAN FRANCISCO, CALIFORNIA
THURSDAY, DECEMBER 112008

(APPEARANCES ON FOLLOWING PAGES)

REPORTED BY: JOAN MARIE COLUMBINI, CSR 5435, RPR
DEBRA L. PAS, CSR 11916, CRR, RMR, RPR
OFFICIAL COURT REPORTERS, U.S. DISTRICT COURT

APPEARANCES :

FOR PLAINTIFFS

PRISON LAW OFFICE
1917 FIFTH STREET
BERKELEY, CALIFORNIA 94710

**BY: DONALD SPECTER, ESQUIRE
REBEKAH EVENSON, ESQUIRE
STEVEN FAMA, ESQUIRE
AMY WHELAN, ESQUIRE**

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

BY: MICHAEL W. BIEN, ESQUIRE

K&L GATES
FOUR EMBARCADERO CENTER
SUITE 1200
SAN FRANCISCO, CALIFORNIA 94111

BY: EDWARD P. SANGSTER, ESQUIRE

FOR CCPOA

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

BY: NATALIE LEONARD, ESQUIRE

FOR DEFENDANTS

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

BY: LISA A. TILLMAN, ESQUIRE

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

BY: KYLE A. LEWIS, ESQUIRE

(APPEARANCES CONTINUED ON NEXT PAGE)

APPEARANCES (CONTINUED) :

FOR DEFENDANTS HANSON BRIDGETT
425 MARKET STREET, 26TH FLOOR
SAN FRANCISCO, CALIFORNIA 94105
BY: PAUL MELLO, ESQUIRE
S. ANNE JOHNSON, ESQUIRE

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

FOR LEGISLATOR INTERVENORS AKIN, GUMP, STRAUSS, HAUER & FELD, LLP
580 CALIFORNIA STREET, 15TH FLOOR
SAN FRANCISCO, CALIFORNIA 94104
BY: TERESA WANG, ESQUIRE

FOR LAW ENFORCEMENT INTERVENORS JONES & MAYER
3777 NORTH HARBOR BOULEVARD
FULLERTON, CALIFORNIA 92835
BY: KIMBERLY HALL BARLOW, ESQUIRE

FOR COUNTY INTERVENORS OFFICE OF THE COUNTY COUNSEL
COUNTY OF SANTA CLARA
70 WEST HEDDING STREET
NINTH FLOOR, EAST WING
SAN JOSE, CALIFORNIA 95110
BY: THERESA FUENTES, ESQUIRE

FOR SONOMA COUNTY INTERVENORS COUNTY OF SONOMA
575 ADMINISTRATION DRIVE, ROOM 105A
SANTA ROSA, CALIFORNIA 95403
BY: ANNE L. KECK, ESQUIRE

1 **THURSDAY, DECEMBER 11, 2008**

9:23 O'CLOCK A.M.

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

5 **JUDGE HENDERSON:** OKAY. YOU MAY CALL YOUR NEXT
6 WITNESS, COUNSEL.

7 **MR. SANGSTER:** GOOD MORNING, YOUR HONOR. ED SANGSTER
8 FOR THE PLAINTIFFS. THE PLAINTIFFS CALL DR. BARRY KRISBERG.

9 **BARRY KRISBERG,**

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

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

14 **THE WITNESS:** MY NAME IS BARRY KRISBERG, B-A-R-R-Y,
15 K-R-I-S-B-E-R-G.

16 **DIRECT EXAMINATION BY MR. SANGSTER**

17 **BY MR. SANGSTER**

18 **Q** GOOD MORNING, DR. KRISBERG. WOULD YOU GIVE THE COURT A VERY
19 BRIEF SUMMARY OF YOUR EDUCATIONAL BACKGROUND?

20 **A** I RECEIVED A BACHELOR'S FROM THE UNIVERSITY OF PENNSYLVANIA,
21 GOT A MASTER'S FROM THE SAME SCHOOL IN CRIMINOLOGY, AND,
22 ULTIMATELY, A PH.D. IN SOCIOLOGY FROM PENN.

23 **Q** WOULD YOU GIVE THE COURT A VERY BRIEF SUMMARY OF YOUR CAREER
24 IN CRIMINOLOGY?

25 **A** AFTER GETTING MY DEGREE, I CAME OUT AND TAUGHT AT THE

1 UNIVERSITY OF CALIFORNIA BERKELEY IN WHAT WAS THEN THE SCHOOL OF
2 CRIMINOLOGY, WENT ON TO WORK FOR THE NATIONAL COUNCIL ON CRIME
3 AND DELINQUENCY WHERE I'M STILL EMPLOYED. THAT BEGAN IN 1976.

4 I'VE ALSO HAD A NUMBER OF ADJUNCT EDUCATIONAL
5 APPOINTMENTS DURING THAT PERIOD, MOST RECENT ONE AT THE LAW
6 SCHOOL AT U.C. BERKELEY.

7 **Q** WHAT IS THE NATIONAL CENTER ON CRIME AND DELINQUENCY?

8 **A** NATIONAL COUNCIL ON CRIME AND DELINQUENCY.

9 **Q** NATIONAL COUNCIL ON CRIME AND DELINQUENCY.

10 **A** IT IS THE NATION'S OLDEST CRIMINAL JUSTICE RESEARCH
11 ORGANIZATION.

12 **Q** HAVE YOU PUBLISHED ANY BOOKS ON THE SUBJECT OF CRIMINOLOGY?

13 **A** YES, I HAVE.

14 **Q** HOW MANY?

15 **A** FOUR BOOKS.

16 **Q** HAVE YOU AUTHORED ANY PEER-REVIEWED ARTICLES IN THE FIELD OF
17 CRIMINOLOGY?

18 **A** YES, QUITE A NUMBER OF OVER THE YEARS.

19 **Q** HAVE YOU RECEIVED ANY AWARDS FOR YOUR WORK IN THE FIELD OF
20 CRIMINOLOGY?

21 **A** YES, IN 1993 I WAS SELECTED BY THE AMERICAN SOCIETY OF
22 CRIMINOLOGY FOR THE AUGUST VOLLMER AWARD WHICH IS --

23 **Q** HOW SIGNIFICANT IS THAT AWARD?

24 **A** IT'S THEIR HIGHEST AWARD FOR CONTRIBUTIONS TO CRIMINAL
25 JUSTICE. I'VE ALSO BEEN SELECTED BY THE JESSIE BALL DUPONT FUND

1 AS THEIR GRANTEE OF THE YEAR, AND SOME OTHER AWARDS AS WELL.

2 **Q** HAVE YOU BEEN ASKED TO PROVIDE ANY TRAINING TO CALIFORNIA
3 COUNTIES IN THE FIELD OF CRIMINOLOGY?

4 **A** YES, I HAVE.

5 **Q** WOULD YOU BRIEFLY DESCRIBE THAT?

6 **A** PRINCIPALLY, MY RESEARCH, MY TRAINING HAS INVOLVED TRAINING
7 PROBATION STAFF, AND, IN SOME CASES, JAIL STAFF ON ISSUES
8 RELATED TO CLASSIFICATION AND EFFECTIVE SUPERVISION STRATEGIES.

9 **Q** WHAT STUDIES OF CALIFORNIA PRISONS HAVE YOU BEEN INVOLVED
10 WITH?

11 **A** I PROBABLY BEEN INVOLVED IN EVERY MAJOR LEGISLATIVELY
12 MANDATED STUDY OF THE CALIFORNIA PRISONS SINCE 1980. THE FIRST
13 ONE, I ACTUALLY DIRECTED A STUDY FOR THE LEGISLATURE ON
14 ALTERNATIVES TO THE PRISON SYSTEM. SUBSEQUENT TO THAT, I WAS
15 APPOINTED TO THE BLUE RIBBON COMMISSION ON INMATE POPULATION
16 MANAGEMENT, WHICH WAS DURING GOVERNOR DEUKMEJIAN'S
17 ADMINISTRATIONS. MORE RECENTLY I WAS APPOINTED TO BE PART OF AN
18 EXPERT PANEL ON PRISONER REHABILITATION IN CDCR. SO, AGAIN MOST
19 OF THE MAJOR EFFORTS I HAVE BEEN INVOLVED IN.

20 **Q** HAVE YOU FORMED ANY OPINIONS ABOUT THE IMPACT THAT PRISON
21 POPULATION REDUCTION IN CALIFORNIA WOULD HAVE ON PUBLIC SAFETY?

22 **A** YES, I HAVE.

23 **Q** WHAT IS YOUR OPINION?

24 **A** MY OPINION IS THAT, DONE PROPERLY, THERE IS NO REASON TO
25 THINK THAT THAT RELEASE OF PRISONERS FROM THE CALIFORNIA PRISONS

1 OUGHT TO HAVE ANY ADVERSE EFFECT ON PUBLIC SAFETY.

2 **Q** WHAT DID YOU DO IN ORDER TO FORM YOUR OPINION?

3 **A** MY OPINION IS BASED ON A COUPLE OF -- I GUESS THREE MAJOR
4 COMPONENTS. ONE IS I DID AN EXHAUSTIVE REVIEW OF RESEARCH
5 HAVING TO DO WITH EARLY ACCELERATED RELEASE FROM OTHER STATE
6 PRISON SYSTEMS OVER THE LAST 20 YEARS.

7 **Q** LET ME JUST STOP YOU THERE. THOSE WERE STUDIES OF WHAT
8 ACTUALLY HAPPENED, NOT WHAT PEOPLE WERE PREDICTING WOULD HAPPEN;
9 IS THAT CORRECT?

10 **A** THAT'S CORRECT.

11 **Q** GO ON. WHAT ELSE DID YOU DO?

12 **A** SECONDLY, I LOOKED AT DATA FROM APPROXIMATELY 22 CALIFORNIA
13 COUNTIES THAT OVER THE LAST TEN YEARS HAD RELEASED APPROXIMATELY
14 1.7 MILLION INMATES BASED ON COURT ORDERED RELEASES, AND I
15 LOOKED AT THAT AS IT WAS RELATED TO CRIME TRENDS IN THE STATE.

16 FINALLY, I HAVE BEEN REVIEWING A NUMBER OF STUDIES
17 AND REPORTS, INCLUDING THE REPORT OF THE EXPERT PANEL,
18 INDICATING THE MOST EFFECTIVE STRATEGIES TO BOTH SELECT PEOPLE
19 FOR RELEASE AND ALSO MANAGE THEM IN THE COMMUNITY.

20 **Q** NOW, I WANT TO TURN YOUR ATTENTION TO YOUR REVIEW OF THE
21 STUDIES OF WHAT ACTUALLY HAPPENED WHEN THERE WAS EFFORTS TO
22 REDUCE PRISON POPULATION. SO LET'S TALK ABOUT THE STUDIES OF
23 THE OTHER JURISDICTIONS. HOW MANY JURISDICTIONS DID YOU STUDY?

24 **A** I LOOKED AT NINE AMERICAN STATES, CITY OF PHILADELPHIA, AND
25 ALSO CANADA.

1 Q HOW DID YOU SELECT THOSE JURISDICTIONS?

2 A I LOOKED AT -- WELL, USING THE RESOURCES OF THE NATIONAL
3 CRIMINAL JUSTICE REFERENCE SERVICE, THE NATIONAL INSTITUTE OF
4 CORRECTIONS INFORMATION CENTER, THE BANCROFT LIBRARY AT U.C.
5 AND, ALSO, THE RUTGERS NCCD JAMES COTTON LIBRARY, WHICH ARE
6 PRETTY MUCH THE EXHAUSTIVE LITERARY SOURCES, I ATTEMPTED TO
7 ASSEMBLE EVERY ARTICLE THAT WAS DONE ON ACCELERATED EARLY
8 RELEASE FROM ROUGHLY THE 1980'S ON UP.

9 Q DID YOU FIND ANY ARTICLES ON THAT TOPIC THAT YOU DID NOT
10 CONSIDER?

11 A NO, NONE THAT WERE -- I MEAN, MY CRITERIA IS IT HAD TO BE
12 REAL RESEARCH, NOT OPINIONS, AND IT HAD TO HAVE SOME DATA THAT
13 YOU COULD ANALYZE.

14 Q DID YOU HAVE ANY PERSONAL INVOLVEMENT IN STUDYING POPULATION
15 REDUCTION IN ANY OF THOSE JURISDICTIONS?

16 A YES, I WAS INVOLVED AS WELL AS THE SUPERVISOR AND ALSO AS A
17 CO-WORKER IN A STUDY THAT I THINK YOU'VE HEARD ABOUT, THAT JIM
18 AUSTIN TALKED ABOUT, IN ILLINOIS, THE STUDY OF FORCED RELEASE IN
19 THE ILLINOIS DEPARTMENT OF CORRECTIONS.

20 Q WHAT WAS STUDIED IN CONNECTION WITH THE OTHER JURISDICTIONS
21 THAT YOU REVIEWED?

22 A ESSENTIALLY, I WAS LOOKING AT TWO THINGS. ONE WAS
23 SUMMARIZING THE INFORMATION ON WHETHER OR NOT THE RECIDIVISM
24 RATES OF PEOPLE RELEASED EARLY, HOW THAT COMPARED TO PEOPLE
25 RELEASED AT THE END OF THEIR REGULAR TERMS. I ALSO COLLECTED

1 SOME DATA FROM THE FBI TO SEE WHETHER OR NOT DURING THE PERIOD
2 IN WHICH THE RELEASE PRACTICES WERE TAKING PLACE, THERE WERE ANY
3 CRIME TREND PATTERNS.

4 **Q** WHAT CONCLUSIONS DID YOU REACH AS A RESULT OF YOUR STUDIES
5 OF THESE OTHER JURISDICTIONS?

6 **A** WITH RESPECT TO RECIDIVISM --

7 **JUDGE KARLTON:** WELL, BEFORE YOU GO THERE, WE'VE
8 HAD -- WE'VE NOW LEARNED THAT RECIDIVISM MEANS DIFFERENT THINGS
9 TO DIFFERENT PEOPLE. WHAT DO YOU MEAN BY IT WHEN YOU TALK ABOUT
10 RECIDIVISM?

11 **THE WITNESS:** WELL, IN THESE STUDIES, JUDGE, THEY
12 USED A VARIETY. TYPICALLY, THE MEASURE WAS PAROLE FAILURE,
13 RETURN TO PRISON. THAT WAS THE MOST TYPICAL MEASURE USED. IN A
14 COUPLE OF THEM THEY LOOKED AT ARRESTS, BUT IT WAS MOSTLY FAILURE
15 ON PAROLE.

16 **JUDGE KARLTON:** DOES THAT MEAN, WHEN YOU SAY "FAILURE
17 ON PAROLE," WHAT HAS BEEN REFERRED TO HERE AS TECHNICAL
18 VIOLATIONS OF PAROLE?

19 **THE WITNESS:** IN MOST OF THESE STUDIES, IT INCLUDED
20 BOTH MEASURES, NEW OFFENSES AND TECHNICAL VIOLATIONS.

21 **JUDGE KARLTON:** THANK YOU, SIR.

22 **BY MR. SANGSTER**

23 **Q** LET ME FOLLOW UP ON JUDGE KARLTON'S QUESTION.

24 WHY IS IT SIGNIFICANT TO LOOK AT THE RECIDIVISM RATES
25 WHEN YOU ARE TRYING TO EVALUATE THE IMPACT ON PUBLIC SAFETY?

1 **A** I THINK THE KEY ISSUE IS WHETHER OR NOT, BY RELEASING
2 INMATES EARLY, ONE SEES AN INCREASE IN THE CRIMINAL BEHAVIOR
3 THEY ENGAGE IN, AS COMPARED TO PERSONS WHO ARE RELEASED
4 NORMALLY.

5 **Q** DID YOU FIND ANY JURISDICTIONS DURING THE COURSE OF YOUR
6 REVIEW THAT ACTUALLY REDUCED RECIDIVISM RATES AS A RESULT OF
7 POPULATION REDUCTION?

8 **A** YES. MOST OF THE STUDIES FOUND NO DIFFERENCE, BUT WHAT WE
9 FOUND IN A STUDY OF THE PHILADELPHIA JAIL SYSTEM IN WHICH THEY
10 MADE PROVISIONS FOR DRUG TREATMENT RESOURCES, THAT, IN THAT
11 CASE, THOSE EARLY PAROLED PHILADELPHIA JAIL INMATES WHO
12 PARTICIPATED IN DRUG TREATMENT DID BETTER THAN THOSE THAT DID
13 NOT PARTICIPATE IN DRUG TREATMENT.

14 THE OTHER SIGNIFICANT STUDY WAS IN FLORIDA WHERE THE
15 STATE CREATED A PROGRAM CALLED COMMUNITY CONTROL, IN WHICH, IN
16 LIEU OF GOING TO PRISON, YOU WOULD HAVE INTENSIVE SUPERVISION
17 AND INTENSIVE SERVICES. AND ON THAT STUDY, WHICH WAS ACTUALLY
18 DONE BY NCCD STAFF, AGAIN UNDER MY GENERAL SUPERVISION, THE
19 STUDY SHOWED THAT THE INMATES UNDER THIS COMMUNITY CONTROL
20 PROGRAM HAVE MUCH LOWER RECIDIVISM RATES THAN THOSE THAT HAD
21 BEEN RELEASED FROM FLORIDA PRISONS NORMALLY.

22 **Q** NOW, I THINK THE COURT HAS HEARD, AND IS GOING TO HEAR, THE
23 OPINIONS OF SOME WITNESSES THAT RELEASING PRISONERS EARLY WILL
24 SOMEHOW REDUCE THE DETERRENT EFFECT OF PRISON. WHAT DOES YOUR
25 DATA FROM THE STUDIES SHOW ABOUT THE IMPACT OF EARLY RELEASE ON

1 RECIDIVISM?

2 **A** WELL, FIRST OF ALL, THE RESEARCH ON DETERRENCE SUGGESTS THAT
3 MARGINAL REDUCTIONS IN SANCTIONS ARE NOT GOING TO LIKELY HAVE AN
4 EFFECT. THAT IT IS THE CERTAINTY OF PUNISHMENT AND THE
5 QUICKNESS WITH WHICH PENALTIES ARE BROUGHT TO BEAR HAS A MUCH
6 BIGGER EFFECT. THERE'S A PRETTY LARGE CONSENSUS THAT MINOR
7 REDUCTIONS ARE NOT GOING TO MAKE A BIG DIFFERENCE.

8 **Q** BASED ON YOUR STUDIES OF THE RESULTS OF PRISON POPULATION IN
9 THESE 14 OTHER JURISDICTIONS, AS WELL AS YOUR OWN EXPERIENCE,
10 WOULD THERE BE AN ADVERSE IMPACT ON PUBLIC SAFETY IF THIS COURT
11 ORDERED THE STATE OF CALIFORNIA TO REDUCE ITS PRISON POPULATION?

12 **A** I DON'T BELIEVE SO, PROVIDED THAT THE PLAN THAT EMERGED WAS,
13 YOU KNOW, FOLLOWED, SENSIBLE SCREENING AND GOOD SUPERVISION
14 STRATEGIES, AND, WHERE POSSIBLE, RESOURCES WERE AVAILABLE, LIKE
15 DRUG TREATMENT SERVICES.

16 **Q** YOU SAID --

17 **JUDGE REINHARDT:** WHAT IF THERE WERE NO RESOURCES
18 AVAILABLE?

19 **THE WITNESS:** WELL, THERE'S RESEARCH INDICATING THAT
20 YOU CAN SLIGHTLY REDUCE RECIDIVISM RATES SIMPLY BY BETTER
21 SCREENING AND TEACHING PAROLE OFFICERS HOW TO BETTER SUPERVISE
22 OFFENDERS. THERE'S STUDIES FROM FLORIDA, WISCONSIN, AND SOUTH
23 CAROLINA INDICATING THAT SIMPLY TRAINING PAROLE OFFICERS ON HOW
24 TO DO A BETTER JOB WILL GET YOU A NET REDUCTION IN THOSE
25 RECIDIVISM RATES. YOU WILL GET ADDITIONAL REDUCTION IF, IN

1 ADDITION TO THAT, YOU WERE ABLE TO PROVIDE RESOURCES.

2 **MR. SANGSTER:** I WANT TO MAKE SURE, IF I COULD FOLLOW
3 UP ON YOUR QUESTION, JUDGE REINHARDT.

4 **BY MR. SANGSTER**

5 **Q** THE QUESTION, I THINK, IS IN ORDER TO AVOID AN ADVERSE
6 IMPACT ON PUBLIC SAFETY, DO THESE PROGRAMS HAVE TO BE IN PLACE
7 BEFORE THE COURT CAN REDUCE THE PRISON POPULATION?

8 **A** NO.

9 **Q** WHY NOT?

10 **A** AGAIN, IN A NUMBER OF THE JURISDICTIONS THAT I LOOKED AT,
11 WASHINGTON, WISCONSIN, AND OTHERS, THESE PROGRAMS DID NOT EXIST
12 AT THE TIME OF THE ACCELERATED RELEASE OF INMATES, AND, AGAIN,
13 THERE WAS -- THE RECIDIVISM RATES WERE ESSENTIALLY IDENTICAL
14 AND, AGAIN, NO DISCERNIBLE CHANGES IN CRIME PATTERNS.

15 **JUDGE KARLTON:** MAY I INTERRUPT FOR A MOMENT?
16 YESTERDAY WE HEARD SOME TESTIMONY WHICH, THE WITNESS, HAVING
17 REVIEWED APPARENTLY MUCH THE SAME MATERIAL, I GATHER, SAID YOU
18 COULDN'T MAKE ANY CONCLUSIVE JUDGMENT ABOUT ANYTHING, THAT THE
19 MATERIAL WAS TOO -- I'M NOT CLEAR EXACTLY WHY YOU COULDN'T, BUT,
20 IN ANY EVENT, HE WAS VERY FIRM ABOUT NOT BEING ABLE TO MAKE A
21 CONCLUSIVE DETERMINATION ABOUT ANYTHING.

22 IS YOUR REVIEW OF THE MATERIAL OF THE SAME JUDGMENT?
23 I MEAN, OBVIOUSLY IT'S NOT. YOU SEEM TO BELIEVE THAT THE
24 MATERIAL CLEARLY POINTS ONE WAY OR ANOTHER.

25 **THE WITNESS:** WELL, MY CONCLUSION IS BASED ON THE

1 FACT THAT, LOOKING AT THESE 14 SEPARATE AND DISTINCT ARTICLES,
2 DISSERTATION, AND STATE AGENCY REPORTS, THEY'RE ALL IN THE SAME
3 DIRECTION, AND IN SOME CASES SO -- IN SOCIAL SCIENCE, WE WOULD
4 CALL THIS A META ANALYSIS, WHEN YOU FIND 14 STUDIES AND THEY ARE
5 ALL REACHING THE SAME CONCLUSION.

6 THERE'S AT LEAST ONE STUDY WHICH, ALTHOUGH A BIT
7 DATED, I THINK IS INTERESTING.

8 CALIFORNIA IN THE 1970'S ENGAGED IN AN EXPERIMENT,
9 WHICH, AGAIN, IS SORT OF THE GOLD STANDARD OF RESEARCH, IN WHICH
10 RANDOM -- BASED ON A RANDOM SAMPLING BASIS SOME INMATES FROM THE
11 CALIFORNIA DEPARTMENT OF CORRECTIONS WERE RELEASED SIX MONTHS
12 EARLY. AND THE RESEARCH DONE BY THE CALIFORNIA DEPARTMENT OF
13 CORRECTIONS UNIT SHOWED NO DIFFERENCE BASED ON THAT.

14 NOW, IT'S PRETTY RARE TO GET RANDOMIZED EXPERIMENTS
15 LIKE THAT, BUT WHAT WE HAVE IN THESE 14 STUDIES IS A PRETTY
16 BROAD RANGE, DIFFERENT METHODS, DIFFERENT APPROACHES, BUT ALL
17 REACHING THE SAME CONCLUSION.

18 **BY MR. SANGSTER**

19 **Q** NOW I WANT TO TURN YOUR ATTENTION TO YOUR STUDY OF WHAT'S
20 ACTUALLY HAPPENED IN CALIFORNIA. YOU SAID YOU STUDIED THE
21 IMPACTS OF POPULATION CONTROL IN COUNTY JAILS IN CALIFORNIA.
22 HOW MANY COUNTIES DID YOU STUDY?

23 **A** THE NUMBER VARIED FROM 20 TO 24 DEPENDING ON TIME PERIODS.
24 I TRIED TO LOOK AT A TEN-YEAR TIME PERIOD, A FIVE-YEAR TIME
25 PERIOD, AND THE LAST THREE YEARS. SO SOMETIMES I DIDN'T HAVE

1 THE DATA FOR ALL THOSE YEARS.

2 **Q** WHAT WAS THE SOURCE OF THE INFORMATION THAT YOU STUDIED IN
3 CONNECTION WITH CALIFORNIA JAIL RELEASES?

4 **A** THE DATA ON COURT-ORDERED JAIL RELEASES CAME FROM WHAT'S NOW
5 CALLED THE CORRECTIONS STANDARDS AUTHORITY. IT WAS SUBMITTED BY
6 THE COUNTIES TO CSA, AND I PULLED IT RIGHT OFF THE WEBSITE OF
7 CSA.

8 **Q** DID YOU ALSO REVIEW ANY INTERROGATORY RESPONSES THAT WERE
9 PROVIDED BY PARTIES TO THIS LITIGATION?

10 **A** YES, I DID.

11 **Q** DID YOU REVIEW ANY INFORMATION ABOUT THE CRIME RATE IN THE
12 COUNTIES -- LET ME JUST END IT THERE. DID YOU REVIEW ANY
13 INFORMATION ABOUT THE CRIME RATES IN THE COUNTIES YOU STUDIED?

14 **A** YES, I DID. I CONTACTED THE CALIFORNIA DEPARTMENT OF
15 JUSTICE AND WAS ABLE TO ASSEMBLE DATA ON SERIOUS CRIMES THAT, AS
16 PART ONE OFFENSES, IN EACH OF THESE COUNTIES FOR ALL THOSE
17 YEARS.

18 AND BECAUSE THESE WERE JAIL INMATES, I ALSO WANTED TO
19 LOOK AT MISDEMEANOR CRIME TRENDS. MISDEMEANORS, AS YOU KNOW,
20 AREN'T REPORTED AS CONSISTENTLY. SO IN THE CASE OF
21 MISDEMEANORS, I LOOKED AT TRENDS IN MISDEMEANOR ARRESTS FOR THE
22 SAME PERIOD OF TIME.

23 **Q** NOW, DID YOU CONSIDER YOUR STUDY OF CALIFORNIA STUDY --
24 CALIFORNIA COUNTIES TO BE AS RIGOROUS AS THE OTHER STUDIES THAT
25 YOU REFERRED TO IN OTHER JURISDICTIONS?

1 **A** NO, IT WAS NOT AS RIGOROUS. THE OTHER STUDIES INVOLVED
2 INDIVIDUAL CASES RANDOMLY SAMPLED FROM RELEASES. IN THIS
3 INSTANCE, I WAS SIMPLY LOOKING AT AGGREGATE INFORMATION, TOTAL
4 NUMBERS, RELEASES EACH YEAR, AND LOOKING AT THAT IN RELATIONSHIP
5 TO TOTAL NUMBERS OF CRIMES.

6 **Q** IS THE INFORMATION THAT YOU GAIN FROM STUDYING CALIFORNIA
7 COUNTIES NONETHELESS HELPFUL IN ANALYZING THE IMPACT OF
8 COURT-ORDERED POPULATION REDUCTIONS IN JAILS?

9 **A** I BELIEVE IT IS, BECAUSE, FOR EXAMPLE, LOOKING AT THE
10 TEN-YEAR PERIOD, 21 COUNTIES, WHAT WE SEE IS OVER 1.7 MILLION
11 INMATES WERE RELEASED FROM CALIFORNIA JAILS DURING THIS PERIOD
12 OF TIME. AGAIN, THOSE COUNTIES, SPECIFICALLY DUE TO
13 OVERCROWDING ORDERS DURING THAT SAME PERIOD OF TIME, THE NUMBER
14 OF CRIMES IN CALIFORNIA WENT DOWN BY 18 -- IN THOSE COUNTIES
15 WENT DOWN BY 18 PERCENT, SERIOUS CRIMES. AND ALSO MISDEMEANOR
16 ARRESTS WENT DOWN BY 18 PERCENT IN THOSE SAME PLACES.

17 **JUDGE KARLTON:** BUT AT LEAST ONE ARGUMENT WE WILL
18 HEAR, APPARENTLY, IS THAT MISDEMEANOR ARRESTS WENT DOWN BECAUSE
19 THE SHERIFF AND POLICE HAD NO PLACE TO PUT THEM; THE JAILS WERE
20 SO OVERCROWDED. CAN YOU REALLY RELATE THE DOWNWARD TREND ON
21 CRIME AND THE REDUCTION IN MISDEMEANOR ARRESTS TO THE CAP THAT
22 HAD BEEN PLACED ON THE COUNTIES?

23 **THE WITNESS:** I WOULDN'T GO THERE. I WOULD BE FAR
24 MORE CONFIDENT THAT -- THAT JAIL CAPS WOULD NOT AFFECT CRIMES
25 REPORTED TO THE POLICE, THE MOST SERIOUS CRIMES, RAPE, ROBBERY,

1 AGGRAVATED ASSAULT, CAR THEFT, ET CETERA. THERE'S NO REASON
2 THAT PEOPLE STOP REPORTING CRIMES TO THE POLICE.

3 **JUDGE KARLTON:** THAT'S WHY I SAID MISDEMEANANTS.

4 **THE WITNESS:** YEAH. THE ONLY REASON I LOOKED AT
5 MISDEMEANANTS IS, I GUESS THE ARGUMENT IS SINCE MOST JAIL
6 RELEASEES ARE MOST LIKELY TO BE MISDEMEANANTS, I WANTED TO SEE
7 WHETHER OR NOT THERE WAS A SUDDEN INCREASE IN MISDEMEANANT CRIME
8 IN THE STATE, AND THERE WAS NOT.

9 **BY MR. SANGSTER**

10 **Q** YOU SAID YOU STUDIED 1.7 MILLION PEOPLE RELEASED OVER A
11 TEN-YEAR PERIOD. DID YOU ALSO STUDY THE NUMBER OF PEOPLE WHO
12 WERE RELEASED FROM CALIFORNIA COUNTIES DURING THE FIVE-YEAR
13 PERIOD BETWEEN 2001 AND 2006?

14 **A** YES, I DID, AND DURING THAT PERIOD, A LITTLE OVER
15 THREE-QUARTERS OF A MILLION INMATES WERE RELEASED FROM -- I HAVE
16 DATA ON 22 COUNTIES. AND DURING THAT PERIOD OF TIME REPORTED IN
17 THOSE COUNTIES WAS ESSENTIALLY UNCHANGED.

18 FOR THE LAST THREE YEARS, 2004 TO 2006, THERE WERE
19 OVER 400,000 INMATES RELEASED BASED ON COURT ORDERS FROM THESE
20 COUNTIES, AND DURING THAT PERIOD OF TIME THE NUMBER OF REPORTED
21 CRIMES DECLINED BY SEVEN PERCENT.

22 **Q** DID ALL OF THE COUNTIES SHOW CONSISTENT RESULTS?

23 **A** NO. ONE OF THE THINGS I DID WAS LOOK AT EACH ONE OF THESE
24 COUNTIES INDIVIDUALLY TO LOOK AT THESE TRENDS AND PUT THEM
25 TOGETHER.

1 Q WHAT DID YOU FIND AS A RESULT OF LOOKING AT THEM
2 INDIVIDUALLY?

3 A WHAT I FOUND IS THERE WERE SOME VARIATIONS, BUT THERE WAS NO
4 CONSISTENT PATTERN. RELEASE DIDN'T LEAD TO A CRIME REDUCTION,
5 BUT IT CERTAINLY DID NOT LEAD TO A CRIME INCREASE.

6 WHAT I FOUND, FOR EXAMPLE, WAS, YOU KNOW, LET'S TAKE
7 THE LAST THREE YEARS. I FOUND 13 COUNTIES WHERE RELEASES WERE
8 UP AND CRIME WAS DOWN. THERE WERE ANOTHER EIGHT COUNTIES IN
9 WHICH CRIME WAS DOWN AND RELEASES WERE DOWN. AND THEN THERE
10 WERE THREE WHERE RELEASES WERE ACTUALLY UP AND CRIME WENT UP.

11 WE ALSO -- I ALSO LOOKED SEPARATELY AT LOS ANGELES,
12 ORANGE, AND SAN DIEGO TO SEE WHETHER OR NOT THIS TREND HAD
13 ANYTHING TO DO WITH THE LARGER COUNTIES, AND, AGAIN, NO
14 CONSISTENT PATTERN. WHEN YOU PUT THIS ON A SCATTER DIAGRAM AND
15 YOU LOOK AT THESE THINGS FROM A STATISTICAL POINT OF VIEW,
16 THERE'S JUST NO DISCERNIBLE PATTERN.

17 Q WHAT OPINIONS DID YOU REACH AS A RESULT OF YOUR STUDY OF
18 COURT-ORDERED POPULATION REDUCTIONS IN CALIFORNIA COUNTIES?

19 A THAT IT DID NOT APPEAR TO HAVE ANY ADVERSE EFFECT ON CRIME
20 IN CALIFORNIA.

21 Q MY PRIOR QUESTIONS HAVE BEEN RETROSPECTIVE, IN OTHER WORDS,
22 DEALING WITH WHAT'S ACTUALLY HAPPENED IN THE PAST AND BEEN
23 OBSERVED. NOW I WANT TO TURN YOUR ATTENTION FOR A MOMENT TO
24 YOUR OPINIONS ABOUT WHAT WOULD HAPPEN IN THE FUTURE IN THIS
25 CASE.

1 **JUDGE REINHARDT:** MAY I ASK ONE QUESTION ABOUT THE
2 PAST?

3 DID THOSE FIGURES FROM THE PAST SHOW ANYTHING ABOUT
4 WHETHER PAROLE CONTINUED FOR A LENGTHY PERIOD OR WHETHER IT WAS
5 TERMINATED AFTER ONE YEAR OR WHETHER CERTAIN CRIMES WERE NOT
6 SUBJECTED TO PAROLE AT ALL?

7 **THE WITNESS:** IF YOU GO THROUGH THE 14 JURISDICTIONS,
8 THERE'S A VARIETY OF PATTERNS, NO CONSISTENT PATTERN. SOME
9 STATES, FOR EXAMPLE, LIKE ILLINOIS, HAD NO PAROLE DURING THE
10 PERIOD OF TIME. OTHERS WOULD INSTITUTE INTENSIVE PAROLE, LIKE
11 FLORIDA DID. OTHERS HAD MINIMAL PAROLE. SO I THINK THERE'S NO
12 CONSISTENT PATTERN IN TERMS OF WHAT THEY DID WITH --

13 **JUDGE REINHARDT:** COULD YOU TELL ANYTHING -- COULD
14 YOU OBSERVE ANY DIFFERENCE BETWEEN THE STATES THAT WENT TO
15 INTENSIVE PAROLE ON THE ONES THAT HAD NO PAROLE AT ALL? WERE
16 THERE ANY DIFFERENCES IN THE RATES?

17 **THE WITNESS:** WELL, AGAIN, THE LARGER FINDING IS THAT
18 THERE'S NO PARTICULAR DIFFERENCE. THE ONE STUDY WHICH I THINK
19 WOULD INDICATE THAT INTENSIVE SUPERVISION, THE FLORIDA EXAMPLE,
20 DID PRODUCE REDUCTIONS IN RECIDIVISM RATES FROM INMATES WHO
21 OTHERWISE WOULD HAVE SERVED OVER A YEAR IN FLORIDA PRISONS, BUT
22 DURING THIS PERIOD OF TIME WERE ACTUALLY SERVING ONLY ABOUT A
23 MONTH OR TWO IN JAIL AND THEN RELEASED UNDER INTENSIVE
24 SUPERVISION.

25

1 **BY MR. SANGSTER**

2 **Q** I WANT TO FOLLOW UP ON JUDGE REINHARDT'S QUESTION. DOES
3 PAROLE MAKE ANY DIFFERENCE IN IMPROVING PUBLIC SAFETY?

4 **A** YES.

5 **Q** HOW SO?

6 **A** IF DONE PROPERLY WITH PAROLE OFFICERS PROPERLY TRAINED IN
7 TERMS OF SUPERVISION, PAROLE OFFICERS ASSISTING INMATES IN
8 ADDRESSING ISSUES, LIKE HAVING ACCESS TO HOUSING AND WHAT HAVE
9 YOU, CAN MAKE A DIFFERENCE, YES.

10 **Q** ALL RIGHT. NOW, IS IT POSSIBLE FOR A COURT ORDER REDUCING
11 PRISON POPULATION TO ACTUALLY IMPROVE PUBLIC SAFETY?

12 **A** COULD YOU REPEAT THAT QUESTION?

13 **Q** IS IT POSSIBLE FOR A COURT ORDER EVER --

14 **JUDGE KARLTON:** ANYTHING IS POSSIBLE. WHAT IS YOUR
15 BEST JUDGMENT? ASK HIM THAT.

16 **MR. SANGSTER:** LET ME REPHRASE THE QUESTION.

17 **JUDGE KARLTON:** THAT'S WHAT WE HAD YESTERDAY.

18 **MR. SANGSTER:** I APOLOGIZE FOR THAT.

19 **BY MR. SANGSTER**

20 **Q** WHAT WOULD IT TAKE FOR A COURT-ORDERED POPULATION REDUCTION
21 TO IMPROVE PUBLIC SAFETY IN CALIFORNIA?

22 **A** I WOULD ANSWER THAT BY GOING BACK TO THE REPORT OF THE
23 EXPERT PANEL ON REDUCING INMATE RECIDIVISM RATES. IT WAS THE
24 OVERWHELMING CONSENSUS OF THAT PANEL THAT CALIFORNIA COULD MAKE
25 A SIGNIFICANT DIFFERENCE IN REDUCING ITS VERY HIGH RECIDIVISM

1 RATE, BUT THAT WAS REALLY DEPENDENT UPON A SIGNIFICANT REDUCTION
2 IN CROWDING THAT, UNDER THE EXISTING LEVELS OF CROWDING, THAT
3 PANEL DID NOT THINK IT WAS REALISTIC TO THINK THAT MUCH PROGRESS
4 COULD BE MADE IN TERMS OF REDUCING RECIDIVISM RATES.

5 **Q** I WANT TO ASK YOU A HYPOTHETICAL. I WANT YOU TO ASSUME THAT
6 THERE HAS BEEN TESTIMONY FROM A COUNTY SHERIFF WHO RUNS THE
7 JAIL. I WANT YOU TO ASSUME THAT THAT SHERIFF TESTIFIED
8 APPROXIMATELY FIVE PERCENT OF THE BOOKINGS INTO HIS JAIL
9 CONSISTED OF PAROLEES. I WANT YOU TO ASSUME THERE'S BEEN
10 TESTIMONY FROM A CHIEF OF POLICE THAT SOMEWHERE LESS THAN FIVE
11 PERCENT OF THE ARRESTS BY HIS DEPARTMENT CONSISTED OF PAROLEES.
12 HOW WOULD THOSE FACTS, IF TRUE, COMPARE TO NATIONAL NORMS?

13 **A** THOSE FACTS ARE PROBABLY A LITTLE BIT HIGHER OF WHAT I'M
14 AWARE OF, BUT THERE HAVE BEEN TWO STUDIES BY THE BUREAU OF
15 JUSTICE STATISTICS THAT LOOKED AT COHORTS OF RELEASED PRISONERS
16 AND THEN USED FBI DATA TO LOOK AT HOW MANY OF THEM WERE ARRESTED
17 IN THE SUBSEQUENT THREE-YEAR PERIOD, AND THOSE NUMBERS WERE
18 SOMETHING IN THE RANGE OF THREE PERCENT --

19 **Q** ALL RIGHT.

20 **A** -- OF THREE PERCENT OF THE ARRESTS IN THOSE STATES WERE
21 ATTRIBUTABLE TO PEOPLE WHO HAD BEEN RELEASED FROM PRISONS DURING
22 THAT --

23 **Q** WHAT DOES THE FACT THAT SUCH A LOW PERCENTAGE OF THE PEOPLE
24 BEING ARRESTED ARE PAROLEES TELL YOU ABOUT THE IMPACT OF COURT
25 ORDERED POPULATION REDUCTION ON PUBLIC SAFETY?

1 **A** THAT, IN GENERAL, A MODEST REDUCTION IN TIME SERVED WOULD
2 NOT HAVE A BIG EFFECT ON PUBLIC SAFETY.

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

4 **BY MR. SANGSTER**

5 **Q** THERE HAS BEEN TESTIMONY FROM SOME LAW ENFORCEMENT WITNESSES
6 AND OTHER WITNESSES THAT COURT-ORDERED POPULATION REDUCTION OF
7 THE PRISONS WOULD HAVE A NEGATIVE IMPACT ON PUBLIC SAFETY.
8 YOU'VE JUST TESTIFIED THAT IT WOULD NOT HAVE A NEGATIVE IMPACT
9 ON --

10 **JUDGE REINHARDT:** HE TESTIFIED IT WOULD NOT HAVE A
11 BIG EFFECT.

12 **MR. SANGSTER:** LET ME CLARIFY THAT.

13 **BY MR. SANGSTER**

14 **Q** IS IT YOUR TESTIMONY THAT IT WOULD NOT HAVE A BIG EFFECT ON
15 PUBLIC SAFETY OR THAT IT WOULD HAVE NO EFFECT ON PUBLIC SAFETY?

16 **A** I BELIEVE DONE PROPERLY, IT WOULD HAVE NO EFFECT ON PUBLIC
17 SAFETY.

18 **JUDGE REINHARDT:** THAT WAS WHAT HE SAID.

19 **MR. SANGSTER:** NOW I CLARIFIED IT.

20 **BY MR. SANGSTER**

21 **Q** HOW DO YOU RECONCILE THE TWO POSITIONS? HOW DOES THIS COURT
22 FIGURE OUT WHICH IS THE MORE -- WHICH IS THE CORRECT OPINION?

23 **A** WELL, FIRST OF ALL, THE RESEARCH THAT I'M TALKING ABOUT
24 REFERS TO WHAT ACTUALLY HAPPENED IN A NUMBER OF JURISDICTIONS,
25 SO IT'S NOT HYPOTHETICAL, IT'S WHAT WE ACTUALLY OBSERVED, AS

1 WELL AS THE CALIFORNIA JAIL RELEASE EXAMPLE.

2 SECONDLY, I'M NOT SURPRISED THAT LAW ENFORCEMENT
3 OFFICIALS MIGHT HAVE THIS VIEW. FOR THE LAST 25 TO 30 YEARS IN
4 THE MEDIA AND VARIOUS POLITICAL CONTESTS, WE'VE HEARD THAT
5 RELEASING INMATES WOULD ENDANGER PUBLIC SAFETY, AND THE RESEARCH
6 I'M DESCRIBING IS NOT EASILY IN THE PUBLIC DOMAIN. I MEAN I HAD
7 TO WORK PRETTY HARD TO ASSEMBLE THIS.

8 I WAS STRUCK WHEN I PRESENTED SOME OF THIS RESEARCH
9 EARLIER UNDER THE AUSPICES OF THE CALIFORNIA LIBRARY, AND CHIEF
10 RICHARD WARD WHO IS NOW THE CHIEF OF VACAVILLE AND WAS THE
11 FORMER PRESIDENT.

12 **JUDGE KARLTON:** HE TESTIFIED HERE.

13 **THE WITNESS:** RIGHT. AND IT WAS INTERESTING THAT
14 CHIEF WARD DIDN'T DISPUTE THE DATA BUT JUST SAID HE WAS
15 SURPRISED BY IT.

16 SO I THINK MANY POLICE OFFICERS, POLICE CHIEFS
17 HAVEN'T BEEN NECESSARILY EXPOSED TO THIS DATA. THE NATURE OF
18 THEIR WORK IS THEY TEND TO RESPOND TO THE SPECIFIC INCIDENTS IN
19 THEIR JURISDICTIONS, ANECDOTES OF WHAT'S GOING ON. I WOULDN'T
20 EXPECT MANY OF THEM TO BE EMBROILED IN THE RESEARCH AND
21 STATISTICS OF THIS.

22 **MR. SANGSTER:** THAT'S ALL THE QUESTIONS I HAVE, YOUR
23 HONOR.

24 **JUDGE HENDERSON:** ANYTHING FROM CCPOA?

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

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

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

3 **BY MS. TILLMAN**

4 **Q** GOOD MORNING, DR. KRISBERG.

5 **A** GOOD MORNING.

6 **Q** I WANT TO BE SURE WE UNDERSTAND YOUR PROFESSIONAL
7 BACKGROUND. A GOOD PORTION OF YOUR PROFESSIONAL BACKGROUND HAS
8 BEEN DEDICATED TO THE JUVENILE CORRECTIONS AREA, CORRECT?

9 **A** THAT IS CORRECT.

10 **Q** AND AT LEAST 75 PERCENT OF YOUR PUBLISHED ARTICLES ADDRESS
11 JUVENILE OFFENDER ISSUES, CORRECT?

12 **A** YES.

13 **Q** YOU ARE A COURT-APPOINTED SUBJECT MATTER EXPERT IN THE
14 PENDING JUVENILE CLASS ACTION CASE CALLED FARRELL VERSUS
15 DEPARTMENT OF CORRECTIONS, CORRECT?

16 **A** YES.

17 **Q** AND THAT CASE SOLELY INVOLVES JUVENILE OFFENDERS, CORRECT?

18 **A** YES.

19 **Q** YOUR WORK IN THE FARRELL CASE DOES NOT ENCOMPASS THE MEDICAL
20 CARE PROVIDED TO JUVENILE OFFENDERS, DOES IT?

21 **A** NO.

22 **Q** NOR DOES IT INVOLVE THE MENTAL HEALTHCARE PROVIDED TO
23 JUVENILE OFFENDERS, DOES IT?

24 **A** NO.

25 **Q** AND YOU SPEND ABOUT A THIRD OF YOUR PROFESSIONAL TIME

1 WORKING ON THAT CASE, CORRECT?

2 **A** YES.

3 **Q** IN FACT, THE TIME SPENT CONSULTING ON THIS CASE HAS BEEN
4 PRETTY LIMITED, HASN'T IT?

5 **A** YES.

6 **Q** YOU HAVEN'T TOURED ANY DEPARTMENT OF CORRECTIONS AND
7 REHABILITATION FACILITIES IN PREPARING YOUR REPORT, HAVE YOU?

8 **A** NOT FOR PREPARING MY REPORT, BUT I CERTAINLY HAVE TOURED
9 FACILITIES, YES.

10 **Q** NOW, YOU SERVE AS THE PRESIDENT OF THE NATIONAL COUNCIL ON
11 CRIME AND DELINQUENCY, CORRECT?

12 **A** YES.

13 **Q** AND YOU'VE WORKED WITH THAT NATIONAL COUNCIL ON CRIME AND
14 DELINQUENCY SINCE 1977, CORRECT?

15 **A** SEVENTY-SIX, YES.

16 **Q** THANK YOU.

17 A GOOD PORTION OF WHAT THE NATIONAL COUNCIL ON CRIME
18 AND DELINQUENCY DOES IS PERFORM RESEARCH ON PRISON ISSUES,
19 RIGHT?

20 **A** YES.

21 **Q** AND SO WHEN MR. SPECTER OF PLAINTIFFS' COUNSEL ASKED YOU TO
22 LOOK AT THE IMPACT OF SENTENCING REFORMS, PAROLE REFORMS, AND
23 DIVERSION OF DEPARTMENT OF CORRECTION AND REHABILITATION INMATES
24 TO COUNTY PROGRAMS, YOU UNDERTOOK TO DO RESEARCH ON THAT ISSUE,
25 CORRECT?

1 **A** YES, BUT I'VE ALSO DONE EXTENSIVE RESEARCH ON ADULT
2 CORRECTIONS IN CALIFORNIA.

3 **Q** YOU ALSO HAD HELP, DIDN'T YOU, FROM A RESEARCH ASSOCIATE
4 WITHIN THE NATIONAL COUNCIL ON THIS MATTER?

5 **A** THAT'S CORRECT.

6 **Q** AND HER NAME WAS -- WAS IT CAROLINA GUZMAN?

7 **A** CAROLINA GUZMAN, YES.

8 **Q** SO YOU AND YOUR RESEARCH ASSOCIATE, CAROLINA GUZMAN, DID A
9 REVIEW OF THE LITERATURE CONCERNING VARIOUS EFFECTS OF THE
10 PRISON -- I'M SORRY.

11 YOU AND YOUR RESEARCH ASSOCIATE, CAROLINA GUZMAN, DID
12 A REVIEW OF THE LITERATURE CONCERNING VARIOUS EFFECTS, IF ANY,
13 OF EARLY RELEASE FROM PRISONS IN OTHER STATES AND OTHER
14 LOCALITIES, CORRECT?

15 **A** YES.

16 **Q** AND IN DOING THAT REVIEW OF THE PUBLISHED LITERATURE ON SUCH
17 PROGRAMS, THERE WAS NO INTENTION OF CHALLENGING ANY OF THE
18 UNDERLYING METHODOLOGY OF ANY OF THESE ARTICLES OR STUDIES THAT
19 WERE DONE, CORRECT?

20 **A** I REVIEWED EACH AND EVERY ARTICLE AND CERTAINLY COULD SPEAK
21 TO THE METHODOLOGY USED IN EACH ONE OF THESE ARTICLES, YES.

22 **JUDGE KARLTON:** THE QUESTION, I SUPPOSE, IS SOMEWHAT
23 DIFFERENT. WERE YOU SATISFIED THAT THE -- WELL, I DON'T KNOW.

24 IN YOUR REVIEW OF THE MATERIAL, WHAT OPINION DID YOU
25 HAVE, IF ANY, AS TO THE LEGITIMACY OF THE CRITERIA THAT WERE

1 BROUGHT TO BEAR AND THE METHODOLOGY USED?

2 **THE WITNESS:** OVERALL, I WOULD SAY THAT THE
3 METHODOLOGY WAS QUITE REASONABLE. MOST OF THESE STUDIES -- IN
4 THE CASE OF THREE OF THESE STUDIES WERE DONE BY MY ORGANIZATION
5 UNDER MY SUPERVISION. IN OTHER INSTANCES THEY WERE DONE BY
6 RESEARCH BUREAUS WITHIN THE STATES, AND THEY USED METHODS WHICH
7 I WOULD DESCRIBE AS QUITE CUSTOMARY TO DO THESE KINDS OF
8 ANALYSIS.

9 IN MOST CASES THESE STAFF WERE REQUESTED TO DO THIS
10 EITHER ON BEHALF OF THE LEGISLATURE OR ON BEHALF OF THE GOVERNOR
11 OF THOSE STATES.

12 **BY MS. TILLMAN**

13 **Q** YOU ASSUME THE DATA REPORTED IN THE STUDIES TO BE CORRECT;
14 IS THAT RIGHT?

15 **A** YES.

16 **Q** NOW, IN DOING THAT RESEARCH FOR PEER REVIEW-VIEWED ARTICLES,
17 YOU RECOGNIZE THAT THERE IS NO STATE THAT HAS AS LARGE A PRISON
18 POPULATION AS CALIFORNIA, CORRECT?

19 **A** THAT'S CORRECT.

20 **Q** IN FACT, YOU'VE CONSULTED WITH OTHER STATES ON PRISON
21 ISSUES, AND THE TWO STATES IN WHICH YOU PERFORMED THAT
22 CONSULTATION WORK, LET'S SEE, THEY'RE ILLINOIS AND NEW YORK,
23 CORRECT?

24 **A** ACTUALLY, I MADE A QUICK LIST. MY EXPERIENCE ON THE ADULT
25 SIDE IN TERMS OF CONSULTATION HAS INCLUDED ILLINOIS, THE

1 DISTRICT OF COLUMBIA, HAWAII. THE STATE OF FLORIDA, I WAS ASKED
2 BY GOVERNOR CHILDS TO ASSIST HIM WHEN HE TOOK OVER TO LOOK AT
3 THE FLORIDA SYSTEM.

4 I'VE DONE EXTENSIVE CONSULTATION FOR THE NATIONAL
5 INSTITUTE OF CORRECTIONS AND DID A MASTER PLAN FOR THE NEVADA
6 PRISON SYSTEM AS WELL. AGAIN, AS I'VE INDICATED, I'VE DONE A
7 NUMBER OF STUDIES OF THE CALIFORNIA PRISON SYSTEM.

8 **Q** WHEN YOU WERE A CONSULTANT FOR THE STATE OF ILLINOIS, THE
9 PRISON POPULATION AT THAT TIME WHEN YOU CONSULTED WAS, IN
10 ILLINOIS, 45,000, CORRECT?

11 **A** THAT'S CORRECT.

12 **Q** AND WHEN YOU WERE A CONSULTANT FOR NEW YORK CITY, THE JAIL
13 POPULATION WAS FAR LESS THAN WHAT YOU SAW IN THE STATE OF
14 ILLINOIS, CORRECT?

15 **A** THAT'S RIGHT.

16 **Q** NOW, THE SAMPLE GROUPS THAT WERE ADDRESSED IN THE 14 PEER
17 REVIEW-VIEWED ARTICLES THAT YOU AND YOUR RESEARCH ASSOCIATE
18 CULLED WERE VARYING SIZES, CORRECT?

19 **A** YES.

20 **Q** THEIR ARTICLE ON THE WASHINGTON PROGRAM ADDRESSED A SAMPLE
21 OF 1,674 INMATES, CORRECT?

22 **A** YES.

23 **Q** AND THE ARTICLE ON A CALIFORNIA PROGRAM ADDRESSED A SAMPLE
24 OF -- A SAMPLE OF 637 INMATES, CORRECT?

25 **A** YES.

1 **JUDGE KARLTON:** I DON'T KNOW WHAT IT'S DOING UP,
2 DOCTOR; DON'T WORRY ABOUT IT.

3 **THE WITNESS:** OKAY.

4 **BY MS. TILLMAN**

5 **Q** YOUR ARTICLE ON THE COLORADO RELEASE ADDRESSED A SAMPLE OF
6 126 INMATES, CORRECT?

7 **A** YES.

8 **Q** THE ARTICLE ON THE TEXAS RELEASE ADDRESSED A SAMPLE OF 2,072
9 INMATES, CORRECT?

10 **A** YES.

11 **Q** AND THE ARTICLE ON THE WISCONSIN RELEASE ADDRESSED A SAMPLE
12 OF 892 RELEASED INMATES?

13 **A** YES.

14 **Q** THE ARTICLE ON THE ILLINOIS RELEASE ADDRESSED 1,600 IN THE
15 SAMPLE SIZE, CORRECT?

16 **A** YES.

17 **Q** NONE OF THE IDENTIFIED 14 PEER-REVIEWED ARTICLES ADDRESSED A
18 RELEASE OF SOME 50,000 INMATES, DID THEY?

19 **A** FIRST OF ALL, IF I CAN CORRECT ONE THING? NOT EVERY ONE OF
20 THESE ARTICLES WAS PEER-REVIEWED. SOME OF THESE WERE PRODUCED
21 BY RESEARCH DIVISIONS WHICH AREN'T NECESSARILY SUBJECT -- I
22 MEAN, THERE WAS PROBABLY SOME PEER REVIEW, BUT NOT IN THE
23 ACADEMIC SENSE OF IT.

24 BUT IN MOST INSTANCES THOSE NUMBERS REPRESENT RANDOM
25 SAMPLES SO THAT YOU CAN ESTIMATE TO THE FULL RELEASE POPULATION

1 BASED ON THOSE RANDOM SAMPLES. IN OTHER CASES, THESE ARE
2 SMALLER STATES. ON THE OTHER HAND, WHAT I WOULD SAY IS THAT AS
3 PART OF THE EXPERT PANEL, ONE OF THE MOST SIGNIFICANT THINGS AS
4 PART OF THE EXPERT PANEL.

5 **MS. TILLMAN:** I'M GOING TO FILE -- THIS WITNESS IS
6 NON-RESPONSIVE TO THE QUESTIONS, YOUR HONORS. I'D LIKE TO
7 STRIKE THAT TESTIMONY. I THINK THE QUESTION WAS SIMPLE. NONE
8 OF THE IDENTIFIED 14 PEER-REVIEWED ARTICLES ADDRESSED A RELEASE
9 OF 50,000 INMATES.

10 **JUDGE KARLTON:** HE DOESN'T AGREE THEY WERE ALL
11 PEER-REVIEWED. WHY DON'T YOU JUST SAY THE 14 ARTICLES?

12 **MS. TILLMAN:** FAIR ENOUGH.

13 **BY MS. TILLMAN**

14 **Q** NONE OF THE IDENTIFIED ARTICLES ADDRESSED A RELEASE OF
15 50,000 INMATES, CORRECT?

16 **A** THAT'S CORRECT.

17 **Q** THANK YOU.

18 NOW, WHEN CONSIDERING THE IMPACT OF RELEASE OF
19 DEPARTMENT OF CORRECTIONS AND REHABILITATION INMATES ON PUBLIC
20 SAFETY, YOU WOULD LOOK AT WHETHER THE INMATE IS MENTALLY ILL,
21 WOULDN'T YOU, BECAUSE MENTAL ILLNESS CAN INCREASE THE LIKELIHOOD
22 OF RECIDIVISM?

23 **JUDGE KARLTON:** THAT'S AN ASSUMPTION. WE'VE HAD
24 TESTIMONY THAT'S NOT SO. I'M NOT SAYING IT IS TRUE OR ISN'T
25 TRUE, BUT WE'VE HAD AT LEAST THAT TESTIMONY INDICATING THAT'S

1 NOT SO.

2 **MS. TILLMAN:** LET ME BACKTRACK.

3 **JUDGE KARLTON:** BEFORE WE BACKTRACK, DO YOU HAVE AN
4 OPINION AS TO WHETHER THE RELEASE OF MENTALLY ILL INMATES ON A
5 LARGE SCALE BUT RELATIVELY EARLY WOULD HAVE AN EFFECT ON PUBLIC
6 SAFETY?

7 **THE WITNESS:** I DON'T HAVE AN OPINION ON THAT.

8 **JUDGE KARLTON:** FAIR ENOUGH.

9 **BY MS. TILLMAN**

10 **Q** YOU WOULD AGREE THAT MENTAL ILLNESS DOES CONSTITUTE A FACTOR
11 THAT CAN INCREASE THE LIKELIHOOD OF RECIDIVISM IN A PAROLEE,
12 CORRECT?

13 **A** MOST OF THE RESEARCH ON RISK FACTORS INCLUDES MENTAL HEALTH
14 BUT NOT AS A MAJOR FACTOR IN TERMS OF RECIDIVISM RATES.

15 **Q** BUT IT IS A FACTOR, ISN'T IT?

16 **A** YES.

17 **Q** AND YOU WOULD AGREE ALSO THAT DRUG DEPENDENCY INCREASES THE
18 LIKELIHOOD OF RECIDIVISM AMONGST PAROLEES, DOESN'T IT?

19 **A** YES.

20 **Q** AND WHEN A PAROLEE PRESENTS WITH BOTH MENTAL ILLNESS AND
21 DRUG DEPENDENCY, THERE IS AN EVEN HIGHER LIKELIHOOD OF
22 RECIDIVISM, ISN'T THERE?

23 **A** I DON'T KNOW THAT TO BE TRUE.

24 **Q** LOOKING AT PAGE 54 OF YOUR DEPOSITION THAT WAS TAKEN IN
25 SEPTEMBER, I BELIEVE, 2008, LINE 2?

1 **MR. SANGSTER:** YOUR HONOR, MAY I ASK THIS BE TAKEN
2 DOWN UNTIL I HAVE A CHANCE TO REVIEW THE TRANSCRIPT AND FIND OUT
3 IF IT'S PROPER?

4 **JUDGE KARLTON:** YES.

5 **MR. SANGSTER:** I'M SORRY. IT'S PAGE 54?

6 **MS. TILLMAN:** PAGE 54, LINE 2.

7 **MR. SANGSTER:** NO OBJECTION, YOUR HONOR.

8 **JUDGE HENDERSON:** PROCEED.

9 **MS. TILLMAN:** THANK YOU.

10 **BY MS. TILLMAN**

11 **Q** I BELIEVE IN YOUR DEPOSITION YOU WERE ASKED, QUOTE:

12 "IF THESE TWO FACTORS WERE CO-OCCURRING WHERE
13 A PERSON IS BOTH MENTALLY ILL AND DRUG
14 DEPENDENT, DO THEY HAVE AN EVEN HIGHER
15 LIKELIHOOD OF RECIDIVISM THAN IF THEY JUST HAD A
16 SINGLE FACTOR AT PLAY, WHETHER IT BE DRUG
17 DEPENDENCE OR MENTAL ILLNESS?

18 "ANSWER: YES."

19 **A** I DID SAY THAT, AND -- BUT THE CONTEXT WOULD BE THAT --

20 **Q** I DON'T THINK THERE'S A PENDING QUESTION.

21 **JUDGE HENDERSON:** HE CAN EXPLAIN.

22 **THE WITNESS:** DO YOU WANT ME TO EXPLAIN?

23 THERE'S BEEN A LOT OF RESEARCH ON RISK FACTORS
24 ASSOCIATED WITH RECIDIVISM, AND USUALLY THE MOST IMPORTANT RISK
25 FACTORS THAT EMERGE HAVE TO DO WITH THE PRIOR RECORD OF THE

1 PERSON WHO IS BEING RELEASED, WHETHER OR NOT -- THE AGE AT WHICH
2 THEY ENTERED THE SYSTEM INITIALLY, THE CRIMES THAT THEY
3 COMMITTED. SO WHILE IT IS CERTAINLY TRUE THAT RECIDIVISM AND
4 MENTAL HEALTH ADD TO THAT, WITHIN AN OVERALL RISK ASSESSMENT
5 THEY'RE NOT NECESSARILY THE MOST IMPORTANT FACTORS. THEY ARE A
6 FACTOR, AND MY ANSWER WAS YES BECAUSE THEY ARE A FACTOR, BUT
7 THEY WOULDN'T BE THE DRIVING RISK FACTOR.

8 **BY MS. TILLMAN**

9 **Q** YOU WOULD AGREE THEN THAT ANY RELEASE ORDER SHOULD HAVE A
10 COMPONENT OF EXAMINING THE RISK OF RECIDIVISM POSED BY EACH
11 INDIVIDUAL INMATE SUBJECT TO THAT RELEASE, WOULDN'T YOU?

12 **A** YES, I'D RECOMMEND THAT.

13 **Q** AND THAT KIND OF EXAMINATION WOULD BE NECESSARY TO ENSURE A
14 MINIMAL ADVERSE EFFECT ON PUBLIC SAFETY, WOULDN'T IT?

15 **A** YES.

16 **Q** I'M RECALLING YOUR DEPOSITION. I BELIEVE YOU INDICATED THAT
17 IN THE ILLINOIS PROGRAM THAT YOU STUDIED --

18 **MR. SANGSTER:** OBJECTION. IMPROPER IMPEACHMENT, YOUR
19 HONOR.

20 **JUDGE HENDERSON:** I'M NOT SURE IT'S IMPEACHMENT.

21 **MR. SANGSTER:** SHE'S READING HIM HIS PRIOR STATEMENT.

22 **MS. TILLMAN:** ACTUALLY I'M NOT READING.

23 **MR. SANGSTER:** DO YOU RECALL IN YOUR DEPOSITION YOU
24 TESTIFIED?

25 **JUDGE REINHARDT:** THAT'S NOT WHAT SHE SAID ON THIS

1 QUESTION.

2 **JUDGE KARLTON:** I KEEP ASKING PEOPLE WHY DON'T THEY
3 JUST ASK THE QUESTION? SEE WHAT THE GUY SAYS. IF HE SAYS THE
4 SAME THING, YOU DON'T HAVE TO READ THE DEPOSITION. IF HE
5 DOESN'T, YOU CAN READ IT. I DON'T UNDERSTAND WHAT EVERY -- I
6 MEAN, IT'S NOT JUST THE DEFENDANTS. THE PLAINTIFFS DO THE SAME
7 THING. NONE OF IT MAKES ANY SENSE. IT'S EASIER FOR US TO LET
8 YOU DO IT AND GET ON WITH YOUR LIFE. GO AHEAD.

9 **BY MS. TILLMAN**

10 **Q** ISN'T IT CORRECT THAT IN THE ILLINOIS PROGRAM YOU STUDIED
11 REGARDING THE RELEASE OF INMATES EARLY, AS THEY SAY, THE WARDENS
12 WERE SIMPLY ASKED TO FLAG THOSE INDIVIDUAL INMATES THAT THEY
13 THOUGHT POSED A RISK TO THE COMMUNITY?

14 **A** THE WAY THE ILLINOIS FORCED RELEASE PROGRAM WORKED WAS THAT
15 A LIST WAS GENERATED OF THOSE INMATES WHO WERE MOST LIKELY TO BE
16 RELEASED ANYWAY, AND SO A LIST WAS GENERATED OF THE NUMBER OF
17 INMATES POTENTIALLY TO BE RELEASED, AND THEN WARDENS WERE ASKED
18 TO LOOK AT THOSE NAMES AND BASICALLY COME UP WITH ANY REASONS
19 THAT THEY BELIEVED THAT THOSE INMATES SHOULD NOT BE RELEASED.

20 **Q** AND THIS PROGRAM OCCURRED BEFORE THE ONSET OF THE MORE
21 RECENT PHENOMENON OF THE TECHNOLOGY OF A SCIENTIFIC RISK
22 ASSESSMENT AND SCREENING TOOLS, CORRECT?

23 **A** THAT'S RIGHT.

24 **Q** SO YOU WOULD WANT TO GO BEYOND THE SIMPLE FLAGGING OF INMATE
25 CASES BY WARDENS AND USE A SCIENTIFIC TOOL TO MEASURE THE RISK

1 POSED BY EACH INDIVIDUAL CANDIDATE FOR RELEASE, WOULDN'T YOU?

2 **A** TEN YEARS AGO I DID A STUDY FOR THE CALIFORNIA DEPARTMENT OF
3 CORRECTIONS IN WHICH I RECOMMENDED THAT THE DEPARTMENT OF
4 CORRECTIONS ADOPT A RISK ASSESSMENT INSTRUMENT IN HELPING THEM
5 MAKE PAROLE DECISIONS AND IN ALLOCATING THEIR SUPERVISION
6 RESOURCES. SO, YES, I BELIEVE THAT.

7 **Q** THAT KIND OF RISK ASSESSMENT TOOL HAS BEEN DEVELOPED BY YOUR
8 ORGANIZATION, HASN'T IT?

9 **A** WE HAVE ONE. THERE ARE OTHERS OUT THERE. YES.

10 **Q** AND THE TOOL THAT WAS DEVELOPED BY YOUR ORGANIZATION IS
11 CALLED?

12 **A** THE CORRECTIONAL ASSESSMENT AND INTERVENTION SYSTEM.

13 **Q** AND EVEN WITH THAT TOOL, THERE IS ALWAYS SOME RISK OF
14 RECIDIVISM, ISN'T THERE?

15 **A** YES.

16 **Q** AND THE TOOL THAT'S BEEN DEVELOPED BY YOUR ORGANIZATION, THE
17 CORRECTIONAL ASSESSMENT INTERVENTION SYSTEM, IS SIMILAR TO THE
18 ONE DEVELOPED BY THE DEPARTMENT OF CORRECTIONS AND
19 REHABILITATION CALLED COMPAS, ISN'T IT?

20 **A** IT'S REASONABLY SIMILAR. THERE'S TWO BIG DIFFERENCES. THE
21 COMPAS INSTRUMENT HAS MANY MORE ITEMS ASSOCIATED WITH IT, AND,
22 AS I INDICATED EARLIER, THE INSTRUMENT I'M TALKING ABOUT HAS
23 ACTUALLY BEEN USED ON PAROLEES IN FLORIDA, SOUTH CAROLINA, AND
24 WISCONSIN. AND WE FOUND THAT WHEN PAROLE OFFICERS USE IT, THEY
25 GET BETTER RESULTS.

1 Q SO THE TOOL THAT WAS DEVELOPED BY YOUR ORGANIZATION, THE
2 CORRECTIONAL ASSESSMENT INTERVENTION TOOL, WAS NOT USED TO
3 DETERMINE WHETHER TO RELEASE AN INMATE EARLY, CORRECT?

4 A THAT'S CORRECT.

5 Q AND, IN FACT, FLORIDA AND SOUTH CAROLINA NO LONGER USE THAT
6 TOOL, DO THEY?

7 A THAT'S CORRECT.

8 Q AND THE TECHNOLOGY OF RISK AND SCREENING TOOLS IS SO RECENT
9 THAT IT WAS NOT PART OF ANY OF THE 14 STUDIES THAT WERE REVIEWED
10 AND CULLED BY YOU AND YOUR ASSOCIATE, CORRECT?

11 A IN SEVERAL OF THESE STUDIES THE RESEARCH STAFF ACTUALLY
12 LOOKED AT RISK FACTORS AND ATTEMPTED TO IDENTIFY WHAT WERE THE
13 FACTORS LIKELY TO IDENTIFY THE PEOPLE WHO SUCCEEDED IN EARLY
14 RELEASE VERSUS NOT, AND IN MANY OF THEM SUGGESTED THAT GOING
15 FORWARD THIS WOULD BE A GOOD ADDITION. AGAIN, MANY OF THESE
16 STUDIES WERE DONE BEFORE THIS TECHNOLOGY IS ANYWHERE NEAR IT IS
17 TODAY.

18 Q IT'S A RECENT PHENOMENON OVER THE PAST TWO YEARS THESE TYPE
19 OF TOOLS HAVE COME INTO BEING; IS THAT CORRECT?

20 A MAYBE FIVE YEARS, YES.

21 Q WHEN YOU WERE DEPOSED IN SEPTEMBER 2008, YOU HAD NO
22 INFORMATION ON THE NUMBER OF INMATES WITHIN THE DEPARTMENT OF
23 CORRECTIONS AND REHABILITATION THAT WOULD QUALIFY AS LOW RISK
24 OFFENDERS USING EVEN THE TOOL DEVELOPED BY YOUR ORGANIZATION,
25 THE CORRECTIONAL ASSESSMENT INTERVENTION SYSTEM TOOL, RIGHT?

1 **A** THAT'S CORRECT.

2 **Q** IN FACT, AT THE TIME OF YOUR DEPOSITION, YOU HAD NO
3 INFORMATION THAT EVEN JUST 15,000 INMATES WOULD QUALIFY AS LOW
4 RISK OFFENDERS UNDER THE CORRECTIONAL ASSESSMENT INTERVENTION
5 SYSTEM TOOL DEVELOPED BY YOUR ORGANIZATION, CORRECT?

6 **A** YES.

7 **Q** YOU HAVE NO INFORMATION THAT EVEN 15,000 INMATES WOULD
8 QUALIFY AS LOW RISK OFFENDERS UNDER THE COMPAS TOOL FOR PURPOSES
9 OF RELEASE, DO YOU?

10 **A** I KNOW THAT THE DEPARTMENT HAS BEEN ADMINISTERING COMPAS,
11 AND SO THE DATA IS PROBABLY KNOWABLE AT THIS POINT. I DON'T
12 HAVE IT.

13 **Q** WHEN IT COMES TO SELECTING INMATES FOR EARLY RELEASE, A
14 FACTOR IN THAT DETERMINATION SHOULD BE THE OFFENSE FOR WHICH
15 THEY WERE COMMITTED, CORRECT?

16 **A** YES.

17 **Q** AND SO YOU WOULD RECOMMEND FIRST EXCLUDING CERTAIN OFFENDERS
18 FROM ANY RELEASE BASED UPON THEIR CONVICTION OFFENSE, LIKE SEX
19 OFFENDERS, CORRECT?

20 **A** YES.

21 **Q** VIOLENT OFFENDERS, PEOPLE WHO HAVE COMMITTED HOMICIDE, RAPE,
22 THAT TYPE OF THING, CORRECT?

23 **A** YES.

24 **Q** AND YOU WOULD ALSO LOOK AT THE AMOUNT OF TIME LEFT ON A
25 PRISONER'S SENTENCE, WOULDN'T YOU?

1 **A** YES.

2 **Q** YOU WOULD THEN USE A RISK ASSESSMENT TOOL TO FURTHER INFORM
3 ANY DECISION ON WHICH INMATES SHOULD BE RELEASED, WOULDN'T YOU?

4 **A** IT WOULD BE ONE OF THE DECISIONS, ONE OF THE PARTS OF THAT
5 DECISION, YES.

6 **Q** NOW, YOU AGREE THAT A POTENTIAL CONSEQUENCE OF A PRISONER
7 RELEASE ORDER IS THAT SOME INMATES WHO ARE RELEASED WILL
8 RECIDIVATE?

9 **A** THAT'S CORRECT.

10 **Q** AND THAT RECIDIVISM RATE COULD BE AS HIGH AS 70 PERCENT,
11 COULDN'T IT, DEPENDING UPON THE AVAILABILITY OF COMMUNITY
12 RESOURCES, PAROLE SUPERVISION, HOW THE PERSON WAS SELECTED FOR
13 RELEASE, CORRECT?

14 **A** SEVENTY PERCENT IS THE CURRENT RECIDIVISM RATE OF PEOPLE
15 RELEASED FROM CALIFORNIA PRISONS.

16 **Q** AND ISN'T IT TRUE THAT EVEN IF YOU CAN SELECT A GROUP OF LOW
17 RISK OFFENDERS WITHIN THE DEPARTMENT OF CORRECTIONS AND
18 REHABILITATION FOR EARLY RELEASE, THE LIKELIHOOD OF RECIDIVISM
19 ABSENT ANY SUPPORT IN THE COMMUNITY AND ABSENT ANY SPECIAL
20 PAROLE SUPERVISION TECHNIQUES AND TRAINING, THE SAFEST BET WOULD
21 BE THAT THE RECIDIVISM RATE WOULD BE THE SAME?

22 **A** I DON'T ACCEPT THE PREMISE OF THAT QUESTION, BECAUSE I DON'T
23 THINK IT WOULD BE RESPONSIBLE PUBLIC POLICY TO HAVE NO
24 SELECTION, HAVE NO TRAINING OF PAROLE OFFICERS TO SUPERVISE
25 THEM, AND CERTAINLY EFFORT SHOULD BE MADE TO CREATE SOME

1 RESOURCES. I GUESS I DON'T FOLLOW THE LOGIC OF THAT QUESTION.

2 **Q** WHAT I'M SUGGESTING IS YOU MAKE SOME ASSUMPTIONS. IF YOU
3 SELECT A GROUP OF LOW RISK OFFENDERS FOR EARLY RELEASE, WHAT
4 REMAINS OF THEIR LIKELIHOOD OF RECIDIVISM ABSENT ANY SUPPORT IN
5 THE COMMUNITY, ABSENT ANY SPECIAL PAROLE SUPERVISION TECHNIQUES
6 IN THE COMMUNITY. YOU WOULD AGREE THAT THE SAFEST BET IS THE
7 RECIDIVISM RATE REMAINS THE SAME, WOULDN'T YOU?

8 **A** IF ONE IS SELECTING LOW RISK INMATES, YOU WOULD EXPECT THE
9 RECIDIVISM RATE WOULD BE LOWER BECAUSE THAT 70 PERCENT RATE
10 CONSISTS OF PEOPLE WITH MUCH HIGHER RISK AND PEOPLE WITH LOWER
11 RISK.

12 FOR EXAMPLE, IF WE WERE TO FOCUS IN ON WOMEN INMATES
13 WHO, BY AND LARGE, REPRESENT A LOWER RISK OF RECIDIVISM, YOU
14 WOULD GET A LOWER RECIDIVISM RATE.

15 **Q** IN LOOKING AT PAGE 85 OF YOUR DEPOSITION YOU WERE ASKED THAT
16 QUESTION AT LINE 10. I'LL GIVE PLAINTIFF COUNSEL AN OPPORTUNITY
17 TO TAKE A LOOK.

18 **MR. SANGSTER:** OKAY. NO OBJECTION.

19 **MS. TILLMAN:** YOU WERE ASKED:

20 "QUESTION: ACTUALLY, I'M JUST -- I'M TRYING
21 NOT TO GIVE YOU ANY VARIABLES. I'M JUST SAYING
22 THAT YOU CAN SELECT A GROUP OF LOW RISK
23 OFFENDERS WITHIN CDCR FOR EARLY RELEASE, WHAT
24 REMAINS OF THEIR LIKELIHOOD OF RECIDIVISM ABSENT
25 ANY SUPPORT IN THE COMMUNITY, ABSENT ANY SPECIAL

1 PAROLE SUPERVISION TECHNIQUES?

2 "ANSWER: BASED ON THE STUDIES THAT I
3 REVIEWED, SORT OF THE SAFEST BET WOULD BE THAT
4 THE RECIDIVISM RATE WOULD BE THE SAME."

5 **JUDGE KARLTON:** SIR, I'M NOT SURE WHAT THAT QUESTION
6 ASKS. IT APPEARS TO ASK WHETHER THE RECIDIVISM RATE AMONG LOW
7 RISK OFFENDERS WOULD REMAIN THE SAME, AND YOUR ANSWER TO THAT IS
8 YES?

9 **THE WITNESS:** YES.

10 **JUDGE KARLTON:** BUT IF THE QUESTION IS THE TOTAL
11 RECIDIVISM RATE, YOUR ANSWER IS PROBABLY NO, BECAUSE LOW RISK
12 OFFENDERS HAVE A LOWER RATE OF RECIDIVISM?

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

14 **JUDGE KARLTON:** SPEAK INTO THE MICROPHONE.

15 **THE WITNESS:** I'M SORRY. THAT IS CORRECT.

16 WHAT I BELIEVE WHAT I WAS REFERRING TO IN THAT
17 DEPOSITION WAS COMPARING LOW RISK OFFENDERS TO LOW RISK
18 OFFENDERS. IF THE ONLY VARIABLE IS THAT ONE GROUP WOULD GET OUT
19 OF PRISON A LITTLE BIT EARLIER -- WHICH, BY THE WAY, I POINT OUT
20 WE HAVE BEEN DOING IN THIS STATE FOR 25 YEARS. WE HAVE BEEN
21 CHANGING GOOD TIME CREDIT LAWS.

22 IT'S ACTUALLY TRUE THAT 30 -- OVER THE LAST 30 YEARS,
23 THE AMOUNT OF TIME SERVED IN THE CALIFORNIA PRISONS FOR BURGLARY
24 HAS ACTUALLY GONE DOWN FROM WHERE IT WAS WHEN DETERMINATE
25 SENTENCING WAS STARTED. SO WE HAVE BEEN RUNNING THAT EXPERIMENT

1 OVER THE LAST 30 YEARS, A NUMBER OF LAWS, CHANGING TIME SERVED.
2 AND, AGAIN, DURING THAT PERIOD OF TIME THE OVERALL TREND HAS
3 BEEN DOWNWARD PARTICULARLY. BURGLARY RATES HAVE BEEN VERY
4 SHARPLY DOWN IN THE STATE OF CALIFORNIA.

5 **BY MS. TILLMAN**

6 **Q** IF I MIGHT JUST CLARIFY THE RECORD AND GOING BACK A LITTLE
7 BIT?

8 IN YOUR DEPOSITION YOU WERE ASKED "IF THESE TOOLS,"
9 REFERRING TO THE SCREENING TOOLS.

10 "...WERE USED TO SELECT A GROUP OF CDCR
11 INMATES FOR EARLY RELEASE, WOULD THE TOOLS
12 RESULT IN A REDUCTION OF THE RECIDIVISM RATE
13 FROM 70 PERCENT TO A DIFFERENT NUMBER FOR THIS
14 PARTICULAR GROUP?"

15 AND YOU RESPONDED:

16 "IF THAT SELECTION WAS ALSO COMBINED WITH
17 RESPONDING TO THE SUPERVISION STRATEGIES."

18 SO THE RECIDIVISM RATE STAYS THE SAME, DOESN'T IT,
19 EVEN WITH A LOW RISK GROUP, UNLESS YOU HAVE PAROLE SUPERVISION
20 STRATEGIES AT PLAY, CORRECT?

21 **A** WHAT I WAS SUGGESTING THERE IS THAT IF YOUR -- I MEAN, FIRST
22 OF ALL, YOU'RE INCREASING YOUR CHANCES OF NOT AFFECTING PUBLIC
23 SAFETY BY SELECTING LOW RISK PEOPLE. BUT WHAT I WAS SUGGESTING
24 IS, IF THEN YOU TEACH PAROLE OFFICERS HOW TO DO A GOOD JOB IN
25 SUPERVISION, THE NUANCES OF SUPERVISING DIFFERENT KINDS OF

1 OFFENDERS, YOU ARE GOING TO GET EVEN BETTER RESULTS.

2 **Q** YOU WOULD AGREE THAT EVEN OFFENDERS WHO ARE CLASSIFIED AS
3 HAVING A LOW RISK OF REARREST REQUIRE SOME REENTRY PROGRAMMING,
4 SOME HEALTHCARE SUPPORT, SOME JOB SUPPORT TO SUCCESSFULLY
5 REINTEGRATE INTO THE COMMUNITY, CORRECT?

6 **A** YES.

7 **Q** AND YOU WOULD AGREE THAT POST-RELEASE OPPORTUNITIES LIKE
8 EMPLOYMENT, HOUSING, POSITIVE FAMILY SUPPORT, CAN ALSO REDUCE
9 RECIDIVISM RATES?

10 **A** YES.

11 **Q** YOU WOULD AGREE THAT IN THE PHILADELPHIA STUDY INVOLVING THE
12 EARLY PAROLE OF JAIL INMATES, IT WAS SHOWN THAT ADDING IN
13 COMMUNITY-BASED DRUG TREATMENT SERVICES INCREASED THE PROPORTION
14 OF SUCCESS ON PAROLE AMONGST THOSE INMATES FROM 66 TO
15 78 PERCENT, CORRECT?

16 **A** YES.

17 **Q** SO TO AVOID A 70 PERCENT RECIDIVISM RATE WITH DEPARTMENT OF
18 CORRECTION AND REHABILITATION INMATES, YOU WOULD RECOMMEND,
19 WOULDN'T YOU, THAT THERE EXISTS AND BE MADE AVAILABLE TO THIS
20 GROUP OF RELEASED INMATES DRUG TREATMENT CENTERS?

21 **A** WELL, AGAIN, I WANT TO REITERATE THAT I BELIEVE IMPROVED
22 SUPERVISION STRATEGIES ALONE WOULD PRODUCE SOME REDUCTION IN
23 RECIDIVISM RATES, AND IN THE CASE OF FLORIDA WE FOUND THAT TO BE
24 AS MUCH AS ONE-THIRD REDUCTION, EVEN WITH NO ADDITIONAL
25 RESOURCES PUT INTO IT.

1 I WOULD SAY THE ADDITION OF THOSE RESOURCES WOULD
2 DRIVE THOSE RECIDIVISM RATES DOWN EVEN MORE.

3 **Q** AND I THINK, AS YOU EXPLAINED IN YOUR DEPOSITION, IF YOU
4 WANTED TO ENSURE THAT THIS SELECT GROUP OF OFFENDERS DID NOT
5 HAVE A 70 PERCENT RECIDIVISM RATE, YOU WOULD RECOMMEND THAT
6 THERE BE DRUG TREATMENT CENTERS AVAILABLE TO THEM, WOULDN'T YOU?

7 **A** YES.

8 **Q** NOW, YOU DON'T KNOW THE PRESENT CAPACITY OF COMMUNITY DRUG
9 TREATMENT CENTERS FOR PAROLEES WITHIN CALIFORNIA, DO YOU?

10 **A** I DO NOT.

11 **Q** BUT YOU KNOW THAT THE TYPE OF DRUG TREATMENT NECESSARY TO
12 ENSURE A REDUCTION IN THE CRIMINALITY OF PAROLEES WOULD PROBABLY
13 BE A RANGE OF DIFFERENT THERAPIES, CORRECT?

14 **A** THAT'S RIGHT.

15 **JUDGE REINHARDT:** MAY I ASK YOU A QUESTION HERE,
16 DOCTOR?

17 THESE STRATEGIES YOU ARE RECOMMENDING, ARE THEY ANY
18 DIFFERENT THAN THE STRATEGIES YOU WOULD RECOMMEND IF THEY GOT
19 OUT A FEW MONTHS LATER?

20 **THE WITNESS:** NO, THEY WOULDN'T BE ANY DIFFERENT.

21 **JUDGE REINHARDT:** BUT YOU WOULD RECOMMEND THESE
22 STRATEGIES WHENEVER THEY GOT OUT?

23 **THE WITNESS:** THAT'S CORRECT. I MEAN --

24 **JUDGE REINHARDT:** AND THEY WOULD HAVE THE SAME EFFECT
25 ON THE RECIDIVISM RATE IF THEY GOT OUT THREE MONTHS LATER OR

1 FOUR MONTHS LATER THAN THEY WOULD HAVE NOW?

2 **THE WITNESS:** THIS WOULD BE MY OPINION, AND I THINK
3 IT WAS THE OPINION OF THE EXPERT PANEL AS WELL.

4 THE THING I WOULD SAY IS, IN LOOKING AT THIS ISSUE,
5 WE ALWAYS HAVE TO KEEP IN MIND THAT THE DEPARTMENT IS RELEASING
6 140,000 INMATES EVERY YEAR, AND SO WHATEVER ADDITIONAL RELEASES
7 HAVE TO BE PUT IN THE CONTEXT OF WHAT IS ALREADY HAPPENING AND
8 WHO IS ALREADY BEING RELEASED.

9 **JUDGE KARLTON:** THAT RAISES A VERY TROUBLING QUESTION
10 FOR ME. I DON'T WANT TO SPEAK FOR MY COLLEAGUES.

11 THE STATE OF CALIFORNIA HAS KNOWN FOR MANY YEARS THAT
12 WHAT IT IS DOING IS ESSENTIALLY FAILING. THE PAROLE RATE IS AT
13 70 PERCENT, AND NOBODY IN HIS RIGHT MIND THINKS THAT'S
14 SUCCESSFUL. BUT THE STATE HAS MAINTAINED THAT IN THE FACE OF
15 REPEATED STUDIES WHICH DEMONSTRATE THAT WHAT THEY'RE DOING
16 DOESN'T WORK AND SOMETHING ELSE MIGHT. BUT THAT'S A POLITICAL
17 OPINION -- I MEAN A POLITICAL JUDGMENT. THEY'VE MADE THE
18 JUDGMENT THAT DESPITE WHAT THE EXPERTS SAY, THEY'D RATHER JUST
19 HAVE PEOPLE COMMITTING CRIMES.

20 WHEN WE ARE ASKED TO CONSIDER PUBLIC SAFETY, I'M NOT
21 QUITE SURE WHAT THAT MEANS. THE STATUTE REQUIRES -- AND I HAVE
22 TO HONEST, LOOK FORWARD THE ORAL ARGUMENT, TO THE FINAL
23 ARGUMENTS, WHEN SOMEBODY WILL TELL ME WHAT IT MEANS. BUT WHAT
24 WE HAVE IS A STATE WHICH DOESN'T CARE. DOESN'T THAT SUGGEST --
25 WHEN I SAY IT DOESN'T CARE, I MEAN ITS PUBLIC POLICY IS THAT IT

1 DOESN'T CARE.

2 DOESN'T THAT SUGGEST THAT THE EFFECT ON PUBLIC SAFETY
3 IN THIS STATE BECAUSE OF ITS PUBLIC POLICY IS SIMPLY -- WELL,
4 THAT'S NOT A QUESTION FOR YOU AT ALL. EXCUSE ME. THAT'S A
5 QUESTION FOR US. I'M JUST THINKING OUT LOUD. EXCUSE ME.

6 PARDON ME, MS. TILLMAN.

7 **BY MS. TILLMAN**

8 **Q** WE WERE TALKING ABOUT DRUG TREATMENT CENTERS. IN TERMS OF
9 THE DRUG TREATMENT NEEDS OF THE PAROLEES, YOU WOULD RECOMMEND,
10 WOULDN'T YOU, SOME SORT OF A RANGE OF DRUG TREATMENT CENTERS
11 WITH EITHER CLASSROOM SESSIONS, POSSIBLY GROUP SESSIONS,
12 POSSIBLY EVEN INPATIENT INSTITUTIONAL PROGRAMS FOR SOME
13 PAROLEES, RIGHT?

14 **A** THAT'S CORRECT.

15 **JUDGE REINHARDT:** ARE YOU TALKING ABOUT ALL PAROLEES
16 WHENEVER THEY COME OUT OR JUST THIS GROUP AS OPPOSED TO THE
17 OTHER PAROLEES?

18 **MS. TILLMAN:** WE WERE TALKING GENERALLY ABOUT ANY
19 PAROLEES.

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

21 **BY MS. TILLMAN**

22 **Q** YOU DON'T KNOW HOW MANY DRUG TREATMENT CENTERS SHOULD BE
23 ESTABLISHED TO EVEN SERVE THE PRESENT POPULATION OF PAROLEES
24 WITHIN THE STATE OF CALIFORNIA, DO YOU?

25 **A** I DON'T KNOW THAT, NO.

1 Q NOW, WHEN A PAROLEE COMES OUT OF PRISON, YOUR RECOMMENDATION
2 IS THAT THEY HAVE HOUSING SUPPORT, CORRECT?

3 A YES.

4 Q AND THAT WOULD BE NECESSARY TO HELP REDUCE THE 70 PERCENT
5 RECIDIVISM RATE, CORRECT?

6 A THE RESEARCH WOULD INDICATE THAT IT WOULD HELP, YES.

7 Q AND AT THIS TIME THE ONLY HOUSING PROGRAMS THAT YOU ARE
8 AWARE OF FOR ASSISTING PAROLEES IN OBTAINING HOUSING UPON THEIR
9 REENTRY INTO SOCIETY ARE IN SANTA BARBARA COUNTY, ALAMEDA
10 COUNTY, SAN DIEGO COUNTY, SAN MATEO, AND SAN FRANCISCO?

11 A AND ALAMEDA COUNTY. I DON'T KNOW IF YOU MENTIONED THAT.

12 Q I THINK I MENTIONED THAT, YES.

13 A YES.

14 THE OTHER THING I CAN TELL YOU, I KNOW THIS BECAUSE
15 MY SON WORKS FOR THEM, A NATIONAL ORGANIZATION CALLED THE
16 CORPORATION FOR SUPPORT OF HOUSING, WHICH IS AN ORGANIZATION
17 THAT DESIGNS -- THAT HELPS FUND HOUSING FOR VULNERABLE
18 POPULATIONS IS VERY EXTENSIVELY INVOLVED NOW IN LOS ANGELES IN
19 DEVELOPING HOUSING FOR PAROLEES; IN FACT. DEVELOPING HOUSING
20 FOR PAROLEES IS THE LEADING ACTIVITY OF THE CALIFORNIA BRANCH OF
21 THIS ORGANIZATION RIGHT NOW.

22 Q TO AVOID A 70 PERCENT RECIDIVISM RATE, YOU WOULD ALSO
23 RECOMMEND THAT OFFENDERS HAVE SOME SORT OF TRANSITIONAL REENTRY
24 PROGRAM TO HELP THEM HONE THEIR JOB SEEKING SKILLS, THEIR
25 INTERVIEW SKILLS, HELP THEM SOLVE ISSUES ABOUT ACCESSING JOBS

1 AND HOUSING AND MEDICAL CARE, CORRECT?

2 **A** YES.

3 **Q** YOU DON'T KNOW HOW MANY PAROLEES ARE GAINFULLY EMPLOYED
4 TODAY, DO YOU?

5 **A** I DO NOT.

6 **Q** AND YOU DON'T KNOW WHAT PROPORTION OF THE PRESENT PAROLE
7 POPULATION IS EVEN QUALIFIED FOR COMMON LABORER JOBS, DO YOU?

8 **A** I DO NOT.

9 **Q** YOU DON'T KNOW WHAT PROPORTION OF THE PRESENT PAROLE
10 POPULATION IS QUALIFIED TO WORK IN A SKILLED PROFESSION, DO YOU?

11 **A** NO.

12 **Q** YOU HAVE NO REASON THEN TO QUESTION THE STATEMENT MADE IN
13 DR. MARQUART'S REPORT THAT ONLY 20 PERCENT OF THE PAROLEES
14 SUPPORT THEMSELVES THROUGH EMPLOYMENT IN THE FIRST YEAR AFTER
15 RELEASE, CORRECT?

16 **A** I HAVE NO WAY OF EVALUATING THAT.

17 **JUDGE HENDERSON:** I'M WONDERING ABOUT THE CONTINUITY
18 OF THAT QUESTION. IT SEEMS TO ME THAT DR. MARQUART'S FINDING AS
19 TO HOW MANY SUPPORT THEMSELVES IS DIFFERENT FROM HOW MANY ARE
20 QUALIFIED FOR CERTAIN KINDS OF JOBS. I DON'T SEE THE
21 CONNECTIONS THERE.

22 **MS. TILLMAN:** I THINK THE QUESTION WAS ALONG THE
23 LINES OF HOW MANY PAROLEES WHO ARE EMPLOYED, GAINFULLY EMPLOYED,
24 SUPPORT THEMSELVES THROUGH --

25 **JUDGE HENDERSON:** YOU ASKED HOW MANY WERE QUALIFIED.

1 **THE WITNESS:** CAN I COMMENT ON THAT?

2 **MS. TILLMAN:** I RECOGNIZE THAT. I THINK I WAS TRYING
3 TO INDICATE, TO THE EXTENT THERE IS STATISTICS OUT THERE, WE
4 KNOW THAT, AT LEAST FROM DR. MARQUART, ONLY 20 PERCENT OF THE
5 PAROLEES ARE GAINFULLY EMPLOYED. WE DON'T HAVE ANY INFORMATION
6 ABOUT HOW MANY MIGHT NEED REENTRY PROGRAMS BECAUSE WE DON'T KNOW
7 HOW MANY ARE SKILLED OR UNSKILLED.

8 **JUDGE KARLTON:** DR. MARQUART INDICATED WE CAN'T KNOW
9 ANYTHING.

10 **JUDGE HENDERSON:** ALSO, I GUESS WHAT'S BOTHERING ME,
11 MS. TILLMAN, IS MANY PEOPLE DON'T SEEK JOBS. SO THIS
12 INFORMATION DOESN'T TELL US WHO THOSE ARE. WE JUST KNOW WHO
13 HAVE JOBS. WE DON'T KNOW HOW MANY GO UP TO BURGER KING AND SAY,
14 I'M READY TO FLIP BURGERS, AND THOSE WHO DON'T WANT TO DO THAT.

15 **JUDGE KARLTON:** THE WITNESS WANTED TO COMMENT FURTHER
16 ON HIS ANSWER.

17 **THE WITNESS:** WELL, I MEAN, FIRST OF ALL, THERE ARE
18 WELL-ESTABLISHED PROGRAMS THAT SERVE PEOPLE COMING OUT OF PRISON
19 THAT EQUIP THEM WITH THESE SKILLS. FOR EXAMPLE, THE DELANCEY
20 STREET PROGRAM IN SAN FRANCISCO IS ONE EXAMPLE.

21 SECONDLY, I HAPPEN TO KNOW BECAUSE I HAVE BEEN
22 PARTICIPATING IN A NUMBER OF MEETINGS THAT WITHIN CALIFORNIA,
23 THE PHILANTHROPIC COMMUNITY HAS BEEN EXTENSIVELY INVOLVED IN NOW
24 PROMOTING PROGRAMS SUPPORTING PAROLEES FOR EMPLOYMENT WITHIN THE
25 COMMUNITY.

1 AND, FINALLY, I WOULD LOOK AT SAN DIEGO COUNTY WHICH
2 REALLY HAS AN EXEMPLAR PROGRAM OF PROVIDING EMPLOYMENT SERVICES
3 IN SAN DIEGO FOR PEOPLE COMING OUT OF CALIFORNIA PRISONS. I
4 HAVE DONE THE RESEARCH MYSELF. BY THE ACCOUNTS OF THE
5 CALIFORNIA ENDOWMENT, THE RESULTS OF THIS SAN DIEGO COUNTY
6 EMPLOYMENT PROGRAM HAS BEEN VERY SUCCESSFUL.

7 **BY MS. TILLMAN**

8 **Q** YOU DON'T KNOW HOW MANY REENTRY PROGRAMS ARE NEEDED TO
9 SUPPORT THE PRESENT PAROLE POPULATION, DO YOU?

10 **A** I DON'T KNOW AT THIS POINT, BUT IT'S CERTAINLY KNOWABLE.

11 **Q** YOUR OPINION IS THAT A PRISONER RELEASE ORDER, IF DONE
12 PROPERLY, WILL NOT HAVE AN ADVERSE EFFECT ON THE PUBLIC SAFETY,
13 CORRECT?

14 **A** YES.

15 **Q** WHEN YOU SAY "DONE PROPERLY," WOULDN'T IT BE CORRECT THAT
16 YOU MEAN THAT THERE MUST BE PROPER SCREENING OF THE INDIVIDUALS
17 WHO ARE CANDIDATES FOR A RELEASE?

18 **A** YES.

19 **Q** AND WHEN YOU SAY "DONE PROPERLY," WOULDN'T YOU AGREE THAT
20 THERE MUST BE TRAINING OF THE PAROLE OFFICERS IN THE FIELD TO
21 ENABLE EFFECTIVE SUPERVISION OF THESE RELEASED PAROLEES?

22 **A** YES.

23 **Q** AND WHEN YOU SAY "DONE PROPERLY," YOU WOULD AGREE THAT THERE
24 MUST BE COMMUNITY PROGRAMS TO SUPPORT THE PAROLEES IN THEIR
25 MENTAL HEALTH NEEDS, THEIR MEDICAL NEEDS, THEIR JOB NEEDS, THEIR

1 HOUSING NEEDS?

2 **A** THE LAST ISSUE WOULD BE AN IDEAL, YES.

3 **MS. TILLMAN:** THANK YOU, NOTHING FURTHER.

4 **JUDGE HENDERSON:** INTERVENORS.

5 **MR. MITCHELL:** YES, YOUR HONOR.

6 **MR. SPECTER:** EXCUSE ME. WE DIDN'T HEAR HIS LAST
7 ANSWER.

8 **MR. SANGSTER:** COULD WE HAVE THE LAST QUESTION AND
9 ANSWER READ BACK? THE VOICES DROPPED.

10 (RECORD READ)

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

12 **MR. MITCHELL:** GOOD MORNING. BILL MITCHELL,
13 DEFENDANT INTERVENORS.

14 **BY MR. MITCHELL**

15 **Q** GOOD MORNING, DR. KRISBERG. IS IT DR. KRISBERG?

16 **A** DR. KRISBERG.

17 **Q** DOCTOR, YOU WERE HIRED OR RETAINED IN THIS CASE, I BELIEVE
18 IT WAS, IN JULY OR AUGUST OF THIS YEAR.

19 **A** IN JULY, YES.

20 **Q** AND YOU WERE TASKED OR ASKED TO GIVE AN OPINION WHETHER
21 ACCELERATED RELEASE WOULD ENDANGER PUBLIC SAFETY?

22 **A** YES.

23 **Q** THAT WAS YOUR SOLE ROLE OF -- THAT WAS A REQUEST THAT WAS
24 MADE OF YOU, WILL ACCELERATED RELEASE ENDANGER PUBLIC SAFETY?

25 **A** YES.

1 Q AND YOU HAD ALREADY, OVER THE COURSE OF YOUR CAREER, STUDIED
2 ACCELERATED RELEASE QUITE EXTENSIVELY AND PUBLISHED IN THAT
3 AREA, CORRECT?

4 A I HADN'T -- WELL, IN THE LAST COUPLE OF YEARS WE PUBLISHED A
5 LITERATURE REVIEW, BUT, YES, I'VE -- I WAS PERSONALLY INVOLVED
6 IN THE INITIAL RESEARCH IN ILLINOIS THAT DR. AUSTIN SPOKE ABOUT.

7 Q THIS IS A TOPIC THAT YOU HAVE BEEN INVOLVED IN GOING BACK
8 INTO THE 1980'S?

9 A THAT'S CORRECT.

10 Q WHEN WE TALK ABOUT THE TERM "ENDANGER PUBLIC SAFETY," CAN WE
11 DEFINE THAT AS INCREASING CRIME AND VICTIMIZATION?

12 A YES.

13 Q SO IF WE'RE LOOKING TO DETERMINE WHETHER ACCELERATED RELEASE
14 IS GOING TO ENDANGER PUBLIC SAFETY, WE WOULD LIKE TO KNOW
15 WHETHER THE ACCELERATED RELEASE PROPOSAL WILL INCREASE CRIME AND
16 VICTIMIZATION; IS THAT CORRECT?

17 A YES.

18 Q WHEN WE'RE LOOKING TO DETERMINE WHETHER OR NOT PUBLIC SAFETY
19 IS ENDANGERED BY AN EARLY RELEASE, IS IT TRUE THERE ARE A NUMBER
20 OF DIFFERENT MEASURES WE CAN LOOK AT, SUCH AS WHETHER OR NOT IT
21 INCREASES THE CRIME RATE?

22 A YES.

23 Q SUCH AS WHETHER OR NOT IT INCREASES THE RECIDIVISM RATE OF
24 THE INDIVIDUALS RELEASED?

25 A YES.

1 Q SUCH AS WHETHER OR NOT IT INCREASES THE OCCURRENCE OF CRIMES
2 IN THE COMMUNITY?

3 A YES.

4 Q DO YOU AGREE, DOCTOR, THAT STUDIES -- RESEARCH HAS SHOWN
5 THAT THE INCARCERATION OF HABITUAL CRIMINALS WILL REDUCE THE
6 CRIME RATE?

7 A CAN YOU REPEAT THAT QUESTION?

8 Q LET ME REPHRASE IT FOR YOU.

9 WOULD YOU AGREE THAT INCREASED INCARCERATION OF
10 HABITUAL CRIMINALS WILL AND HAS REDUCED CRIME RATES?

11 A THE RESEARCH ON THAT WOULD SUGGEST IT SORT OF DEPENDS UPON
12 THE POINT IN THEIR CAREERS; YOU KNOW, IN OTHER WORDS, IF YOU
13 CAN -- IF YOU ARE FORTUNATE ENOUGH TO GET A HABITUAL CRIMINAL
14 EARLY IN THEIR CARRIER, YES, IT WOULD. BUT IF YOU ARE LOCKING
15 SOMEBODY UP TOWARDS THE END WHEN THEY ARE SORT OF AGING OUT AND
16 NO LONGER COMMITTING AS MANY CRIMES, THAT RESULT IS MARGINAL.

17 CERTAINLY, THE RAND CORPORATION, WHICH HAS BEEN THE
18 LEADING GROUP ON THAT ISSUE, HAS RAISED SERIOUS QUESTIONS ABOUT
19 WHETHER OR NOT, PER SE, WE CAN IDENTIFY HABITUAL CRIMINALS, AND,
20 SECONDLY, WHETHER OR NOT INCARCERATING THEM WILL HAVE MUCH OF AN
21 EFFECT.

22 Q WOULD YOU AGREE THAT INDIVIDUALS WHO HAVE DEMONSTRATED A
23 PROCLIVITY FOR CRIME, AMASSING THREE OR MORE FELONY CONVICTIONS,
24 DEMONSTRATE THAT THEY MIGHT BE HABITUAL CRIMINALS?

25 JUDGE KARLTON: I SUPPOSE THAT DEPENDS ON HOW YOU

1 DEFINE HABITUAL CRIMINALS. IF YOU DEFINE THEM AS THREE OR MORE,
2 THE ANSWER IS YES. IF YOU DEFINE THEM AS FIVE OR MORE, THE
3 ANSWER IS NO.

4 **THE WITNESS:** YOU KNOW, THERE'S A WHOLE SCIENCE OF
5 CRIMINOLOGY THAT HAS BEEN TRYING TO LOOK AT THIS ISSUE. I SAY
6 IT'S INCONCLUSIVE IN TERMS OF HOW YOU DRAW THE LINE ON THIS.

7 **BY MR. MITCHELL**

8 **Q** GETTING TO THAT POINT THEN, HABITUAL CRIMINALS, HOW WOULD
9 YOU CLASSIFY -- HOW WOULD YOU DEFINE WHAT IS OR WHAT IS NOT A
10 HABITUAL CRIMINAL, WHETHER IT'S VIOLENT OR NONVIOLENT
11 PROPERTY-TYPE CRIMES?

12 **A** I WOULD USE BEHAVIOR AS THE INDICATER. IT IS EXCEEDINGLY
13 DIFFICULT TO LOOK OUT INTO THE FUTURE AND MAKE THESE
14 PREDICTIONS.

15 WE KNOW FROM MOST OF THE STUDIES OF WHAT ARE CALLED
16 CRIMINAL CAREERS, THAT MOST OFFENDERS ACTUALLY SLOW DOWN, AGE
17 OUT, ACTUALLY REDUCE THEIR CRIMINAL BEHAVIOR. THERE'S EXTENSIVE
18 RESEARCH INDICATING THAT MOST OFFENDERS ARE GOING TO BE
19 COMMITTING LESSER CRIMES, AND A LOT OF IT HAS TO DO WITH THE AGE
20 CYCLE.

21 CERTAINLY, IF WE WERE TALKING ABOUT YOUNG MEN IN
22 THEIR 20'S, I WOULD BE A LOT -- YOU KNOW, I THINK YOU WOULD BE
23 BETTING ON CONTINUED CRIME BEHAVIOR. IF WE WERE LOOKING AT
24 PEOPLE IN THEIR 50'S AND 60'S, YOU WOULD BE BETTING ON SOMETHING
25 ELSE.

1 **Q** WITH AGE AS A CONTROLLING FACTOR, WOULD YOU AGREE THAT PAST
2 BEHAVIOR IS A GOOD INDICATOR OF RISK TO REOFFEND?

3 **A** THE FACTORS -- NOT NECESSARILY. THE FACTORS THAT ARE MOST
4 PREDICTIVE HAVE TO DO WITH THE OFFENSE, THE SEVERITY OF THE
5 OFFENSE THE PERSON HAS COMMITTED, THE AGE AT WHICH THEY
6 INITIALLY ENTER THE SYSTEM. SO THOSE ARE MUCH MORE TELLING.
7 SOMEBODY'S ASSOCIATION WITH OTHER CRIMINALS, CRIMINAL PEERS, IS
8 A VERY POWERFUL PREDICTOR OF THIS.

9 **Q** LET ME SEE IF I CAN DEFINE THIS TERM "HABITUAL CRIMINAL" A
10 LITTLE CLEARER THEN.

11 WOULD YOU AGREE THAT SOMEONE WHO COMMITS THREE OR
12 MORE FELONY CRIMES WITHIN A TEN-YEAR PERIOD MIGHT BE A HABITUAL
13 CRIMINAL?

14 **A** THEY MIGHT BE, YES.

15 **JUDGE REINHARDT:** AND THEY MIGHT NOT BE. IS THAT
16 WHAT THAT MEANS? THEY MIGHT BE, THEY MIGHT NOT BE?

17 **BY MR. MITCHELL**

18 **Q** WOULD THEY BE, IN YOUR OPINION?

19 **JUDGE KARLTON:** NO, NO. THE QUESTION IS DIRECTED TO
20 DR. KRISBERG.

21 IS THREE YEARS -- I'M SORRY -- THREE CRIMES WITHIN
22 TEN YEARS A DEMONSTRATION OF HABITUAL -- I THINK IS THE WORD YOU
23 USED.

24 **MR. MITCHELL:** A HABITUAL CRIMINAL.

25 **THE WITNESS:** WE HAVE BEEN HAVING THAT DEBATE IN

1 CALIFORNIA OVER THE LAST TEN YEARS, AND I THINK IT'S REALLY
2 DRIVEN BY WHAT THOSE OFFENSES ARE. YOU KNOW, FOR EXAMPLE, IF
3 SOMEBODY -- YOU KNOW, WE THINK ABOUT THE THREE STRIKES
4 CONVERSATION. IF THE LAST STRIKE IS A VERY MINOR CRIME, I STOLE
5 A VIDEO FROM A VIDEO STORE, THEN I WOULD NOT NECESSARILY VIEW
6 THAT AS AN INDICATION OF A HABITUAL CRIMINAL. IF WE ARE TALKING
7 ABOUT THREE ARMED ROBBERIES, THAT'S WHOLE DIFFERENT STORIES.

8 **BY MR. MITCHELL**

9 **Q** SO WE CAN HAVE HABITUAL VIOLENT CRIMINALS, AND WE CAN HAVE
10 HABITUAL NONVIOLENT PROPERTY CRIMINALS, CORRECT?

11 **A** YES.

12 **Q** SO THREE VIOLENT CRIMES, YOU WOULD AGREE, WITHIN A TEN-YEAR
13 PERIOD WOULD QUALIFY SOMEONE AS A HABITUAL CRIMINAL?

14 **A** YES.

15 **Q** WHAT ABOUT THREE PROPERTY NONVIOLENT CRIMES WITHIN A
16 TEN-YEAR PERIOD, WOULD YOU CLASSIFY THAT PERSON AS AN HABITUAL
17 NONVIOLENT PROPERTY CRIMINAL?

18 **A** THAT TERM DOESN'T HAVE A LOT OF SCIENTIFIC MEANING TO ME. I
19 WOULD BE LOOKING AT OTHER RISK FACTORS. IF YOU ARE ASKING ME TO
20 MAKE A PROJECTION GOING FORWARD AS TO WHAT THAT BEHAVIOR WOULD
21 BE, I'D WANT TO KNOW A NUMBER OF OTHER THINGS ABOUT THAT
22 INDIVIDUAL IF I WERE SITTING ON A PAROLE BOARD OR I WAS MAKING A
23 DECISION ABOUT THAT PERSON.

24 **Q** IN LOOKING AT YOUR STUDIES AND YOUR OPINION, I BELIEVE IT'S
25 YOUR OPINION, CORRECT ME IF I'M WRONG, THAT EARLY RELEASE

1 LOWERED RECIDIVISM RATES WHEN LOW RISK OFFENDERS WERE TARGETED,
2 ESPECIALLY DRUG AND PROPERTY OFFENDERS?

3 **A** THAT'S CORRECT.

4 **Q** SO WHEN WE ARE LOOKING AT TARGETING LOWER RISK INDIVIDUALS,
5 WE WANT TO MAKE SURE THAT WE'RE NOT EARLY RELEASING HIGH RISK
6 INDIVIDUALS, CORRECT?

7 **A** YES.

8 **Q** AND WOULD YOU AGREE THAT THE COMMISSION OF THREE OR MORE
9 FELONY CRIMES WITHIN A TEN-YEAR PERIOD WOULD QUALIFY SOMEONE AS
10 HIGH RISK?

11 **A** I WOULD NOT AGREE WITH THAT. I DON'T THINK THERE'S A
12 SCIENTIFIC STANDARD THAT SAYS THREE OR MORE WITHIN TEN YEARS
13 LEADS TO HIGH RISK. AGAIN, I WOULD DEPEND UPON -- YOU KNOW,
14 THERE'S SUBSTANTIAL RESEARCH THAT'S DONE BY PETER GREENWOOD OF
15 THE RAND CORPORATION. ALFRED BLOOMSTEIN AT CARNEGIE-MELLON HAS
16 DONE EXTENSIVE RESEARCH ON THIS. SO I WOULD -- IN ORDER TO FORM
17 THOSE DEFINITIONS, I WOULD LOOK AT THE BEST RESEARCHERS IN THE
18 COUNTRY AND FIGURE OUT WHERE THEY WOULD MAKE THOSE CUTOFF
19 POINTS.

20 **Q** WHAT NUMBER OF FELONY CONVICTIONS WITHIN A TEN-YEAR PERIOD
21 WOULD DISQUALIFY SOMEONE FROM EARLY RELEASE, IN YOUR OPINION?

22 **A** I DON'T HAVE AN OPINION ON THAT.

23 **Q** TEN OR MORE?

24 **A** TEN OR MORE, I WOULD PROBABLY SAY YES.

25 **Q** WHAT ABOUT FIVE IN TEN YEARS?

1 **A** AGAIN, IN REACHING THAT DECISION, I WOULD WANT TO KNOW THE
2 NATURE OF THOSE OFFENSES, HOW SERIOUS THEY WERE. WE WANT TO
3 KNOW THE CIRCUMSTANCES. AND I'D ALSO WANT TO KNOW QUITE A BIT
4 ABOUT THAT INDIVIDUAL IN TERMS OF WHILE THEY WERE INCARCERATED,
5 WERE THEY PARTICIPATING IN PROGRAMS OR NOT? DID THEY HAVE A JOB
6 WHEN THEY WERE RELEASED?

7 I MEAN, THERE WOULD BE A WHOLE SERIES OF THINGS THAT
8 I WOULD I THINK REASONABLY WANT TO TAKE INTO CONSIDERATION IN
9 FORMING THIS ISSUE OF RISK OF FUTURE BEHAVIOR.

10 **Q** AS A BOTTOM LINE, WOULD YOU AGREE THAT SOMEONE WHO HAS THREE
11 OR MORE FELONY CONVICTIONS, HAS GREATER RISK OF REOFFENDING THAN
12 SOMEONE WHO DOES NOT HAVE THREE OR MORE FELONY CONVICTIONS?

13 **A** YES.

14 **Q** NOW, IN YOUR REVIEW OF THE LITERATURE AND THE STUDIES IN THE
15 ACCELERATED RELEASE AREA, YOU CITED IN YOUR REPORT, I BELIEVE
16 YOU SAID TEN DIFFERENT STUDIES, CORRECT?

17 **A** WHAT I SAID, THE TOTAL NUMBER OF STUDIES THAT I HAVE
18 COLLECTED HERE THERE ARE 14 STUDIES, SOME OF THEM ARE MULTIPLE
19 FOR JURISDICTIONS. IT'S NINE STATES, AND THE COUNTRY OF CANADA,
20 AND THERE'S ONE WHICH IS THE CITY OF PHILADELPHIA.

21 **Q** YOU SELECTED THOSE FROM A WIDE VARIETY OF DIFFERENT STUDIES,
22 DIFFERENT ARTICLES THAT COMMENT ON AND LOOKED AT ACCELERATED
23 RELEASE, CORRECT?

24 **A** OUR GOAL WAS TO ASSEMBLE EVERY ARTICLE ON ACCELERATED
25 RELEASE WHICH, IN FACT, CONSTITUTED RESEARCH AND CONTAINED DATA

1 ABOUT THAT. SO, FOR EXAMPLE, WE EXCLUDE OPINION PIECES OR
2 ARTICLES ON JURISPRUDENCE WHICH SPOKE TO THESE ISSUES.

3 SO, TO MY KNOWLEDGE, THOSE WERE THE 14 THAT EMERGED
4 FROM A PRETTY THOROUGH LITERATURE REVIEW ON ACTUAL EMPIRICAL
5 STUDIES OF WHAT HAPPENED IN THESE STATES.

6 **Q** IN ORDER TO INFORM YOUR OPINION, DID YOU TAKE INTO
7 CONSIDERATION, EVEN THOUGH YOU MAY HAVE REJECTED IT, ARTICLES
8 THAT EXAMINED THE EXPERIENCE OF EARLY RELEASE IN VARIOUS
9 JURISDICTIONS SUCH AS IN LOS ANGELES OR IN PHILADELPHIA?

10 **A** AGAIN, I'VE CERTAINLY READ SOME ARTICLES WRITTEN, BUT I
11 WAS -- THE STANDARD WE APPLIED WAS AN EMPIRICAL STUDY.

12 **Q** THERE'S BEEN TESTIMONY IN THIS CASE REGARDING A LOS ANGELES
13 TIMES STUDY OF RELEASING INMATES EARLY IN LOS ANGELES DURING

14 **A** --

15 **JUDGE HENDERSON:** LOS ANGELES TIMES STUDY?

16 **MR. MITCHELL:** LOS ANGELES TIMES STUDY. IT WAS
17 REFERENCED IN TESTIMONY I BELIEVE THE DAY BEFORE YESTERDAY.

18 **MR. SANGSTER:** THERE WAS AN OBJECTION SUSTAINED, AND
19 IT'S IMPROPER TO FORMULATE A HYPOTHETICAL BASED ON --

20 **JUDGE HENDERSON:** RIGHT. I WAS EVEN ADMONISHED FROM
21 REFERRING TO THAT STUDY, IF YOU'LL RECALL.

22 **MR. MITCHELL:** I AM NOT BRINGING OUT ANY DETAILS OF
23 THE STUDY. I AM ASKING IF HE LOOKED AT IT AND CONSIDERED IT.
24 I'M NOT GETTING INTO ANY OF THE DETAILS, IF I MAY.

25 **JUDGE HENDERSON:** QUESTION IS, DID YOU LOOK AT A

1 STUDY AND CONSIDER A STUDY THAT THE COURT HAS FOUND NOT RELEVANT
2 TO THIS PROCEEDING?

3 **THE WITNESS:** I DON'T BELIEVE I'VE DONE THAT, NO.

4 **BY MR. MITCHELL**

5 **Q** IN ORDER TO INFORM YOUR OPINION, YOU WANTED TO TAKE IN AS
6 MUCH INFORMATION AS POSSIBLE REGARDING THE ACTUAL EXPERIENCE OF
7 EARLY RELEASE PROCEDURES THROUGHOUT MOST JURISDICTIONS IN THE
8 UNITED STATES, CORRECT?

9 **A** WITH SPECIFIC REFERENCE TO RECIDIVISM RATES AND CRIME RATES,
10 YES.

11 **Q** LOOKING AT THE ILLINOIS STUDY THAT YOU ACTUALLY SUPERVISED
12 AND PARTICIPATED IN IN 1986, I BELIEVE THAT STUDY WAS PUBLISHED,
13 CORRECT?

14 **A** THAT'S CORRECT.

15 **Q** THAT WAS PUBLISHED BY YOUR ORGANIZATION THAT YOU ARE
16 PRESIDENT OF, THE NATIONAL COUNCIL ON --

17 **A** CRIME AND DELINQUENCY, YES. IT WAS DONE -- THE GRANT WAS
18 THE NATIONAL INSTITUTE OF JUSTICE, WHICH IS THE RESEARCH ARM OF
19 THE JUSTICE DEPARTMENT, FUNDED THE STUDY, AND, ULTIMATELY, WE
20 PUBLISHED IT IN A JOURNAL CALLED CRIME AND DELINQUENCY, WHICH IS
21 A PEER-REVIEWED AND HIGHLY REGARDED ACADEMIC JOURNAL.

22 **Q** EARLY RELEASE SUBSTANTIALLY ACCELERATED THE AMOUNT OF CRIME
23 SUFFERED BY THE PUBLIC, THAT WAS A STATEMENT FROM THAT STUDY.
24 YOU STILL AGREE WITH THAT?

25 **A** YES. IN THE SENSE THAT IT ADVANCED THE DATES AT WHICH

1 CRIMES WERE COMMITTED. IT DIDN'T CHANGE THE OVERALL VOLUME OF
2 CRIMES COMMITTED IN THE STATE OF ILLINOIS. QUITE THE OPPOSITE.
3 BUT IT DID MEAN THAT CRIMES THAT LIKELY WOULD HAVE BEEN
4 COMMITTED BY THOSE SAME PEOPLE JUST SIMPLY HAPPENED A MONTH OR
5 TWO EARLIER.

6 **Q** ALTHOUGH THE PRISON SYSTEM WOULD DIRECTLY BENEFIT FROM
7 LOWERED PRISON POPULATIONS, THE PUBLIC MUST ALSO SUFFER THE
8 INCREASED EFFECTS OF ACCELERATED PRISON RELEASES THAT IN TURN
9 CAN JEOPARDIZE PUBLIC SAFETY. DO YOU AGREE WITH THAT?

10 **A** WOULD YOU REPEAT THAT SENTENCE? I KNOW I DIDN'T WRITE THAT
11 SENTENCE. IS THAT A SENTENCE FROM THE ARTICLE YOU ARE REFERRING
12 TO?

13 **Q** AT PAGE 405.

14 "ALTHOUGH THE PRISON SYSTEM WOULD DIRECTLY
15 BENEFIT FROM LOWERED PRISON POPULATIONS, THE
16 PUBLIC MUST ALSO SUFFER THE INCREASED EFFECTS OF
17 ACCELERATED PRISON RELEASES THAT, IN TURN, CAN
18 JEOPARDIZE PUBLIC SAFETY."

19 **A** I'M NOT SURE I AGREE WITH THAT STATEMENT.

20 **Q** "ONE CAN ALSO QUESTION HOW A WELL-PUBLICIZED
21 EARLY RELEASE PROGRAM MIGHT ADVERSELY AFFECT
22 GENERAL DETERRENCE."

23 DO YOU AGREE WITH THAT STATEMENT FROM THE ARTICLE?

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

25 **Q** "IF IT BECOMES COMMON KNOWLEDGE AMONG THE

1 PUBLIC THAT THE STATE IS REDUCING PRISON TERMS,
2 THEN MARGINAL OFFENDERS MIGHT BE MORE INCLINED
3 TO ENGAGE IN CRIMINAL ACTIVITIES."

4 DO YOU AGREE WITH THAT STATEMENT FROM THE ARTICLE?

5 **A** NO. AGAIN, THAT'S A HYPOTHETICAL STATEMENT. I THINK MY
6 GOAL HAS BEEN TO FOCUS IN ON WHAT ACTUALLY HAPPENED. AGAIN, IN
7 CALIFORNIA, THERE HAVE BEEN REPEATED TIMES WHEN THE LEGISLATURE
8 HAS INCREASED GOOD TIME CREDITS, TO MAKE SOME EFFECT ON THE
9 PRISON OVERCROWDING. IT'S BEEN PUBLICIZED TO THE EXTENT THAT
10 THESE THINGS ARE PUBLICIZED, AND WE SAW NO EVIDENCE THAT THAT
11 ALONE CHANGED CRIME COMMITTING PATTERNS IN THE STATE.

12 **JUDGE KARLTON:** MR. MITCHELL, LET ME INTERRUPT FOR A
13 MINUTE.

14 THE QUOTATION IS --

15 **MR. SANGSTER:** JUDGE KARLTON, I CAN'T HEAR YOU. I
16 APOLOGIZE.

17 **JUDGE KARLTON:** MY APOLOGIES.

18 IF IT BECOMES COMMON KNOWLEDGE AMONG THE PUBLIC THAT
19 THE STATE IS REDUCING PRISON TERMS, THEN MARGINAL OFFENDERS
20 MIGHT BE MORE INCLINED TO ENGAGE IN CRIMINAL ACTIVITIES. YOU
21 SAID YOU DON'T AGREE WITH THAT. ANYTHING IS POSSIBLE. THIS IS
22 A "MIGHT" STATEMENT.

23 **THE WITNESS:** THAT'S CORRECT.

24 **JUDGE KARLTON:** AND THAT'S WHY YOU WERE SAYING YOU
25 DON'T AGREE WITH IT?

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

2 I MEAN, IT'S POSSIBLE THAT SOME PEOPLE MIGHT, BUT I
3 THINK, IN MY EXTENSIVE CAREER OF RESEARCHING AND INTERVIEWING
4 PERSONS WHO HAVE BEEN EXTENSIVELY INVOLVED IN CRIME, I DON'T
5 FIND THAT THEY SPEND A LOT OF TIME, YOU KNOW, LOOKING AT THE
6 PENAL CODE OR TRYING TO FIGURE OUT WHAT THE PENALTIES ARE. IN
7 FACT, MOST OF THEM THINK THEY ARE NEVER GOING TO GET CAUGHT.
8 SO, DETERRENCE, MINOR CHANGES IN PENALTIES, AGAIN, THERE'S NOT
9 MUCH EVIDENCE THAT THEY HAVE A BIG EFFECT.

10 **JUDGE REINHARDT:** THERE ARE TWO DIFFERENT QUESTIONS.

11 ONE IS WHAT YOU JUST ADDED IN YOUR ANSWER A MINOR
12 CHANGE. AND THE OTHER I THINK THE QUESTION THAT COUNSEL -- THE
13 QUOTATION THAT HE READ WAS NOT LIMITED TO A MINOR CHANGE, BUT IT
14 HAD TO DO WITH WHETHER, IF THE PUBLIC BECOMES AWARE THAT
15 PENALTIES ARE BEING REDUCED, SAY FROM 80 YEARS TO TEN YEARS, IT
16 MIGHT BE ONE ANSWER. IF IT'S FROM SIX MONTHS TO FIVE MONTHS, IT
17 MIGHT BE A DIFFERENT ANSWER. THE QUESTION SEEMED TO BE A
18 GENERAL QUESTION, NOT RELATED TO EITHER A SHORT REDUCTION OR A
19 LONG REDUCTION.

20 AS YOU SAY, THERE'S BEEN A DEBATE EVER SINCE I CAN
21 REMEMBER ABOUT WHETHER LONG SENTENCES HAVE -- HOW MUCH OF A
22 DETERRENT EFFECT LONG SENTENCES HAVE. THIS IS THE SAME DEBATE
23 IF YOU SHORTEN SENTENCES, WHAT EFFECT DOES THAT HAVE ON THE
24 COMMISSION OF CRIME. BUT I THINK WHAT'S RELEVANT TO US IS
25 WHETHER YOU SHORTEN SENTENCES FOR A VERY SHORT PERIOD, AND I

1 DON'T KNOW WHETHER YOUR ANSWER IS -- IT WOULD SEEM THE QUESTION
2 RELATED TO JUST THE GENERAL PHILOSOPHICAL ISSUE OF WHETHER
3 LENGTHY SENTENCES REDUCES CRIME, WHICH IS AN INTERESTING DEBATE,
4 LIKE WHETHER WE OUGHT TO HAVE THREE STRIKES LAWS.

5 I THINK WHAT'S MOST HELPFUL TO US IS WHETHER THESE
6 QUESTIONS COULD BE ANSWERED IN TERMS OF THE KIND OF ISSUE WE
7 FACE, WHICH IS SHORT REDUCTIONS.

8 I DON'T KNOW WHETHER THAT'S A SPEECH, OR A QUESTION,
9 OR MAYBE SOME DESIRE TO HAVE QUESTIONS RELATE -- I THINK THE
10 QUESTION WAS A FAIR QUESTION, WHETHER THE REPORT -- YOU AGREE
11 WITH THE PART OF THE REPORT THAT TELLS US THAT IF THE PUBLIC IS
12 AWARE YOU ARE ONLY GETTING A ONE-YEAR SENTENCE INSTEAD OF A
13 50-YEAR SENTENCE, DOES THAT HAVE AN EFFECT ON CRIME. BUT WHAT I
14 THINK -- TO HAVE SOME EFFECT ON US WOULD BE WHETHER A REDUCTION
15 OF A SENTENCE BY A COUPLE OF MONTHS WOULD HAVE AN EFFECT ON
16 CRIME.

17 **THE WITNESS:** WELL, I THINK THAT'S WHERE I AM --
18 THAT'S WHAT I'M TRYING TO COMMUNICATE. I DO NOT BELIEVE THAT
19 SMALL REDUCTIONS IN SENTENCES ARE GOING TO HAVE AN EFFECT ON
20 CRIME RATES. THEY HAVEN'T, IN FACT. THE EVIDENCE IS PRETTY
21 CLEAR THAT THEY HAVE NOT.

22 AND THE QUESTION, AGAIN, WHETHER BROAD PUBLIC
23 KNOWLEDGE OF THIS IS GOING TO HAVE AN EFFECT, YOU KNOW, AGAIN I
24 COME BACK TO THE FACT THAT EVERY YEAR THE LEGISLATURE MEETS,
25 EVERY YEAR THE LEGISLATURE CHANGES PENALTIES. THINGS THAT WERE

1 FELONIES BECOME WOBBLERS. WE SENTENCE PEOPLE TO JAIL THAT USED
2 TO GO TO STATE PRISON. THIS IS PUBLICIZED IN THE NEWSPAPERS.
3 THERE'S NO EVIDENCE THAT THOSE CHANGES HAVE INCREASED CRIME IN
4 THIS STATE.

5 **JUDGE REINHARDT:** YOU MIGHT ASK THE SAME QUESTION
6 ABOUT THREE STRIKES, HAS THAT INCREASED OR DECREASED CRIME, BUT
7 THAT'S NOT A PROBLEM IN THIS CASE.

8 **BY MR. MITCHELL**

9 **Q** DR. KRISBERG, WHEN THIS STUDY WAS SUPERVISED BY YOU BACK IN
10 1986 AND IT WAS PUBLISHED, DID YOU AGREE WITH IT THEN?

11 **A** THE GENERAL CONCLUSIONS OF THE STUDY, YES. ALTHOUGH THE
12 AUTHOR WAS JAMES AUSTIN AND I CERTAINLY DIDN'T SUBSCRIBE TO EACH
13 AND EVERY WORD THAT JIM WROTE IN THAT REPORT, THAT WAS HIS
14 ARTICLE.

15 **Q** AND YOU CITED THAT STUDY -- THIS STUDY IN THE MATERIALS YOU
16 PROVIDED IN YOUR REPORT TO THIS COURT, CORRECT?

17 **A** THAT'S CORRECT.

18 **Q** AND IN THAT REPORT YOU INDICATED THAT THIS EARLY RELEASE
19 PROCEDURE OPERATING BETWEEN 1980 TO 1983 INVOLVED THE EARLY
20 RELEASE OF OVER 21,000 INMATES FROM THE ILLINOIS DEPARTMENT OF
21 CORRECTIONS, CORRECT?

22 **A** THAT'S CORRECT.

23 **MR. SANGSTER:** MISSTATES -- HE SAID IT WAS
24 MR. AUSTIN'S STUDY, NOT HIS STUDY.

25 **JUDGE KARLTON:** HE SUPERVISED, APPARENTLY; IS THAT

1 RIGHT, SIR?

2 **THE WITNESS:** THAT'S RIGHT. JAMES AUSTIN WORKED FOR
3 ME AT THE TIME, YES.

4 **BY MR. MITCHELL**

5 **Q** AND THAT EARLY RELEASE PROCEDURE IN ILLINOIS INVOLVED THE
6 RELEASE OF THAT 21,000 INMATES 90 DAYS PRIOR TO THE EXPIRATION
7 OF THEIR TERMS. SO WE ARE TALKING ABOUT A 90-DAY REDUCTION IN
8 THEIR TERMS?

9 **A** YES.

10 **Q** AND THAT WAS EFFECTIVE IN REDUCING THE PRISON POPULATION BY
11 TEN PERCENT?

12 **A** YES.

13 **Q** TWENTY-FIVE HUNDRED INMATES?

14 **A** YES. IF I COULD ADD? PART OF THE REASON IT ONLY HAD THAT
15 EFFECT WAS THAT DURING THAT PERIOD OF TIME, THE LEGISLATURE WAS
16 ENACTING OTHER LAWS THAT WERE ACTUALLY INCREASING TIME SERVED,
17 AND SO THERE WERE COUNTERVAILING FORCES THAT LED TO AN INCREASE
18 IN THE ILLINOIS PRISON POPULATION DURING THAT PERIOD AND
19 THEREAFTER.

20 **Q** AND YOU CITED IN YOUR REPORT THAT THOSE WHO HAD BEEN
21 RELEASED EARLY AS A GROUP HAD A LOWER RECIDIVISM RATE,
22 42 PERCENT, COMPARED TO THE FULL TERMERS WHO HAD A 49 PERCENT
23 RECIDIVISM RATE?

24 **A** THAT'S CORRECT.

25 **Q** AND THAT IS OFFERED AS EVIDENCE THAT ACCELERATED RELEASE

1 DIDN'T ENDANGER PUBLIC SAFETY BECAUSE IT DIDN'T LEAD TO AN
2 INCREASE IN THEIR RECIDIVISM RATE; IT ACTUALLY LOWERED THEIR
3 RECIDIVISM RATE?

4 **A** WELL, IN THAT STUDY WE CONCLUDED, FIRST, THAT THE RECIDIVISM
5 RATES WERE EITHER THE SAME OR LOWER, WHICH IS WHAT THOSE NUMBERS
6 SUGGEST. SECONDLY, THAT, IN FACT, DURING THE YEARS THAT EARLY
7 RELEASE WAS OPERATING, ACCORDING TO THE FBI, THE CRIME RATE OF
8 ILLINOIS WAS DECLINING. SO THAT WAS ANOTHER KEY CASE OF THIS --

9 **JUDGE REINHARDT:** IS THAT CAUSE AND EFFECT?

10 **THE WITNESS:** NO. I WOULD NOT SAY IT'S CAUSE AND
11 EFFECT, BUT, CERTAINLY, IT'S HARD TO CONCLUDE THAT IF CRIME IS
12 GOING DOWN THAT THIS IS HAVING A --

13 **JUDGE REINHARDT:** MAYBE IT WOULD HAVE GONE DOWN
14 FARTHER. WE KEEP HEARING ABOUT CRIME GOING DOWN NO MATTER WHAT
15 YOU DO, OR CRIME GOING UP NO MATTER WHAT YOU DO, AND IT GOES
16 DOWN, APPARENTLY, NATIONALLY WHETHER STATES GET TOUGHER OR MORE
17 LENIENT AND THEN IT GOES UP.

18 **JUDGE KARLTON:** WE HAVEN'T HEARD ABOUT GOING UP.

19 **JUDGE REINHARDT:** WE HAVEN'T HEARD ABOUT IT YET.

20 **JUDGE KARLTON:** WE COULD INFER THAT -- JUST AS
21 SENSIBLE HUMAN BEINGS, THAT SOMEHOW THE CRIME RATE IS UNRELATED.
22 I MEAN, IS THAT REALLY TRUE, THE CRIME RATE IS UNRELATED?

23 **JUDGE REINHARDT:** TO ANYTHING?

24 **JUDGE KARLTON:** WELL, PARTICULARLY TO THE NUMBER OF
25 PEOPLE INCARCERATED AND THE LENGTH OF TIME THEY'RE INCARCERATED.

1 **THE WITNESS:** I WOULDN'T SAY IT'S UNRELATED. IF YOU
2 DID SOMETHING DRAMATIC LIKE OPENED THE DOORS AND LET EVERYBODY
3 OUT, IT MIGHT HAVE AN EFFECT; YOU KNOW, IF YOU DECLARED MASS
4 AMNESTY, THAT MIGHT HAVE AN EFFECT.

5 **JUDGE REINHARDT:** OR IF YOU LOCKED EVERYBODY UP.

6 **THE WITNESS:** RIGHT, WHICH WOULD BE ANOTHER EXAMPLE.
7 I MEAN, THERE CERTAINLY HAVE BEEN NATIONS LIKE THE FORMER SOVIET
8 UNION THAT LOCKED UP EXTRAORDINARY AMOUNTS OF PEOPLE BUT STILL
9 HAD VERY HIGH RATES OF CRIMINAL BEHAVIOR.

10 I'D REFER YOU TO PROFESSOR FRANKLIN ZIMRING'S
11 EXCELLENT BOOK, "THE GREAT AMERICAN CRIME DECLINE," WHERE HE
12 LOOKS EXHAUSTIVELY AT ALL KINDS OF THEORIES THAT MIGHT HAVE
13 ACCOUNTED FOR THIS DRAMATIC CRIME DROP AND CONCLUDES PRETTY
14 CONVINCINGLY THAT CORRECTIONS POLICIES DIDN'T HAVE A BIG EFFECT
15 ON IT, BUT, FOR EXAMPLE, EFFECTIVE LAW ENFORCEMENT CAN HAVE A
16 VERY -- DID HAVE A POSITIVE EFFECT ON THIS ISSUE.

17 ONE OF THE THINGS THAT I ALWAYS POINT TO IS THAT NEW
18 YORK CITY, WHICH HAS THE MOST DRAMATIC DECLINE IN CRIME OF ANY
19 CITY AND ABOVE ALL THE OTHER CITIES DURING THIS PERIOD OF TIME,
20 DURING THE PERIOD AT WHICH CRIME RATES WERE DROPPING
21 PRECIPITOUSLY IN NEW YORK, NEW YORK CITY WAS ACTUALLY SENDING
22 FEWER PEOPLE TO ITS JAILS AND COMMITTING FEWER PEOPLE TO STATE
23 PRISONS. IT SEEMS PRETTY CLEAR TO THE RESEARCHERS THAT HAVE
24 LOOKED AT IT THAT IT'S NOT ONLY BETTER POLICING, BUT LARGELY
25 BETTER POLICING HAD A MAJOR EFFECT ON THE CRIME DROP.

1 AND, SIMILARLY, SAN DIEGO, IN THIS STATE, SAN DIEGO
2 EXPERIENCED THE BIGGEST DROP OF ANY COUNTY DURING THIS LAST TEN
3 YEARS IN TERMS OF CRIME RATE. AGAIN, IF YOU LOOK AT THE
4 INCARCERATION PATTERNS OF SAN DIEGO, IT IS NOT THE HIGHEST
5 INCARCERATION PLACE IN THE STATE BY ANY MEANS, AND I THINK MOST
6 CRIMINOLOGISTS WOULD CONCLUDE IT WAS MORE EFFECTIVE POLICING
7 THAT HAD A BIGGER EFFECT.

8 **BY MR. MITCHELL**

9 **Q** YOU THINK HOW EXPENSIVE IT IS TO LIVE THERE MIGHT HAVE
10 SOMETHING TO DO WITH IT ALSO?

11 **A** ARE YOU REFERRING TO NEW YORK OR SAN DIEGO?

12 **Q** REFERRING TO SAN DIEGO.

13 DEMOGRAPHICS ALSO PLAY A FACTOR. INCOME LEVELS AND
14 SUCH CAN PLAY A FACTOR IN THE LEVEL OF CRIME. LOOK AT ORANGE
15 COUNTY, SAN MATEO. THEY ALL HAVE LOW CRIME RATES TOO, DON'T
16 THEY?

17 **JUDGE REINHARDT:** HOW ABOUT PARTY AFFILIATION?
18 REPUBLICANS IN ORANGE COUNTY, LESS CRIME?

19 **JUDGE KARLTON:** MY COLLEAGUE HAS SAID, THE THING THAT
20 COMES OUT OF THIS TRIAL IS WE DON'T KNOW ANYTHING ABOUT WHAT
21 CAUSES CRIME.

22 **JUDGE REINHARDT:** THAT AND THAT EVERYTHING IS
23 POSSIBLE.

24 **JUDGE KARLTON:** EVERYTHING IS POSSIBLE.

25 **THE WITNESS:** WELL, WHEN REPORTERS ASK ME ABOUT

1 CHANGING CRIME PATTERNS, I ALWAYS SAY IF I COULD RELIABLY ANSWER
2 THAT QUESTION, I WOULD TRY TO BE IN THE STOCK MARKET. WE ARE
3 TALKING ABOUT HUMAN BEHAVIOR WHICH, WITH ITS INHERENT
4 UNPREDICTABLY, I THINK GOOD PUBLIC POLICY IS YOU DO EVERYTHING
5 YOU CAN TO REDUCE RISK, BUT I DON'T THINK THERE'S ANY SUCH THING
6 AS ZERO RISK IN LIFE.

7 **BY MR. MITCHELL**

8 **Q** DR. KRISBERG, ONE THING WE CAN SAY FOR CERTAIN IS THAT
9 CRIMES COMMITTED BY INDIVIDUALS WHO ARE RELEASED EARLY WOULD NOT
10 HAVE OCCURRED BUT FOR THE FACT THAT THEY WERE RELEASED EARLY,
11 CORRECT?

12 **A** NO, I WOULDN'T SAY THAT. WHAT I WOULD SAY IS THE CRIME
13 COMMITTED BY SOMEBODY EARLY IS GOING TO HAVE A DIFFERENT VICTIM
14 THAN WHEN THEY ARE GOING TO BE RELEASED, LET'S SAY 90 DAYS
15 LATER. SO IT CHANGES TIME, PLACE AND POTENTIAL VICTIM, BUT IT
16 DOESN'T NECESSARILY ALTER WHETHER OR NOT THE CRIME WOULD OCCUR.

17 AND IF YOU PLAY THIS OUT OVER 12 MONTHS OR 18 MONTHS,
18 AS MANY OF THESE STUDIES HAVE DONE, THE ACTUAL NUMBER OF CRIMES
19 COMMITTED BY PEOPLE IS THE SAME.

20 **Q** WHEN WE LOOKED AT THE ILLINOIS STUDY DURING THE TIME PERIOD
21 1980 TO 1983 INVOLVING THE INDIVIDUALS WHO WERE RELEASED EARLY,
22 THERE WERE 4,504 CRIMES THAT OCCURRED WITHIN THE EARLY RELEASE
23 WINDOW; DO YOU RECALL THAT PART OF THE STUDY?

24 **A** YES, I DO.

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

1 **BY MR. MITCHELL**

2 **Q** THOSE EARLY RELEASE CRIMES INCLUDED 23 HOMICIDES, 32 RAPES,
3 681 ROBBERIES, 2,571 ASSAULTS, 262 ARSONS, AND 2472 BURGLARIES;
4 IS THAT CORRECT?

5 **A** YES.

6 **Q** FROM THE REPORT?

7 **A** IF IT'S IN THE REPORT, I'D SAY YES. I'M SURE IT'S CORRECT.

8 **Q** NOW, EVEN THOUGH WE CAN -- I HATE TO USE THE WORD
9 "SPECULATE" -- THAT THOSE OR SIMILAR CRIMES WOULD HAVE OCCURRED
10 WHEN THESE INDIVIDUALS GOT OUT AFTER SERVING THEIR FULL TERM, WE
11 KNOW FOR A FACT THAT THESE CRIMES DID OCCUR DURING THE PERIOD
12 THAT THEY WOULD HAVE BEEN IN CUSTODY BUT FOR THE 90 DAYS CREDITS
13 THAT WERE GIVEN TO THEM TO GET OUT EARLY, CORRECT?

14 **A** YES. AND I THINK GOVERNOR JIM THOMPSON INSTITUTED THIS
15 POLICY BECAUSE THERE WERE ALSO DEATHS AND RIOTS THAT WERE TAKING
16 PLACE IN THE ILLINOIS PRISONS, AND HE WAS EQUALLY CONCERNED
17 ABOUT THE SAFETY OF STAFF AND THE SAFETY OF PEOPLE WHO WORKED
18 FOR HIM. SO EARLY RELEASE WAS -- ACTUALLY, IT WAS CALLED FORCED
19 RELEASE IN ILLINOIS -- WAS IMPLEMENTED AS AN EMERGENCY MEASURE
20 BECAUSE THE GOVERNOR WAS QUITE CONCERNED ABOUT THE SAFETY OF THE
21 PRISONS.

22 **Q** NOW, YOUR COLLEAGUE, DR. AUSTIN, REFERRED TO THIS UNDER THE
23 HEADING "THE DARK SIDE OF EARLY RELEASE" IN HIS STUDY THAT YOU
24 CITED IN YOUR EXPERT REPORT IN THIS CASE; DO YOU RECALL THAT
25 PORTION?

1 **A** YES.

2 **Q** IT STATED THERE THAT:

3 "EARLY RELEASE MEANS THAT CRIMES THAT WOULD
4 NOT HAVE BEEN COMMITTED BY RELEASED PRISONERS
5 HAD THEY SERVED THEIR FULL TERMS ARE NOW LIKELY
6 TO TAKE PLACE."

7 THAT'S A CORRECT STATEMENT, ISN'T IT?

8 **A** YES.

9 **Q** "ASSESSING THE COST OF EARLY RELEASE MUST GO BEYOND A
10 SIMPLISTIC CALCULATION OF RECIDIVISM RATES FOR RELEASED
11 PRISONERS"; DO YOU AGREE WITH THAT?

12 **A** YES, I DO.

13 **Q** THAT IS SOMETHING IMPORTANT FOR THIS COURT TO TAKE INTO
14 CONSIDERATION IN ITS DECISION IN THIS CASE, ISN'T IT?

15 **A** WELL, WHAT I'M HOPING IS THAT AS THE COURT CONSIDERS THE
16 URGENT NEED TO REDUCE THE POPULATION IN THE DEPARTMENT OF
17 CORRECTIONS -- AND, AGAIN, I REFER YOU TO THE EXPERT PANEL WHICH
18 INDICATED THAT SUBSTANTIAL REDUCTIONS IN RECIDIVISM ARE UNLIKELY
19 TO OCCUR WITHOUT REDUCING THE POPULATION -- I WOULD ASSUME THAT
20 YOU WOULD COME UP WITH A PLAN THAT WOULD -- OR AGREE TO A PLAN
21 THAT WOULD INCLUDE DIVERSION OF SOME LOW RISK PEOPLE FROM THE
22 PRISON SYSTEM, WOULD INCLUDE GOOD TIME CREDITS, NOT UNLIKE WHAT
23 THE GOVERNOR HAS RECENTLY PROPOSED IN HIS BUDGET MEASURE, AND
24 MAYBE SOME ACCELERATED RELEASE AS PART OF THAT.

25 SO I'M -- AT LEAST IN MY OWN MIND, I'M NOT ASSUMING

1 THAT ACCELERATED RELEASE BY ITSELF WOULD BE THE ONLY PART OF THE
2 PLAN. IT WOULD BE CERTAINLY SOMETHING I WOULD ADVISE FOR FOR
3 RELIEVING WHAT I WOULD DESCRIBE AS EMERGENCY CIRCUMSTANCES IN
4 SOME OF THE PRISONS.

5 **Q** SIR, IN THE STUDY THAT YOU SUPERVISED, IT STATES:

6 "ONE MUST ALSO ATTEMPT TO ACCOUNT FOR THE
7 REAL FINANCIAL LOSSES ATTRIBUTIVE TO EARLY
8 RELEASE RELATED CRIMES, SUCH AS PROPERTY LOSS
9 AND DAMAGE, AS WELL AS MEDICAL EXPENSES
10 RESULTING FROM CRIMES OF VIOLENCE. FINALLY,
11 NON-PECUNIARY COSTS, SUCH AS PSYCHOLOGICAL HARM
12 OR CHANGES IN THE VICTIM'S LIFESTYLE AS A RESULT
13 OF THE CRIMES INFLICTED, ARE EXAMPLES OF
14 DIFFICULT TO MEASURE BUT EQUALLY SIGNIFICANT
15 CONSEQUENCES OF AN EARLY RELEASE POLICY."

16 IS IT STILL YOUR OPINION THAT THESE FACTORS --

17 **JUDGE KARLTON:** THE QUESTION IS WHETHER IT EVER WAS
18 HIS OPINION. THAT'S DR. AUSTIN --

19 **MR. MITCHELL:** I'M SORRY FOR MISPHRASING THAT.

20 **BY MR. MITCHELL**

21 **Q** WOULD YOU AGREE WITH THAT STATEMENT STILL?

22 **A** I BELIEVE EFFECTIVE VICTIM ASSISTANCE PROGRAMMING CAN MORE
23 THAN BUFFER THOSE IMPACTS, AND WE KNOW THIS HAS BEEN A
24 DIFFICULTY IN THIS STATE, BUT CERTAINLY IF CALIFORNIA WERE TO
25 HAVE AN EFFECTIVE AND WELL-ADMINISTERED VICTIM ASSISTANCE

1 PROGRAM, I THINK THOSE MEASURABLE COSTS, WHICH BY AND LARGE FOR
2 MOST OFFENDERS ARE MINOR PROPERTY LOSSES, CAN BE HANDLED.

3 FOR THOSE EXPERIENCING MORE SIGNIFICANT PSYCHOLOGICAL
4 IMPACTS, THERE ARE KNOWN TECHNOLOGIES OF COUNSELING AND SUPPORT
5 FOR VICTIMS THAT CERTAINLY COULD BE PART OF THIS EQUATION.

6 **Q** YOUR EXPERT REPORT, SIR, WENT ON TO LIST, FURTHER,
7 ACCELERATED RELEASE PROVISION IN ILLINOIS IN 1990 WHERE THEY
8 INCREASED THE LENGTH OF TIME UP TO 180 DAYS, THEY LET PEOPLE OUT
9 180 DAYS EARLY STARTING IN 1990, CORRECT?

10 **A** THAT'S CORRECT.

11 **Q** AND THE STUDY THAT YOU NOTED IN YOUR REPORT EXAMINED 4,640
12 CASES AND SAW NO INCREASE IN THE RECIDIVISM RATE?

13 **A** THAT'S RIGHT.

14 **Q** AND YOU ALSO POINTED OUT THAT CRIME RATES DECLINED BETWEEN
15 '93 AND '96; IS THAT CORRECT?

16 **A** YES. THAT'S A MORE RECENT PERIOD. I MEAN, THE IMPORTANT
17 THING IS THAT ILLINOIS SUBSEQUENTLY TRANSFORMED THE FORCED
18 RELEASE PROGRAM INTO AN EXPANDED GOOD TIME CREDITS STATUTE, AND
19 EXTENDED THE AMOUNT OF GOOD TIME CREDIT THAT INMATES COULD GET,
20 AND EVEN TODAY HAS INSTITUTED THAT POLICY.

21 SO WHERE THEY'RE NO LONGER USING FORCED RELEASE,
22 THEY'RE USING A PROGRAM THAT INVOLVES ACTUALLY GREATER GRANTING
23 OF TIME, AND THAT'S BEEN GOING UP UNTIL THE PRESENT. AND,
24 AGAIN, ILLINOIS' OVERALL CRIME PATTERNS LOOK LIKE MOST OF THE
25 COUNTRY.

1 Q DR. KRISBERG, ISN'T IT TRUE THAT IN THE YEAR FOLLOWING THE
2 EARLY RELEASE INCREASE OF UP TO 180 DAYS, THAT THE CRIME RATE
3 ACTUALLY INCREASED TO 1,039 PER 100,000 OF POPULATION?

4 A THAT'S CORRECT, AND WE SEE YEAR-TO-YEAR INFLUXES IN THOSE
5 CRIME RATES. THAT'S NOT UNUSUAL.

6 Q SO YOU ARE NOT ATTRIBUTING THE REDUCTION OR DECLINE IN CRIME
7 BETWEEN '93 AND '96 THAT YOU CITED IN YOUR REPORT TO THE EARLY
8 RELEASES THAT TOOK PLACE IN 1990, ARE YOU?

9 A NO. I'M NOT ARGUING THAT EARLY RELEASE REDUCES THE CRIME
10 RATE, BUT I'M SUGGESTING THAT THERE'S NO EVIDENCE THAT IT'S
11 ACTUALLY INCREASED THE CRIME RATE.

12 Q BUT YOU CITED THAT DECLINE IN THE CRIME RATE IN YOUR EXPERT
13 REPORT REGARDING ACCELERATED RELEASE?

14 A WELL, AGAIN, IF ONE GOES ACROSS 14 STUDIES, ONE SEES A
15 CONSISTENT PATTERN OF EITHER NO CHANGE OR REDUCTIONS IN CRIME
16 RATES IN VIRTUALLY IN ALL OF THOSE JURISDICTIONS DURING THAT
17 PERIOD OF TIME.

18 Q IN LOOKING AT THE WASHINGTON STATE STUDY THAT YOU HAD IN
19 YOUR REPORT BETWEEN 1969 AND 1984, 1,674 PRISONERS WERE
20 RELEASED; IS THAT CORRECT?

21 A YES.

22 Q AND THEY STUDIED THE --

23 MR. SANGSTER: YOUR HONOR, EXCUSE ME. I UNDERSTOOD
24 WE WERE UNDER TIME LIMITS IN CONNECTION WITH OUR EXAMINATIONS,
25 AND BY MY CALCULATION WE ARE OVER THE TIME. I UNDERSTAND THE

1 COURT ASKED SOME QUESTIONS, BUT I THINK WE ARE WELL OVER THE
2 TIME.

3 **MR. MITCHELL:** I DON'T HAVE THAT MUCH MORE. I'D ASK
4 FOR ADDITIONAL TIME.

5 **JUDGE HENDERSON:** ARE WE UNDER TIME LIMITS?

6 **MR. SANGSTER:** MY UNDERSTANDING --

7 **JUDGE REINHARDT:** I THINK THEY'RE GENERAL AGREEMENTS
8 ON TIME, BUT WE'RE A GENERALLY VERY TOLERANT GROUP, AND WE'RE
9 NOT GOING TO ENFORCE ANYTHING STRICTLY.

10 **MR. MITCHELL:** THANK YOU, YOUR HONORS.

11 **JUDGE KARLTON:** SPEAK FOR YOURSELF.

12 **BY MR. MITCHELL**

13 **Q** AND THEY LOOKED AT, I BELIEVE, SIX EARLY RELEASE EFFORTS IN
14 THAT TIME PERIOD?

15 **A** THAT'S CORRECT.

16 **Q** AND ALTHOUGH, AS YOU NOTED IN YOUR STUDY OF THE FIRST TWO
17 RELEASE EFFORTS THAT OCCURRED, THAT THEIR RECIDIVISM RATE
18 DECLINED, WASN'T IT TRUE THAT THE OFFENDERS IN THE THIRD RELEASE
19 HAD SIGNIFICANTLY HIGHER RECIDIVISM RATES THAN THE COMPARISON
20 GROUP?

21 **A** THAT'S RIGHT. AND THE STATE OF WASHINGTON THEN TIGHTENED UP
22 THEIR CRITERIA, AND THE RATE WENT DOWN AGAIN IN SUBSEQUENT --

23 **Q** CORRECT, BECAUSE DIDN'T THEY ATTRIBUTE THAT HIGHER
24 RECIDIVISM RATE IN THE THIRD RELEASE WAS MOST LIKELY DUE TO A
25 HIGHER PERCENTAGE OF HABITUAL OFFENDERS BEING INCLUDED IN THE

1 EARLY RELEASE?

2 **A** IT'S WHAT THE AUTHOR INDICATED. YOU KNOW, I'D LIKE TO DO A
3 MORE IN-DEPTH ANALYSIS TO VERIFY THAT OPINION.

4 **Q** YOU DIDN'T DO AN IN-DEPTH ANALYSIS TO CITE IT IN YOUR EXPERT
5 REPORT?

6 **A** I RELIED ON THE PUBLISHED REPORT THAT YOU ARE REFERRING TO.

7 **Q** IN REFERRING TO THE CALIFORNIA STUDY THAT YOU CITED IN YOUR
8 REPORT FROM 1970, WAS A STUDY DONE BY THE -- CDC AT THAT TIME,
9 WASN'T IT?

10 **A** RIGHT, RESEARCH COMMISSION.

11 **Q** AND THAT INVOLVED EARLY RELEASE BETWEEN MARCH AND AUGUST OF
12 1970 WHERE HALF OF THE INDIVIDUALS WERE RELEASED 6.6 MONTHS
13 EARLY?

14 **A** YES.

15 **Q** YOU STATE IN YOUR REPORT THAT THERE WAS NO SIGNIFICANT
16 DIFFERENCE ON RETURN-TO-CUSTODY RATES?

17 **A** THAT'S CORRECT.

18 **Q** ISN'T IT TRUE THAT THE ACTUAL STUDY SHOWS THAT AT 12 MONTHS
19 OF FOLLOW-UP, THE EARLY RELEASE GROUP HAD A PAROLE FAILURE RATE
20 OF 34.4 PERCENT COMPARED TO 8.2 PERCENT FOR THE CONTROL GROUP?

21 **A** THAT'S RIGHT, BUT THE STATISTICAL TEST THAT WAS APPLIED BY
22 THE AUTHORS SUGGESTED THAT THAT DIFFERENCE WAS NOT A
23 STATISTICALLY SIGNIFICANT DIFFERENCE AND ACTUALLY WAS, YOU KNOW,
24 NOT UNLIKE WHEN WE LOOK AT ELECTION POLLS AND WE TALK ABOUT THE
25 MARGIN OF ERROR. IN OTHER WORDS, THAT DIFFERENCE WAS WITHIN THE

1 MARGIN OF ERROR.

2 **Q** DIDN'T THE STUDY ALSO INDICATE THAT AT 24 MONTHS AFTER
3 RELEASE -- EXCUSE ME -- THE PAROLE FAILURE RATE WAS 47.4 PERCENT
4 FOR THE EARLY RELEASE GROUP AND 39.5 PERCENT FOR THE CONTROL
5 GROUP?

6 **A** YES, AND I BELIEVE THAT THE DIFFERENCE WAS MOSTLY AN
7 INCREASE IN PAROLE FAILURE DUE TO TECHNICAL VIOLATIONS.

8 **Q** SO WHEN YOU INDICATE THAT THERE WAS NO SIGNIFICANT
9 DIFFERENCE ON RETURN-TO-CUSTODY RATES BETWEEN THE TWO GROUPS,
10 THERE WAS A SIX POINT DIFFERENCE IN THE FIRST 12 MONTHS AND
11 ALMOST AN 11 POINT DIFFERENCE IN THE 24 MONTHS, BUT THAT WAS
12 ATTRIBUTED TO BEING INSIGNIFICANT?

13 **A** THE STATISTICAL MEASURE APPLIED BY THE AUTHORS, WHICH WAS
14 APPROPRIATE, LOOKED AT THAT DIFFERENCE, AND CONCLUDED THAT,
15 BASED ON THAT SAMPLE, THAT DIFFERENCE COULD HAVE OCCURRED BY
16 CHANCE. SO, YES, AGAIN, JUST LIKE MARGIN OF ERROR, WE HAVE LOTS
17 OF POLITICAL POLLS, AND THEY VARY OVER TIME.

18 SO, THE AUTHORS OF THAT ARTICLE CONCLUDED, HAD THEY
19 PICKED A DIFFERENT SAMPLE AND MEASURED IT, THEY MIGHT HAVE COME
20 UP WITH OTHER RESULTS, BUT THERE WAS NOT A STATISTICAL
21 DIFFERENCE BETWEEN THOSE TWO GROUPS.

22 **Q** DR. KRISBERG, YOU PARTICIPATED IN A TASK FORCE ON CALIFORNIA
23 PRISON CROWDING BACK IN AUGUST OF 2006, CORRECT?

24 **A** EXCUSE ME?

25 **Q** DID YOU PARTICIPATE IN A TASK FORCE ON CALIFORNIA PRISON

1 CROWDING IN 2006?

2 **A** YES, I WAS ASKED BY THE CALIFORNIA SENATE TO ORGANIZE SUCH A
3 TASK FORCE AND TO PROVIDE RECOMMENDATIONS DURING AN EMERGENCY
4 SESSION CALLED BY THE GOVERNOR ON PRISON OVERCROWDING.

5 **Q** YOU RECALL YOUR PARTICIPATION IN THAT?

6 **A** OH, YES.

7 **Q** THAT WAS A PUBLISHED STUDY, CORRECT?

8 **A** YES.

9 **Q** THE PURPOSE OF THE STUDY WAS TO OFFER SOME POLICY AND
10 PROGRAM OPTIONS TO BE CONSIDERED IN A SPECIAL SESSION OF THE
11 LEGISLATURE ON SEVERE PROBLEMS IN CALIFORNIA PRISONS, CORRECT?

12 **A** THAT'S CORRECT.

13 **Q** AND THE GROUP THAT WAS ASSEMBLED, YOURSELF INCLUDED, PUT
14 TOGETHER PROPOSALS FOR REFORM TO ADDRESS THE CROWDING PROBLEM IN
15 CALIFORNIA PRISONS?

16 **A** YES.

17 **Q** THEY INVOLVED THE CALIFORNIA PAROLE SYSTEM AND RECOMMENDED
18 REFORMS TO THAT?

19 **A** YES.

20 **Q** THEY INVOLVED REDUCING WOMEN'S IMPRISONMENT IN CALIFORNIA TO
21 COMMUNITY CORRECTIONAL CENTERS, CORRECT?

22 **A** YES.

23 **Q** AND CREATING A NEW STATE/LOCAL PARTNERSHIP?

24 **A** YES.

25 **Q** AND ALSO CREATING A CALIFORNIA SENTENCING COMMISSION?

1 **A** YES.

2 **Q** IN THE ENTIRETY OF THIS REPORT IN 2006, THERE WAS NO
3 RECOMMENDATION FOR ANY EARLY RELEASE PROCEDURES IN THIS REPORT,
4 WAS THERE?

5 **A** THAT'S CORRECT, BECAUSE THE LEGISLATIVE LEADERSHIP WAS
6 INTERESTED IN PROPOSALS THAT COULD BE PUT FORWARD IMMEDIATELY,
7 THAT WERE PRACTICAL, WERE VETTED BY A NATIONAL TEAM OF EXPERTS,
8 AND SO WE DIDN'T SPEND A LOT OF TIME LOOKING AT EARLY RELEASE
9 PER SE. WE WERE LOOKING FOR, YOU KNOW, WHAT IS SOMETIMES
10 REFERRED TO AS THE LOW HANGING FRUIT IN THE SITUATION.

11 **MR. MITCHELL:** THANK YOU, DR. KRISBERG.

12 **JUDGE REINHARDT:** DOCTOR, I HAVE A QUESTION. YOU
13 KNOW, WHATEVER WE DO, WHATEVER WE TRY TO CONCLUDE ABOUT THE
14 EFFECT OF THINGS IS SPECULATIVE. IT'S SPECULATIVE AS TO WHAT
15 PEOPLE WILL DO IF THEY'RE RELEASED EARLY, HOW MANY CRIMES
16 THEY'LL COMMIT. WE ARE NOT TALKING ABOUT A GROUP THAT HAS
17 ALREADY BEEN RELEASED. SO WE'RE GOING TO SPECULATE ABOUT HOW
18 MANY CRIMES THEY WILL COMMIT DURING THE EARLY PERIOD. OR WE
19 HAVE TO SPECULATE ABOUT HOW MANY CRIMES THEY WILL COMMIT AND
20 WHEN IF THEY'RE NOT RELEASED EARLIER.

21 **THE WITNESS:** RIGHT.

22 **JUDGE REINHARDT:** SO IT'S ALL SPECULATIVE, BUT IF WE
23 ARE GOING TO SPECULATE, HOW -- ARE YOU CAPABLE OF GIVING US
24 SPECULATION OR IS IT -- EXCUSE ME. I SHOULDN'T ASK YOU. IS
25 THERE SOMEBODY WHO CAN TELL US OVER HOW LONG A PERIOD THE SAME

1 NUMBER OF CRIMES WILL HAVE BEEN COMMITTED?

2 **JUDGE KARLTON:** LET'S NOT USE THE WORD "SPECULATE."
3 OUR BEST JUDGMENT.

4 **JUDGE REINHARDT:** HOW MANY CRIMES WILL BE COMMITTED
5 BY THE GROUP RELEASED EARLY AND THE GROUP NOT RELEASED EARLY IF
6 THERE'S AN EARLY RELEASE, OVER WHAT PERIOD WILL IT EQUAL OUT, IF
7 THAT'S WHAT YOU'RE TELLING US? IT INVOLVES THE QUESTION OF IF
8 THE POPULATION IS REDUCED WILL THERE BE FEWER PEOPLE COMING OUT
9 LATER? HOW DO WE FIND OUT? I ASSUME YOU TELL US THERE WILL BE
10 MORE CRIMES COMMITTED DURING THE PERIOD OF EARLY RELEASE.

11 AT SOME POINT, WILL THE TOTAL NUMBER OF CRIMES TO
12 HAVE BEEN COMMITTED, WHETHER THERE'S EARLY RELEASE OR NOT BE THE
13 SAME, AND WHEN WOULD THAT BE?

14 **THE WITNESS:** I MEAN, IT'S A VERY -- WHAT YOU ARE
15 ASKING FOR IS TO DO A STUDY WHICH WOULD INVOLVE KNOWING EXACTLY
16 WHO THOSE CURRENT INMATES ARE AND KNOWING SOMETHING ABOUT THEIR
17 RISK LEVELS.

18 BUT I WANT TO REITERATE TO YOU THAT THE EXPERT PANEL,
19 WHICH CONSISTED OF PROBABLY THE TOP NAMES IN CORRECTIONS IN THIS
20 COUNTRY, CONCLUDED NOT ONLY THAT IT WAS ESSENTIAL TO RELEASE TO
21 REDUCE THE POPULATION, BUT CAME UP WITH A PLAN THAT WAS PUT
22 TOGETHER BY MIKE JACOBSON, WHO'S BEEN THE HEAD OF CORRECTIONS IN
23 NEW YORK CITY, AND OTHERS, THAT WE VIRTUALLY UNANIMOUSLY AGREED
24 TO, WHICH INDICATED THAT BY MODEST GOOD TIME CREDIT EXPANSIONS,
25 THAT IS RETURNING WHERE THEY WERE WHEN GOVERNOR WILSON WAS THE

1 GOVERNOR, MODEST PAROLE REFORMS, AND I WOULD ADD SOME VERY
2 PRUDENT DIVERSION, YOU KNOW.

3 FOR EXAMPLE, WE HAVE 17,000 PEOPLE WHO ENTER
4 CALIFORNIA PRISONS WHO ARE PROBATION VIOLATERS. THEY STAY AN
5 AVERAGE OF EIGHT MONTHS. MOST PROBATION LEADERS IN THIS STATE
6 WOULD SAY WITH ADEQUATE RESOURCES, WE COULD MANAGE THEM IN THE
7 COUNTIES, BECAUSE THE MOST SERIOUS CRIME THEY COMMITTED WAS A
8 PROBATION VIOLATION.

9 SO I THINK OUR CONCLUSION WAS SOME COMBINATION OF
10 THOSE STRATEGIES WOULD MORE THAN DO THE JOB AND WOULD FREE UP
11 THE DOLLARS THAT WOULD PAY FOR THE --

12 **JUDGE REINHARDT:** DOCTOR, I DON'T WANT TO INTERRUPT
13 YOU, BUT ONE OF THE ISSUES WE'RE REQUIRED TO CONSIDER IS THE
14 EFFECT ON PUBLIC SAFETY. NOW, THAT DOESN'T MEAN WHAT'S WISE
15 PENAL POLICY, AND IT DOESN'T MEAN WHAT'S THE EFFECT GOING TO BE
16 ON PEOPLE IN THE PRISON. WE HAVE TO TRY TO EVALUATE WHAT THE
17 EFFECT IS GOING TO BE ON THE COMMUNITY IF THESE PROGRAMS ARE
18 ADOPTED. AND, AS I UNDERSTOOD YOUR TESTIMONY EARLIER, THE SAME
19 NUMBER OF CRIMES WOULD BE COMMITTED, ONLY OVER A DIFFERENT
20 PERIOD OF TIME?

21 **JUDGE KARLTON:** LET ME --

22 **JUDGE REINHARDT:** MY QUESTION IS QUITE CLEAR.

23 **JUDGE KARLTON:** I DON'T THINK --

24 **JUDGE REINHARDT:** DO YOU --

25 **JUDGE KARLTON:** RIGHT NOW WE ARE RELEASING 10,000

1 INMATES A MONTH, APPARENTLY?

2 **THE WITNESS:** THAT'S CORRECT.

3 **JUDGE KARLTON:** IF WE ORDER A QUICK RELEASE, WE ARE
4 GOING TO INCREASE THAT TO SOME NUMBER, 12,500 OR WHATEVER.
5 THOSE PEOPLE WOULD ALL BE COMMITTING THE SAME CRIMES THAT THEY'D
6 BE COMMITTING IF THEY WERE LET LOOSE SEVERAL MONTHS LATER, BUT
7 AT THE TIME WE RELEASE THEM, WE ARE NOW HAVING -- I THINK THIS
8 IS WHAT JUDGE REINHARDT IS SAYING.

9 **JUDGE REINHARDT:** A SURGE WE CALL IT.

10 **JUDGE KARLTON:** WE'RE HAVING A SURGE. ISN'T THAT
11 RIGHT, OR IS IT RIGHT?

12 **THE WITNESS:** IT MIGHT BE A VERY SHORT PERIOD OF
13 TIME, BUT IT WOULD DEPEND UPON WHETHER OR NOT PAROLE OFFICERS
14 WHO WOULD BE SUPERVISING THESE FOLKS WOULD BE GETTING
15 APPROPRIATE TRAINING TO DO THAT AND THE RIGHT STEPS WERE TAKEN
16 TO SUPERVISE THEM, THAT SURGE WOULD VIRTUALLY DISAPPEAR, I
17 THINK.

18 **JUDGE REINHARDT:** ALL RIGHT. LET'S ASSUME THERE'S --
19 NOTHING'S GOING TO CHANGE AS FAR AS PAROLE OFFICERS, AS FAR AS
20 COMMUNITY SERVICES, THAT THEY'LL RECEIVE THE SAME AMOUNT OF
21 PAROLE OR LESS TRAINING OR SUPERVISION IF THEY'RE RELEASED
22 EARLIER. LET'S ASSUME CONDITIONS ARE THE SAME AS THEY ARE NOW
23 AND AS THEY WOULD BE IF THEY WERE RELEASED THREE MONTHS LATER.

24 THE QUESTION IS, JUDGE KARLTON PUT MORE SQUARELY, OR
25 MORE SPECIFICALLY, IF INSTEAD OF RELEASING 10,000 PEOPLE NEXT

1 MONTH, YOU RELEASED 12,000, AND, THEREFORE, THERE WILL BE MORE
2 CRIME COMMITTED IN THAT PARTICULAR MONTH, THAT'S -- BECAUSE YOU
3 ARE HAVING A LARGER GROUP RELEASED WITHIN ONE MONTH OR WITHIN
4 TWO MONTHS, THE CRIME THAT WOULD HAVE BEEN CREATED -- COMMITTED
5 LATER IS BEING COMMITTED EARLIER. BUT, AS I UNDERSTOOD YOUR
6 TESTIMONY, OVER SOME PERIOD OF TIME IT WOULD BE THE SAME TOTAL
7 NUMBER OF CRIMES COMMITTED?

8 **THE WITNESS:** THAT'S CORRECT.

9 **JUDGE REINHARDT:** OVER WHAT PERIOD OF TIME WOULD THAT
10 BE? IS THERE A WAY TO TELL WITH THE KIND OF PROPOSAL FOR EARLY
11 RELEASE, IS THERE A WAY TO DETERMINE WITHIN WHAT PERIOD OF TIME
12 THE TOTAL NUMBERS OF CRIMES WOULD BE THE SAME?

13 **THE WITNESS:** I BELIEVE THAT THAT NUMBER COULD BE
14 CALCULATED. I MEAN, OBVIOUSLY, I CAN'T DO IT HERE, BUT I THINK,
15 DEPENDING -- IF YOU COULD TELL ME HOW MANY PEOPLE, WHO THEY ARE,
16 WHAT THEIR BACKGROUNDS ARE, WHAT THEIR RISK LEVELS ARE, I THINK
17 ONE COULD COME UP WITH A PRETTY GOOD ESTIMATE OF THAT NUMBER
18 ALONE.

19 AGAIN, I SEE NO REASON TO ACCEPT THE PREMISE THAT YOU
20 WOULD MAKE SUCH AN ORDER WITH NOTHING BEING DONE, BECAUSE,
21 AGAIN, WE KNOW THAT JUST SIMPLY BETTER SUPERVISION WOULD --
22 MIGHT WIPE OUT THAT NET INCREASE.

23 **JUDGE REINHARDT:** WITHOUT THE TIME -- LET ME ASK YOU,
24 IS IT YOUR TESTIMONY THAT WITH AN EARLY RELEASE PROGRAM AND
25 WITHOUT CHANGING THE PAROLE SYSTEM OR THE AID IN THE COMMUNITY,

1 IS IT YOUR TESTIMONY THAT ALTHOUGH THERE WOULD BE MORE CRIME IN
2 A PARTICULAR EARLY PERIOD, THAT OVER A LONGER PERIOD OF TIME,
3 THE NUMBER OF CRIMES COMMITTED WOULD BE THE SAME?

4 **THE WITNESS:** YES. THE NUMBER OF CRIMES COMMITTED
5 ATTRIBUTED TO PAROLEES WOULD BE THE SAME.

6 **JUDGE KARLTON:** AND IN THIS REGARD, THE SUGGESTION
7 THAT WE CAN ORDER OTHER THINGS IS NOT CLEAR TO ME. MAYBE WE
8 CAN, WE'LL TALK, IF WE EVER GET TO FINAL ARGUMENT, WHICH I
9 DOUBT, WE COULD TALK ABOUT ALL OF THAT.

10 **JUDGE REINHARDT:** WE KEEP ASKING QUESTIONS.

11 **JUDGE KARLTON:** BUT THERE'S NO EVIDENCE THAT THIS
12 STATE HAS THE SLIGHTEST INTEREST IN REDUCING CRIME BY DOING THE
13 KINDS OF THINGS THAT YOUR PANEL AND EVERY PRECEDING PANEL,
14 EXCEPT ONE FOUND BY MR. MITCHELL, HAS SUGGESTED. SO IF WE JUST
15 SAY TO THE STATE, CUT ANOTHER 2,500 PEOPLE LOOSE, THEY MAY WELL
16 JUST SAY, FINE, WE'LL JUST LET THEM OUT AND THEY'LL KILL HOWEVER
17 MANY PEOPLE THEY WANT TO KILL.

18 **THE WITNESS:** WELL, FIRST OF ALL, JUDGE, I DON'T
19 DETECT THAT ATTITUDE ON THE PART OF OUR CORRECTIONAL LEADERSHIP.
20 AND THE OTHER THING I HAVE TO TELL YOU IS I HAVE BEEN WORKING IN
21 A NUMBER OF COUNTIES, AND WHAT IS GOING ON IN CALIFORNIA IN
22 SEVERAL COUNTIES IS A REALIZATION AT THE COUNTY LEVEL THAT THEY
23 BEAR A RESPONSIBILITY FOR PAROLEES.

24 SO WHAT WE'RE SEEING IS TREMENDOUS INNOVATION TAKING
25 PLACE IN A NUMBER OF PLACES IN WHICH OFFICIALS, INCLUDING IN

1 THIS COUNTY, ARE FORMING REENTRY COUNCILS, ARE SCRUTINIZING THE
2 FULL RANGE OF SERVICES BEING OFFERED LOCALLY, BECAUSE TIP
3 O'NEILL USED TO SAY ALL REENTRY -- ALL POLITICS IS LOCAL.
4 REENTRY AND SUCCESS OF INMATES IS ULTIMATELY A LOCAL ISSUE.

5 THE KINDS OF THINGS THAT PEOPLE NEED TO SUCCEED ALL
6 HAPPEN NOT BECAUSE OF, YOU KNOW, ULTIMATELY STATE POLICY, BUT
7 WHAT GOES ON IN THEIR COMMUNITIES. AND WHAT IS CERTAINLY
8 HAPPENING IN THIS STATE ACROSS THIS STATE IS AN INTEREST IN THE
9 PART OF BOARDS OF SUPERVISORS, SHERIFFS, PROBATION, AND POLICE
10 IN SHORING UP THE LOCAL LEVEL RESPONSE TO THIS.

11 SO I'M ACTUALLY VERY ENCOURAGED THAT AS WE LOOK
12 AROUND THE STATE, WE ARE SEEING LOTS OF MODELS OF COMMUNITIES
13 TAKING GREATER RESPONSIBILITY FOR THIS AND SUCCEEDING.

14 **JUDGE KARLTON:** AND THAT RAISES THE NEXT QUESTION,
15 WHICH IS, WE'RE GOING TO GET SOME MORE EVIDENCE FROM COUNTIES
16 WHICH SAY THAT IF WE JUST CUT PEOPLE LOOSE, THOSE PROGRAMS WILL
17 BE OVERWHELMED.

18 **JUDGE REINHARDT:** I THINK IT'S NOT REALLY A QUESTION
19 OF WHAT THE MOTIVE IS, WHETHER IT'S DISINTEREST OR WHETHER IT'S
20 LACK OF FUNDS, WHICH THERE IS IN THIS STATE, AS YOU KNOW, A REAL
21 LACK OF FUNDS FOR ALL KINDS OF ISSUES, EDUCATION, WELFARE,
22 EVERYTHING, NOT JUST PRISONS. IT'S NOT JUST -- WHETHER THERE'S
23 A DESIRE OR NOT REALLY DOESN'T MATTER. WHAT MATTERS IS, I THINK
24 WE HAVE TO ASSUME THAT THERE AREN'T GOING TO BE EXTRA FUNDS TO
25 IMPROVE THESE OTHER CONDITIONS.

1 AND I'M SURE THE COUNTIES ALSO HAVE A GREAT DESIRE TO
2 DO WHAT THEY CAN, WHETHER THEY ARE ABLE TO, AS JUDGE KARLTON
3 SAID. WE'VE HAD TESTIMONY FROM COUNTIES ALREADY THAT THEY SAY
4 THEY'RE NOT ABLE TO DO THIS FOR PAROLEES, THAT THEIR PROGRAMS
5 CAN'T BE ADJUSTED TO THAT.

6 BUT I THINK FROM THE ANSWERS TO THE QUESTIONS WE'RE
7 GETTING, WE CAN'T ASSUME PROGRAMS WILL BE IMPROVED OR THERE WILL
8 BE MONEY AVAILABLE.

9 **THE WITNESS:** HERE'S WHAT I WOULD SAY, JUDGE, IF I
10 WAS THE HEAD OF THE DEPARTMENT OF CORRECTIONS, OR IF I WAS THE
11 SHERIFF, WHAT I WOULD ASSUME IS THAT I COULD PUT IN PLACE THOSE
12 PROGRAMS FASTER AND CHEAPER THAN TRYING TO BUILD ADDITIONAL
13 CAPACITY TO ADDRESS THIS ISSUE. SO I THINK THE ISSUE IS HOW
14 FAST CAN I GET IT DONE AND WHAT WOULD BE THE COST, BECAUSE THE
15 COST OF GETTING THESE PROGRAMS IN PLACE WOULD BE A FRACTION OF
16 CONSTRUCTION AND OPERATION OF ADDITIONAL CAPACITY.

17 **JUDGE REINHARDT:** WELL, AS AN ALTERNATIVE, WHICH IS
18 DO NOTHING AND LEAVE PEOPLE IN PRISONS WITH THE GROWING
19 POPULATION.

20 **JUDGE KARLTON:** WHICH AFFECTS ADVERSELY, WE ARE TOLD,
21 PUBLIC SAFETY AS WELL, BECAUSE WE SEND LOW LEVEL PEOPLE IN TO
22 MIX WITH HABITUAL CRIMINALS AND OTHER BAD GUYS, AND THEY COME
23 OUT WORSE OFF.

24 **THE WITNESS:** IT WAS THE OPINION OF THE EXPERT PANEL,
25 AGAIN, THESE NATIONALLY RENOWNED FOLKS THAT I WAS PRIVILEGED

1 WORK WITH, THAT THE SEVERE OVERCROWDING IN CALIFORNIA PRISONS IS
2 LEADING TO TREMENDOUS LEVELS OF VIOLENCE, IS INHIBITING THE
3 CAPACITY TO DELIVER REHABILITATION SERVICES.

4 SO I THINK REDUCING THE CROWDING AND CUTTING DOWN ON
5 THE VIOLENCE AND ACTUALLY INTRODUCING REHABILITATION SHOULD
6 BRING THAT CALIFORNIA RECIDIVISM RATE DOWN TO MUCH MORE WHAT
7 WE'RE SEEING IN OTHER STATES, WHICH IS A MUCH, MUCH SMALLER
8 RECIDIVISM LEVEL.

9 **JUDGE HENDERSON:** NOTHING FURTHER FROM --

10 **MR. SANGSTER:** NO, YOUR HONOR.

11 **JUDGE HENDERSON:** OKAY. THANK YOU FOR TESTIFYING,
12 DR. KRISBERG. WE'LL TAKE A 15-MINUTE RECESS AT THIS TIME.

13 (RECESS TAKEN.)

14 **JUDGE HENDERSON:** CALL THE NEXT WITNESS, COUNSEL.

15 **MS. KECK:** GOOD MORNING, YOUR HONORS. ANN KECK,
16 DEPUTY COUNTY COUNSEL ON BEHALF OF THE SONOMA COUNTY
17 INTERVENORS, AND I WOULD LIKE TO CALL DAVID BENNETT TO THE
18 STAND.

19 **JUDGE HENDERSON:** STEP FORWARD AND BE SWORN IN,
20 MR. BENNETT.

21 **DAVID BENNETT,**
22 CALLED AS A WITNESS FOR THE DEFENDANTS HEREIN, HAVING BEEN
23 FIRST DULY SWORN, WAS EXAMINED AND TESTIFIED AS FOLLOWS:

24 **THE WITNESS:** I DO.

25 **THE CLERK:** PLEASE HAVE A SEAT. STATE AND SPELL YOUR

1 FULL NAME FOR THE RECORD.

2 **THE WITNESS:** DAVID BENNETT, B-E-N-N-E-T-T.

3 **MS. KECK:** YOUR HONOR, AS AN INITIAL HOUSEKEEPING
4 MATTER, I WANTED TO CASE TO THE COURTS' ATTENTION THAT WE JUST
5 YESTERDAY FILED A DIFFERENT EXHIBIT C TO MR. BENNETT'S EXPERT
6 REPORT FILED ON OCTOBER 15TH. WE REALIZED FOR THE FIRST TIME
7 THAT WE HAD FILED A DRAFT REPORT RATHER THAN A FINAL REPORT.

8 SO WHAT I HAVE DONE -- WE FILED THEM WITH THE COURT.
9 WE HAVE ALSO PROVIDED COPIES TO THE COURT CLERK, AS WELL AS
10 COURTESY COPIES TO THE COURT, OF EACH OF HIS TWO REPORTS WITH
11 THE ATTACHMENTS, ONE DATED AUGUST 15, THE SECOND ONE DATED
12 OCTOBER 16TH.

13 AND ACCORDING TO THE COURTS' PROCESS, WE WOULD LIKE
14 TO MOVE THEM INTO EVIDENCE. I HAVE RECEIVED NO OBJECTIONS TO
15 ANY PORTION OF HIS REPORTS AT THIS TIME.

16 **JUDGE HENDERSON:** MAY I ASSUME THERE IS NONE?

17 **MS. KECK:** PARDON ME, YOUR HONOR?

18 **JUDGE HENDERSON:** I WAS SPEAKING TO PLAINTIFFS.

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

20 **THE COURT:** OKAY. THEY WILL BE ADMITTED AT THIS
21 TIME.

22 (DEFENDANTS' EXHIBIT C RECEIVED IN EVIDENCE)

23

24

25

DIRECT EXAMINATION

1
2 **BY MS. KECK:**

3 **Q.** MR. BENNETT, CAN YOU PLEASE BRIEFLY EXPLAIN YOUR BACKGROUND
4 AND EXPERTISE IN THE CORRECTIONS AREA?

5 **A.** I'M A CRIMINAL JUSTICE CONSULTANT. I BEGAN MY CAREER
6 WORKING IN SALT LAKE COUNTY, WHERE I ENCOUNTERED AN OVERCROWDED
7 JAIL AND BEGAN A PROGRAM TO MANAGE THE LOCAL COUNTY JAIL
8 POPULATION. I RAN THAT PROGRAM FOR FIVE YEARS, ACTUALLY BECAME
9 A MODEL, AND THEN I BEGAN CONSULTING.

10 AND FOR THE LAST 30 YEARS I HAVE BEEN TRAVELING
11 AMERICA. I HAVE WORKED WITH SEVERAL HUNDRED COUNTIES IN 40
12 STATES ON JAIL OVERCROWDING, JAIL POPULATION MANAGEMENT, JAIL
13 PLANNING ISSUES.

14 WHEN I BEGAN MY CONSULTING CAREER, I DID WORK FOR THE
15 UNITED STATES DEPARTMENT OF JUSTICE ON THE JAIL OVERCROWDING
16 JAIL DETAINEE PROJECT WHERE WE WORKED WITH ROUGHLY 75 COUNTIES
17 THROUGHOUT THE UNITED STATES.

18 DURING THE COURSE OF MY CAREER, I HAVE DONE A LOT OF
19 CONSULTING WORK FOR THE NATIONAL INSTITUTE OF CORRECTIONS, WHICH
20 IS PART OF THE JUSTICE DEPARTMENT, AND I AM THE AUTHOR OF THE
21 *JAIL CAPACITY FORECAST WORKBOOK* THAT THE JUSTICE DEPARTMENT
22 PROVIDES TO COUNTIES GOING THROUGH THE JAIL PLANNING PROCESS.

23 **Q.** WHEN YOU PROVIDE CONSULTANT SERVICES TO COUNTIES, WHAT TYPES
24 OF SERVICES DO YOU PROVIDE TO THEM?

25 **A.** WELL, IT VARIES, BUT MY BASIC WORK IS TO GO INTO A

1 JURISDICTION AND PUT TOGETHER A MASTER PLAN; TO SPEND TIME WITH
2 THE LOCAL OFFICIALS, THE JUDGES, THE PROSECUTORS, THE DEFENSE
3 ATTORNEYS, PROBATION OFFICERS, LAW ENFORCEMENT; AND TO COLLECT
4 DATA; TO TAKE A LOOK AT WHAT HAPPENS TO DEFENDANTS FROM THE
5 POINT OF ARREST ON THROUGH ADJUDICATION; TO GO AHEAD AND
6 UNDERSTAND WHO IT IS THAT'S BEING HELD IN A COUNTY JAIL.

7 THAT PROCESS TAKES ABOUT SIX MONTHS. AT THE
8 CONCLUSION OF THAT, I GENERALLY CONDUCT A FULL-DAY CRIMINAL
9 JUSTICE SYMPOSIUM WHERE WE TRY TO SHUT DOWN THE COURTS FOR THAT
10 DAY AND HAVE ALL OF THE LOCAL OFFICIALS COME AND TAKE A LOOK AT
11 THEIR CRIMINAL JUSTICE SYSTEM, TO TAKE A LOOK AT HOW THE SYSTEM
12 IS FUNCTIONING WHERE THERE MIGHT BE DELAYS AND PROBLEMS, AND TO
13 CONSIDER A SERIES OF RECOMMENDATIONS TO BETTER MANAGE THE
14 CRIMINAL JUSTICE SYSTEM.

15 Q. APPROXIMATELY HOW MANY COUNTIES ACROSS THE UNITED STATES
16 HAVE YOU PROVIDED SUCH CONSULTING SERVICES TO?

17 A. AT ONE LEVEL OR ANOTHER UP OVER A COUPLE HUNDRED COUNTIES.

18 Q. AND HAVE YOU PROVIDED SERVICES TO ANY COUNTIES IN
19 CALIFORNIA?

20 A. I HAVE WORKED IN EIGHT COUNTIES IN CALIFORNIA.

21 Q. DID SONOMA COUNTY ENGAGE YOU AS AN EXPERT CONSULTANT WITH
22 RESPECT TO ITS CRIMINAL JUSTICE SYSTEM?

23 A. YES, THEY DID.

24 Q. WHAT HAVE YOU DONE FOR SONOMA COUNTY?

25 A. AS I EXPLAINED EARLIER, I CONDUCTED MY NORMAL PROCESS AND I

1 WENT AHEAD AND PUT TOGETHER A MASTER MANUAL. I CONDUCTED A
2 FULL-DAY CRIMINAL JUSTICE SYMPOSIUM IN AUGUST OF 2007.

3 SINCE THAT TIME I HAVE BEEN WORKING WITH COUNTY
4 OFFICIALS TO IMPLEMENT THE RECOMMENDATIONS THAT CAME OUT OF THAT
5 STUDY. WE ARE IN THE PROCESS OF MAKING SIGNIFICANT CHANGES IN
6 THE DAY-TO-DAY OPERATION OF SONOMA COUNTIES CRIMINAL JUSTICE
7 SYSTEM.

8 **Q.** COULD YOU PERHAPS BRIEFLY EXPLAIN TO THE COURT THE TYPES OF
9 REFORMS THAT YOU RECOMMENDED FOR SONOMA COUNTY AND THAT IT'S
10 CURRENTLY ENGAGED IN?

11 **A.** SONOMA COUNTY, NOT UNLIKE A LOT OF OTHER COUNTIES IN
12 AMERICA, HAS A VERY INEFFICIENT CRIMINAL JUSTICE PROCESS, AND WE
13 HAVE DOCUMENTED THAT PROCESS. WE HAVE DOCUMENTED THE IMPACT
14 THAT THE INEFFICIENCIES HAVE ON JAIL POPULATION, BUT MORE
15 IMPORTANTLY, DOCUMENTED THE IMPACT THAT THE INEFFICIENCIES HAVE
16 ON THE OVERALL CRIMINAL JUSTICE SYSTEM PROCESS.

17 I HAVE BEEN WORKING WITH THE COURT THAT'S TAKEN THE
18 LEADERSHIP IN THIS ROLE, AS WELL AS WITH ALL OF THE KEY AGENCIES
19 OF THE SYSTEM, AND WE ARE PUTTING IN PLACE -- IT KICKS OFF
20 JANUARY 5TH -- AN EARLY CASE RESOLUTION PROGRAM.

21 RATHER THAN HAVING ALL CASES THAT ENTER SONOMA COUNTY
22 SPREAD OUT AMONGST FIVE DIFFERENT FELONY DEPARTMENTS AND FIVE
23 DIFFERENT DEPARTMENTS HANDLING THE FRONT END OF THE SYSTEM AND
24 THEN THE CASES PROCEEDING AS THEY WILL THROUGH THE PROCESS, WE
25 ARE CENTRALIZING THAT. WE ARE GOING TO TAKE ALL NEW FELONY

1 ARRESTS. THEY ARE GOING TO ALL COME INTO ONE COURTROOM. THE
2 DISTRICT ATTORNEY AND THE PUBLIC DEFENDER HAVE ASSIGNED SENIOR
3 COUNSEL TO THAT COURTROOM, AND THE GOAL IS TO RESOLVE THE CASES
4 EARLIER.

5 THE MANTRA IS *SAME JUSTICE SOONER* AND WE HAVE
6 COMMITMENTS FROM THE LOCAL OFFICIALS TO DO THAT, SO THAT WE CAN
7 ACHIEVE THE ADJUDICATION THAT WOULD BE SOUGHT -- THAT WOULD BE
8 ACHIEVED ANYWAY, BUT AT A MUCH EARLIER POINT IN TIME.

9 SO THAT WE ARE ADDING THE CREDIBILITY BACK INTO THE
10 SYSTEM. WE ARE REDUCING WHAT HAS BECOME EPIDEMIC IN THAT
11 JURISDICTION OF PROBLEMS OF FAILURES TO APPEAR, OF INDIVIDUALS
12 GETTING REARRESTED WHILE CASES ARE BEING RESOLVED. WE ARE ABLE
13 TO TELL VICTIMS AND WITNESSES OF CRIME THAT THE CASE HAS BEEN
14 RESOLVED AND THE DEFENDANT HAS BEEN SENTENCED.

15 SO THAT'S THE GOALS OF THE PROGRAM. I HAVE BEEN VERY
16 SUCCESSFUL IN SETTING THAT MODEL UP IN OTHER JURISDICTIONS AND
17 IT BEGINS THE 5TH OF JANUARY IN SONOMA COUNTY.

18 **Q.** AND WHAT WOULD YOU DESCRIBE AS BEING THE ULTIMATE RESULT OF
19 THAT, OF THAT PROGRAM?

20 **A.** THE OVERALL GOAL IS TO CHANGE BEHAVIOR, TO CHANGE
21 DEFENDANTS' BEHAVIOR.

22 THE GOAL IS THAT THE BEHAVIOR THAT CAUSED THE
23 INDIVIDUAL TO COME IN CONTACT WITH THE SYSTEM IN THE FIRST PLACE
24 DOESN'T HAPPEN AGAIN. WHEN WE ARE ABLE TO DO THAT SUCCESSFULLY
25 AT THE LOCAL LEVEL, AND WHAT WE ARE GOING TO SEE IN SONOMA

1 COUNTY IS A REDUCTION IN THE NUMBER OF PEOPLE HEADING INTO THE
2 CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION, BECAUSE
3 WE ARE DEALING WITH THE INDIVIDUALS. WE ARE TAKING CARE OF THE
4 ADJUDICATION PROCESS.

5 ALONG THE WAY WE ARE ALSO PUTTING IN PLACE SOME NEW
6 PROGRAMS. WE ARE PUTTING IN SOME INNOVATIVE PROGRAMS SO THAT
7 WHEN IT COMES TIME FOR PUNISHMENT OF THE OFFENDERS, WE CAN
8 PUNISH THEM IN A MORE EFFECTIVE MANNER THAT WILL IMPACT THE
9 NUMBER OF PEOPLE THAT ULTIMATELY GO ON TO THE PRISON SYSTEM.

10 **Q.** DID SONOMA COUNTY ALSO ENGAGE YOU TO TESTIFY AS AN EXPERT
11 WITH RESPECT TO A PRISONER RELEASE ORDER IN THIS CASE?

12 **A.** YES.

13 **Q.** CAN YOU DESCRIBE FOR THE COURT GENERALLY WHAT TYPE OF
14 INFORMATION YOU RELIED UPON IN FORMULATING AN OPINION IN THIS
15 MATTER?

16 **A.** WELL, I HAVE DONE A LOT OF READING. I HAVE READ, I BELIEVE,
17 ALL OF THE EXPERT REPORTS THAT HAVE BEEN ENTERED INTO EVIDENCE
18 IN THIS CASE. I HAVE READ A LOT OF THE BACKGROUND DOCUMENTATION
19 OF THE PREVIOUS STUDIES THAT HAVE BEEN DONE FOR THE STATE OF
20 CALIFORNIA.

21 THROUGHOUT MY CAREER -- CALIFORNIA, OF COURSE, IS A
22 VERY LARGE STATE AND I HAVE ALWAYS KEPT UP ON WHAT'S HAPPENING
23 IN CALIFORNIA AND MY WORK WITHIN THE EIGHT COUNTIES THAT I HAVE
24 WORKED IN WITHIN THE STATE.

25 SO I FEEL PRETTY COMFORTABLE THAT I'VE ABSORBED -- I

1 HAVE READ AND ABSORBED A LOT OF INFORMATION ABOUT THE ISSUES IN
2 THIS CASE.

3 **Q.** DO YOU UNDERSTAND THAT THE PLAINTIFFS IN THIS CASE ARE
4 SEEKING AN ORDER THAT WOULD REQUIRE THE STATE TO REDUCE ITS
5 PRISON POPULATION BY APPROXIMATELY ONE-THIRD, AN AMOUNT OF ABOUT
6 52,000 INMATES, WITHIN A PERIOD OF TWO YEARS?

7 **A.** YES.

8 **Q.** IN YOUR OPINION, WHAT WOULD BE THE EFFECT OF A PRISON
9 POPULATION CAP ON PUBLIC SAFETY AND LOCAL CRIMINAL JUSTICE
10 SYSTEMS?

11 **A.** I DON'T THINK I'M OVERSTATING IT WHEN I SAY IT WOULD BE
12 ABSOLUTELY DEVASTATING. THE CRIMINAL JUSTICE SYSTEM, AS IT'S
13 STRUCTURED TODAY, RELIES UPON INTEGRITY.

14 ALREADY THERE HAS BEEN A LOT OF INTEGRITY IN THE
15 CRIMINAL JUSTICE PROCESS; NOT JUST IN CALIFORNIA, BUT IN MANY
16 JURISDICTIONS THROUGHOUT THE UNITED STATES. WE OPERATE WITH A
17 SYSTEM OF RULES, AND IN THIS INSTANCE A STATE AND A SYSTEM OF
18 LAWS.

19 WHEN AN INDIVIDUAL IS CONVICTED AND THE COURT DULY
20 DELIBERATES AND SENTENCES AN OFFENDER TO TIME, WHETHER IT'S TIME
21 IN A COUNTY JAIL OR TIME IN A STATE PRISON, AND THEN SIMPLY
22 USING SOME TYPE OF FORMULA, EITHER A SHERIFF OF A COUNTY JAIL OR
23 THE SECRETARY OF THE DEPARTMENT OF CORRECTIONS RELEASES THAT
24 INDIVIDUAL EARLY WITHOUT THERE BEING ANY RELATIONSHIP BETWEEN
25 EITHER THE INDIVIDUAL'S BEHAVIOR OR THEIR WORK OUT IN THE

1 COMMUNITY, THEN WHAT IS AT STAKE HERE IS THE OVERALL INTEGRITY
2 OF THE PROCESS.

3 WE CAN'T BUILD ENOUGH BEDS AND LOCK ENOUGH PEOPLE UP
4 FOR A LONG ENOUGH PERIOD OF TIME TO IMPACT THE CRIME RATES. WE
5 HAVE TO RELY UPON THE INTEGRITY OF THE PROCESS. AND SO SIMPLY
6 RELEASING INDIVIDUALS FROM PRISON EARLY IS GOING TO HAVE A
7 SIGNIFICANT IMPACT UPON THAT INTEGRITY ISSUE AND ON EVERYTHING
8 THAT WE ARE DOING IN THE CRIMINAL JUSTICE SYSTEM.

9 Q. BUT DO YOU BELIEVE THAT IT'S POSSIBLE TO REDUCE THE PRISON
10 POPULATION SAFELY AND EFFECTIVELY?

11 A. ABSOLUTELY.

12 Q. AND HOW -- HOW WOULD YOU SAY THAT COULD BE DONE?

13 A. A WELL-THOUGHT-OUT PLAN NEEDS TO BE IMPLEMENTED, A PLAN THAT
14 HAS THREE PRIMARY AREAS, THAT COVERS THREE PRIMARY AREAS.

15 FIRST OF ALL, THE INTRODUCTION INTO THE SYSTEM, THE
16 EXPANSION, THE USE OF PROGRAMS THAT ARE BASED ON EVIDENCE-BASED
17 PRACTICES.

18 SECOND OF ALL, THE USE OF A RISK AND NEEDS ASSESSMENT
19 IN ORDER TO SET PAROLE SUPERVISION CONDITIONS.

20 AND, FINALLY, THE IMPLEMENTATION. I KNOW THERE HAS
21 BEEN SOME WORK IN THIS AREA, BUT IT HAS NOT BEEN IMPLEMENTED.
22 THE IMPLEMENTATION OF A STRUCTURED SANCTIONS PROCESS FOR BOTH
23 PROBATION AND PAROLE VIOLATORS.

24 Q. I WOULD LIKE TO HAVE YOU EXPLAIN MORE OF EACH OF THESE TO
25 THE COURT IN TURN, SO LET ME ADDRESS YOUR ATTENTION TO THE FIRST

1 PART OF THE PLAN THAT YOU JUST STATED, THE PROGRAMS NEED TO BE
2 INSTITUTED.

3 COULD YOU EXPLAIN FOR THE COURT WHAT YOU MEAN BY THAT
4 AND WHAT WOULD BE THE IMPACT OF THAT RECOMMENDATION?

5 **JUDGE REINHARDT:** CAN I ASK YOU ONE QUESTION HERE?

6 WHEN YOU SAY COULD YOU REDUCE THE POPULATION WITH
7 YOUR PROGRAMS, ARE YOU -- ARE YOU SAYING YOU COULD REDUCE IT BY
8 50,000? AND IF SO, OVER HOW LONG A PERIOD?

9 **THE WITNESS:** YOUR HONOR, I DON'T HAVE A NUMBER OR A
10 TIME PERIOD. I'M PROPOSING A PROCESS AND A STRUCTURE IN WHICH
11 TO REDUCE THAT PRISON POPULATION.

12 A LOT OF WORK IS GOING TO HAVE TO BE DONE IN ORDER TO
13 PUT IN PLACE THE SPECIFICITY AND AS I CONTINUE TALKING, TO PUT
14 IN PLACE THE NEEDED PARTNERSHIP BETWEEN THE STATE OF CALIFORNIA
15 AND ITS COUNTIES TO CARRY THIS OUT.

16 **JUDGE KARLTON:** FOLLOWING JUDGE REINHARDT'S QUESTION,
17 IS THERE ANY WAY THAT YOU UNDERSTAND THAT WE CAN REDUCE THE
18 POPULATION SO AS TO AFFECT THE ABILITY OF THE SYSTEM TO PROVIDE
19 ADEQUATE MEDICAL AND MENTAL HEALTH HEALTHCARE WITHOUT RELEASING
20 PEOPLE?

21 **THE WITNESS:** MY UNDERSTANDING OF THE OVERCROWDING
22 SITUATION IN THE PRISON SYSTEM IS THAT IT ABSOLUTELY WILL
23 REQUIRE THE RELEASE OF INMATES IN THE FACILITIES IN ORDER TO BE
24 ABLE TO PROVIDE THAT LEVEL OF CARE THAT'S REQUIRED.

25 **JUDGE KARLTON:** SO THAT SOME FORM OF A PRISON RELEASE

1 ORDER WILL BE REQUIRED SOMEHOW?

2 **THE WITNESS:** YES. WHAT I'M TALKING ABOUT HERE THIS
3 MORNING, AND AS I WALK INTO THE THREE PARTS OF THIS PLAN, IS NOT
4 JUST A RELEASE ORDER, BUT THE DEVELOPMENT AND THE INTRODUCTION
5 OF A PLAN THAT A BYPRODUCT WILL BE A MANAGED PRISON POPULATION.

6 **JUDGE KARLTON:** GO AHEAD.

7 **BY MS. KECK:**

8 **Q.** LET ME DIRECT YOUR ATTENTION TO THE FIRST PART OF THE PLAN
9 THAT YOU MENTIONED, WHICH IS THE PROGRAMS NECESSARY TO SUPPORT
10 THE RELEASE.

11 COULD YOU PLEASE EXPLAIN TO THE COURT WHAT IT IS YOU
12 MEAN BY THAT?

13 **A.** IT'S A COMBINATION OF PROGRAMS. RIGHT NOW THERE ARE SOME
14 PROGRAMS THAT CDCR OFFERS. THERE'S VERY LITTLE INCENTIVE FOR
15 PRISONERS TO PARTICIPATE IN THE PROGRAMS.

16 THERE'S NO LINKAGE WHATSOEVER WITH THE PROGRAMS THAT
17 THEY PARTICIPATE IN WHILE IN THE INSTITUTION, AND THEY ARE
18 RELEASED BACK OUT INTO THE COMMUNITY.

19 THERE IS NO STRUCTURED PROCESS FOR MAKING SURE THAT
20 THE BASIC ISSUES THAT WE ARE DEALING WITH IN A CORRECTIONAL
21 SYSTEM ARE BEING ADDRESSED; THE ALCOHOL, DRUG, MENTAL HEALTH
22 ISSUES; THE LACK OF EDUCATION AND THE PROBLEMS WITH EMPLOYMENT
23 ISSUE; THE HOUSING ISSUES.

24 THERE IS NO PUTTING TOGETHER OF A PLAN. THERE IS
25 HOLDING INDIVIDUALS IN THE PRISON SYSTEM AND RELEASING THEM.

1 THERE'S INDIVIDUALS THAT VIOLATE THEIR PAROLE. THEY COME BACK
2 IN AND SIMPLY ROTATE BACK THROUGH THE SYSTEM AGAIN.

3 WE ARE NOT USING EVIDENCE-BASED PRACTICES IN ORDER TO
4 PROPERLY ADDRESS THE INDIVIDUAL'S BASIC SENSE OF NEEDS.

5 SPECIFICALLY, ONE OF THE PRIMARY FUNCTIONS THAT I'M
6 RECOMMENDING, AGAIN IDEALLY WITH A PARTNERSHIP BETWEEN THE STATE
7 AND THE COUNTIES, IS TO PUT IN PLACE A COMMUNITY CORRECTIONS
8 PLAN, A COMMUNITY CORRECTIONS PLAN THAT STEPS OFFENDERS DOWN
9 FROM PRISON BACK OUT INTO THE COMMUNITY; THAT ALLOWS THEM TO
10 PARTICIPATE IN PROGRAMS WITHIN THE INSTITUTION AND THEN THEY ARE
11 LINKED WITH PROGRAMS DIRECTLY INTO THE COMMUNITY, WHERE WE ARE
12 MOVING THE INDIVIDUALS THROUGH A PROCESS.

13 THAT'S DEVELOPING PROGRAMS BASED UPON EVIDENCE-BASED
14 PRACTICES.

15 **Q.** AND SO WHAT YOU JUST DESCRIBED IS A SYSTEM, BASICALLY
16 CONTINUING PROGRAMS THAT WOULD START IN THE PRISON AND THEN GO
17 OUT IN THE COMMUNITY?

18 **A.** EXACTLY. THE RESEARCH IS VERY CLEAR ON THIS, THAT EVEN IN A
19 SYSTEM WHERE YOU HAVE VERY GOOD PROGRAMS WITHIN THE INSTITUTION,
20 UNLESS THERE IS A SPECIFIC LINKAGE WITH -- AND IT'S FORMALLY
21 KNOWN AS REENTRY.

22 UNLESS THERE IS A SPECIFIC LINKAGE WITH THAT
23 INDIVIDUAL'S RELEASE BACK OUT INTO THE COMMUNITY, THE PROGRAMS
24 ARE FOR NAUGHT.

25 AND THAT'S WHAT WE HAVE HERE IN THE STATE OF

1 CALIFORNIA. WE HAVE SOME PROGRAMS. INDIVIDUALS DON'T
2 NECESSARILY HAVE AN INCENTIVE TO PARTICIPATE IN THEM, BUT THEN
3 THERE ISN'T THE LINKAGE WHEN THEY ARE RELEASED BACK OUT INTO THE
4 COMMUNITY.

5 **Q.** LET ME DRAW YOUR ATTENTION TO THE SECOND ELEMENT THAT YOU
6 MENTIONED, WHICH THE PAROLE SUPERVISION ISSUE AND PROBATION
7 SUPERVISION.

8 COULD YOU EXPLAIN TO THE COURT WHAT YOUR
9 RECOMMENDATIONS ARE IN THAT REGARD?

10 **A.** IN THE LAST FEW YEARS, FINALLY, WE HAVE SOME VALIDATED RISK
11 AND NEEDS INSTRUMENTS THAT ARE AVAILABLE TO HELP US IN
12 CORRECTIONS. THOSE RISK AND NEEDS INSTRUMENTS NEED TO BE
13 APPLIED TO EACH AND EVERY OFFENDER RELEASED ON PAROLE.

14 INDIVIDUALS THAT ARE RELEASED, THE LEVEL OF
15 SUPERVISION, THE PROGRAMS THAT THEY RECEIVE NEED TO BE BASED ON
16 THE RESULTS OF THAT RISK AND NEEDS ASSESSMENT, ALONG WITH WHAT'S
17 HAPPENED WITHIN THE INSTITUTION.

18 THERE ARE GOING TO BE INDIVIDUALS WHO ARE RELEASED ON
19 PAROLE WHO NEED A MINIMAL AMOUNT OF ATTENTION AND/OR CAN BE
20 RELEASED WITHOUT PAROLE. SHORT PERIOD OF TIME, RELEASE, DONE.

21 THERE ARE GOING TO BE OTHER INDIVIDUALS THAT NEED
22 INTENSIVE SUPERVISION AND NEED IT FOR A LONGER PERIOD OF TIME.
23 IF WE ARE GOING TO BE SUCCESSFUL WITH THE GOAL THAT I STATED
24 EARLIER OF THE -- THAT THE BEHAVIOR THAT CAUSED THE INDIVIDUAL
25 TO COME IN CONTACT WITH THE SYSTEM IN THE FIRST PLACE DOESN'T

1 HAPPEN AGAIN, THEN WE NEED TO INDIVIDUALLY TAILOR HOW WE HANDLE
2 AND ADDRESS THAT SPECIFIC INDIVIDUAL'S NEEDS AND PROBLEMS.

3 **Q.** ARE THERE EXAMPLES CURRENTLY IN THE STATE OF CALIFORNIA
4 WHERE THIS TYPE OF INDIVIDUAL ASSESSMENT AND ADDRESSING THE
5 SPECIFIC NEEDS OF THE POPULATION IS BEING CONDUCTED CURRENTLY?

6 **A.** WELL, SONOMA COUNTY IS IN THE PROCESS OF IMPLEMENTING THE
7 USE OF A RISK AND NEED ASSESSMENT THROUGHOUT ITS ENTIRE SYSTEM.
8 IT COMES ONLINE THIS NEXT WEEK ON THE JUVENILE SYSTEM, AND IN
9 MARCH ON THE ADULT SYSTEM, WITH THAT RISK AND NEEDS ASSESSMENT
10 AS BEING APPLIED TO THE INDIVIDUALS IN THE LOCAL CRIMINAL
11 JUSTICE SYSTEM TO HELP DETERMINE, EITHER AT THE JUVENILE LEVEL
12 OR THE ADULT LEVEL, THE LEVEL OF SUPERVISION AND THE PROGRAMS
13 THAT THE INDIVIDUALS ARE GOING TO BE INVOLVED WITH.

14 CDCR HAS DONE SOME DIFFERENT THINGS WITH RISK AND
15 NEEDS ASSESSMENTS. IT'S IN THE PROCESS. IT'S GROWING. IT'S
16 HAPPENING. IT JUST HASN'T BEEN FULLY IMPLEMENTED AND THERE
17 HASN'T BEEN THAT FORMAL LINKAGE WITH THE LEVEL AND AMOUNT OF
18 SUPERVISION OF INDIVIDUALS RELEASED ON PAROLE.

19 **Q.** AND WHEN YOU TALK ABOUT THERE BEING STRUCTURED SANCTIONS, IS
20 THE ONLY SANCTIONS YOU ARE REFERRING TO JUST A RETURN TO PRISON
21 IF THERE IS A VIOLATION OF PAROLE OR IS IT SOMETHING MORE?

22 **A.** WE NEED TO DO A LOT MORE. WHAT WE HAVE LEARNED -- AND WE
23 KNEW THIS ALL ALONG, BUT DRUG COURT HAS TAUGHT IT TO US AGAIN.

24 IT'S NOT THE SEVERITY OF THE SANCTION THAT'S
25 IMPORTANT. WHAT'S IMPORTANT IS THE CERTAINTY AND THE IMMEDIACY

1 OF IT. THAT AN OFFENDER WHO IS OUT, EITHER ON PROBATION OR
2 PAROLE, THAT THERE IS AN UNDERSTANDING, THERE ARE CERTAIN RULES,
3 THERE ARE CERTAIN CONDITIONS THAT HAVE TO BE FOLLOWED. THERE
4 HAS TO BE THE ABILITY TO MONITOR THOSE CONDITIONS AND THEN THERE
5 HAS TO BE THE CONSEQUENCE FOR THEIR ACTIONS.

6 WE DON'T JUST SIMPLY WAIT TILL THE LEVEL OF FAILURE
7 RISES TO THE LEVEL, WHETHER A ZERO TOLERANCE PROGRAM IS IN PLACE
8 OR PROBATION AND PAROLE OFFICERS HAVE SOME DISCRETION AS TO WHEN
9 TO VIOLATE THE OFFENDER, VIOLATE THEM AND SIMPLY RETURN THEM TO
10 PRISON, HAVE THEM HELD ON WHAT THE DATA TELLS US AN AVERAGE OF
11 120 DAYS, CIRCULATE THEM THROUGH THE PROCESS BACK OUT AGAIN.

12 WE NEED TO HAVE MEANINGFUL, IMMEDIATE, CERTAIN
13 SANCTIONS. AND IT DOESN'T HAVE TO BE A RETURN TO PRISON. WE
14 CAN DEVELOP SANCTIONS AT THE LOCAL LEVEL. WE CAN KEEP
15 INDIVIDUALS LOCALLY IN THIS PARTNERSHIP BETWEEN THE STATE OF
16 CALIFORNIA AND IT'S COUNTIES. WE CAN HAVE A MORE EFFECTIVE
17 SANCTION WITHOUT INTERRUPTING INDIVIDUAL'S LIVES AND RETURNING
18 THEM TO PRISON.

19 **Q.** WHY WOULD A PRISON POPULATION REDUCTION PLAN THAT CONTAINS
20 THE THREE ELEMENTS YOU DESCRIBE SIGNIFICANTLY LOWER PRISON
21 POPULATION? WHY DO YOU BELIEVE THEY WOULD BE EFFECTIVE?

22 **A.** BECAUSE WE ARE INTERRUPTING THE CYCLE OF CRIME. WE ARE
23 BECOMING INVOLVED WITH THE INDIVIDUAL, WITH THEIR ISSUES AND
24 WITH THEIR PROBLEMS.

25 NO LONGER ONE SIZE FITS ALL. NO LONGER SIMPLY TAKING

1 A LOOK AT THE DEFENDANT'S PRIOR CRIMINAL HISTORY, TAKING A LOOK
2 AT THE INSTANT OFFENSE AND COMING UP WITH A SENTENCE THAT IS
3 THEN ADMINISTERED AND THE INDIVIDUAL HELD FOR SOME MAGIC PERIOD
4 OF TIME AND THEN RELEASED ON PAROLE.

5 WE ARE BEGINNING THE PROCESS OF HAVING INDIVIDUALS
6 EARN THEIR WAY TO BE RELEASED, OF STEPPING THEM DOWN OUT OF THE
7 INSTITUTION BACK OUT INTO THE COMMUNITY.

8 WE ARE PUTTING IN PLACE A SYSTEM THAT HAS THE
9 NECESSARY ACCOUNTABILITY, HAS THE NECESSARY CONSEQUENCES, AND IS
10 TRULY A MUCH BETTER SYSTEM IN PRESERVING PUBLIC SAFETY.

11 **Q.** ABSENT THIS TYPE OF A PLAN, WHAT WOULD BE THE EFFECT OF A
12 PRISONER RELEASE ORDER ON COUNTIES IF THERE WAS A POPULATION CAP
13 THAT WAS INSTITUTED AS THE PLAINTIFF SO REQUESTS?

14 **A.** HERE IS MY CONCERN. THE SYSTEM IS ALREADY BROKEN. THERE IS
15 NO QUESTION ABOUT IT. WE CAN TAKE A LOOK AT THE HIGH CRIME RATE
16 OF PEOPLE WHO ARE RELEASED ON PAROLE COMING BACK INTO THE
17 INSTITUTION.

18 WHETHER THIS IS A SHORT TERM BLIP, I HAVE -- I CAN'T
19 -- I DON'T FULLY UNDERSTAND THE MATH THAT HAS GONE INTO THE
20 RECOMMENDATION OF A SHORT TERM EXPEDITED RELEASE OF OFFENDERS
21 BACK OUT INTO THE COMMUNITY THAT'S GOING TO BRING THE OVERALL
22 PRISON POPULATION DOWN TO MORE MANAGEABLE LEVELS.

23 BUT BE THAT AS IT MAY, WHEN WE ARE TALKING ABOUT THE
24 RELEASE UNDER THIS CURRENT BROKEN SYSTEM, OF ONE-THIRD OF ITS
25 POPULATION BACK OUT INTO THE COMMUNITY, WE ARE GOING TO HAVE

1 PROBLEMS. WE ARE GOING TO HAVE INCREASED RECIDIVISM, INCREASED
2 PRESSURE COMING BACK IN.

3 AND HERE IS MY CONCERN. ONCE AGAIN, THREE SPECIFIC
4 ISSUES.

5 ONE IS, WE HAVE GOT A TERRIBLY OVER TAXED LOCAL
6 CRIMINAL JUSTICE SYSTEM. AND THIS IS BEFORE THE BUDGET CUTS OF
7 THE LAST SIX MONTHS OR YEAR HAVE TAKEN HOLD.

8 WE HAVE NOT ENOUGH JUDGES ON THE BENCH. CLEARLY, NOT
9 ENOUGH PROSECUTORS, PUBLIC DEFENDERS, PROBATION OFFICERS TO DO
10 THE BUSINESS OF THE LOCAL CRIMINAL JUSTICE SYSTEM. IT IS
11 ALREADY STRETCHED AS THIN AS IT POSSIBLY CAN THROUGHOUT THE
12 STATE AND IN MOST JURISDICTIONS THROUGHOUT THE COUNTRY.

13 NOW THAT WE HAVE HAD THIS ECONOMIC TURNDOWN, WE HAVE
14 HAD BUDGET CUTS, WE HAVE HAD ALL OF THAT IMPACT AND THAT
15 TIGHTENING ON THE CRIMINAL JUSTICE SYSTEM AND, YET, WE STILL
16 HAVEN'T FELT WHAT I HAVE FEAR IS ALREADY IN THE PIPELINE, AND
17 THAT'S AN INCREASE IN THE CRIME RATE. THAT'S AN INCREASE IN
18 CRIMES THAT ARE COMMITTED AS A RESULT OF THE THIS ECONOMIC
19 TURNDOWN AND WE, WITH TODAY'S SYSTEM, DON'T HAVE THE RESOURCES
20 AT THE LOCAL LEVEL TO HANDLE IT.

21 I AM CONCERNED ON THE INTEGRITY ISSUE THAT I SPOKE
22 ABOUT EARLIER. WITH OUR LOCAL PRETRIAL SERVICES PROGRAMS THAT
23 RELEASE INDIVIDUALS FROM JAIL PRIOR TO TRIAL, OUR LOCAL
24 PROBATION EFFORTS ARE GOING TO BE COMPROMISED BECAUSE
25 INDIVIDUALS -- BECAUSE OF JAIL OVERCROWDING, BECAUSE OF HAVING

1 TO RELEASE INDIVIDUALS AND NOT HAVE THE APPROPRIATE SERVICES IN
2 THE COMMUNITY. THEY DON'T EXIST TODAY.

3 SECOND POINT, TO THAT ISSUE OF THE INSTITUTIONS.
4 THIRTY-TWO OF CALIFORNIA'S COUNTY JAILS ARE UNDER SOME TYPE OF A
5 CAP. THE LARGEST HORROR STORY THROUGHOUT AMERICA OF JAIL
6 OVERCROWDING IS RIGHT HERE IN THIS STATE, IN LOS ANGELES COUNTY.
7 THE NUMBER OF PRISONERS THAT ARE TURNED OUT BY THE LOS ANGELES
8 COUNTY SYSTEM REFLECT THAT BROKEN SYSTEM I SPOKE ABOUT EARLIER,
9 THAT LACK OF INTEGRITY.

10 WITH SUCH A RETURN OF 50,000 PRISONERS BACK TO THE
11 COMMUNITIES OF CALIFORNIA WITHOUT THE IMPLEMENTATION OF A PLAN
12 SUCH AS I HAVE PROPOSED, WILL TAX THE LOCAL SYSTEMS BEYOND
13 BELIEF. THEY CANNOT HANDLE THE INCREASED NUMBERS OF
14 INDIVIDUALS. THE RESULT BEING MORE OF THE SAME. MORE
15 INDIVIDUALS RELEASED, NOT HAVING THE CONSEQUENCES, NOT HAVING
16 THE ACCOUNTABILITY, HAVING INCREASED RECIDIVISM, INCREASED
17 CRIME, INDIVIDUALS RETURNING BACK TO THE SYSTEM.

18 AND FINALLY, OUR PROGRAMS. CALIFORNIA HAS LED THE
19 NATION WITH THE IMPLEMENTATION OF PROGRAMS IN LIEU OF
20 INCARCERATION. WE CAN GO BACK INTO THE EARLY 1900S IN SONOMA
21 COUNTY WITH THE CALIFORNIA HUMAN DEVELOPMENT CORPORATION TO
22 TODAY, THE WORK THAT IT DOES IN THE LOCAL CRIMINAL JUSTICE
23 SYSTEM. I WOULD LOVE TO CHALLENGE ANYBODY IN THIS COURTROOM TO
24 COME SPEND A DAY WITH THE STAFF OF THAT PROGRAM AND SEE HOW --
25 IT'S NOT THE DOLLARS THEY GET PAID. IT'S THE HEART THAT THEY

1 BRING TO THEIR WORK. IT'S THE WORK THAT THEY GET UP IN THE
2 MORNING FOR THAT THEY ARE EXCITED TO DO, TO WORK WITH THE
3 CLIENTS OF THE CRIMINAL JUSTICE SYSTEM.

4 THE PROBLEM IS, THERE IS NOT ENOUGH SLOTS. THEY
5 DON'T EXIST. AND THOSE PROGRAMS, THOSE NETWORKS ARE BECOMING
6 TAXED AND STRAINED TO THE BREAKING POINT. AND UNLESS THOSE
7 PROGRAMS ARE EXPANDED, UNLESS MORE SLOTS BECOME AVAILABLE, THE
8 IMPLEMENTATION OF A RELEASE ORDER IS GOING TO FAIL AND IT'S
9 GOING TO HIT HARDEST ON THE LOCAL CRIMINAL JUSTICE SYSTEMS.

10 **Q.** THERE HAVE BEEN SOME EXPERTS THAT HAVE TESTIFIED IN THIS
11 PROCEEDING THAT THERE WOULD BE -- IF A PRISONER RELEASE ORDER
12 WERE TO BE ENTERED, EVEN WITHOUT INCREASING PAROLE SUPERVISION,
13 EVEN WITHOUT A STRUCTURED SANCTIONS POLICY, AND EVEN WITHOUT
14 INCREASING THE FUNDING OR RESOURCES AVAILABLE TO THE COMMUNITIES
15 TO DO COMMUNITY OUTPUT, THAT A RELEASE ORDER WOULD NOT EFFECT
16 PUBLIC SAFETY NOR LEAD TO AN INCREASE IN RECIDIVISM OR A CHANGE
17 IN -- YEAH, LEAD TO AN INCREASE IN RECIDIVISM. DO YOU AGREE
18 WITH THAT?

19 **A.** I DO NOT. THE SYSTEM IS BROKEN TODAY AND BECAUSE IT'S SO
20 BROKEN IS WHY WE HAVE THE RECIDIVISM PROBLEMS THAT WE HAVE IN
21 THE LOCAL CRIMINAL JUSTICE SYSTEMS.

22 SUCH A PLAN SIMPLY RESHUFFLES THE DECK. IT SIMPLY
23 CONTINUES TO TURN INDIVIDUALS OUT OF THE INSTITUTION WITHOUT THE
24 NECESSARY LEVELS OF SUPERVISION AND PROGRAMMING TO CHANGE
25 BEHAVIOR. AND WHEN WE DO THAT, WE ADD THAT TO TODAY'S ALREADY

1 BROKEN SYSTEM WITH RESOURCES STRETCHED BEYOND THEIR MEANS, THIS
2 RESHUFFLING OF THE DECK WILL JUST COMPOUND THE PROBLEMS AND NOT
3 BRING ABOUT THE CHANGES IN BEHAVIOR THAT I SPOKE ABOUT AT THE
4 BEGINNING.

5 **JUDGE REINHARDT:** MAY I ASK YOU, YOU BELIEVE THAT
6 THESE THREE STEPS WOULD RESOLVE THE PROBLEM. WHAT IS STOPPING
7 THE STATES AND THE COUNTIES FROM IMPLEMENTING THOSE THREE STEPS?

8 **THE WITNESS:** THAT'S A GREAT QUESTION. I DON'T KNOW.
9 I DON'T KNOW WHY THERE HASN'T BEEN A LOOK AT -- WE HAVE
10 CERTAINLY OF ENOUGH STUDIES.

11 THE STATE HAS BEEN -- BEEN THE BENEFICIARY OF SOME OF
12 THE BEST EXPERTS IN THIS COUNTRY PUTTING TOGETHER STUDIES AND
13 DOCUMENTING THE NATURE OF THE PROBLEM.

14 THEY STARTED TO IMPLEMENT PIECES OF THIS, BUT THEY
15 HAVEN'T GRASPED THE WHOLE PROBLEM. THEY HAVEN'T MADE THE
16 COMMITMENT THAT NEEDS TO BE MADE TO TRULY CHANGING BEHAVIOR.
17 TRULY GETTING OUT IN FRONT OF THIS PROBLEM.

18 IT WAS TOO EASY FOR TOO LONG TO EITHER -- WHEN TIMES
19 WERE GOOD TO JUST BUILD PRISONS. WHEN THEY WEREN'T SO GOOD,
20 JUST OVERCROWD THEM.

21 THIS PLAN FORCES THE SYSTEM TO COME TO GRIPS WITH ITS
22 ISSUES AND PUT IN PLACE MEANINGFUL CHANGES THAT WILL HAVE A
23 LASTING BENEFIT.

24 **JUDGE REINHARDT:** AND ALL OF THESE STEPS REQUIRE THE
25 EXPENDITURE OF SUBSTANTIAL SUMS OF MONEY BY THE STATE AND THE

1 COUNTIES.

2 **THE WITNESS:** IT DOES, BUT IT'S MY OPINION THAT THE
3 STATE IS ALREADY SPENDING SUBSTANTIAL AMOUNTS OF DOLLARS IN ITS
4 INEFFECTIVE BROKEN CRIMINAL JUSTICE AND CORRECTIONS SYSTEM; THAT
5 BY REPRIORITIZING ITS DOLLARS, BY RETARGETING AND WORKING ON
6 UPSTREAM ISSUES SO THAT WE GET OUT AHEAD OF THE PROBLEM, THAT'S
7 THE ONLY WAY THAT WE ARE GOING TO BE ABLE TO SOLVE THIS PROBLEM
8 WITHOUT CATASTROPHE.

9 **JUDGE REINHARDT:** AND HOW LONG IF YOUR STEPS WERE IN
10 EFFECT -- ARE YOU SAYING IF THESE STEPS WERE IN EFFECT, THEN
11 50,000 PRISONERS COULD BE RELEASED?

12 **THE WITNESS:** I'M SAYING THAT IF THIS PLAN WERE
13 ADOPTED BY THE STATE OF CALIFORNIA, THAT THE POPULATION COULD BE
14 BROUGHT DOWN IN A SYSTEMATIC WAY WITHOUT HAVING TO ENTER A
15 RELEASE ORDER.

16 **JUDGE KARLTON:** I THOUGHT YOU JUST SAID -- NEVER
17 MIND.

18 **BY MS. KECK:**

19 **Q.** PERHAPS YOU SHOULD CLARIFY TO THE COURT. ARE YOU
20 RECOMMENDING AS PART OF YOUR PROGRAM THAT THERE BE A POPULATION
21 CAP OR OTHER GENERAL RELEASE ORDER ENTERED WITH RESPECT TO THE
22 STATE PRISON POPULATION?

23 **A.** I UNDERSTAND IT'S A \$64,000 QUESTION HERE THIS MORNING.

24 **JUDGE REINHARDT:** WELL, TO ANSWER THE COURT, THE
25 CAP -- IF YOUR PROGRAM WOULD BRING IT DOWN, WHAT HARM WOULD

1 THERE BE TO A CAP, IF THAT WOULD BE THE EFFECT ANYWAY?

2 **THE WITNESS:** THE ISSUE -- AND THE ISSUE I THINK THAT
3 JUDGE KARLTON WAS REACTING TO WAS MY COMMENT EARLIER ABOUT
4 WITHIN THE INSTITUTIONS, THE PROVIDING OF THE NECESSARY
5 CONSTITUTIONAL MEDICAL AND MENTAL HEALTH SERVICES CAN'T BE
6 PROVIDED WITH TODAY'S OVERCROWDING.

7 IT'S GOING TO TAKE SOME TIME TO IMPLEMENT MY PLAN.
8 IT'S GOING TO TAKE SOME TIME TO PUT THIS IN PLACE, THE OVERALL
9 PLANNING PROCESS AS WELL AS THE IMPLEMENTATION, ONCE THE
10 PLANNING HAS BEEN DONE.

11 AND SO WE ARE KIND OF BETWEEN A ROCK AND A HARD SPOT
12 RIGHT NOW BECAUSE WE HAVE THE OVERCROWDING AT THE LEVEL THAT WE
13 HAVE. WE HAVE THE DIFFICULTIES WITHIN THE INSTITUTION, AND WE
14 DON'T HAVE THE MECHANISMS IN THE COMMUNITY TO HAVE -- TO
15 IMPLEMENT A RELEASE ORDER IN SUCH A WAY THAT IT'S NOT GOING TO
16 IMPACT THE LOCAL SYSTEMS.

17 **BY MS. KECK:**

18 **Q.** WOULD A POPULATION CAP BY ITSELF BE SUFFICIENT TO BOTH
19 RESOLVE THE PROBLEMS AT THE OVERCROWDING AT THE STATE PRISON
20 LEVEL AS WELL AS ADDRESS THE CONCERNS IN THE COMMUNITY?

21 **A.** WELL, CLEARLY, A POPULATION CAP WILL ADDRESS THE
22 OVERCROWDING IN THE STATE PRISON.

23 WHETHER -- DEPENDING UPON HOW THE CAP IS IMPLEMENTED,
24 EITHER THE FRONT DOOR IS GOING TO BE CLOSED OR THE BACK DOOR IS
25 GOING TO OPEN UP. IN ANY EVENT, IT'S GOING TO HAVE A NEGATIVE

1 IMPACT ON THE LOCAL COUNTY JAILS, BECAUSE RIGHT NOW INDIVIDUALS
2 SENTENCED TO STATE PRISON MOVE IN AND OUT OF THE COUNTY JAIL
3 VERY QUICKLY.

4 IN SONOMA COUNTY 1200 PEOPLE LAST YEAR MOVED THAT
5 ROUTE FROM COUNTY JAIL INTO CDCR.

6 **JUDGE REINHARDT:** YOU ARE SAYING THAT A CAP WOULD NOT
7 HAVE AN ADVERSE EFFECT IF THE STATES AND COUNTIES WOULD ADOPT
8 YOUR THREE STEPS?

9 **THE WITNESS:** CORRECT.

10 **JUDGE REINHARDT:** WHICH THEY CAN DO?

11 **THE WITNESS:** CORRECT.

12 **BY MS. KECK:**

13 **Q.** AND PERHAPS IT WOULD BE MORE PRECISE TO SAY THAT, MR.
14 BENNETT, DID YOU PROVIDE SOME SPECIFIC IMPLEMENTATION PROGRAMS
15 IN THE EXPERT REPORT DATED AUGUST 15?

16 **A.** YES.

17 **Q.** AND ARE THESE THE THREE ELEMENTS THAT WE JUST DISCUSSED OR A
18 SUMMARY OF THOSE SPECIFIC RECOMMENDATIONS THAT YOU HAD MADE?

19 **A.** THEY ARE, WITH ONE EXCEPTION THAT I HAVE LEFT OFF SO FAR
20 HERE THIS MORNING. AND THIS GETS TO THE HEART OF WHAT WE ARE
21 DOING.

22 ULTIMATELY A SENTENCING COMMISSION NEEDS TO BE
23 CONVENEED AND TAKE A LOOK AT THE DISPARITY OF SENTENCES AT THE
24 LOCAL LEVEL INTO THE STATE PRISON SYSTEM. IT IS -- THE
25 DISPARITY IS SHOCKING.

1 WHEN WE ARE TALKING ABOUT LONG TERM SYSTEMIC CHANGE,
2 CALIFORNIA NEEDS TO A A LOOK AT THIS PROBLEM. IT NEEDS TO
3 UNDERSTAND WHERE THE SENTENCING SCHEME IS BROKEN IN THIS SYSTEM,
4 HOW IT OPERATES DIFFERENTLY THROUGHOUT THE STATE AND THEN
5 OVERALL SENTENCING GUIDELINES NEED TO BE DEVELOPED.

6 **Q.** YOU DO UNDERSTAND, MR. BENNETT, THAT THIS COURT DOES NOT
7 HAVE THE POWER TO ORDER THE LEGISLATURE TO CHANGE THE SENTENCING
8 GUIDELINES, IS THAT CORRECT?

9 **A.** I DO UNDERSTAND THAT. HOWEVER, WHEN WE ARE TALKING ABOUT
10 LONG TERM SYSTEMIC CHANGES, THESE STEPS NEED TO BE TAKEN.

11 **MS. KECK:** THANK YOU.

12 **THE COURT:** OKAY. WE ARE GOING TO TAKE OUR LUNCH
13 RECESS AT THIS TIME. THE COURT IS ADJOURNED FOR AN HOUR.

14 (WHEREUPON AT 12:17 P.M. PROCEEDINGS
15 WERE ADJOURNED FOR NOON RECESS.)

16 **JUDGE HENDERSON:** I GUESS BEFORE WE GO INTO CROSS,
17 ANYTHING FROM STATE DEFENDANTS?

18 **MR. LEWIS:** NO QUESTIONS, YOUR HONOR.

19 **THE COURT:** OKAY, CROSS-EXAMINATION.

20 **MS. EVENSON:** GOOD AFTERNOON, YOUR HONOR. GOOD
21 AFTERNOON, MR. BENNETT. REBECCA EVENSON FOR PLAINTIFFS.

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

23 **BY MS. EVENSON**

24 **Q.** MR. BENNETT, YOUR LAWYER ASKED YOU WHAT THE EFFECT WOULD BE
25 OF REDUCING THE POPULATION BY 52,000 OVER TWO YEARS, AND YOU

1 SAID IT WOULD BE ABSOLUTELY DEVASTATING. WHEN YOU SAID THAT,
2 YOU DIDN'T MEAN IT WOULD BE ABSOLUTELY DEVASTATING TO REDUCE THE
3 POPULATION USING THE METHODS THAT YOU DESCRIBED IN YOUR REPORT,
4 RIGHT?

5 **A.** CORRECT.

6 **MS. EVENSON:** NOTHING FURTHER.

7 **JUDGE KARLTON:** MR. BENNETT, ONE THING THAT YOU SAID
8 WAS ABSOLUTELY NECESSARY WAS A PROGRAM, ADEQUATE PROGRAM,
9 PRERELEASE PROGRAM IN THE PRISONS, IS THAT RIGHT?

10 **THE WITNESS:** YES.

11 **JUDGE KARLTON:** ARE YOU AWARE THAT ALMOST NO ADEQUATE
12 PROGRAMMING IS GOING ON BECAUSE THERE IS NO SPACE?

13 **THE WITNESS:** CORRECT.

14 **JUDGE KARLTON:** SO IN ORDER TO OBTAIN THE PROGRAM
15 THAT YOU ARE TALKING ABOUT, YOU HAVE GOT TO RELEASE ENOUGH
16 PEOPLE AT LEAST TO GET THE SPACE?

17 **THE WITNESS:** IT'S A DIFFICULT CONFLICT BECAUSE OF
18 THAT ISSUE, AND TAKING A LOOK AT THE PICTURES FROM THE
19 INSTITUTIONS OF THE INCREDIBLE OVERCROWDING IN SPACES THAT ARE
20 SUPPOSED TO BE PROGRAM SPACES. IT'S A VERY DIFFICULT, DAUNTING
21 TASK AHEAD.

22 **JUDGE KARLTON:** I'M GLAD YOU THINK YOU HAVE A
23 DAUNTING TASK. WHAT DO WE DO? WE HAVE GOT TO LET PEOPLE OUT
24 JUST TO GET THE SPACE TO GET THE PROGRAMMING THAT YOU SAY IS
25 NECESSARY TO MAKE THIS WORK.

1 **THE WITNESS:** WHAT I WOULD LIKE, IN THE BEST OF ALL
2 POSSIBLE WORLDS, AND I REALIZE THE COURT HAS BEEN WORKING ON
3 BOTH OF THESE CASES FOR A LONG PERIOD OF TIME, BUT IN AN IDEAL
4 WORLD, TO BE ABLE TO EITHER DIRECT OR TO HAVE A COMMITMENT FROM
5 THE STATE OF CALIFORNIA TO WORK WITH ITS COUNTIES ON PUTTING
6 TOGETHER A PLAN THAT IS CERTAIN AND IMMEDIATE, JUST LIKE WHEN I
7 TALK ABOUT WITH SANCTIONS UPON DEFENDANTS, TO PUT TOGETHER A
8 PLAN THAT IS CERTAIN AND IMMEDIATE AND -- BECAUSE THEY ARE
9 RELEASING PEOPLE NOW. THEY ARE RELEASING THEM THROUGH THIS
10 PAROLE PROCESS, SANCTIONING PEOPLE FOR 120 DAYS, DOING NOTHING,
11 ROLLING THEM THROUGH THE SYSTEM AND BACK OUT AGAIN, THAT IF
12 THERE WERE PROGRAMS IN THE COMMUNITY THAT THEY WERE ROLLING THEM
13 TO, WE COULD START TO HAVE AN IMPACT.

14 **JUDGE KARLTON:** SO THAT YOU WOULD, AS A FIRST STEP,
15 MODIFY THE PROGRAM THAT EXISTS NOW, WHICH IS SIMPLY TO TAKE
16 TECHNICAL VIOLATORS, HAVE THEM SIT IN PRISON FOR THREE OR FOUR
17 MONTHS WITHOUT ANYTHING BEING DONE, AND THEN LETTING THEM BACK
18 OUT. THAT CLEARLY SIMPLY MAKES NO SENSE.

19 **THE WITNESS:** CORRECT.

20 **JUDGE KARLTON:** ALL RIGHT.

21 **JUDGE HENDERSON:** ALL RIGHT. THANK YOU VERY MUCH FOR
22 TESTIFYING. IF WE HAD KNOWN IT WOULD BE THIS SHORT, WE WOULD
23 HAVE DONE THIS BEFORE LUNCH. THANK YOU VERY MUCH. YOU ARE
24 EXCUSED.

25 **THE WITNESS:** THANK YOU.

1 **THE COURT:** YOU MAY CALL YOUR NEXT WITNESS.

2 **MS. WHELAN:** YOUR HONORS, WE RECALL DR. PABLO
3 STEWART.

4 **JUDGE HENDERSON:** YOU ARE STILL UNDER OATH.

5 **MS. WHELAN:** FOR THE RECORD, WE PREVIOUSLY OFFERED
6 BOTH OF DR. STEWART'S EXPERT REPORTS INTO EVIDENCE IN THIS CASE,
7 INCLUDING COLEMAN DOCKET NUMBERS 3217, WHICH WAS HIS NOVEMBER 9
8 --

9 **JUDGE KARLTON:** OTHER THAN TAKING OUR TIME, WHY ARE
10 YOU REPEATING IT?

11 **MS. WHELAN:** SORRY, JUST FOR THE RECORD. I CAN MOVE
12 ON.

13 **JUDGE KARLTON:** I'M SORRY, I DIDN'T MEAN TO SPEAK
14 SHARPLY. EXCUSE ME.

15 **DIRECT EXAMINATION BY MS. WHELAN**

16 **BY MS. WHELAN**

17 **Q.** DR. STEWART, ONE OF THE ISSUES THAT YOU EVALUATED IN THIS
18 CASE WAS WHETHER OTHER RELIEF, MEANING RELIEF OTHER THAN
19 POPULATION REDUCTION MEASURES, COULD SUCCEED IN REMEDYING THE
20 CONSTITUTIONAL VIOLATIONS IN THE DELIVERY OF MEDICAL AND MENTAL
21 HEALTH CARE. WHAT DID YOU CONCLUDE?

22 **A.** I CONCLUDED THAT, DUE TO THE EXTREME NATURE OF THE
23 OVERCROWDING, WHICH NEGATIVELY IMPACTS ALL ASPECTS OF THE MENTAL
24 HEALTH AND MEDICAL CARE SYSTEM THAT IS CURRENTLY CAUSING COLEMAN
25 CLASS MEMBERS NEEDLESS SUFFERING, AS WELL AS DEATH, THAT THE

1 ONLY REMEDY THAT WOULD HELP THE SYSTEM TO MOVE INTO
2 CONSTITUTIONAL COMPLIANCE WOULD BE A POPULATION REDUCTION.

3 **Q.** AND COULD YOU EXPLAIN THE SPECIFIC FINDINGS YOU MADE THAT
4 LED YOU TO THAT CONCLUSION?

5 **A.** THERE WAS A COUPLE FINDINGS THAT LED ME TO THAT CONCLUSION.
6 THERE WERE TWO OF THOSE THAT -- EXCUSE ME, THIS SOUNDS A LITTLE
7 FUNNY FROM HERE. IS THIS ALL RIGHT?

8 **JUDGE KARLTON:** IT'S ALL RIGHT FOR ME.

9 **JUDGE HENDERSON:** IT'S OKAY.

10 **THE WITNESS:** EXCUSE ME.

11 TWO OF THE FINDINGS THAT I BASE THAT OPINION ON WERE
12 ALSO TWO OF THE FINDINGS THAT I BASED MY OPINIONS THAT
13 OVERCROWDING IS A PRIMARY CAUSE OF THE CONSTITUTIONAL
14 VIOLATIONS, AND THAT IS THE PERSISTENCE OF THE VIOLATIONS AFTER
15 YEARS OF VERY CLOSE COURT MONITORING.

16 AND, ALSO, THE SPECIAL MASTER HAS STATED IN SEVERAL
17 PLACES THAT THE PROGRESS THAT WAS MADE EARLY ON IN THE COLEMAN
18 MATTER HAS BEEN UNDERMINED BY CURRENT POPULATION PRESSURES THAT
19 EXIST.

20 **BY MS. WHELAN**

21 **Q.** AND DEFENDANTS ARGUE IN THIS CASE THAT THEY HAVE PLANS TO
22 FIX ALL OF THESE PROBLEMS. HAVE YOU HAD AN OPPORTUNITY TO
23 REVIEW THOSE PLANS?

24 **A.** YES, I HAVE.

25 **Q.** CAN YOU EXPLAIN BRIEFLY WHY YOU DO NOT THINK THOSE PLANS

1 WILL ADEQUATELY SOLVE THE CRISIS?

2 **A.** WELL, THE MAIN REASON IS THAT THESE PLANS WILL TAKE YEARS TO
3 IMPLEMENT, IF THEY ARE EVEN ABLE TO BE IMPLEMENTED AT ALL, GIVEN
4 THE CURRENT DEGREE OF THE POPULATION PRESSURES.

5 SO THE COLEMAN CLASS MEMBERS ARE SUFFERING NOW.
6 THEY'RE -- AND ANY PLANS THAT WOULD COME ONLINE YEARS DOWN IN
7 THE FUTURE WOULDN'T DO ANYTHING TO ADDRESS THAT ISSUE.

8 SO IT'S MY OPINION THAT THE ONLY REMEDY, SINCE
9 OVERCROWDING, IN MY OPINION, IS THE PRIMARY CAUSE OF THE
10 CONSTITUTIONAL VIOLATIONS, THAT ANY REMEDY WOULD NECESSARILY
11 NEED TO INCLUDE A POPULATION REDUCTION.

12 **Q.** YOU DISCUSS IN YOUR REPORT YOUR BELIEF THAT THE STATE MUST
13 MAKE SUBSTANTIAL REDUCTIONS IN THE PRISONER POPULATION. DO YOU
14 HAVE AN OPINION ABOUT WHAT TARGET POPULATION SHOULD BE ACHIEVED
15 FROM A MEDICAL AND A MENTAL HEALTH PERSPECTIVE?

16 **A.** FROM A MEDICAL AND A MENTAL HEALTH PERSPECTIVE, AND -- I
17 HAVE RUN JAIL MEDICAL SITUATION PROGRAMS, AND MENTAL HEALTH
18 PROGRAMS NECESSARILY NEED TO BE RUN AT UNDER 100 PERCENT SO
19 YOU'RE ABLE TO RESPOND TO THE GIVEN NEEDS OF A SYSTEM ON ANY
20 GIVEN DAY. YOU NEED TO MOVE PEOPLE QUICKLY INTO A MENTAL HEALTH
21 CRISIS BED. YOU NEED TO MOVE SOMEONE TO AN ACUTE CARE BED.

22 SO ANY POPULATION REDUCTION THAT WOULD OCCUR WOULD
23 HAVE TO BE OF SUFFICIENT QUANTITY TO ALLOW THE MENTAL HEALTH
24 UNITS TO EXIST AT LESS THAN 100 PERCENT OF DESIGN CAPACITY.

25 **Q.** YOU ALSO STATE IN YOUR AUGUST 15 REPORT THAT COLEMAN CLASS

1 MEMBERS SHOULD BE INCLUDED IN ANY POPULATION REDUCTION MEASURES.

2 CAN YOU EXPLAIN WHY YOU REACHED THAT CONCLUSION?

3 **A.** I REACHED THAT CONCLUSION FOR SEVERAL REASONS. ONE, TO ME,
4 IT'S VERY OBVIOUS. THE COLEMAN CLASS MEMBERS ARE BEING RELEASED
5 FROM THE CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION
6 EVERY DAY. THOUSANDS OF COLEMAN CLASS MEMBERS ARE RELEASED FROM
7 PRISON EVERY YEAR.

8 IF YOU TAKE THE NUMBER THAT I REVIEWED FOR
9 APPROXIMATELY 130,000 DISCHARGES FROM THE CDCR IN A GIVEN YEAR
10 AND ASSUMING A 21 PERCENT INCIDENCE OF THE COLEMAN CLASS
11 MEMBERS, THAT'S 25,000 PEOPLE, GIVE OR TAKE, OF COLEMAN CLASS
12 MEMBERS THAT ARE CURRENTLY BEING RELEASED FROM THE CDCR.

13 AND AN ADDITIONAL ASPECT IS, YOU KNOW, THERE IS THIS
14 NOTION THAT EXISTS THAT SOMEHOW THE MENTALLY ILL, AND THAT'S HOW
15 I HEAR IT REFERRED TO, AS THE MENTALLY ILL OR SOMEHOW -- SOMEHOW
16 POSE A RISK TO THE SAFETY IN THE COMMUNITY OR GREATER RISK OF
17 COMMITTING VIOLENCE. AND, FIRST OF ALL, THERE IS NO -- THERE IS
18 NO COHORT OF THE MENTALLY ILL.

19 WITHIN THIS BIG GROUP, THERE IS ANY NUMBER OF
20 DIFFERENT TYPES OF MENTALLY ILL PEOPLE. AND IT'S VERY CLEAR
21 FROM MY PERSONAL EXPERIENCE, AS WELL AS REVIEWING THE
22 LITERATURE, THAT PEOPLE WHO ARE RECEIVING PROPER MENTAL HEALTH
23 TREATMENT POSE NO GREATER RISK TO THE COMMUNITY AS NOT.

24 **Q.** AND IN TERMS OF THE RELIEF THAT PLAINTIFFS ARE SEEKING HERE,
25 WHICH IS APPROXIMATELY A 50,000 PRISONER POPULATION REDUCTION

1 OVER THE COURSE OF TWO YEARS, COULD YOU EXPLAIN WHAT EFFECT THAT
2 WOULD HAVE ON THE COLEMAN CLASS?

3 **A.** WELL, IF WE TAKE JUST THE 50,000 NUMBER, AND GIVEN THAT
4 APPROXIMATELY 21 PERCENT ARE COLEMAN CLASS MEMBERS, THE CDCR
5 POPULATION, THEN THAT MEANS OUT OF THIS 50,000 REDUCTION, 10,000
6 WOULD BE COLEMAN CLASS MEMBERS. AND OUT OF THE COLEMAN CLASS
7 MEMBERS, THE OVERWHELMING MAJORITY, 85 PERCENT, ARE IN THE 3CMS
8 LEVEL. SO THAT WOULD CORRESPOND TO 8,500 PEOPLE FROM THE 3CMS.

9 AND THE 3CMS LEVEL CURRENTLY IN THE DEPARTMENT OF
10 CORRECTIONS RECEIVE, QUITE FRANKLY, MINIMAL CARE. THEY ARE SEEN
11 OCCASIONALLY FOR MEDICATIONS. THEY MAY HAVE A CASE MANAGER
12 VISIT. AND THAT WOULD TRANSLATE TO THE COMMUNITY AS NEEDING
13 SIMILAR LEVELS OF TREATMENT, MEDICATION MANAGEMENT POSSIBLY,
14 MAYBE SOME SORT OF CASE MANAGEMENT SERVICES. THAT WOULD BE THE
15 EXTENT THAT THEY WOULD NEED.

16 **Q.** WHAT ABOUT IN TERMS OF CLASS MEMBERS AT THE ENHANCED
17 OUTPATIENT OR DMH LEVELS OF CARE?

18 **A.** AGAIN, LOOKING AT THE NUMBERS THAT CURRENTLY EXIST, THE EOP
19 LEVEL OF CARE IS 13 PERCENT OF THE COLEMAN CLASS, AND IN A
20 50,000 PRISONER REDUCTION, THAT WOULD MEAN 1,300 PEOPLE. AND
21 THAT WOULD BE 1,300 PEOPLE POSSIBLY RELEASED -- WOULD BE
22 RELEASED OVER A PERIOD OF TWO YEARS.

23 CURRENTLY, IN THE STATE OF CALIFORNIA, LOOKING AT THE
24 DMH WEBSITE FOR ITS MOST CURRENT DATA, THERE'S OVER 658,000
25 PEOPLE RECEIVING MENTAL HEALTH SERVICES AT THE COUNTY LEVEL, AND

1 OUT OF THOSE 658,000 PEOPLE, OVER 69,000 RECEIVE ANY SORT OF DAY
2 SERVICES, DAY TREATMENT-TYPE LEVEL THAT IS ROUGHLY EQUIVALENT TO
3 THE EOP.

4 WE ARE TALKING 650 PEOPLE ADDED TO THAT COHORT OF
5 OVER 69,000 IN A GIVEN YEAR. I THINK THAT THEY CAN BE
6 INCORPORATED INTO THE CURRENT SYSTEM AS IT EXISTS, EVEN WITHOUT
7 ANY AUGMENTATION.

8 AND THEN IF YOU LOOK AT THE DMH LEVEL OF CARE, AGAIN,
9 THAT'S AROUND TWO PERCENT OF THE COLEMAN CLASS. THAT
10 CORRESPONDS IN THIS 50,000 PRISONER REDUCTION NUMBER TO 200
11 PEOPLE.

12 NOW, ASSUMING THAT ONCE THEY ARE RELEASED FROM PRISON
13 OVER THE COURSE OF TWO YEARS THESE 200 PEOPLE WOULD CONTINUE TO
14 REQUIRE INITIATE CARE, AND I DON'T THINK YOU CAN NECESSARILY
15 ASSUME THAT, ONCE THEY ARE REMOVED FROM THE VERY DIFFICULT
16 CONDITIONS THAT THEY ARE IN NOW, IT'S VERY REASONABLE TO SUSPECT
17 THAT THEIR MENTAL HEALTH CONDITIONS WOULD IMPROVE.

18 BUT EVEN ASSUMING 200, WE ARE TALKING ABOUT 100
19 ADDITIONAL PEOPLE OVER THE STATE OF CALIFORNIA IN A GIVEN YEAR
20 THAT CURRENTLY TREATS OVER 43,000 PEOPLE IN INPATIENT CARE IN A
21 GIVEN YEAR, THAT'S 100 IN A SYSTEM THAT CURRENTLY TREATS 43,000.

22 Q. YOU ALSO STATE IN YOUR AUGUST 15, 2008 REPORT THAT IF THE
23 STATE INCREASES RESOURCES TO IMPROVE MENTAL HEALTH SERVICES ON
24 PAROLE AND IN THE COMMUNITIES, IT WOULD ACTUALLY IMPROVE PUBLIC
25 SAFETY. CAN YOU EXPLAIN WHAT YOU MEAN?

1 **A.** WELL, IN THINKING ABOUT WHAT THE STATE CURRENTLY DOES AND
2 WHAT THE STATE COULD DO TO ENHANCE PUBLIC SAFETY, THERE ARE
3 THINGS THAT THEY COULD DO PRIOR TO RELEASE. THE CURRENT PROGRAM
4 GUIDE, THE REVISED PROGRAM GUIDE THAT DETERMINES WHAT SORT OF
5 CARE PEOPLE GET IN THE COLEMAN CLASS STATES THAT PRERELEASE
6 PLANNING SHOULD OCCUR PRIOR TO A PERSON'S RELEASE.

7 NOW, I AGREE. THAT'S A VERY GOOD THING. THAT SHOULD
8 BE CONTINUED. THAT SHOULD BE AUGMENTED. AND PRERELEASE
9 PLANNING MEANS PREPARING PEOPLE FOR RELEASE, ESTABLISHING
10 CLINICAL CONNECTIONS ON THE OUTSIDE PRIOR TO RELEASE, MECHANISMS
11 TO ENSURE THAT PEOPLE DO REALIZE THESE OUTPATIENT APPOINTMENTS.
12 IT ALSO INCLUDES A PROVISION FOR A 30-DAY SUPPLY OF MEDICATION.

13 AGAIN, THESE ARE VERY IMPORTANT THINGS THAT THE STATE
14 IS DOING, AND I THINK IF THEY CONTINUE TO DO THAT AND ENSURE
15 THAT WOULD HAPPEN, THAT WOULD GO TOWARD IMPROVING COMMUNITY
16 SAFETY.

17 AND, FINALLY, I KNOW THIS EXISTS NOW, BUT IT
18 CERTAINLY COULD BE IMPROVED, AND THAT IS HELPING COLEMAN CLASS
19 MEMBERS APPLY FOR BENEFITS, EITHER SOCIAL SECURITY BENEFITS,
20 VETERANS ADMINISTRATION BENEFITS, THAT WOULD THEN GIVE THEM A
21 SOURCE OF INCOME TO PROVIDE FOR OUTPATIENT CARE PRIOR TO BEING
22 RELEASED. THOSE ARE THE THINGS THAT CAN OCCUR PRIOR TO RELEASE.

23 AND THEN IF YOU LOOK AT THOSE THINGS THAT CAN OCCUR
24 AFTER RELEASE, THERE IS A CURRENT SYSTEM OF PAROLE OUTPATIENT
25 CLINIC THAT CERTAINLY COULD BE AUGMENTED, THAT CERTAINLY COULD

1 RECEIVE HELP IN IMPROVING THEIR ABILITY TO CARE FOR PAROLEES.
2 THEY'RE EXAMPLES THAT EXIST WHERE A PAROLE OUTPATIENT CLINIC AND
3 CONTRACT FOR LOCAL PROVIDERS TO PROVIDE DAY SERVICES, CASE
4 MANAGEMENT SERVICES. AND THIS SORT OF THINKING CAN BE DONE VERY
5 CREATIVELY TO HAVE THE PAROLE OUTPATIENT TAKE ADVANTAGE OF THE
6 INFRASTRUCTURE THAT ALREADY EXISTS IN PROVIDING MENTAL HEALTH
7 CARE IN THE COMMUNITY.

8 **Q.** AND IN TERMS OF THE COMMUNITIES THEMSELVES WHERE PEOPLE MAY
9 EITHER RETURN OR BE DIVERTED THROUGH A RELEASE ORDER, WHAT KIND
10 OF INFRASTRUCTURE AND SERVICES EXIST IN COMMUNITY MENTAL HEALTH
11 TODAY?

12 **A.** WELL, AS I MENTIONED EARLIER, BASED ON THE MOST CURRENT DATA
13 FROM DMH, THERE ARE OVER 658,000 PEOPLE RECEIVING MENTAL HEALTH
14 CARE AT THE COUNTY LEVEL THROUGHOUT THE STATE IN A GIVEN YEAR.
15 THAT IS SUPPORTED BY A COMPREHENSIVE NETWORK OF OUTPATIENT
16 CLINICS, DAY TREATMENT CENTERS, DAY HOSPITALS, CASE MANAGEMENT
17 PROGRAMS AS WELL AS INITIATE PROGRAMS THAT ARE ALREADY IN PLACE.

18 NOTHING NEEDS TO BE RECREATED. IT'S ALREADY THERE.
19 IT CERTAINLY COULD RECEIVE HELP. IT CERTAINLY COULD ALWAYS
20 BENEFIT FROM INCREASED RESOURCES. BUT THE SYSTEM IS ALREADY IN
21 PLACE.

22 AND, AGAIN, WE LOOKED AT THE NUMBERS IN THIS
23 10,000 -- IN THE 50,000 REDUCTION, PRISONER POPULATION
24 REDUCTION, 10,000 OF THEM BEING COLEMAN CLASS MEMBERS,
25 THEORETICALLY, THAT WOULD BE 8,500 AT THE OUTPATIENT LEVEL,

1 ANOTHER 1,300 AT MAYBE THE DAY TREATMENT LEVEL, AND 200 AT THE
2 INPATIENT, AGAIN, SPREAD OUT OVER TWO YEARS IN A SYSTEM THAT
3 TREATS 658,000.

4 **Q.** THE INTERVENORS IN THIS CASE, SOME OF THEM HAVE EXPRESSED
5 CONCERNS ABOUT PROVIDING CARE TO THE ADDITIONAL PEOPLE WHO WOULD
6 EITHER REMAIN IN THE COMMUNITIES THROUGH DIVERSION PROGRAMS, OR
7 WHO MIGHT OTHERWISE RETURN TO THE COUNTIES THROUGH POPULATION
8 REDUCTION MEASURES.

9 YOU HAVE EXTENSIVE EXPERIENCE IN COMMUNITY MENTAL
10 HEALTH. DO YOU THINK THOSE CONCERNS ARE WARRANTED?

11 **A.** WELL, YOU KNOW, AGAIN, LOOKING AT IT FROM THE PERSPECTIVE OF
12 A COMMUNITY MENTAL HEALTH PROVIDER, AS I WAS AND I CONTINUE TO
13 BE, YOU CERTAINLY ARE PROTECTIVE OF YOUR CURRENT CLIENTS. YOU
14 ARE PROTECTIVE OF WHAT YOU ARE DOING NOW, AND ANY POTENTIAL
15 INCREASE IN PATIENT POPULATION WOULD GET YOUR ATTENTION.

16 SO I CAN UNDERSTAND THEIR INITIAL CONCERN, BUT I,
17 QUITE FRANKLY, THINK IT'S OVERSTATED.

18 AND, YOU KNOW, THE BENEFIT -- ONE OF THE BENEFITS,
19 HOPEFULLY, NOT THE ONLY ONE, OF BEING AROUND A LONG TIME IS THAT
20 YOU SEE THINGS COME AND GO, AND THIS IS THE MOST CURRENT
21 MANIFESTATION OF THE COMMUNITY MENTAL HEALTH PROTESTING THAT,
22 OH, THIS NEW COHORT OF PATIENT IS GOING TO RUIN OUR SYSTEM.

23 YOU KNOW, I FIRST SAW THIS IN THE LATE '70'S, EARLY
24 '80'S WITH THE VIETNAM VETERAN POPULATION. COMMUNITY MENTAL
25 HEALTH WAS COMPLAINING ALL THESE PEOPLE WERE TOO SICK, THEY

1 ABUSE DRUGS, THEY ARE GOING TO BE TOO VIOLENT, WE DON'T HAVE
2 ENOUGH SERVICES FOR THEM, AND IF WE ARE FORCED TO TREAT THEM,
3 BOY, ALL HELL IS GOING TO BREAK LOOSE. WELL, IT DIDN'T. AND
4 THAT WAS THE FIRST EXAMPLE.

5 YOU KNOW, THERE HAS BEEN OTHER EXAMPLES THROUGHOUT MY
6 CAREER WHERE THE COMMUNITY MENTAL HEALTH MAKES A WHOLE BIG FUSS
7 ABOUT TREATING PEOPLE THAT HAVE CONCURRENT SUBSTANCE ABUSE
8 PROBLEMS. YOU KNOW, THE SAME EXAMPLES ARE GIVEN. IT'S GOING TO
9 OVERWHELM OUR SYSTEM. WE DON'T HAVE ENOUGH RESOURCES; THEY ARE
10 TOO VIOLENT; WE CAN'T CARE FOR THEM ADEQUATELY; PUBLIC SAFETY IS
11 GOING TO GO DOWN THE TUBES. AND, IN FACT, IT DIDN'T.

12 RIGHT NOW THE STANDARD OF CARE IS THAT PEOPLE WITH
13 MENTAL HEALTH AND SUBSTANCE ABUSE PROBLEMS ARE TREATED
14 CONCURRENTLY IN THE COMMUNITY MENTAL HEALTH SYSTEM.

15 SO I CAN UNDERSTAND ON ONE LEVEL. I CAN UNDERSTAND
16 THEIR DEGREE OF CONCERN, AS I WOULD BE. BUT I THINK IT'S, QUITE
17 FRANKLY, OVERSTATED.

18 **Q.** AND DEFENDANTS HAVE ARGUED IN THIS CASE THAT THE REDUCTION
19 THAT PLAINTIFFS SEEK, AGAIN APPROXIMATELY 50,000 OVER THE COURSE
20 OF TWO YEARS, WILL NOT BENEFIT THE COLEMAN CLASS. DO YOU AGREE
21 WITH THAT?

22 **A.** I WHOLEHEARTEDLY DISAGREE WITH THAT.

23 **Q.** AND CAN YOU EXPLAIN WHY?

24 **A.** A SIGNIFICANT REDUCTION, IF WE LOOK AT 50,000 AS AN EXAMPLE,
25 50,000 PEOPLE REDUCED FROM THE CURRENT CDCR POPULATION WOULD

1 HAVE A SIGNIFICANT IMPACT ON THE COLEMAN CLASS.

2 JUST FOR EXAMPLE, THERE ARE GENERAL POPULATION YARDS
3 AT SALINAS VALLEY STATE PRISON THAT HAVE BASICALLY BEEN IN
4 LOCKDOWN FOR SEVERAL YEARS BECAUSE THERE'S TOO MANY INMATES AND
5 THERE'S NOT ENOUGH GUARDS TO SAFELY GUARD THEM. SO THEY LOCK
6 EVERYBODY UP IN THEIR CELLS, AND AMONG THAT GROUP OF PEOPLE THAT
7 ARE LOCKED DOWN ARE COLEMAN CLASS MEMBERS, THAT, WHEN I
8 INTERVIEWED, TALKED ABOUT THE EXTREME STRESS AND THE WORSENING
9 OF THEIR MENTAL ILLNESS BECAUSE OF THEIR BEING LOCKED DOWN.

10 ANOTHER IMMEDIATE RELIEF THAT WOULD BE ACCRUED FOR
11 COLEMAN CLASS MEMBERS, IF THERE WERE THE 50,000 INMATE
12 POPULATION REDUCTION WOULD BE, HOPEFULLY, THE ELIMINATION OF
13 THESE HORRIBLE DORMITORIES THAT EXIST IN DAYROOMS, IN GYMS, IN
14 CORRIDORS AND HALLWAYS WHERE COLEMAN CLASS MEMBERS ARE CURRENTLY
15 HOUSED.

16 AND I CERTAINLY OBSERVED, AND IT WAS CONFIRMED BY THE
17 SPECIAL MASTER, THAT THERE'S SO MANY PEOPLE THAT IT EXACERBATES
18 THE PEOPLE THAT STARTED OFF WITH MENTAL ILLNESS, AND IT CREATES
19 NEW MENTAL ILLNESS. SO ANY POPULATION REDUCTION WOULD HAVE --
20 IMMEDIATELY HAVE A BENEFICIAL EFFECT ON THE COLEMAN CLASS.

21 **Q.** AND WHAT ABOUT IN TERMS OF DEFENDANT'S PLANS TO FIX SOME OF
22 THESE PROBLEMS, HOW WOULD THE REDUCTION AFFECT THOSE PLANS?

23 **A.** WELL --

24 **MS. TILLMAN:** OBJECTION. ASKED AND ANSWERED.

25 **JUDGE HENDERSON:** OVERRULED.

1 **THE WITNESS:** LOOK AT THE DIFFERENT ASPECTS OF THE
2 PLANS, THE BED PLANS, FOR EXAMPLE, THE CONSTRUCTION PLANS. THE
3 POPULATION AT LARGE FEEDS IN TO THE SYSTEM THAT THEN REQUIRES
4 INPATIENT CARE.

5 SO IF YOU LOOK AT THE NUMBERS FOR MENTAL HEALTH
6 CRISIS BED REFERRALS FROM JULY AND AUGUST OF THIS YEAR, A
7 SIGNIFICANT NUMBER WERE FROM 3CMS AND, ALSO, OVER 40 PERCENT AND
8 AROUND 10 PERCENT GIVE OR TAKE WERE FROM THE GENERAL POPULATION.

9 IF YOU LOWER THE GENERAL POPULATION, IF YOU LOWER THE
10 NUMBERS, THERE ARE LESS PEOPLE THAT WOULD BE REQUIRING MENTAL
11 HEALTH CRISIS BEDS, AND THEN MENTAL HEALTH CRISIS BEDS ARE THEN
12 FEEDING INTO THE INTERMEDIATE CARE FACILITIES WHICH THEN FEED
13 INTO THE ACUTE CARE. IT WOULD HAVE THIS CASCADING POSITIVE
14 EFFECT BY LOWERING POPULATION.

15 AND IT MAY, QUITE FRANKLY, BE THE ONLY REMEDY THAT'S
16 GOING TO HELP THE STATE MEET THEIR REQUIREMENTS FOR ADEQUATE
17 NUMBER OF BEDS AT DIFFERENT LEVELS OF CARE.

18 **BY MS. WHELAN**

19 **Q.** YOU ALSO TALKED ABOUT RECEPTION CENTERS BEING A PROBLEM BUT
20 COULD YOU TALK ABOUT HOW A REDUCTION MAY ASSIST THOSE, AS WELL
21 AS THE MAIN LINE INSTITUTIONS?

22 **A.** THE RECEPTION CENTERS -- THE RECEPTION CENTER THAT I TOURED
23 WAS DVI. AND IT WAS -- I DON'T HAVE THE RIGHT ADJECTIVE HOW
24 CROWDED IT WAS. I BELIEVE IT WAS OPERATING AT OVER 200 PERCENT
25 DESIGN CAPACITY.

1 PEOPLE WERE STUCK THERE. THEY COULDN'T MOVE OUT OF
2 THE RECEPTION CENTER. IT WAS EOPS -- I BELIEVE THERE WAS 5- TO
3 700 EOPS IN THE RECEPTION CENTERS THAT ARE WAITING TO BE PLACED
4 BECAUSE THERE'S JUST TOO MANY PEOPLE. A POPULATION REDUCTION
5 WOULD HELP THAT.

6 I MEAN -- AND THE COURT IS VERY AWARE BY THEIR
7 APPROVAL OF THIS RECEPTION CENTER EOP PROGRAM. IT RECOGNIZES
8 HOW PEOPLE ARE GETTING STUCK THERE BECAUSE THERE'S JUST, QUITE
9 FRANKLY, TOO MANY PEOPLE. SO, AGAIN, AN OVERALL POPULATION
10 REDUCTION WOULD HELP RELIEVE THAT. IF THAT WERE RELIEVED, THEN
11 THE STAFF THAT ARE CURRENTLY IN THE RECEPTION CENTERS, WHICH ARE
12 VERY STAFF-INTENSIVE PROGRAMS, COULD BE REDEPLOYED TO AREAS
13 WHERE THERE'S STAFF SHORTAGES. SO THAT WOULD AGAIN HAVE ANOTHER
14 POSITIVE EFFECT ON THE COLEMAN CLASS.

15 **Q.** WHAT ABOUT IN TERMS OF ACCESS TO CARE IN THE MAINLINE
16 INSTITUTIONS AS WELL?

17 **A.** AGAIN, AS I WAS SAYING, THERE'S JUST TOO MANY PEOPLE TRYING
18 TO ACCESS CARE. THERE'S TOO MANY 3CMS. THERE'S GP INMATES THAT
19 ARE TRYING TO ACCESS MENTAL HEALTH CRISIS BEDS, WHICH THEN HAVE
20 THIS CASCADING EFFECT ON THE ENTIRE SYSTEM. SO THE POPULATION
21 REDUCTION WOULD SIGNIFICANTLY IMPROVE THE CARE PROVIDED TO
22 COLEMAN CLASS MEMBERS.

23 **Q.** AND IN TERMS OF THE WAITING LISTS THAT CURRENTLY EXIST FOR
24 CARE, ARE YOU FAMILIAR WITH THOSE LISTS?

25 **A.** YES, I AM.

1 Q. AND CAN YOU TALK ABOUT HOW THOSE MAY ALSO BE AFFECTED BY A
2 REDUCTION THAT WE ARE TALKING ABOUT IN THIS CASE?

3 A. IF WE JUST CONSIDER THE EOP WAITING LIST, THERE'S
4 APPROXIMATELY 1,000 PEOPLE WAITING FOR EOP PLACEMENTS. ON THIS
5 50,000 REDUCTION, AGAIN, 13 PERCENT EOPS, THAT EQUATES TO 1,300
6 PEOPLE. OVER THE COURSE OF TWO YEARS, WHERE MY UNDERSTANDING
7 THIS REDUCTION WOULD OCCUR, YOU WOULD BE ABLE TO ONCE AND FOR
8 ALL ELIMINATE THE WAITING LIST FOR THE EOP.

9 RIGHT NOW THERE'S -- WHEN I DID MY TOURS OF SALINAS
10 VALLEY AND THE VACAVILLE PSYCHIATRIC PROGRAMS, THERE WERE OVER
11 160, 170 PEOPLE WAITING FOR INTERMEDIATE CARE BEDS. THERE WAS,
12 ON A GIVEN DAY THAT I WAS TOURING THE VACAVILLE PSYCHIATRIC
13 PROGRAM, THERE WAS AN ADDITIONAL 15 PEOPLE WAITING FOR ACUTE
14 CARE PLACEMENT.

15 SO IF WE WOULD REDUCE THE NUMBERS ACCORDINGLY, WE
16 WOULD ONCE AND FOR ALL BE ABLE TO CATCH UP ON THE WAITING LIST,
17 AND, AS I SAID, HOPEFULLY CREATE THESE MENTAL HEALTH PROGRAMS
18 THAT ARE RUNNING NOT AT 100 PERCENT, BUT SOMEWHAT LESS, SO THAT
19 THEY WOULD BE ABLE TO RESPOND TO THE NEEDS OF THE SYSTEM ON A
20 GIVEN DAY, RATHER THAN HAVING TO HOUSE PEOPLE IN THESE MOHUS
21 OHUS AND AD-SEG OVERFLOWS BECAUSE THEY CAN'T ACCESS APPROPRIATE
22 LEVELS OF CARE.

23 MS. WHELAN: THANK YOU, DR. STEWART.

24 THE COURT: ANYTHING FROM CCPOA?

25 MS. LEONARD: NO, YOUR HONOR.

1 **THE COURT:** CROSS-EXAMINATION?

2 **MS. TILLMAN:** THANK YOU, YOUR HONOR.

3 **CROSS EXAMINATION**

4 **BY MS. TILLMAN:**

5 **Q.** GOOD AFTERNOON, DOCTOR.

6 **A.** GOOD AFTERNOON.

7 **Q.** I WANTED TO MAKE SURE YOU HAD YOUR WATER IN PLACE BEFORE WE
8 STARTED.

9 **A.** YES, THANK YOU.

10 **Q.** DOCTOR, YOU HAVE NO INDEPENDENT OPINION, DO YOU, ON THE
11 NUMBER OF INMATES THAT NEED TO BE REMOVED FROM THE DEPARTMENT OF
12 CORRECTIONS AND REHABILITATION IN ORDER TO HELP THE DEPARTMENT
13 OF CORRECTIONS AND REHABILITATION ACHIEVE THE CONSTITUTIONAL
14 REQUIREMENTS OF AN ADEQUATE MEDICAL CARE SYSTEM, CORRECT?

15 **A.** WELL, NO, THAT'S NOT CORRECT. AS I JUST TESTIFIED, IT'S MY
16 OPINION THAT A POPULATION REDUCTION WOULD HAVE TO BE OF A
17 SIGNIFICANT NUMBER TO ALLOW THE MENTAL HEALTH UNITS WITHIN THE
18 CDCR TO OPERATE AT LESS THAN 100 PERCENT CAPACITY. THAT IS MY
19 OPINION.

20 **Q.** BUT YOU ACTUALLY DON'T KNOW WHAT PARTICULAR NUMBER OF
21 INMATES WOULD HAVE TO BE RELEASED IN ORDER TO ACHIEVE THOSE
22 CONSTITUTIONAL REQUIREMENTS, DO YOU?

23 **A.** I DON'T HAVE A PARTICULAR NUMBER IN MIND, NO.

24 **Q.** AND, IN FACT, YOU HAVE NO INDEPENDENT OPINION AS TO WHAT IS
25 THE APPROPRIATE CAPACITY FOR THE DELIVERY OF MENTAL HEALTH CARE

1 WITHIN THE DEPARTMENT OF CORRECTIONS AND REHABILITATION, DO YOU?

2 **JUDGE KARLTON:** SAME QUESTION, SAME ANSWER. HOW IS
3 THE QUESTION DIFFERENT, MISS TILLMAN?

4 **MS. TILLMAN:** I BELIEVE WE ARE ADDRESSING CAPACITY AS
5 OPPOSED TO THE NUMBER OF INMATES THAT NEED TO BE RELEASED.

6 **THE WITNESS:** CAN YOU SAY THE QUESTION AGAIN, PLEASE,
7 BECAUSE I THOUGHT IT WAS THE SAME QUESTION ALSO?

8 **BY MS. TILLMAN:**

9 **Q.** IN FACT, YOU HAVE NO INDEPENDENT OPINION, DO YOU, AS TO WHAT
10 IS THE APPROPRIATE CAPACITY FOR THE DELIVERY OF CONSTITUTIONALLY
11 ADEQUATE MENTAL CARE, DO YOU?

12 **A.** HOW IS THAT DIFFERENT FROM POPULATION CAPACITY? I DON'T
13 UNDERSTAND.

14 **Q.** IN TERMS OF CAPACITY, WE'RE ASKING DO YOU HAVE AN OPINION AS
15 TO WHAT THE MAXIMUM OPERABLE CAPACITY OF THE DEPARTMENT OF
16 CORRECTIONS AND REHABILITATION IS FOR CONSTITUTIONALLY ADEQUATE
17 MENTAL HEALTH CARE TO BE DELIVERED?

18 **A.** SORRY, I BELIEVE I ALREADY ANSWERED. I DON'T HAVE A
19 PARTICULAR NUMBER IN MIND. BUT MY OPINION IS THAT THE
20 POPULATION WOULD HAVE TO BE AT A LEVEL WHERE THE MENTAL HEALTH
21 UNITS WERE ABLE TO BE RUN AT LESS THAN 100 PERCENT OF CAPACITY.

22 **Q.** ISN'T IT CORRECT THAT IN YOUR DEPOSITION, YOU MENTIONED
23 MAXIMUM OPERABLE CAPACITY OF 140 TO 140 PERCENT TO SECURELY
24 HOUSE AND PROVIDE EFFECTIVE PROGRAMMING FOR CDCR INMATES?

25 **MS. WHELAN:** OBJECTION. CAN WE HAVE THE PAGE

1 REFERENCE?

2 **MS. TILLMAN:** THAT WOULD BE THE SEPTEMBER '08
3 DEPOSITION AT PAGE 206, LINES 1 THROUGH 24.

4 **THE WITNESS:** AND YOUR QUESTION, PLEASE?

5 **MS. TILLMAN:** I'M WAITING FOR PLAINTIFF COUNSEL TO
6 CHECK THE CITE.

7 (BRIEF PAUSE.)

8 **JUDGE KARLTON:** ARE YOU OBJECTING, MA'AM, OR NOT?
9 YOU DON'T HAVE THE DEPOSITION.

10 **MR. BIEN:** YOU CAN PUT IT UP.

11 **BY MS. TILLMAN**

12 **Q.** AND WE ARE LOOKING AT 206 OF YOUR DEPOSITION FROM
13 SEPTEMBER 2008 WHERE YOU INDICATED THE MAXIMUM OPERABLE CAPACITY
14 IS DEFINED AS 140 TO 145 PERCENT. DO YOU RECALL THAT TESTIMONY?

15 **A.** YES.

16 **Q.** AND YOU RELIED UPON THE FINDING OF THE INDEPENDENT REVIEW
17 PANEL FOR THAT 140 TO 145 PERCENT MAXIMUM OPERABLE CAPACITY
18 NUMBER, CORRECT?

19 **A.** I REMEMBER SPEAKING OF THAT, YES.

20 **Q.** AND YOU OPINED THAT THE RECOMMENDATION THAT WAS INDICATED IN
21 THAT INDEPENDENT REVIEW PANEL REPORT WAS PROVIDED BY WARDENS WHO
22 PARTICIPATED IN THE STUDIES OF THAT PANEL, CORRECT?

23 **A.** I DON'T SEE IT IN THE PAGE HERE, BUT I BELIEVE SO.

24 **JUDGE KARLTON:** IT SAYS WHATEVER IT SAYS, MA'AM.

25

1 **BY MS. TILLMAN**

2 **Q.** EVEN AT THE MAXIMUM OPERABLE CAPACITY OF 140 TO 145 PERCENT,
3 THE DEPARTMENT OF CORRECTIONS AND REHABILITATION WILL STILL HAVE
4 TO OBTAIN AN ADEQUATE NUMBER OF COMPETENT MENTAL HEALTH
5 CLINICIANS TO STAFF THE FACILITIES, CORRECT?

6 **A.** YES.

7 **Q.** AND YOU HAVE NO OPINION TODAY, DO YOU, AS TO WHAT PARTICULAR
8 NUMBER OF MENTALLY ILL INMATES CAN BE SERVED IN AN ADEQUATE
9 FASHION WITH THE EXISTING MENTAL HEALTH BEDS, STAFF, INFORMATION
10 TECHNOLOGY, PHARMACY, RECORD KEEPING AND MANAGEMENT SERVICES
11 AVAILABLE WITHIN THE DEPARTMENT OF CORRECTIONS AND
12 REHABILITATION, DO YOU?

13 **A.** IF I HAVE A NUMBER IN MIND OF THE PEOPLE THAT CAN CURRENTLY
14 BE TREATED AT A CONSTITUTIONAL LEVEL OF CARE GIVEN THE CURRENT
15 STATE OF THE STAFF, TREATMENT BASE, ET CETERA ET CETERA?

16 **Q.** I THINK THE QUESTION WAS YOU HAVE NO OPINION AS TO WHAT
17 PARTICULAR NUMBER OF MENTALLY ILL INMATES CAN BE SERVED IN AN
18 ADEQUATE FASHION WITH THE EXISTING MENTAL HEALTH BEDS, STAFF,
19 INFORMATION TECHNOLOGY, PHARMACY, RECORDKEEPING, AND MANAGEMENT
20 SERVICES CURRENTLY AVAILABLE WITHIN THE DEPARTMENT OF
21 CORRECTIONS AND REHABILITATION, DO YOU?

22 **A.** I DO NOT HAVE A NUMBER IN MIND, NO, YOU ARE CORRECT.

23 **Q.** NOW, AT THE TIME OF YOUR DEPOSITION IN SEPTEMBER 2008, YOU
24 WERE NOT AWARE OF ANY PLANS FOR A REDUCTION OF EVEN JUST 15,000
25 INMATES, CORRECT?

1 **A.** I'M SORRY. COULD YOU SAY THAT AGAIN, PLEASE?

2 **Q.** AT THE TIME OF YOUR DEPOSITION IN AUGUST 2008, YOU WERE NOT
3 AWARE THAT PLAINTIFFS HAD PROPOSED AN IMMEDIATE REDUCTION OF
4 15,000 INMATES FROM THE DEPARTMENT OF CORRECTIONS' POPULATION,
5 CORRECT?

6 **A.** I'M SORRY. I WASN'T AWARE THAT THE PLAINTIFFS HAD REQUESTED
7 AN IMMEDIATE 15,000 POPULATION REDUCTION?

8 **Q.** CORRECT.

9 **A.** I'M NOT FAMILIAR WITH THAT NUMBER.

10 **Q.** ASSUMING A REDUCTION OF THE CDCR PRISON POPULATION BY EVEN
11 JUST 15,000 INMATES, WOULDN'T IT BE CORRECT THAT YOU HAVE NO
12 OPINION AS TO WHAT PARTICULAR NUMBER OF COLEMAN CLASS INMATES
13 SHOULD BE A PART OF THAT 15,000 RELEASE TO ENSURE THAT THE ORDER
14 AND THE RELEASE EFFECTIVELY ADDRESSES THE IMPEDIMENT TO A
15 CONSTITUTIONALLY ADEQUATE MENTAL HEALTH CARE SYSTEM?

16 **A.** BASED ON THIS 15,000 NUMBER THAT I HAVEN'T HEARD OF? I'M
17 NOT SURE.

18 **Q.** SO YOU HAVE NO OPINION, IS THAT CORRECT?

19 **A.** I'M NOT SURE WHAT YOUR QUESTION IS.

20 **JUDGE KARLTON:** ASSUME THAT SOMEBODY HAS SUGGESTED
21 IMMEDIATELY 15,000. DO YOU HAVE AN OPINION AS TO WHAT
22 PERCENTAGE OF THOSE PEOPLE SHOULD BE COLEMAN CLASS CLIENTS SO AS
23 TO AMELIORATE THE PRESENT CONDITIONS?

24 **THE WITNESS:** IT'S MY OPINION, YOUR HONOR, THAT THE
25 COLEMAN CLASS SHOULD BE INCLUDED IN THE POPULATION REDUCTION AT

1 THE RELATIVE PERCENTAGE THAT THEY ARE OF THE OVERALL POPULATION.

2 **JUDGE KARLTON:** AND EACH INCREMENT IS HELPFUL EVEN IF
3 IT DOESN'T SOLVE THE PROBLEM?

4 **THE WITNESS:** I BELIEVE SO, YES, YOUR HONOR.

5 **MS. TILLMAN:** MAY I READ FROM HIS DEPOSITION AT PAGE
6 240, LINE 21, TO 241, LINE 2?

7 (DOCUMENT DISPLAYED)

8 **BY MS. TILLMAN**

9 **Q.** YOU WERE ASKED AT YOUR DEPOSITION IN SEPTEMBER 2008.

10 "QUESTION: OF THE 15,000 INMATES, WHAT
11 NUMBER WOULD HAVE TO BE COLEMAN CLASS MEMBERS IN
12 ORDER TO ENSURE THAT THE RELEASE ORDER
13 EFFECTIVELY ADDRESSES THE OVERCROWDING THAT
14 CAUSES IMPEDIMENTS TO CONSTITUTIONALLY ADEQUATE
15 MENTAL HEALTH CARE?"

16 **JUDGE KARLTON:** EVEN IF THE PLAINTIFFS DON'T
17 OBJECT -- GO AHEAD, GO AHEAD.

18 **MS. TILLMAN:**

19 "ANSWER: I DON'T HAVE A PARTICULAR NUMBER
20 IN MIND."

21 **BY MS. TILLMAN**

22 **Q.** IN FACT, SIR, THE REMOVAL OR REDUCTION OF INMATES WILL NOT
23 IMMEDIATELY RESULT IN CONSTITUTIONAL COMPLIANCE, WILL IT?

24 **A.** THE REDUCTION OF THE OVERALL POPULATION OF THE CDCR, IN MY
25 OPINION, IS THE ONLY WAY THAT YOUR CLIENT CAN EVEN HAVE A CHANCE

1 OF ACHIEVING -- PROVIDING CONSTITUTIONALLY ADEQUATE CARE.

2 **Q.** YOU WOULD CALL IT THE FIRST STEP OR FIRST INTERVENTION, BUT
3 WORK WOULD STILL REMAIN TO BE DONE, CORRECT?

4 **A.** WHAT I HAVE TESTIFIED TO IS THAT OVERCROWDING IS A PRIMARY
5 CAUSE OF THE CONSTITUTIONAL VIOLATIONS. SO AS IT IS A PRIMARY
6 CAUSE, IT NECESSARILY WOULD NEED TO BE THE PRIMARY REMEDY. BUT
7 IT'S NOT THE ENTIRE REMEDY.

8 YOUR CLIENT WOULD STILL HAVE TO PROVIDE ADEQUATE
9 NUMBER OF BEDS, STAFF, TREATMENT SPACE, SMALL MANAGEMENT YARDS,
10 ET CETERA, ET CETERA.

11 **Q.** I UNDERSTAND YOU HAVE TESTIFIED THAT YOU SUPPORT THE RELEASE
12 OF COLEMAN CLASS MEMBERS AS PART OF ANY PRISONER RELEASE ORDER,
13 CORRECT?

14 **A.** YES.

15 **Q.** AND NOW THE COLEMAN CLASS, AS YOU HAVE DESCRIBED, HAS
16 ESSENTIALLY INMATES WITH SERIOUS MENTAL DISORDERS, CORRECT?

17 **A.** SOME OF THEM DO, YES.

18 **Q.** THESE ARE PEOPLE WHO WILL HAVE AXIS I DISORDER, RIGHT?

19 **JUDGE KARLTON:** THEY ARE ALL AXIS 1, CORRECT?

20 **THE WITNESS:** THAT'S CORRECT, YOUR HONOR.

21 **BY MS. TILLMAN:**

22 **Q.** AND THEY WILL HAVE A GLOBAL ASSESSMENT FUNCTION OF LESS THAN
23 50, CORRECT?

24 **A.** NOT ALL OF THEM.

25 **Q.** MANY?

1 **A.** NO. THE MAJORITY OF THEM -- IF YOUR CLIENT IS APPROPRIATELY
2 USING THE REVISED PROGRAM GUIDE, THEN THE OVERWHELMING MAJORITY
3 OF COLEMAN CLASS MEMBERS WOULD HAVE A GLOBAL ASSESSMENT OF
4 FUNCTIONING GREATER THAN 50.

5 **Q.** IN THE INMATES WHO PRESENTLY RECEIVE COORDINATED CLINICAL
6 CASE MANAGEMENT SERVICES, THAT'S THE LOWEST LEVEL OF SERVICE
7 AVAILABLE WITHIN THE DEPARTMENT OF CORRECTIONS, IF THOSE
8 INDIVIDUALS ARE RELEASED TO THE COMMUNITY, ISN'T IT YOUR OPINION
9 THAT THESE INDIVIDUALS WHO RECEIVE THIS CORRECTIONAL CLINICAL
10 CASE MANAGEMENT CARE WILL STILL NEED TREATMENT THAT PARALLELS
11 WHAT THEY RECEIVE WITHIN THE STATE PRISONS?

12 **A.** SOME OF THEM CERTAINLY WILL. SOME OF THEM WILL NEED THE
13 SAME LEVEL OF CARE, WHICH IS MEDICATION MANAGEMENT, MAYBE AN
14 OCCASIONAL COUNSELOR VISIT IS WHAT THEY GET CURRENTLY, IF THEY
15 ARE LUCKY IN THE CDCR.

16 HOWEVER, THERE -- IN MY OPINION, THERE WOULD BE A
17 NUMBER OF THE 3CMS MEMBERS WHO, ONCE REMOVED FROM THE STRESS OF
18 AN OVERCROWDED PRISON SITUATION, MAY NOT REQUIRE ANY MENTAL
19 HEALTH CARE AT ALL.

20 **Q.** AND THERE ARE THOSE MEMBERS OF WHAT YOU CALL THE 3C, THE
21 COORDINATED CLINICAL CASE MANAGEMENT SERVICES GROUP, WHO WOULD
22 ACTUALLY NEED ASSISTANCE IN ACCESSING COMMUNITY MENTAL HEALTH
23 SERVICES, SUBSTANCE ABUSE TREATMENT IN THE COMMUNITY, HOUSING IN
24 THE COMMUNITY, BENEFITS AND EMPLOYMENT IN THE COMMUNITY,
25 CORRECT?

1 **A.** YES.

2 **Q.** AND THEN THE NEXT HIGHER STEP OF CARE, THE ENHANCED
3 OUTPATIENT PROGRAM, PATIENTS WITHIN THE DEPARTMENT OF
4 CORRECTIONS WILL POSSIBLY -- WILL NEED TREATMENT PERHAPS, DAY
5 TREATMENT PROGRAMS YOU CALL THEM, RIGHT?

6 **A.** POSSIBLY.

7 **Q.** AND SOME ENHANCED OUTPATIENT PROGRAM PATIENTS WILL ACTUALLY
8 NEED EVEN MORE CARE THAN THAT IN THE COMMUNITY; THEY WILL NEED
9 BOARD AND CARE HOUSING OR OTHER RESIDENTIAL FACILITIES, CORRECT?

10 **A.** WELL, SEE, AGAIN, YOU ARE FALLING INTO THAT TRAP OF
11 CONSIDERING DIFFERENT CATEGORIES AS ALL THE SAME. THE EOP LEVEL
12 OF CARE, SOME OF THEM WOULD REQUIRE DAY SERVICES. SOME OF THEM
13 MAY REQUIRE ONLY OUTPATIENT SERVICES. SOME MAY REQUIRE BOARD
14 AND CARE HOMES. OTHERS THAT ARE CURRENTLY AT THE EOP LEVEL OF
15 CARE MAY REQUIRE NO MENTAL HEALTH CARE.

16 I ENCOUNTERED IN MY TOURS, SPEAKING WITH STAFF, THAT
17 BECAUSE OF HOW BAD THE 3CMS SYSTEM CURRENTLY IS, THEY MAINTAIN
18 THEIR PATIENTS AT THE EOP LEVEL BECAUSE IF THEY GO TO THE 3CMS,
19 THEY WILL GET NOTHING. AND SO THERE ARE PEOPLE THAT ARE
20 CURRENTLY BEING HELD AT THE EOP LEVEL OF CARE THAT TECHNICALLY
21 COULD BE TREATED AT A LOWER LEVEL OF CARE.

22 **Q.** AND WOULDN'T YOU AGREE THAT THERE ARE SOME ENHANCED
23 OUTPATIENT PROGRAM PATIENTS WITHIN THE DEPARTMENT OF CORRECTIONS
24 WHO ARE AWAITING INPATIENT CARE AND SO NEED, ACTUALLY, INPATIENT
25 CARE IF THEY ARE RELEASED TODAY, CORRECT?

1 **A.** YES.

2 **Q.** AND AS PART OF THE CARE OF A PERSON WITH A SERIOUS MENTAL
3 DISORDER, A COLEMAN PATIENT, YOU WOULD EXPECT THAT SOME OF THESE
4 COLEMAN PATIENTS WOULD, BECAUSE THEY HAVE A SERIOUS MENTAL
5 DISEASE, EXPERIENCE EPISODES OF ILLNESS THAT REQUIRES
6 PSYCHIATRIC HOSPITAL STAYS, CORRECT?

7 **A.** THERE WILL BE A CERTAIN POPULATION OF ANY COLEMAN CLASS
8 MEMBERS THAT WILL REQUIRE HOSPITALIZATION, YES.

9 **Q.** AND YOU DON'T KNOW WHAT PERCENTAGE OF COLEMAN CLASS MEMBERS
10 WHO ARE PRESENTLY HOUSED IN INPATIENT INTERMEDIATE CARE AND
11 INPATIENT ACUTE CARE SETTINGS WOULD NEED TO BE HOUSED IN SIMILAR
12 SETTINGS IN THE COMMUNITY IF THEY WERE SUBJECT TO A PRISONER
13 RELEASE ORDER TODAY, DO YOU?

14 **A.** WELL, I -- I HAVE A PRETTY GOOD ESTIMATE. AS I MENTIONED
15 EARLIER, THE PEOPLE WHO ARE CURRENTLY HOUSED IN DMH LEVEL OF
16 CARE, WHICH IS INTERMEDIATE CARE, AS WELL AS ACUTE CARE, MAKE UP
17 TWO PERCENT OF THE COLEMAN CLASS. SO IF WE ARE LOOKING AT A
18 50,000 POPULATION REDUCTION, AND IF WE INCLUDED COLEMAN CLASS IN
19 THE SAME PERCENTAGE THAT THEY EXIST IN THE OVERALL CDCR
20 POPULATION, THAT'S 200 PEOPLE OVER THE COURSE OF A COUPLE YEARS.
21 SO THAT WOULD BE MY ANSWER TO YOUR QUESTION. INTERMEDIATE.

22 **MS. TILLMAN:** I WOULD LIKE TO DRAW THE COURT'S
23 ATTENTION TO PAGE 282 OF THE DEPOSITION OF DR. STEWART ON
24 DECEMBER 18, 2008. THAT'S PAGE 282, LINES 12 THROUGH 22.

25

1 **BY MS. TILLMAN**

2 **Q.** AND YOU WERE ASKED AT THAT DEPOSITION:

3 **"QUESTION:** CAN YOU PROVIDE ME WITH A GOOD
4 FAITH ESTIMATE OF THE PERCENTAGE OF THESE
5 COLEMAN CLASS MEMBERS WHO ARE PRESENTLY HOUSED
6 IN INTERMEDIATE CARE AND ACUTE CARE SETTINGS AND
7 WHO WOULD NEED TO BE HOUSED IN SIMILAR SETTINGS
8 IN THE COMMUNITY IF THEY ARE SUBJECT TO A
9 PRISONER RELEASE ORDER?"

10 THERE WAS AN OBJECTION.

11 "VAGUE AND AMBIGUOUS, ASSUMES FACTS NOT IN
12 EVIDENCE."

13 AND THE WITNESS STATED:

14 **"ANSWER:** I DON'T HAVE A PARTICULAR NUMBER
15 IN MIND.

16 "SIR, YOU ALSO -- LET ME STRIKE THAT.

17 "SIR, YOU DON'T KNOW WHAT PERCENTAGE OF THE
18 COLEMAN POPULATION WILL NEED ONGOING MEDICATION
19 SUPPORT THROUGHOUT THEIR LIVES, DO YOU?"

20 **A.** I DO NOT KNOW WHAT PERCENTAGE OF THE COLEMAN CLASS WOULD
21 NEED ONGOING MEDICATION MANAGEMENT?

22 **Q.** CORRECT. THAT'S THE QUESTION.

23 **A.** AGAIN, I DON'T HAVE A PARTICULAR NUMBER IN MIND. I CAN
24 ESTIMATE IT BASED ON THE PERCENTAGE OF PEOPLE AT DIFFERENT
25 LEVELS OF CARE.

1 Q. NOW, YOU WOULD AGREE THAT SOME PORTION OF THE COLEMAN CLASS
2 MEMBERS HAVE CO-OCCURRING SUBSTANCE ABUSE ISSUES, CORRECT?

3 A. CORRECT.

4 Q. AND YOU WOULD AGREE THAT EVEN JUST A REDUCTION OF -- WELL,
5 LET ME STRIKE THAT.

6 YOU HAVE ALREADY TESTIFIED TODAY THAT THE REDUCTION
7 BY 50,000 INMATES WITH SOME PORTION OF THAT 50,000 INCLUDING
8 COLEMAN CLASS MEMBERS, WOULD REQUIRE THE AUGMENTATION OF CURRENT
9 COMMUNITY MENTAL HEALTH SYSTEMS TO CARE FOR THESE MENTALLY ILL
10 INDIVIDUALS, WOULDN'T IT?

11 A. NO. I BELIEVE MY TESTIMONY WAS THAT BASED ON THE LARGE
12 NUMBER THAT ARE CURRENTLY TREATED IN THE COMMUNITY MENTAL HEALTH
13 SYSTEM, 658,000, THAT THE ADDITION OF A RELATIVELY SMALL NUMBER
14 THAT WE ARE TALKING ABOUT HERE COULD BE ADEQUATELY TREATED GIVEN
15 CURRENT -- THE CURRENT SYSTEM. AND I BELIEVE I ALSO SAID THAT I
16 BELIEVE THAT THE SYSTEM COULD BE AUGMENTED ALSO, BUT I BELIEVE
17 THAT THEY CAN BE TREATED WITHOUT ANY AUGMENTATION.

18 Q. ISN'T THAT CORRECT THAT EVEN JUST THE ROUGHLY 15,000 INMATES
19 FROM THE DEPARTMENT OF CORRECTIONS AND REHABILITATION, WITH SOME
20 PORTION OF THAT 15,000 CONSISTING OF COLEMAN CLASS MEMBERS,
21 WOULD REQUIRE AN AUGMENTATION OF THE CURRENT HEALTH SYSTEMS IN
22 THE COMMUNITIES TO CARE FOR THESE MENTALLY ILL INDIVIDUALS?

23 A. I DON'T BELIEVE THAT.

24 Q. I WOULD LIKE TO READ FROM YOUR DEPOSITION, PAGE 236. AND
25 THIS IS THE SEPTEMBER 2008 DEPOSITION. 236 LINE 17 THROUGH 236

1 LINE SEVEN.

2 (DOCUMENT DISPLAYED)

3 Q. AT PAGE 236, LINE 17 YOU WERE ASKED:

4 "QUESTION: DO YOU HAVE ANY OPINIONS
5 REGARDING ANY SORT OF PROTOCOL THAT SHOULD BE
6 FOLLOWED IF THERE IS AN IMMEDIATE REDUCTION OF
7 15,000 INMATES WITH SOME PORTION OF THOSE
8 CONSISTING OF COLEMAN CLASS MEMBERS?

9 "ANSWER: A PROTOCOL REGARDING WHAT?

10 "QUESTION: TO PROVIDE ANY SORT OF MENTAL
11 HEALTH CARE TO COLEMAN CLASS MEMBERS WHO ARE
12 RELEASED?

13 "ANSWER: ANY INCREASE OF MENTALLY ILL
14 INDIVIDUALS IN THE COMMUNITY WOULD NECESSARILY
15 REQUIRE AN AUGMENTATION OF THE CURRENT SYSTEMS
16 THAT EXIST IN THE COMMUNITY TO DEAL WITH
17 MENTALLY ILL INDIVIDUALS, AND THAT WOULD BE
18 COMMUNITY MENTAL HEALTH. IT WOULD BE IN THE
19 AREA OF PAROLE AND MENTAL HEALTH. THOSE AREAS
20 WOULD CERTAINLY NEED AUGMENTATION."

21 NOW, SIR, YOU HAVE NO OPINION, DO YOU, ON WHETHER OR
22 NOT THE PAROLE OUTPATIENT CLINICIANS ARE SUFFICIENT -- I'M
23 SORRY, ON WHETHER OR NOT THE PAROLE OUTPATIENT CLINICS ARE
24 SUFFICIENT IN NUMBER AND STAFF TO HANDLE A RELEASE ORDER OF EVEN
25 JUST 15,000 INMATES WITH SOME 20 PERCENT OF THAT GROUP

1 CONSISTING OF COLEMAN PATIENTS, CORRECT?

2 **A.** I TESTIFIED TODAY. I SAID THAT THE PAROLE OUTPATIENT CLINIC
3 COULD CERTAINLY BENEFIT FROM AUGMENTATION.

4 **Q.** YOU ARE NOT FAMILIAR WITH WHAT NUMBER OF PAROLE OUTPATIENT
5 CLINICS ARE CURRENTLY AVAILABLE, ARE YOU?

6 **A.** I AM NOT.

7 **Q.** AND EVEN WITH A RELEASE ORDER CONSISTING OF ONLY 15,000
8 INMATES WITH SOME 20 PERCENT OF THAT GROUP CONSISTING OF COLEMAN
9 PATIENTS, YOU WOULD RECOMMEND THAT THE COUNTIES RECEIVING A
10 LARGER PORTION OF, SAY, THAT 20 PERCENT, OR 3,000 OF THE 15,000
11 RELEASED GROUP, RECEIVE AUGMENTED RESOURCES, RIGHT?

12 **A.** I AGREE THAT THEY CERTAINLY COULD BENEFIT FROM AUGMENTED
13 RESOURCES. THERE IS NO QUESTION ABOUT THAT.

14 **JUDGE KARLTON:** I TAKE IT THAT'S TRUE EVEN IF YOU
15 DON'T GIVE THEM AN EXTRA SINGLE PERSON FROM OUT OF THE PRISONS.

16 **THE WITNESS:** ABSOLUTELY RIGHT, YOUR HONOR. THEY
17 COULD BENEFIT FROM AUGMENTED RESOURCE THIS AFTERNOON.

18 **BY MR. TILLMAN:**

19 **Q.** NOW, YOU ARE NOT AWARE OF ANY COUNTY IN THE STATE OF
20 CALIFORNIA THAT LACKS THE RESOURCES TO SUPPORT A COUNTY HOSPITAL
21 FOR THE CARE OF THE INDIGENT, ARE YOU?

22 **A.** CAN YOU SAY THAT QUESTION AGAIN, PLEASE?

23 **Q.** YOU ARE NOT AWARE OF ANY COUNTY IN THE STATE OF CALIFORNIA
24 THAT LACKS RESOURCES TO SUPPORT A COUNTY HOSPITAL FOR THE CURE
25 OF THE INDIGENT, ARE YOU?

1 **JUDGE HENDERSON:** LACKS RESOURCES? WHAT DOES THAT
2 MEAN? LACKS MONEY --

3 **MS. TILLMAN:** WOULD IT HELP IF I REPHRASED. CAN I
4 REPHRASE?

5 **JUDGE HENDERSON:** I DIDN'T UNDERSTAND.

6 **BY MS. TILLMAN:**

7 **Q.** YOU ARE NOT AWARE OF ANY COUNTY IN THE STATE OF CALIFORNIA
8 THAT DOES NOT HAVE A COUNTY HOSPITAL TO PROVIDE CARE FOR THE
9 INDIGENT, CORRECT?

10 **A.** I AM NOT AWARE OF THAT. YES, YOU ARE CORRECT.

11 **Q.** AND SO YOU HAVE NOT HAD THE CHANCE TO REVIEW THE REPORT OF
12 MR. GRAVES WHERE IT'S INDICATED THAT THERE ARE ONLY 19 PUBLIC
13 HOSPITALS STATE WIDE FOR THE CARE OF THE INDIGENT, CORRECT?

14 **A.** I HAVEN'T REVIEWED THAT REPORT.

15 **Q.** YOU HAVE MENTIONED THE NEED TO ENSURE PAROLEE ACCESS TO
16 VETERANS ADMINISTRATION BENEFITS.

17 DO YOU ACTUALLY KNOW THE NUMBER OF COLEMAN CLASS
18 MEMBERS WHO ARE ELIGIBLE AND COULD ACCESS THOSE MENTAL HEALTH
19 PROGRAMS WITHIN THE VETERANS ADMINISTRATION?

20 **A.** I DO NOT.

21 **Q.** YOU REALLY DON'T KNOW THE RECIDIVISM RATES OF THE COLEMAN
22 CLASS MEMBERS, DO YOU?

23 **A.** THE ACTUAL RECIDIVISM RATE? I KNOW THAT OVER 100,000 --
24 130,000 PEOPLE ARE COMING AND GOING EVERY YEAR.

25 **Q.** WHEN YOU SPEAK OF 130,000, IS THAT A RECIDIVISM RATE THAT

1 YOU ARE REFERRING TO?

2 **A.** THAT'S THE NUMBER OF RELEASES. AND SINCE THE POPULATION IS
3 SLOWLY GOING UP OVER THE YEARS, I WOULD IMAGINE THEY HAVE THAT
4 MANY ADMISSIONS ALSO.

5 **MS. TILLMAN:** IF I MIGHT DIRECT THE COURT'S ATTENTION
6 TO PAGE 270 OF DR. STEWART'S DEPOSITION IN SEPTEMBER, 2008, LINE
7 17 THROUGH 23.

8 (BRIEF PAUSE.)

9 **MS. WHELAN:** OKAY.

10 **BY MS. TILLMAN:**

11 **Q.** AND THERE YOU WERE ASKED:

12 "QUESTION: DO YOU HAVE ANY UNDERSTANDING AS
13 TO THE RECIDIVISM RATES OF COLEMAN CLASS
14 MEMBERS?

15 "ANSWER: NOT OF COLEMAN CLASS MEMBERS."

16 DOCTOR, YOU DON'T KNOW IF COLEMAN CLASS MEMBERS WITH
17 CO-OCCURRING SUBSTANCE ABUSE ISSUES HAVE A HIGHER RATE OF
18 RECIDIVISM, DO YOU, THAN THE GENERAL POPULATION OF CDCR INMATES?

19 **A.** NO.

20 **Q.** NOW, YOU HAVE RECOMMENDED THE DIVERSION OF MENTALLY ILL
21 OFFENDERS AWAY FROM STATE PRISON, CORRECT?

22 **A.** YES.

23 **Q.** AND THAT DIVERSION WOULD BE IN THE FORM OF PROGRAMS WITH
24 SUPERVISED MENTAL HEALTH CARE, CORRECT?

25 **A.** THAT WOULD BE PART OF IT.

1 Q. YOU HAVE NEVER TOURED ANY SUCH FACILITIES, HAVE YOU?

2 A. I'M VERY FAMILIAR WITH THOSE. I HAVE TOURED MANY PROGRAMS
3 THAT PROVIDE MENTAL HEALTH CARE THAT INCLUDE PAROLEES IN THAT
4 POPULATIONS.

5 MS. TILLMAN: IF I MIGHT DIRECT THE COURT'S ATTENTION
6 TO PAGE 274 OF THE SEPTEMBER, 2008 DEPOSITION OF DR. STEWART,
7 PAGE 274 LINES 22 THROUGH 23.

8 MS. WHELAN: JUST THOSE TWO LINES? I DON'T THINK
9 THAT GIVES -- SHOWS ANYTHING.

10 JUDGE KARLTON: WE ARE GOING TO HAVE TO LOOK AT IT --
11 YOUR OBJECTION IS IT'S NOT IMPEACHING?

12 MS. WHELAN: IT'S NOT IMPEACHING.

13 MS. TILLMAN: I BELIEVE IT IS.

14 JUDGE KARLTON: HANG ON. JUDGE HENDERSON IS GOING TO
15 LOOK AT IT IF YOU PUT IT UP AND MAKE A DECISION FOR ALL OF US
16 WHETHER OR NOT IT CAN BE READ INTO THE RECORD.

17 MS. TILLMAN: THANK YOU.

18 (DOCUMENT DISPLAYED)

19 JUDGE HENDERSON: NOT THAT. HAVE YOU TOURED SUCH
20 FACILITIES?

21 MS. TILLMAN: I PUT IT IN CONTEXT. I THINK IF WE GO
22 TO THE PREVIOUS QUESTION AT LINE 6 THROUGH -- AND THE ANSWER
23 GOES THROUGH 21 ON THE SAME PAGE.

24 (BRIEF PAUSE.)

25 JUDGE HENDERSON: OKAY. YOU MAY ANSWER.

1 **JUDGE KARLTON:** EXCEPT START AT THE TOP SO THAT IT
2 MAKES SENSE.

3 **MS. TILLMAN:** THANK YOU, YOUR HONOR.

4 **BY MS. TILLMAN:**

5 **Q.** STARTING AT LINE 6 ON PAGE 274, THE QUESTION:

6 **"QUESTION:** ALL THAT I'M SAYING IS THAT YOU
7 INDICATE AT PARAGRAPH 145, QUOTE, IF A DIVERSION
8 OF INDIVIDUALS WITH MENTAL ILLNESS FROM PRISON
9 CAN BE DONE WITHOUT ADVERSELY AFFECTING PUBLIC
10 SAFETY, WHAT DIVERSION PROGRAMS ARE YOU
11 REFERENCING IN THAT STATEMENT?

12 **"ANSWER:** PROGRAMS THAT WOULD ORDER PEOPLE
13 INTO TREATMENT, PROGRAMS THAT WOULD INCLUDE CASE
14 MANAGEMENT SERVICES, SUPPORTIVE HOUSING
15 SERVICES, MEDICATION MANAGEMENT SERVICES, WHERE
16 THE MENTAL HEALTH CARE WOULD BE SUPERVISED AND
17 NOT JUST LEFT UP TO THE INDIVIDUAL. THESE SORTS
18 OF SUPERVISED MENTAL HEALTH PROGRAMS HAVE BEEN
19 SHOWN TO ENSURE THAT PEOPLE REMAIN COMPLIANT
20 WITH THE TREATMENT AND STAY OUT OF TROUBLE WITH
21 THE CRIMINAL JUSTICE SYSTEM.

22 **"QUESTION:** HAVE YOU TOURED SUCH FACILITIES?

23 **"ANSWER:** NO."

24 **JUDGE HENDERSON:** I'M NOT SURE. HIS ANSWER WAS THAT,
25 "I HAVE TOURED MANY FACILITIES WHICH INCLUDE." SO I'M NOT SURE

1 THAT --

2 **JUDGE KARLTON:** WE WILL DECIDE WHETHER IT MAKES ANY
3 DIFFERENCE.

4 **JUDGE HENDERSON:** YEAH.

5 **BY MS. TILLMAN:**

6 **Q.** OKAY. IN FACT, DOCTOR, YOU HAVE NOT ACTUALLY ANY KNOWLEDGE
7 OF WHETHER OR NOT SUCH DIVERSION PROGRAMS ARE AVAILABLE WITHIN
8 ANY COUNTY OF THE STATE OF CALIFORNIA, ARE YOU?

9 **A.** THE PROGRAMS THAT ARE DESCRIBED THERE ARE AVAILABLE. I KNOW
10 THEY ARE AVAILABLE IN SAN FRANCISCO COUNTY.

11 THESE ARE PROGRAMS THAT ARE WIDELY AVAILABLE,
12 MEDICATION MANAGEMENT, CASE MANAGEMENT PROGRAMS. THESE ARE
13 AVAILABLE IN MOST COUNTIES THAT I'M FAMILIAR WITH.

14 **Q.** GOING BACK TO YOUR DEPOSITION OF SEPTEMBER, 2008, PAGE 274,
15 LINE 24. YOU WERE ASKED THAT SAME QUESTION. GOING ONTO PAGE
16 275, YOUR ANSWER IS AT LINE WHAT.

17 (DOCUMENT DISPLAYED)

18 **Q.** YOU WERE ASKED --

19 **MS. TILLMAN:** MAY I READ IT?

20 **MR. BIEN:** YES, GO AHEAD.

21 **BY MS. TILLMAN:**

22 **Q.** (READING)

23 **"QUESTION:** ARE YOU AWARE OF THE
24 AVAILABILITY OF SUCH DIVERSION PROGRAMS WITHIN
25 ANY COUNTY OF CALIFORNIA?

1 **"ANSWER:** I AM NOT AWARE."

2 DOCTOR, ISN'T THAT CORRECT THAT YOU HAVE NOT SEEN ANY
3 SUCH PROGRAMS IN THE UNITED STATES?

4 **A.** IN THE UNITED STATES?

5 **Q.** YES.

6 **A.** I AM NOT AWARE OF A PARTICULAR PROGRAM AS DESCRIBED THAT WE
7 JUST READ THAT HAS ALL THOSE ELEMENTS.

8 WHAT MY TESTIMONY WAS IS THAT I'M VERY AWARE THAT THE
9 DIFFERENT ELEMENTS OF THESE PROGRAMS EXIST THROUGHOUT THE STATE
10 OF CALIFORNIA. I'M NOT AWARE OF A PARTICULAR PROGRAM. YOU ARE
11 ABSOLUTELY CORRECT.

12 **Q.** SO EVEN WITH THIS FIRST INTERVENTION, AS YOU HAVE CALLED IT,
13 OF REDUCING THE POPULATION OF THE DEPARTMENT OF CORRECTIONS AND
14 REHABILITATION, THERE WOULD STILL NEED TO BE DONE ADDITIONAL
15 STEPS TO IMPROVE THE MENTAL HEALTH CARE PROVIDED TO THE
16 DEPARTMENT OF CORRECTIONS PATIENTS, CORRECT?

17 **A.** YES.

18 **Q.** AND EVEN WITH THIS FIRST STEP OR FIRST INTERVENTION OF
19 POPULATION REDUCTION BY WAY OF A RELEASE, THE RELEASE SHOULD BE
20 ACCOMPANIED BY AUGMENTED COMMUNITY RESOURCES FOR PAROLEES IN
21 ORDER TO ENSURE THEIR SUCCESSFUL REINTEGRATION INTO SOCIETY,
22 CORRECT?

23 **A.** I BELIEVE THAT'S ABSOLUTELY TRUE; THAT THE PAROLEES COULD
24 BENEFIT FROM AUGMENTED SERVICES TO HELP THEIR CHANCES OF --
25 DECREASE THEIR CHANCES OF BEING RETURNED TO PRISON.

1 **MS. TILLMAN:** THANK YOU. NOTHING FURTHER.

2 **THE COURT:** NOTHING FROM INTERVENORS?

3 **MS. WANG:** TERESA WANG FOR THE DEFENDANT INTERVENORS.

4 **DIRECT EXAMINATION**

5 **BY MS. WANG:**

6 **Q.** GOOD AFTERNOON, DR. STEWART.

7 **A.** GOOD AFTERNOON.

8 **Q.** I JUST HAVE A COUPLE QUESTIONS FOR YOU.

9 DURING YOUR DIRECT TESTIMONY, YOU REFERRED TO THE
10 CONCERNS OF COMMUNITY MENTAL HEALTH CARE PROVIDERS ABOUT A
11 POTENTIAL PRISONER RELEASE ORDER AS POSSIBLY OVERSTATED, IS THAT
12 CORRECT?

13 **A.** YES.

14 **Q.** AND YOU CITED AS AN EXAMPLE YOUR WORK WITH RETURNING VIETNAM
15 VETERANS AND THE COMMUNITY MENTAL HEALTH CARE PROVIDERS CONCERNS
16 ABOUT THAT?

17 **A.** YES, I DID.

18 **Q.** AND YOU WOULD AGREE, WOULDN'T YOU, THAT THERE ARE A
19 DIFFERENT SET OF CONCERNS THAT WOULD CONFRONT A COMMUNITY MENTAL
20 HEALTH CARE PROVIDER IN TERMS OF AN VETERAN POPULATION VERSUS A
21 RETURNING CRIMINAL OFFENDER POPULATION?

22 **A.** NOT NECESSARILY.

23 **Q.** DO YOU BELIEVE THAT THERE ARE CONCERNS ABOUT COORDINATING
24 WITH PROBATION, PAROLE, CORRECTIONAL OFFICERS THAT WOULDN'T BE
25 ENCOUNTERED WITH A RETURNING VETERAN POPULATION?

1 **A.** THE NEED TO COORDINATE. OBVIOUSLY, WITH PAROLE WAS NOT AN
2 ISSUE WHEN I REFERRED TO THE VETERAN POPULATION. YES, YOU ARE
3 CORRECT.

4 **Q.** AND YOU WOULD AGREE THAT INADEQUATELY TREATING EVEN ONE
5 MENTALLY ILL OFFENDER WHO WAS RETURNING TO THE COMMUNITY MENTAL
6 HEALTH CARE PROGRAM OR DIVERTED INTO THE COMMUNITY MENTAL HEALTH
7 CARE PROGRAM COULD HAVE POTENTIALLY ADVERSE EFFECTS ON PUBLIC
8 SAFETY, WOULDN'T YOU?

9 **A.** I'M SORRY. COULD YOU SAY THAT AGAIN, PLEASE?

10 **Q.** SURE. YOU WOULD AGREE THAT INADEQUATELY TREATING EVEN ONE
11 MENTALLY ILL OFFENDER WHO WAS RETURNING TO THE COMMUNITY
12 HEALTHCARE PROGRAM OR DIVERTED INTO THE COMMUNITY MENTAL HEALTH
13 CARE PROGRAM COULD HAVE POTENTIALLY ADVERSE EFFECTS ON PUBLIC
14 SAFETY, WOULDN'T YOU?

15 **A.** I AGREE, BUT I WOULD HOPE THAT THE KNOWLEDGE OF THAT IS
16 KNOWN BY MORE THAN JUST ME. IT'S KNOWN BY THE COMMUNITY MENTAL
17 HEALTH PEOPLE, WHOSE RESPONSIBILITY IT IS TO TREAT INDIVIDUALS
18 IN THEIR COUNTY, AND THAT THEY WOULDN'T GO OUT OF THEIR WAY TO
19 PROVIDE INADEQUATE CARE. THEY WOULD DO WHAT THEY COULD IN A
20 CREATIVE WAY USING THE RESOURCES THEY HAVE AVAILABLE TO THEM NOW
21 TO PROVIDE ADEQUATE CARE TO ENHANCE PUBLIC SAFETY.

22 **Q.** BUT YOU AGREE THAT THESE -- THESE COMMUNITY HEALTHCARE
23 PROGRAMS ARE QUITE UNDER FUNDED, DON'T YOU?

24 **A.** I DON'T THINK I SAID THEY WERE QUITE UNDER FUNDED.

25 **Q.** HOW ABOUT UNDER FUNDED?

1 **A.** I THINK THAT THEY LACKED CREATIVITY IN HOW TO DO THEIR JOB
2 BETTER.

3 **JUDGE KARLTON:** THE QUESTION IS JUST FUNDING. ARE
4 YOU SAYING THAT YOU THINK THAT THE FUNDING WOULD BE ADEQUATE IF
5 THEY WERE SMARTER ABOUT HOW TO SPEND IT?

6 **THE WITNESS:** I BELIEVE THAT, YOUR HONOR.

7 **JUDGE KARLTON:** OH, ALL RIGHT.

8 **BY MS. WANG:**

9 **Q.** HOWEVER IN PARAGRAPH 135 OF YOUR SECOND REPORT, YOU DO SAY
10 THAT -- YOU ACKNOWLEDGE THAT THESE PROGRAMS ARE UNDER FUNDED, IS
11 THAT CORRECT?

12 **A.** YEAH. AND I THINK WE HAVE SAID IT HERE TODAY MANY TIMES.
13 CERTAINLY, IT WOULD BE MY -- IF I COULD DECIDE THAT, THE
14 COMMUNITY MENTAL HEALTH PROGRAMS COULD RECEIVE ENHANCED FUNDING.

15 **MS. WANG:** NO FURTHER QUESTIONS, YOUR HONOR.

16 **THE COURT:** REDIRECT?

17 **MS. WHELAN:** NOTHING FURTHER.

18 **THE COURT:** OKAY. THANK YOU FOR REAPPEARING,

19 DR. STEWART.

20 **THE WITNESS:** THANK YOU, YOUR HONOR.

21 **JUDGE HENDERSON:** YOU ARE EXCUSED.

22 (WITNESS EXCUSED.)

23 **JUDGE HENDERSON:** YOU MAY CALL YOUR NEXT WITNESS.

24 **MS. FUENTES:** GOOD AFTERNOON, YOUR HONORS. THERESA

25 FUENTES FROM THE COUNTY OF SANTA CLARA.

1 THE DEFENDANT INTERVENORS CALL GARY GRAVES TO THE
2 STAND.

3 **MS. MORRIS:** YOUR HONOR, BEFORE MR. GRAVES STARTS
4 TESTIFYING, I WOULD LIKE TO MAKE AN OBJECTION TO HIS TRIAL
5 DECLARATION WHICH WAS SUBMITTED AND APPEARS TO BE SOMETHING OF A
6 SUPPLEMENTAL REPORT, PARTICULARLY TO THE EXTENT THAT IT OPINES
7 ON PUBLIC SAFETY, WHICH WAS NOT ONE OF THE SUBJECTS LISTED IN
8 THE EXPERT DISCLOSURE THAT HE WOULD BE TESTIFYING REGARDING.

9 **JUDGE HENDERSON:** DO YOU WANT TO RESPOND TO THAT?

10 **MS. FUENTES:** YES, YOUR HONOR.

11 MR. GRAVES IS A HYBRID EXPERT AND FACT WITNESS, AND
12 HIS DECLARATION CONTAINS SOME FACTUAL INFORMATION AND, ALSO,
13 SOME INFORMATION AND HIS OPINIONS, HIS EXPERT OPINION ON PUBLIC
14 SAFETY.

15 HIS ORIGINAL EXPERT REPORT ALSO ADDRESSES THE ISSUES
16 OF PUBLIC SAFETY AND IMPACTS TO THE COUNTY IN GENERAL.

17 **THE COURT:** WE WILL FOLLOW THE SAME RULE WE HAVE
18 BEEN. THE OBJECTION IS PRESERVED.

19 **GARY GRAVES,**
20 CALLED AS A WITNESS FOR THE DEFENDANT HEREIN, HAVING BEEN FIRST
21 DULY SWORN, WAS EXAMINED AND TESTIFIED AS FOLLOWS:

22 **GARY GRAVES:** GARY GRAVES, G-R-A-V-E-S.

23 **MS. FUENTES:** MR. GRAVES HAS SUBMITTED AN EXPERT
24 REPORT AND DECLARATION, WHICH HAVE BEEN MARKED AS --

25 **JUDGE KARLTON:** WE HAVE ALL AGREED THAT THOSE MATTERS

1 ARE BEFORE THE COURT. THEY WILL BE RECEIVED AT THE END WHEN WE
2 GO THROUGH ALL THE OBJECTIONS. PLEASE DON'T DO THIS ANY MORE.
3 EVERYBODY. BELIEVE US. WE KNOW THAT THEY HAVE BEEN
4 TENDERED.

5 I'M SORRY. I DON'T MEAN TO SPEAK SHARPLY, BUT THIS
6 IS JUST DRIVING ME CRAZY.

7 **MS. FUENTES:** OKAY. I WAS JUST POINTING OUT FOR THE
8 RECORD WHERE HIS EXPERT REPORT DECLARATION CAN BE FIND AND THE
9 EXHIBITS THAT ARE REFERENCED IN THAT REPORT.

10 **DIRECT EXAMINATION**

11 **BY MS. FUENTES:**

12 **Q.** MR. GRAVES, WHERE ARE YOU CURRENTLY EMPLOYED?

13 **A.** SANTA CLARA COUNTY.

14 **Q.** WHAT IS YOUR CURRENT POSITION AT SANTA CLARA COUNTY?

15 **A.** CURRENTLY I AM THE ACTING COUNTY EXECUTIVE.

16 **Q.** AND CAN YOU BRIEFLY SUMMARIZE YOUR EDUCATION AND BACKGROUND?

17 **A.** I HAVE A B.A. IN ECONOMICS AND POLITICAL SCIENCE FROM
18 BUCKNELL UNIVERSITY, A MASTER'S IN PUBLIC ADMINISTRATION FROM
19 THE STATE UNIVERSITY OF NEW YORK AT ALBANY. I HAVE ALSO BEEN
20 TRAINED AT THE HARVARD EXECUTIVE MANAGEMENT PROGRAM.

21 CURRENTLY, AS I SAID, I AM THE ACTING COUNTY
22 EXECUTIVE FOR SANTA CLARA COUNTY. I HAVE BEEN WITH THE COUNTY
23 FOR APPROXIMATELY 25 YEARS. I HAVE -- I STARTED THERE AS THE
24 BUDGET DIRECTOR IN 1984, BECAME A DEPUTY COUNTY EXECUTIVE IN
25 APPROXIMATELY 1997, DURING THAT TIME ALSO MAINTAINING

1 RESPONSIBILITY FOR RESOURCE ALLOCATION, AND BECAME THE ASSISTANT
2 COUNTY EXECUTIVE I BELIEVE IN 2002.

3 PRIOR TO THAT I WAS -- WORKED FOR THE NEW YORK CITY
4 OFFICE OF MANAGEMENT AND BUDGET, WHERE I WAS THE PRINCIPAL
5 BUDGET ANALYST FOR APPROXIMATELY FIVE YEARS RESPONSIBLE FOR
6 POLICE SERVICES.

7 **Q.** WHEN DID YOU BECOME THE ACTING COUNTY EXECUTIVE?

8 **A.** NOVEMBER 1ST OF THIS YEAR.

9 **Q.** CAN YOU BRIEFLY DESCRIBE YOUR DUTIES AS THE ACTING COUNTY
10 EXECUTIVE AND PRIOR TO THAT AS THE ASSISTANT COUNTY EXECUTIVE?

11 **A.** OBVIOUSLY, AS THE ACTING COUNTY EXECUTIVE, I AM RESPONSIBLE
12 FOR THE MANAGEMENT OF SANTA CLARA COUNTY AND ALL OF THE
13 FUNCTIONS AND RESPONSIBILITIES WITHIN THAT. I REPORT DIRECTLY
14 TO THE BOARD OF SUPERVISORS AND AM RESPONSIBLE FOR CARRYING OUT
15 THE BOARD'S DIRECTIVES REGARDING POLICIES. ALSO, RESPONSIBLE
16 FOR THE MANAGEMENT OF THE COUNTY'S BUDGET.

17 AS THE ASSISTANT COUNTY EXECUTIVE, I WAS FOCUSED ON
18 THE INTERNAL MANAGEMENT, THE DAY-TO-DAY OPERATIONS OF THE
19 COUNTY. I HAD SPECIFIC RESPONSIBILITY FOR THE OVERSIGHT OF THE
20 BUDGET PROCESS, RESOURCE ALLOCATION, AND SEVERAL DEPARTMENTS,
21 INCLUDING FACILITIES AND FLEET, PROCUREMENT AND, ALSO, A VARIETY
22 OF OTHER SPECIAL PROJECTS.

23 **Q.** WHAT IS SANTA CLARA COUNTY'S POPULATION?

24 **A.** THE POPULATION CURRENTLY IS APPROXIMATELY 1.7 MILLION.

25 **Q.** AND HOW IS THAT COMPARED TO OTHER CALIFORNIA COUNTIES IN

1 TERMS OF THE SIZE OF THE POPULATION?

2 **A.** CURRENTLY I BELIEVE WE WERE THE SIXTH LARGEST COUNTY IN THE
3 STATE OF CALIFORNIA.

4 **Q.** WHAT IS SANTA CLARA COUNTY'S TOTAL BUDGET?

5 **A.** THE TOTAL BUDGET IS APPROXIMATELY \$4 BILLION. THE GENERAL
6 FUND BUDGET IS APPROXIMATELY 2.2 BILLION.

7 **Q.** CAN YOU JUST EXPLAIN WHAT THE GENERAL FUND IS?

8 **A.** THE GENERAL FUND IS SORT OF THE GENERAL RESPONSIBILITIES OF
9 THE COUNTY, INCLUDING ALL NON-SPECIAL REVENUE OR ENTERPRISE
10 FUNDS. SO IT INCLUDES THINGS LIKE THE MAJOR CORE FUNCTIONS OF
11 THE COUNTY; SOCIAL SERVICES, PUBLIC SAFETY, HEALTH, ANY
12 ADMINISTRATIVE FUNCTIONS OF THE COUNTY.

13 AND IN TERMS OF -- TO GO BEYOND THAT, THE HOSPITAL,
14 OUR HOSPITAL SYSTEM IS A SEPARATE FUND. SO THAT'S IN ADDITION
15 TO THAT, AS WELL AS SPECIAL REVENUE FUNDS; THINGS LIKE ROADS,
16 LIBRARY, PARKS AND RECREATION, THAT KIND OF THING.

17 **Q.** SOMEWHAT IS THE COUNTY'S CURRENT FISCAL SITUATION?

18 **A.** THE COUNTY'S CURRENT FISCAL SITUATION IS RATHER DIRE. WE
19 JUST ON TUESDAY MADE A PRESENTATION TO THE BOARD INDICATING A
20 PROJECTED DEFICIT IN THE CURRENT YEAR OF \$220 MILLION. THIS
21 WILL BE THE EIGHTH CONSECUTIVE YEAR OF DEFICITS WITHIN THE
22 COUNTY. WE ARE PROJECTING DEFICITS INTO THE FUTURE.

23 WE HAVE CLOSED GAPS OVER THOSE EIGHT YEARS OF
24 APPROXIMATELY \$1.2 BILLION, HAVE IMPLEMENTED REDUCTIONS OR WILL
25 IMPLEMENT REDUCTIONS IN DEPARTMENTS SPECIFICALLY TOTALING ABOUT

1 600 MILLION.

2 SO WE ARE REALLY OPERATING VERY MUCH AT THE MINIMUM
3 LEVEL IN TERMS OF MANY OF THE SERVICES THAT WE ARE REQUIRED TO
4 PROVIDE.

5 **Q.** WHAT SERVICES HAVE BEEN CUT?

6 **A.** REDUCTIONS REALLY HAVE BEEN IMPLEMENTED IN EVERY SERVICE
7 AREA WITHIN THE COUNTY; PUBLIC SAFETY, SOCIAL SERVICES, HEALTH
8 THE ADMINISTRATION, THE GENERAL GOVERNMENT DEPARTMENT. EVERY
9 DEPARTMENT HAS TO REDUCE THEIR LEVEL OF SERVICE BECAUSE COUNTIES
10 REALLY HAVE NO REVENUE RAISING AUTHORITY, SO THE ONLY OPTIONS WE
11 HAVE WHEN THERE IS A GAP BETWEEN REVENUES AND EXPENDITURES IS
12 REDUCING EXPENDITURES. THAT'S REALLY THE ONLY OPTION WE HAVE.

13 **Q.** HAS THERE BEEN ANY CUTS TO THE MENTAL HEALTH DEPARTMENT'S
14 BUDGET?

15 **A.** THERE HAS BEEN SIGNIFICANT CUTS IN MENTAL HEALTH. IN SANTA
16 CLARA COUNTY MENTAL HEALTH IS A PRIOR AND AS A RESULT OF THAT, A
17 LOT OF DISCRETIONARY FUNDING HAS BEEN ALLOCATED WHEN FUNDING HAS
18 BEEN AVAILABLE.

19 AND, OBVIOUSLY, WHEN WE ARE -- OUR RESOURCES ARE
20 LIMITED. WE HAVE TO GO TO THOSE PLACES WHERE DISCRETIONARY
21 FUNDS EXIST. SO MENTAL HEALTH HAS BEEN AN AREA THAT HAS
22 RECEIVED PRETTY SIGNIFICANT CUTS.

23 **Q.** BY "SIGNIFICANT," WHAT NUMBERS ARE YOU TALKING ABOUT?

24 **A.** I WOULD SAY OVER THE LAST EIGHT YEARS, WITHOUT HAVING THE
25 DETAIL IN FRONT OF ME, MENTAL HEALTH REDUCTIONS HAVE EXCEEDED

1 \$30 MILLION. WE HAVE BEEN FORCED TO REALLY LOOK AT THE -- AT
2 THE CLIENTS THAT WE CAN SERVE. SO THE LESS ACUTE CLIENTS WE NO
3 LONGER CAN SERVE.

4 IN FACT, OVER THE LAST EIGHT YEARS I BELIEVE THAT WE
5 HAVE BEEN FORCED TO NO LONGER PROVIDE SERVICES TO ROUGHLY 4,000
6 CLIENTS AS A RESULT OF THE FACT THAT WE HAVE HAD TO -- OR FOCUS
7 OUR -- OUR SERVICES ON THOSE THAT ARE MORE ACUTELY ILL.

8 **Q.** DOES THE STATE'S CURRENT BUDGET CRISIS IMPACT THE COUNTY AT
9 ALL?

10 **A.** IT ABSOLUTELY DOES. I MEAN, COUNTIES ARE REALLY AGENTS OF
11 THE STATE. WE REALLY ARE THE SERVICE PROVIDERS FOR MANY STATE
12 PROGRAMS.

13 IN FACT, ABOUT 35 PERCENT OF OUR REVENUE COMES FROM
14 THE STATE. SO ANY TIME THE STATE IS IN A REDUCTION MODE, THE
15 IMPLICATIONS ARE SIGNIFICANT FOR COUNTIES. SPECIFICALLY, EVEN,
16 OBVIOUSLY, TO A MUCH GREATER EXTENTS THAN CITIES.

17 SO WHEN THE STATE IS LOOKING AT A DEFICIT, AS YOU
18 PROBABLY HAVE READ ABOUT, OF \$28 BILLION, THE IMPLICATIONS TO US
19 ARE VERY GRAVE, ESPECIALLY AFTER WE HAVE BEEN THROUGH EIGHT
20 YEARS OF REDUCTIONS.

21 **Q.** CAN YOU TELL US BRIEFLY, GENERALLY, HOW THE COUNTY IS
22 FUNDED?

23 **A.** COUNTIES RELY FOR MORE THAN HALF OF THE REVENUE FROM THE
24 STATE AND FEDERAL GOVERNMENT. IN OUR CASE, IN SANTA CLARA
25 COUNTY, WE GET ABOUT 55 PERCENT OF OUR REVENUES FROM THE STATE

1 AND FEDERAL GOVERNMENT.

2 AS A RESULT OF THAT, IN MANY WAYS WE REALLY DON'T
3 DETERMINE OUR OWN PRIORITIES AS A RESULT OF THAT AND OUR OWN
4 DESTINY.

5 SO THE REST OF THOSE FUNDS THAT WE RECEIVE ARE THINGS
6 LIKE PROPERTY TAX. THE OTHER 45 PERCENT INCLUDE THINGS LIKE
7 PROPERTY TAX, FEES, AND OTHER REVENUES THAT INCLUDE THINGS LIKE
8 MEDICAID TYPE OF REVENUE.

9 SO IN GENERAL THE CRITICAL ISSUE FOR US IS THAT, YOU
10 KNOW, OVER HALF OF OUR REVENUES ARE COMING FROM STATES AND
11 FEDERAL GOVERNMENTS AND DECISIONS ABOUT THOSE REVENUES REALLY
12 ARE BEING MADE OUTSIDE OF THE COUNTY SEAT, IN EFFECT.

13 **Q.** SO HOW MUCH DISCRETION DOES THE COUNTY HAVE IN DETERMINING
14 HOW MUCH MONEY TO ALLOCATE TOWARDS CERTAIN PROGRAMS AND
15 SERVICES?

16 **A.** THE AMOUNT OF DISCRETION THAT THE LOCAL BOARD OF SUPERVISORS
17 HAS REALLY HAS DECLINED. I MEAN, AT THIS POINT IN TIME OUT OF
18 OUR \$2.2 BILLION BUDGET, WE BELIEVE THAT THERE'S ROUGHLY
19 \$500 MILLION THAT THE BOARD HAS IN TERMS OF DISCRETION.

20 SO WHEN WE ARE LOOKING AT A REDUCTION THIS YEAR, AS I
21 HAVE INDICATED, OF 220 MILLION, THAT'S REALLY A DRAMATIC IMPACT
22 ON OUR ABILITY TO PROVIDE SERVICES.

23 OBVIOUSLY, WHEN YOU LOOK AT 220 AS IT RELATES TO THE
24 TOTAL BUDGET OF 2.2 BILLION, IT DOESN'T SEEM AS LARGE, BUT WHEN
25 WE ARE REALLY LOOKING AT WHAT WE DO CONTROL, IT IS A VERY

1 SIGNIFICANT IMPACT. OBVIOUSLY, AFTER EIGHT YEARS OF HAVING TO
2 REDUCE BUDGETS, WE ARE REALLY DOWN TO VERY FEW CHOICES.

3 **Q.** AND WHAT TYPE OF PROGRAMS AND SERVICES DOES THE COUNTY USE
4 WITH ITS DISCRETIONARY GENERAL FUND DOLLARS?

5 **A.** WELL, THOSE DOLLARS ARE REALLY FOCUSED ON PUBLIC SAFETY
6 BECAUSE THE WAY IN WHICH COUNTIES ARE FUNDED, HEALTH, SOCIAL
7 SERVICES, THINGS ALONG THOSE LINES ARE OFTEN SIGNIFICANTLY
8 REIMBURSED BY STATE AND FEDERAL DOLLARS.

9 PUBLIC SAFETY IS DEFINED REALLY AS A LOCAL
10 RESPONSIBILITY, SO THE MAJORITY OF THOSE DISCRETIONARY FUNDS DO
11 FLOW INTO THAT PARTICULAR FUNCTIONAL AREA.

12 AT THE SAME TIME THE OTHER -- WHAT DISCRETIONARY
13 FUNDING IS LEFT REALLY IS ALLOCATED BASED ON THE BOARD'S
14 PRIORITIES.

15 IN OUR COUNTY THE BOARD HAS SET AS A VERY STRONG
16 PRIORITY THE FUNDING OF OUR SAFETY NET. SO WE ARE LOOKING AT
17 ALLOCATING AS MUCH FUNDING AS POSSIBLE TO ENHANCE MENTAL HEALTH,
18 DRUG AND ALCOHOL, PUBLIC HEALTH, THOSE KINDS OF SERVICES.

19 **Q.** IS THAT WHAT YOU MEAN BY SAFETY NET?

20 **A.** YES. THAT'S WHAT WE MEAN BY THE SAFETY NET.

21 **Q.** THE AMOUNT OF MONEY THAT YOU PUT INTO THE SAFETY NET
22 SERVICES, IS IT ENOUGH TO COVER THE SERVICES THAT ARE NEEDED BY
23 THE RESIDENTS OF SANTA CLARA COUNTY?

24 **A.** WELL, CLEARLY, AT THIS POINT WE DON'T BELIEVE THAT IT IS.

25 WHEN YOU LOOK AT WAITING LISTS IN PROGRAMS LIKE DRUG AND

1 ALCOHOL, YOU LOOK AT THE FACT THAT WE NO LONGER ARE ABLE TO
2 SERVE ALL OF THE RESIDENTS THAT REALLY PRESENT THEMSELVES FOR
3 THINGS LIKE MENTAL HEALTH SERVICES, OBVIOUSLY, THOSE ARE THE
4 AREAS WHERE WE HAVE GREAT CONCERNS IN TERMS OF THE OVERALL
5 HEALTH AND WELFARE OF OUR COMMUNITY.

6 AND WHAT HAPPENS IS -- IS THAT BY NOT BEING ABLE TO
7 REALLY ALLOCATE FUNDING TO THINGS LIKE PREVENTION AND TO TREAT
8 THE PEOPLE THAT PERHAPS AREN'T AS SICK, WE END UP SEEING THOSE
9 PEOPLE PRESENT THEMSELVES IN OUR MORE ACUTE ENVIRONMENTS LIKE,
10 FOR INSTANCE, THE EMERGENCY ROOM OR EMERGENCY MENTAL HEALTH
11 FACILITY AND EVEN IN OUR JAIL, BECAUSE THESE ARE THE PEOPLE THAT
12 MAY BE OFFENDING BECAUSE THEY DECOMPENSATE BECAUSE THEY ARE NOT
13 GETTING THE SERVICES THAT THEY NEED.

14 Q. AND THESE ARE PEOPLE THAT ARE OUT IN THE COMMUNITY THAT ARE
15 NOT GETTING SERVICES? YOU'RE SAYING YOU SEE THEM IN YOUR JAILS
16 AND IN THE EMERGENCY ROOMS?

17 A. ABSOLUTELY. AT THIS POINT THAT'S EXACTLY WHAT WE ARE
18 SEEING.

19 Q. SO WHAT HAPPENS WHEN THE COUNTY HAS TO ALLOCATE MONEY
20 TOWARDS JAILS AND EMERGENCY ROOMS AND TREATING MORE ACUTELY ILL
21 INDIVIDUALS?

22 A. WELL, TO THE EXTENT TO WHICH THOSE REQUIREMENTS -- BECAUSE
23 THOSE ARE MANDATES THAT WE HAVE, WE HAVE -- WE HAVE TO PROVIDE
24 THOSE SERVICES. WE HAVE TO -- WHEN INDIVIDUALS ARE BROUGHT TO
25 US BY THE CITY POLICE DEPARTMENTS INTO OUR JAIL, WE HAVE TO

1 HOUSE THEM. WHEN KIDS ARE BROUGHT INTO THE JUVENILE HALL, WE
2 HAVE TO HOUSE THEM. AND SAME THING WITH ACUTE MENTAL HEALTH.

3 WE DON'T HAVE A LOT OF CHOICE IN THOSE SITUATIONS.
4 SO AS THOSE POPULATIONS INCREASE, WE ARE FORCED TO REDUCE OUR
5 ALLOCATION OF FUNDING TO PROGRAMS LIKE PREVENTION. AND SO BY --
6 AND OTHER TYPES OF SERVICES SIMILAR TO THAT.

7 SO IN THOSE KINDS OF CIRCUMSTANCES, WE ARE OFTEN
8 FACED WITH THIS CONTRADICTION BECAUSE WE KNOW THAT FUNDING
9 PREVENTION MAKES SENSE. HOWEVER, WHEN THE RESOURCES ARE
10 DECLINING, WE HAVE TO MEET OUR MANDATES, AND THOSE MANDATES ARE
11 REALLY TAKING CARE OF THE ABSOLUTELY MOST SICK OR PEOPLE THAT
12 HAVE BROKEN THE LAW.

13 SO OUR DISCRETION REALLY HAS DECLINED SUBSTANTIALLY
14 AND WE ARE LEFT WITH VERY FEW CHOICES, AS I INDICATED BEFORE.

15 **Q.** YOU MENTIONED MANDATED SERVICES. ARE THOSE SERVICES THAT
16 ARE REQUIRED BY SOME TYPE OF LAW TO PROVIDE?

17 **A.** YES. THOSE ARE THINGS THAT ARE EITHER IN STATUTE OR THERE'S
18 A MANDATE THAT HAS BEEN PUT IN EFFECT BY THE STATE THAT REQUIRES
19 EITHER A CERTAIN SERVICE BE PROVIDED, AN ENTITLEMENT, OR A
20 CERTAIN TYPE OF SERVICE WHERE THE SERVICE LEVEL MIGHT BE --
21 THERE MAY BE SOME VARIATION IN THE SERVICE LEVEL, BUT WE HAVE TO
22 PROVIDE THAT PARTICULAR SERVICE.

23 **Q.** ARE THOSE MANDATED SERVICES, DOES THE STATE PROVIDE FUNDING
24 FOR THOSE SERVICES?

25 **A.** THE STATE PROVIDES FUNDING IN SOME CASES, BUT IN MANY CASES

1 THOSE MANDATES ARE NOT FULLY FUNDED.

2 AN EXAMPLE THAT YOU MIGHT BE FAMILIAR WITH IS THE
3 PROP 36, OR WHAT'S KNOWN AS THE SACPA PROGRAM, DRUG SERVICES FOR
4 INMATES. THAT WAS AN INITIATIVE THAT WAS PASSED SEVERAL YEARS
5 AGO IN WHICH THERE WAS FUNDING ATTACHED TO IT BEFORE A LIMITED
6 AMOUNT OF TIME. WHAT'S HAPPENED IS IS THAT BECAUSE WE BELIEVE
7 THAT THIS IS A PROGRAM THAT WORKS BECAUSE IT -- IT REALLY TAKES
8 INMATES, POTENTIAL INMATES, AND PUTS THEM INTO TREATMENT AS
9 OPPOSED TO JUST BEING PUT INTO -- INTO THE JAIL. THAT'S A
10 SITUATION THAT WE THINK MAKES SENSE BECAUSE THESE INDIVIDUALS
11 ARE GETTING TREATMENT FOR REALLY WHAT IS AN ILLNESS.

12 THE COUNTY HAS, IN FACT, ALLOCATED DISCRETIONARY
13 DOLLARS IN THE PLACE OF REALLY WHAT SHOULD BE FUNDING FROM THE
14 STATE, BECAUSE THIS WAS AN INITIATIVE PASSED BY THE PEOPLE. AT
15 THIS POINT IN TIME, YOU KNOW, THE COUNTY IS PUTTING BETWEEN A
16 HALF AND TWO-THIRDS OF THE FUNDING FOR THIS PROGRAM WHICH WAS,
17 IN FACT, SOMETHING THAT WAS THRUST UPON US THROUGH THIS PROP 36
18 INITIATIVE.

19 SO, YOU KNOW, FROM AN OVERALL PERSPECTIVE, YOU KNOW,
20 OUR COUNTY HAS SEEN POSITIVE RESULTS FROM THIS PROGRAM. OUR
21 COMPLETION RATE IS AMONG THE HIGHEST IN THE STATE AT AROUND
22 56 PERCENT.

23 AND SO THIS IS JUST AN EXAMPLE OF A PROGRAM WHERE WE
24 ARE BEING FORCED TO PUT DISCRETIONARY FUNDING INTO THAT PROGRAM
25 INSTEAD OF GETTING THE FULL FUNDING FROM THE STATE.

1 Q. AND BY SACPA, YOU MEAN THE SUBSTANCE ABUSE AND CRIME
2 PREVENTION ACT OF 2000?

3 A. THAT'S WHAT I MEAN, YEAH.

4 Q. AND YOU SAID THAT PROGRAM IS SUCCESSFUL IN SANTA CLARA
5 COUNTY?

6 A. IT IS. WE BELIEVE IT'S SUCCESSFUL, AND THE COURT AND
7 ADMINISTRATION HAVE REALLY GOTTEN TOGETHER AND ARE COMMITTED TO
8 THE PROGRAM BECAUSE IT DOES TAKE INMATES OUT OF THE PRISON --
9 OUT OF OUR JAIL SYSTEM AND PUTS THEM INTO TREATMENT, WHICH WE
10 THINK IS A MUCH MORE REASONABLE WAY. IT POTENTIALLY OFFERS THEM
11 THE ABILITY TO REHABILITATE, AS OPPOSED TO RECIDIVATE.

12 Q. AND DID YOU SAY THAT THE STATE PROVIDES ONLY ABOUT ONE-THIRD
13 OF THE FUNDING FOR THAT PROGRAM?

14 A. ONE-THIRD OF THE FUNDING THAT'S REALLY REQUIRED TO MAKE THAT
15 PROGRAM WORK.

16 Q. AND THE COUNTY ALLOCATES ITS OWN DISCRETIONARY MONEY TO MAKE
17 UP THE DIFFERENCE?

18 A. THAT'S CORRECT.

19 Q. IS THE COUNTY ABLE TO SERVE ALL OF THE PEOPLE WHO WOULD
20 BENEFIT FROM THAT PROGRAM?

21 A. WHAT HAPPENS IS, IS THAT, YOU KNOW, AS INDIVIDUALS COME
22 THROUGH THAT PROGRAM BASED ON THE MANDATE, YOU KNOW, THERE ARE
23 ISSUES IN TERMS OF HOW LONG THEY MAY HAVE TO WAIT TO ACTUALLY
24 GET INTO TREATMENT, BECAUSE THERE AREN'T ENOUGH RESOURCES TO
25 TREAT EVERYBODY IN THE TIME FRAME THAT WE WOULD LIKE TO SEE.

1 AND SO THERE ARE WAITING LISTS. THERE ARE -- INMATES ARE
2 SPENDING MORE TIME IN JAIL THAN THEY SHOULD BECAUSE THEY HAVE TO
3 WAIT FOR A BED TO BECOME AVAILABLE.

4 AND WHAT'S OF GREATER CONCERN IS THE FACT THAT THE
5 STATE CONTINUES TO REDUCE THE RESOURCES ALLOCATED TO THE SACPA
6 PROGRAM. SO AT THIS POINT IN TIME WE DON'T HAVE THE FLEXIBILITY
7 TO CONTINUE TO ALLOCATE THOSE DISCRETIONARY RESOURCES, SO WE ARE
8 BEING FORCED TO REDUCE THE BEDS AVAILABLE FOR THAT PROGRAM.

9 **Q.** SO WHAT HAPPENS WHEN THE COUNTY HAS TO APPLY ITS OWN FUNDS
10 TOWARDS THE SACPA PROGRAM?

11 **A.** WELL, BASICALLY WHAT IT MEANS IS THAT THAT'S FUNDING THAT IS
12 NOT ABLE TO BE ALLOCATED TO OTHER IMPORTANT PREVENTION PROGRAMS,
13 WHETHER THEY BE IN MENTAL HEALTH OR SOCIAL SERVICES, WRAP-AROUND
14 SERVICES, WHATEVER THEY MIGHT BE.

15 OBVIOUSLY, WHEN WE HAVE TO COVER A MANDATE, THOSE
16 FUNDS ARE NOT AVAILABLE FOR LOCAL PRIORITIES.

17 **Q.** SO FOR THE -- WHAT ABOUT THE PEOPLE WHO ARE NOT OFFENDING?
18 ARE THEY ABLE TO ACCESS SERVICES?

19 **A.** OF COURSE, THAT'S ANOTHER ISSUE. THE ISSUE OF THE FACT THAT
20 MUCH OF THE MONEY THAT'S BEING PUT FORWARD NOW, EVEN THROUGH
21 THINGS LIKE THE MENTAL HEALTH SERVICES ACT AND OTHER NEW
22 FUNDING, IS REALLY BEING ALLOCATED TO OR COMING FROM THE STATE
23 IN THE FORM OF PROGRAMS IN THE CRIMINAL JUSTICE AREA. SO YOUR
24 AVERAGE PERSON WHO MIGHT HAVE A SUBSTANCE ABUSE ISSUE OR MENTAL
25 HEALTH ISSUE, THERE IS LESS BEDS OR THERE'S LESS SERVICES

1 AVAILABLE. AND WE ARE CONCERNED BECAUSE THAT REALLY IS AN
2 EQUITY ISSUE AS WE SEE IT.

3 **Q.** DID YOU FORM AN OPINION AS TO WHAT IMPACT, IF ANY, A STATE
4 PRISONER POPULATION REDUCTION WOULD HAVE ON THE COUNTY OF SANTA
5 CLARA?

6 **A.** I DID.

7 **Q.** AND WHAT WAS YOUR OPINION?

8 **A.** OBVIOUSLY, WE HAVE GREAT CONCERNS ABOUT IF, IN FACT, THESE
9 INDIVIDUALS WERE TO COME INTO OUR COMMUNITY IN TERMS OF OUR
10 ABILITY TO EITHER PROVIDE SERVICES OR TO THE EXTENT TO WHICH,
11 IF, IN FACT, THERE WAS A CAP AND WE WERE UNABLE TO TRANSPORT
12 THESE PRISONERS INTO THE STATE SYSTEM, HOW THAT WOULD IMPACT OUR
13 JAIL SYSTEM AND OUR ABILITY TO PROVIDE SERVICES.

14 **Q.** WILL THE COUNTY SUFFER ANY TYPE OF HARDSHIP IF THE PRISONERS
15 WERE RELEASED INTO THE COMMUNITY?

16 **A.** CERTAINLY WITHOUT ADDITIONAL RESOURCES, WE THINK WE ARE
17 DEFINITELY AT RISK. I MEAN, EVEN THOUGH WE ARE NOT UNDER COURT
18 ORDER, OUR JAIL IS GETTING VERY CLOSE TO BE FULL. WE HAVE VERY
19 LITTLE FLEXIBILITY AND WE BELIEVE THAT TO ANY EXTENT IN WHICH
20 THERE WOULD BE ADDITIONAL INMATES OR ADDITIONAL INDIVIDUALS WHO
21 WOULD BE COMING INTO THE COMMUNITY OR THAT WE COULD NOT TRANSFER
22 TO THE STATE, THAT THAT WOULD CREATE A VERY DIFFICULT SITUATION
23 FOR US.

24 **Q.** WOULD YOUR OPINION CHANGE IF THE STATE WERE TO PROVIDE THE
25 COUNTIES WITH FUNDING TO PAY FOR SERVICES FOR RELEASED

1 PRISONERS?

2 **A.** I --

3 **MS. MORRIS:** COULD YOU SPEAK UP? I'M HAVING A HARD
4 TIME HEARING YOU.

5 **BY MS. FUENTES:**

6 **Q.** WOULD YOUR OPINION CHANGE IF THE STATE WERE TO PROVIDE
7 COUNTIES WITH FUNDING TO PAY FOR SERVICES AND PROGRAMS FOR
8 RELEASED PRISONERS?

9 **A.** I THINK CLEARLY THE IMPACT OF ADDITIONAL RESOURCES IN TERMS
10 OF LOOKING AT WAYS THAT WE CAN ADDRESS THIS PROBLEM, YOU KNOW,
11 CERTAINLY WOULD MAKE A DIFFERENCE. WHAT THAT DIFFERENCE WOULD
12 BE IS SORT OF HARD TO DETERMINE AT THIS POINT IN TIME.

13 CLEARLY, OUR CONCERN IS, AND WE HAVE SEEN THIS BEFORE
14 WITH REALIGNMENT PROGRAMS, YOU KNOW, WHERE THE STATE HAS, IN
15 FACT, PROVIDED FUNDING UP FRONT AND THEN HAVE LEFT US WITH A
16 PROGRAM IN PLACE AND THEN ELIMINATED THE FUNDING.

17 THE LEVEL OF TRUST BETWEEN THE COUNTY AND THE STATE
18 IS PROBABLY AT AN ALL TIME LOW. WE JUST DON'T TRUST THE STATE.
19 THEY HAVE NOT MADE GOOD ON THEIR PROMISES. SO FROM THAT
20 PERSPECTIVE, YOU KNOW, WE WOULD LOOK AT THIS, YOU KNOW, VERY
21 CAREFULLY. I THINK THAT THAT REALLY WOULD BE A MAJOR CONCERN
22 FOR US.

23 **Q.** DO YOU HAVE ANY OTHER CONCERNS?

24 **A.** WELL, I THINK THAT WHEN WE LOOK AT THE CAPACITY OF OUR
25 SYSTEMS IN TERMS OF MENTAL HEALTH PROVIDERS, DRUG AND ALCOHOL

1 PROVIDERS, TO ACTUALLY BE IN A POSITION TO HAVE ENOUGH
2 RESOURCES, LITERALLY, TO PROVIDE THE SERVICE, YOU KNOW, THAT
3 DEFINITELY IS A CONCERN AS WELL.

4 WE JUST ARE -- WE AT THIS POINT ARE UNSURE DEPENDING
5 ON HOW EITHER A RELEASE OR A -- A CAP WOULD WORK, HOW THAT WOULD
6 IMPACT OUR SYSTEM'S ABILITY TO TREAT THESE INDIVIDUALS.

7 Q. OKAY. THANK YOU.

8 THE COURT: ANYTHING FROM STATE DEFENDANTS?

9 MR. LEWIS: NO QUESTIONS, YOUR HONOR.

10 THE COURT: CROSS-EXAMINATION?

11 MS. MORRIS: MARIE MORRIS FROM ROSEN, BIEN AND GALVAN
12 ON BEHALF OF THE PLAINTIFFS.

13 JUDGE REINHARDT: COULD YOU SPEAK UP A LITTLE BIT?

14 MS. MORRIS: CERTAINLY.

15 CROSS EXAMINATION

16 BY MS. MORRIS:

17 Q. MR. GRAVES, YOUR EXPERTISE IS IN BUDGETING AND RESOURCE
18 ALLOCATION, CORRECT?

19 A. THAT'S CERTAINLY WHERE I HAVE SPENT MOST OF MY CAREER, YES.

20 Q. YOU DON'T HAVE ANY EDUCATION OR TRAINING IN CRIMINAL
21 JUSTICE, DO YOU?

22 A. I DON'T HAVE AN EDUCATION, BUT I HAVE SPENT SEVERAL YEARS
23 OVERSEEING THAT OPERATION FROM A MANAGEMENT PERSPECTIVE.

24 Q. NOT WITHIN THE CRIMINAL JUSTICE SYSTEM, BUT IN TERMS OF
25 COUNTY MANAGEMENT?

1 **A.** THAT'S CORRECT.

2 **Q.** OKAY. AND YOUR RESUME DOESN'T LIST ANY EMPLOYMENT WITH ANY
3 MENTAL HEALTH SERVICES PROVIDERS, IS THAT CORRECT?

4 **A.** THAT'S CORRECT.

5 **Q.** OR WITH ANY PUBLIC HEALTHCARE PROVIDER?

6 **A.** THAT'S CORRECT.

7 **Q.** OR WITH ANY SUBSTANCE ABUSE TREATMENT PROVIDER?

8 **A.** THAT'S CORRECT.

9 **Q.** OR WITH ANY HOMELESS OR HOUSING SERVICES PROVIDER?

10 **A.** THAT'S CORRECT.

11 **Q.** OR WITH A CORRECTIONAL FACILITY OR SYSTEM?

12 **A.** THAT'S CORRECT.

13 **Q.** YOU KNOW THAT THE VIOLENT CRIME RATE IN SANTA CLARA COUNTY
14 HAS DECREASED SINCE 1997, DON'T YOU?

15 **A.** IN TERMS OF ITS DECREASE FROM WHEN TO WHEN?

16 **Q.** FROM 1997 TO THE PRESENT.

17 **A.** I DON'T KNOW THAT AND, CERTAINLY, THAT'S NOT BEEN WHAT'S
18 REPORTED IN TERMS OF WHERE THE CRIME RATE HAS BEEN MOVING IN THE
19 LAST SEVERAL MONTHS.

20 **Q.** OKAY. TO BE FAIR, I ONLY HAVE STATISTICS THROUGH 2006.

21 **MS. MORRIS:** AND IF YOU COULD GO AHEAD AND PUT UP THE
22 CRIME RATE STATISTICS FOR SANTA CLARA COUNTY?

23 **JUDGE HENDERSON:** ARE YOU BOTH TALKING ABOUT THE SAME
24 THING? YOUR QUESTION ASKED ABOUT VIOLENT CRIME RATE. YOUR
25 ANSWER WAS CRIME RATE. I ASSUME THOSE ARE DIFFERENT CRIMES.

1 **MS. FUENTES:** I WOULD LIKE TO IMPOSE AN OBJECTION
2 THAT THE EXPERT IS NOT QUALIFIED. HE IS NOT AN EXPERT OF
3 CRIMINAL JUSTICE.

4 **JUDGE HENDERSON:** SHE IS ASKING HIS KNOWLEDGE OF THIS
5 FACT FOR NOW.

6 **MS. MORRIS:** AND THIS IS IMPEACHMENT ON HIS ASSERTION
7 IN HIS TRIAL DECLARATION ABOUT THE IMPACT ON PUBLIC SAFETY OF
8 RELEASING PEOPLE WITHOUT APPROPRIATE SERVICES AND HOUSING.

9 (DOCUMENT DISPLAYED)

10 **JUDGE KARLTON:** IS THIS AN EXHIBIT?

11 **MS. MORRIS:** THIS WILL BE AN IMPEACHMENT EXHIBIT.

12 **JUDGE KARLTON:** IS IT IN EVIDENCE NOW?

13 **MS. MORRIS:** IT IS NOT CURRENTLY IN EVIDENCE.

14 **JUDGE KARLTON:** DO YOU HAVE ANYTHING ABOUT THIS
15 DOCUMENT? HAVE YOU EVER SEEN IT?

16 **MS. FUENTES:** I DON'T HAVE A COPY OF THIS EITHER.

17 **THE WITNESS:** I HAVE NOT SEEN THIS DOCUMENT BEFORE.

18 **JUDGE HENDERSON:** IF HE HASN'T SEEN, IT'S REALLY HARD
19 TO IMPEACH HIM ON IT.

20 **JUDGE KARLTON:** AND NOBODY IS TESTIFYING TO THE TRUTH
21 OF THE DOCUMENT.

22 **MS. MORRIS:** THIS IS -- I COULD REQUEST JUDICIAL
23 NOTICE FOR THIS. THIS IS A -- FROM THE -- THE ATTORNEY
24 GENERAL'S -- CALIFORNIA ATTORNEY GENERAL'S CRIMINAL JUSTICE
25 STATISTICS CENTER. I CAN PASS IT.

1 **MS. FUENTES:** YOUR HONOR, I OBJECT TO THE DOCUMENT.
2 I STILL DON'T HAVE A COPY OF IT AND THE WITNESS HASN'T SEEN IT.

3 **JUDGE HENDERSON:** YOUR OFFER IS THAT THIS DOCUMENT
4 DID IMPEACH MR. GRAVES?

5 **MS. MORRIS:** MR. GRAVES IN HIS DECLARATION STATES
6 THAT:

7 "RELEASING PAROLEES WITHOUT HOUSING,
8 SUBSTANCE ABUSE, MENTAL HEALTH AND HEALTHCARE
9 SERVICES WILL HAVE A SIGNIFICANT NEGATIVE
10 IMPACTS TO PUBLIC SAFETY."
11 AND SO I WANT TO EXPLORE WITH HIM THE EFFECT THAT
12 RELEASING PAROLEES HAS IN THE PAST HAD ON PUBLIC SAFETY.

13 **JUDGE HENDERSON:** EXPLORING WITH HIM IS DIFFERENT
14 FROM IMPEACHING HIM.

15 **JUDGE KARLTON:** I SUPPOSE YOU CAN ASK HIM A QUESTION,
16 BUT IF HE HAS NEVER SEEN THE DOCUMENT AND HE DOESN'T KNOW ABOUT
17 IT. I DON'T KNOW...

18 **JUDGE HENDERSON:** WELL, LET'S SEE WHERE YOU ARE
19 GOING. EXPLORE WITH HIM THIS.

20 **BY MS. MORRIS:**

21 **Q.** ARE YOU AWARE OF HOW MANY VIOLENT CRIMES THERE WERE IN
22 1997 --

23 **A.** NO.

24 **Q.** -- IN SANTA CLARA COUNTY?

25 **A.** ARE YOU ASKING ME IF BEFORE I HAVE SEEN THIS DOCUMENT WAS I

1 AWARE OF THE NUMBER OR BY LOOKING AT THIS DOCUMENT CAN I TELL
2 YOU THE NUMBER?

3 **Q.** WERE YOU AWARE OF THE NUMBER PREVIOUS TO LOOKING AT THIS
4 DOCUMENT?

5 **A.** NO.

6 **Q.** DOES THE 9,307 NUMBER SEEM LIKE LIKELY TO BE CORRECT TO YOU
7 FROM YOUR KNOWLEDGE IN THE COUNTY GOVERNMENT?

8 **MS. FUENTES:** OBJECTION, YOUR HONOR.

9 **A.** NO, THAT --

10 **JUDGE HENDERSON:** YOU CAN ANSWER THAT.

11 **A.** NO. I AM NOT FAMILIAR WITH THAT SORT OF LEVEL OF DETAIL
12 THAT YOU ARE REFERRING TO.

13 **BY MS. MORRIS:**

14 **Q.** SO YOU ARE NOT ACTUALLY FAMILIAR WITH THE CRIME RATES IN SAN
15 MATEO -- SORRY, SANTA CLARA COUNTY?

16 **A.** NOT SPECIFICALLY.

17 **Q.** OKAY.

18 **JUDGE REINHARDT:** WHY DON'T YOU ASK HIM ON WHAT BASIS
19 HE HAS STATED THAT THE CRIME RATE HAS BEEN INCREASING?

20 **JUDGE KARLTON:** ACTUALLY, ANSWER JUDGE REINHARDT'S
21 QUESTION. WE DON'T HAVE TO PUT IT THROUGH THE WITNESS.

22 I MEAN, IF YOU DIDN'T KNOW WHAT IT WAS IN THE PAST,
23 HOW CAN YOU KNOW IT'S GOING UP NOW?

24 **THE WITNESS:** I THINK THE OPINION THAT I WAS PUTTING
25 FORWARD WAS THAT IF, IN FACT, THERE WAS A SIGNIFICANT ADDITIONAL

1 NUMBER OF INDIVIDUALS COMING FROM THE STATE SYSTEM, THAT THAT
2 WOULD BE A LOGICAL EXPECTATION THAT WE WOULD HAVE.

3 **JUDGE KARLTON:** FIRST OF ALL, SIR, WHAT YOU SAID WAS
4 THAT IT'S GOING UP IN THE LAST COUPLE OF MONTHS. LET'S TAKE
5 THAT FIRST AND THEN WE WILL TALK ABOUT LOGIC LATER.

6 DO YOU HAVE ANY BASIS FOR YOUR OPINION THAT THE CRIME
7 RATE IS RISING IN THE LAST COUPLE OF MONTHS?

8 **THE WITNESS:** I'M NOT FAMILIAR -- THAT WASN'T WHAT I
9 THOUGHT THAT I HAD SAID. I THOUGHT IN MY DECLARATION, NO
10 EXPECTATION --

11 **JUDGE KARLTON:** I'M TALKING ABOUT WHAT YOU SAID HERE.
12 OKAY. THE ANSWER IS NO, YOU DON'T HAVE ANY.

13 **BY MS. MORRIS:**

14 **Q.** DO YOU HAVE ANY BASIS BESIDES YOUR THOUGHTS FOR YOUR
15 ASSERTION IN YOUR DECLARATION THAT THE RELEASE OF PAROLEES WOULD
16 LEAD TO AN INCREASE IN -- WOULD HAVE A NEGATIVE IMPACT ON PUBLIC
17 SAFETY?

18 **A.** AGAIN, THE OPINION THAT I PUT FORWARD WAS THAT THE
19 EXPECTATION IF, IN FACT, THERE WAS A RELEASE OF INDIVIDUALS THAT
20 HAD NOT RECEIVED SERVICES THAT -- AND HAD VERY LITTLE REASON OR
21 OPPORTUNITY FOR EMPLOYMENT, THAT KIND OF THING, OUR EXPECTATION
22 WOULD BE THAT WOULD HAVE AN IMPACT ON PUBLIC SAFETY.

23 **Q.** DO YOU HAVE ANY BASIS FOR THAT EXPECTATION? THAT'S MY
24 QUESTION.

25 **A.** IN FACT? NO. I DON'T HAVE A SPECIFIC FACT TO PUT FORWARD,

1 NO.

2 Q. THANK YOU.

3 I WOULD LIKE TO GO OVER A COUPLE OF THE NUMBERS IN
4 THE REPORT THAT YOU SUBMITTED. YOU STARTED -- YOU HAD A COUPLE
5 OF DIFFERENT ESTIMATES FOR A POPULATION REDUCTION MEASURE FROM
6 THE PRISONS, AND ONE OF YOUR NUMBERS WAS 3500 --

7 A. THAT'S CORRECT.

8 Q. -- CORRECT?

9 AND THIS -- MY UNDERSTANDING IS THAT YOU GOT THIS
10 USING THE LEGISLATIVE ANALYSTS OFFICE DOCUMENT REGARDING A
11 SUPERVISION TRANSFER THAT THEY PUT FORWARD DURING THE BUDGETING
12 PROCESS THIS SPRING, CORRECT?

13 A. THAT'S CORRECT.

14 Q. AND THE LAO, THE LEGISLATIVE ANALYSTS OFFICE, THEY SUCCEEDED
15 THAT 71,000 PEOPLE, PAROLEES, BE TRANSFERRED FROM STATE PAROLE
16 TO COUNTY SUPERVISION, CORRECT?

17 A. YES.

18 Q. AND SO YOU USED THE NUMBER OF 3.6 PERCENT, WHICH IS THE
19 PROPORTION OF PRISONERS IN CDCR THAT COME FROM SANTA CLARA
20 COUNTY, AND APPLIED THAT 3.6 PERCENT TO THE 71,000, IS THAT
21 CORRECT?

22 A. I BELIEVE THAT'S CORRECT.

23 Q. AND THAT'S HOW YOU CAME UP WITH THE 3,500?

24 A. UMM, I THINK THAT IN THAT PARTICULAR CASE -- I DON'T KNOW
25 THAT IT WAS 3.6 PERCENT NOW THAT I'M THINKING.

1 THERE WERE TWO ESTIMATES THAT WE WERE MAKING. ONE
2 WAS IF THERE WAS A POPULATION CAP. AND OUR DEPARTMENT OF
3 CORRECTIONS, WE ASKED THEM TO GIVE US AN ESTIMATE IF THERE WAS A
4 POPULATION CAP WHAT, IN FACT, WOULD BE THE IMPACT.

5 AND I THINK IN TERMS OF THE PAROLE REALIGNMENT, I
6 THINK WE USED A DIFFERENT -- A DIFFERENT PERCENTAGE. GENERALLY
7 SANTA CLARA COUNTY IS 5 PERCENT. WE USED 5 PERCENT AS THE
8 PERCENTAGE FIGURE. SO I THINK IN THE CASE OF THE PAROLE
9 REALIGNMENT, WE WERE JUST USING THAT FIGURE TO COME UP WITH A
10 GENERAL ROUGH ESTIMATE SO THAT WE COULD CALCULATE WHAT THE
11 IMPACTS WOULD BE.

12 **JUDGE KARLTON:** WAIT. 5 PERCENT OF WHAT? OF THE
13 TOTAL POPULATION OF CALIFORNIA?

14 **THE WITNESS:** IN TERMS OF DETERMINING THE IMPACT OF
15 PAROLE REALIGNMENT? YES. 5 PERCENT IS THE NUMBER THAT WE
16 GENERALLY USE. THAT'S THE FIGURE THAT'S APPLICABLE TO SANTA
17 CLARA COUNTY; 5 PERCENT OF POPULATION, 5 PERCENT OF THE BUDGET,
18 WHATEVER IT MIGHT BE. 5 PERCENT IS WHAT OUR SHARE IS GENERALLY.

19 **JUDGE KARLTON:** MR. GRAVES, I DON'T UNDERSTAND YOUR
20 TESTIMONY. PLEASE FORGIVE ME.

21 YOU HAVE GOT THE NUMBER 5 PERCENT AS IT RELATES TO
22 SOMETHING. WHAT DOES IT RELATE TO?

23 **THE WITNESS:** RELATES TO THE POPULATION.

24 **JUDGE KARLTON:** ALL RIGHT.

25

1 **BY MS. MORRIS:**

2 **Q.** THE POPULATION OF SANTA CLARA COUNTY TO THE POPULATION OF
3 CALIFORNIA?

4 **A.** THAT'S CORRECT.

5 **Q.** OKAY. THAT 71,000 THAT YOU STARTED AT, THAT WAS NOT
6 PROPOSED BY THE PLAINTIFFS AT ANY POINT TO YOUR KNOWLEDGE, WAS
7 IT?

8 **A.** NO.

9 **Q.** THAT ACTUALLY CAME FROM THE LAO, STATE GOVERNMENT OFFICE?

10 **A.** THAT'S CORRECT.

11 **Q.** OKAY. AND THAT'S ALSO A PROPOSAL ABOUT PAROLE REALIGNMENT,
12 CORRECT?

13 **A.** THAT'S CORRECT.

14 **Q.** SO THAT'S ABOUT TRANSFERRING RESPONSIBILITY FOR SUPERVISION
15 OF PEOPLE IN THE COMMUNITY, CORRECT?

16 **A.** THAT'S CORRECT.

17 **Q.** SO IT'S NOT PARTICULARLY ABOUT ADDING ADDITIONAL PEOPLE INTO
18 THE COMMUNITY?

19 **A.** WELL, I BELIEVE THAT THEIR PROPOSAL WAS A WAY IN WHICH TO
20 REDUCE THE JAIL POPULATION AT THE STATE LEVEL, SO THAT'S WHY WE
21 BELIEVED THAT IT WAS A PARALLEL CIRCUMSTANCE SUBSTANCES.

22 WHAT WE WERE SIMPLY TRYING TO DO WAS PROVIDE
23 INFORMATION ABOUT WHAT THE IMPACT THAT WOULD BE, AND THAT WAS
24 SOMETHING THAT WE BELIEVED WAS PARALLEL TO WHAT IS BEING
25 DISCUSSED IN THIS CASE.

1 IT CERTAINLY WAS NOT, AS YOU INDICATED, A PROPOSAL
2 FROM THE PLAINTIFFS, BUT IT WAS AN EXAMPLE OF A WAY IN WHICH TO
3 REDUCE JAIL POPULATION.

4 **Q.** BUT IT WOULD NOT -- THE SIMPLE EFFECT OF TRANSFERRING --

5 **JUDGE KARLTON:** SIR, YOU UNDERSTAND THAT PAROLEES ARE
6 PEOPLE WHO ARE OUTSIDE OF THE PRISON?

7 **THE WITNESS:** I DO UNDERSTAND THAT.

8 **JUDGE KARLTON:** SO WHEN YOU TALK ABOUT TRANSFERRING
9 PAROLE SUPERVISION, YOU ARE TALKING ABOUT TRANSFERRING
10 SUPERVISION OF PEOPLE WHO ARE NO LONGER IN PRISON.

11 **THE WITNESS:** THAT'S CORRECT.

12 **JUDGE KARLTON:** AND YOU THINK THAT'S PARALLEL TO WHAT
13 WE ARE CONCERNED WITH HERE?

14 **THE WITNESS:** WELL, THE LAO'S PROPOSAL WAS A WAY IN
15 WHICH TO RELEASE PEOPLE FROM THE STATE PRISON ON TO PAROLE.

16 **JUDGE KARLTON:** OKAY.

17 **BY MS. MORRIS:**

18 **Q.** OKAY. I WOULD LIKE TO LOOK A LITTLE BIT AT THE 1500 NUMBER,
19 SORT OF THE BOTTOM END OF YOUR ESTIMATION.

20 THAT WAS BASED ON AN ASSUMPTION OF A RELEASE OF
21 40,000 PEOPLE FROM CDCR, CORRECT?

22 **A.** YES.

23 **Q.** AND YOU MULTIPLIED THAT 40,000. THAT'S WHERE YOU MULTIPLIED
24 IT BY 3.6, CORRECT?

25 **A.** THAT'S CORRECT.

1 Q. AND THAT'S HOW YOU CAME UP WITH THE 1500?

2 A. YES.

3 Q. I ACTUALLY WANT TO GO TO A DIFFERENT NUMBER. LET'S LOOK AT
4 WHAT PLAINTIFF'S PROPOSAL ACTUALLY IS, WHICH IS THAT AS IT
5 APPLIES TO CDCR, PLAINTIFFS ARE PROPOSING A PHASED REDUCTION OF
6 THE POPULATION IN CDCR BY 52,000 INMATES.

7 SO I HAVE -- I HAVE TAKEN THAT 52,000, MULTIPLIED IT
8 BY 3.6 PERCENT, AS I WAS UNDERSTANDING THAT WAS YOUR
9 METHODOLOGY, AND I CAME UP WITH 1,872; DOES THAT SOUND ABOUT
10 RIGHT TO YOU?

11 A. THAT SOUNDS ABOUT RIGHT.

12 Q. OKAY. AND UNDER PLAINTIFF'S PROPOSAL THAT WOULD BE DONE
13 OVER THE COURSE OF 24 MONTHS. SO I DIVIDED THAT 1872 BY 24 AND
14 I CAME UP WITH 78 SOMETHING -- I CAME UP WITH 78, OKAY?

15 A. UH-HUH.

16 Q. SO WHAT WE ARE PROPOSING IS AN ADDITION OF 78 PAROLEES
17 RETURNING TO SANTA CLARA COUNTY EVERY MONTH, OKAY.

18 SO I WOULD JUST LIKE TO WALK THROUGH SOME OF THE
19 THINGS WE TALKED ABOUT -- YOU TALK ABOUT IN YOUR REPORT USING
20 THAT NUMBER.

21 FIRST OF ALL, YOU TESTIFIED THAT THE POPULATION OF
22 SANTA CLARA COUNTY IS 1.7 MILLION ABOUT?

23 A. THAT'S CORRECT.

24 Q. SO AN ADDITION OF 78 PEOPLE EVERY MONTH FROM CDCR, THAT
25 WOULD ACTUALLY INCREASE THE POPULATION BY -- MY ESTIMATE IS

1 .004 PERCENT; DOES THAT SOUND RIGHT?

2 **A.** IF YOU LOOK AT IT THAT WAY, YES.

3 **JUDGE REINHARDT:** 004 PERCENT PER MONTH?

4 **MS. MORRIS:** UH-HUH.

5 **BY MS. MORRIS:**

6 **Q.** DO YOU KNOW HOW MANY PAROLEES THERE ARE IN SANTA CLARA
7 COUNTY TODAY?

8 **A.** NOT OFF THE TOP OF MY HEAD, NO.

9 **Q.** DO YOU USUALLY KNOW HOW MANY THERE ARE IN SANTA CLARA
10 COUNTY?

11 **A.** THAT'S NOT A NUMBER THAT I NORMALLY KEEP TRACK OF ON A
12 WEEKLY BASIS AS I WOULD, FOR INSTANCE, OUR JAIL POPULATION.

13 **Q.** OKAY. DO YOU KNOW IF IT'S THE SAME NUMBER OF PAROLEES
14 COMING BACK TO SANTA CLARA COUNTY EVERY SINGLE MONTH?

15 **A.** NO, I WOULDN'T KNOW THAT.

16 **Q.** SO YOU WOULDN'T KNOW IF THERE WERE, SAY, 300 OR 400 OR 500
17 COMING BACK ANY PARTICULAR MONTH?

18 **A.** NOT UNLESS I LOOKED AND PURSUED THAT INFORMATION.

19 **Q.** BUT YOU DON'T LOOK AND PURSUE THAT INFORMATION?

20 **A.** NOT NORMALLY, NO.

21 **Q.** OKAY. UNDER CALIFORNIA LAW PERSONS WHO ARE SENT FROM SANTA
22 CLARA COUNTY TO CDCR, THEY ARE GOING TO PAROLE BACK TO SANTA
23 CLARA COUNTY IN GENERAL, CORRECT?

24 **A.** YES.

25 **Q.** AND PAROLE VIOLATORS WHO ARE IN SANTA CLARA COUNTY AND ARE

1 SENT BACK TO CDCR FOR A PAROLE VIOLATION, THEY ARE GOING TO BE
2 SENT BACK TO SANTA CLARA COUNTY AFTER THEY FINISH THEIR
3 REVOCATION TERM, CORRECT?

4 **A.** YES.

5 **Q.** AND PEOPLE IN CDCR FROM OTHER COUNTIES ARE GENERALLY NOT
6 GOING TO BE RETURNED TO SANTA CLARA COUNTY, CORRECT?

7 **A.** AS FAR AS I KNOW, YES.

8 **Q.** DO YOU UNDERSTAND THAT AS TO THOSE PEOPLE THAT ARE IN CDCR,
9 PLAINTIFFS'S PROPOSAL WOULD ONLY RESULT IN PEOPLE BEING RELEASED
10 A FEW MONTHS EARLY?

11 **A.** I HAVE A GENERAL SENSE OF WHAT YOUR PROPOSAL IS, YES.

12 **Q.** AND DO YOU UNDERSTAND THAT AS FAR AS PEOPLE WHO ARE IN CDCR,
13 THE PROPOSAL IS ONLY TO RELEASE PEOPLE A FEW MONTHS EARLY?

14 **A.** I DON'T KNOW SPECIFICALLY HOW MANY MONTHS EARLY, BUT I -- I
15 UNDERSTAND THAT GENERALLY THE PROPOSALS HAVE BEEN PEOPLE TOWARDS
16 THE END OF THEIR TERM.

17 **Q.** SO YOU WOULD UNDERSTAND, ALSO, THAT PLAINTIFFS ARE NOT
18 PROPOSING THAT PEOPLE WHO WOULD NOT BE PAROLING EVER BE
19 RELEASED, CORRECT?

20 **A.** YES.

21 **Q.** SO THESE 78 ADDITIONAL PAROLEES THAT WE HAVE BEEN TALKING
22 ABOUT, THOSE ARE PEOPLE THAT WOULD BE RETURNING TO SANTA CLARA
23 COUNTY AT SOME POINT IN THE RELATIVELY NEAR FUTURE IN ANY EVENT,
24 CORRECT?

25 **A.** YES.

1 Q. YOU MAKE THE CLAIM IN YOUR EXPERT REPORT THAT THE RELEASE OF
2 THE CDCR PRISONERS WOULD OVERWHELM SANTA CLARA COUNTY'S
3 CORRECTIONAL FACILITIES.

4 AT THE TIME THAT YOU WROTE YOUR REPORT, SANTA CLARA
5 COUNTY HAD 643 EMPTY BEDS, CORRECT?

6 A. THAT IS CORRECT.

7 Q. AND TODAY THERE ARE MORE THAN 900 EMPTY BEDS, AREN'T THERE?

8 A. TODAY I BELIEVE THAT THE LAST FIGURE THAT I SAW WAS -- I
9 BELIEVE IT WAS AROUND 700. IT WAS CAPACITY. I THINK OUR
10 POPULATION, THE LAST I LOOKED, WAS AROUND 4600.

11 MS. MORRIS: OKAY. COULD YOU PUT UP THE DAILY
12 POPULATION STATISTICS? OR I CAN DISTRIBUTE THEM.

13 MS. FUENTES: CAN WE HAVE SOME FOUNDATION FOR THIS
14 DOCUMENT?

15 MS. MORRIS: THIS IS THE SANTA CLARA COUNTY
16 DEPARTMENT OF CORRECTIONS WEBSITE DAILY POPULATION.

17 MS. FUENTES: WHICH DAY?

18 MS. MORRIS: TODAY.

19 (WHEREUPON, DOCUMENT WAS TENDERED
20 TO THE COURTS, COUNSEL AND THE WITNESS.)

21 MS. MORRIS: WE WOULD LIKE TO MARK THIS AS
22 EXHIBIT 841.

23 JUDGE HENDERSON: IT WILL BE SO MARKED FOR
24 IDENTIFICATION.

25

1 (PLAINTIFFS' EXHIBIT 841 MARKED FOR
2 IDENTIFICATION)

3 **JUDGE KARLTON:** DO YOU WANT TO MOVE IT IN, MA'AM,
4 BECAUSE YOU ARE GOING TO ASK SOME QUESTIONS ABOUT IT?

5 **MS. MORRIS:** YES. I WOULD LIKE TO MOVE IT INTO
6 EVIDENCE, PLEASE.

7 **JUDGE HENDERSON:** IT WILL BE ADMITTED AT THIS TIME.
8 (PLAINTIFFS' EXHIBIT 841 RECEIVED IN
9 EVIDENCE)

10 **BY MS. MORRIS:**

11 **Q.** SORRY. IT'S NOT GOING TO BE SHOWN ON THE BIG SCREEN, BUT WE
12 CAN ALL LOOK AT IT.

13 ARE YOU FAMILIAR WITH THE DOCUMENT THAT HAS BEEN NOW
14 IDENTIFIED AS EXHIBIT 841?

15 **A.** IT'S NOT A -- THAT'S NOT THE FORM THAT I SEE THIS
16 INFORMATION IN. I DON'T GO TO THE WEBSITE TO GET THIS
17 INFORMATION. INFORMATION IS PRESENTED TO ME ON A WEEKLY BASIS.

18 **Q.** DO YOU HAVE ANY REASON TO BELIEVE THIS IS NOT FROM THE SANTA
19 CLARA COUNTY WEBSITE?

20 **A.** THE ONLY THING I WOULD SAY IS THIS IS DIFFERENT FROM THE
21 INFORMATION THAT I WOULD SEE, SO I DON'T KNOW EXACTLY WHAT THE
22 BASIS FOR THIS IS. IF THERE IS SOME ADDITIONAL INMATE
23 POPULATION THAT'S NOT INCLUDED, I DON'T KNOW THAT.

24 **JUDGE HENDERSON:** WHEN YOU SAY "DIFFERENT," DO YOU
25 MEAN FORMAT OR THE NUMBERS THAT YOU SEE?

1 **THE WITNESS:** THE NUMBERS. AS I INDICATED, I BELIEVE
2 THE NUMBERS -- AND, AGAIN, I LOOKED AT THIS ON MONDAY. I WOULD
3 SAY THAT THE NUMBERS THAT I WAS LOOKING AT WAS SOMEWHERE BETWEEN
4 4500 -- 4550 AND 4600.

5 SO THIS SURPRISES ME, BUT, OBVIOUSLY, IT'S ON THE
6 WEBSITE. SO, AGAIN, I DON'T KNOW IF INFORMATION THAT'S
7 PRESENTED THERE IS DIFFERENT FROM WHAT I SEE.

8 **BY MS. MORRIS:**

9 **Q.** OKAY. BUT YOU BELIEVE THAT THIS IS --

10 **A.** I BELIEVE, CERTAINLY, THAT IF THIS IS ON THE WEBSITE, THAT
11 THAT'S CERTAINLY WHAT'S BEEN REPORTED.

12 AND ALL I COULD TELL YOU ASK THAT IT IS SLIGHTLY
13 DIFFERENT. I MEAN, WE ARE NOT TALKING ABOUT A SUBSTANTIAL
14 DIFFERENCE, BUT IT IS SLIGHTLY DIFFERENT FROM THE INFORMATION
15 THAT I SAW EARLIER THIS WEEK.

16 **Q.** AND THE INFORMATION THAT YOU SAW EARLIER THIS WEEK, YOU
17 THINK WAS AROUND --

18 **A.** 4550 TO 4600 WAS THE NUMBER THAT I RECALL.

19 **Q.** AND THE TOTAL CAPACITY OF THE SANTA CLARA COUNTY
20 CORRECTIONAL FACILITIES IS 5,380, CORRECT?

21 **A.** THAT'S CORRECT.

22 **Q.** SO WHETHER IT'S -- WHETHER IT'S WHAT THE WEBSITE SAYS OR
23 WHAT YOU RECALL FROM EARLIER THIS WEEK, YOU ARE IN THE RANGE OF
24 700 TO 900 EMPTY BEDS CURRENTLY?

25 **A.** THAT IS CORRECT.

1 Q. BUT IT'S IMPORTANT TO HAVE FREE BEDS IN THE PRISON -- IN THE
2 JAIL SYSTEM, ISN'T IT?

3 A. IT IS. GENERALLY, THE EXPECTATION IS THAT 15 PERCENT
4 VACANCY RATE IS NECESSARY BECAUSE OF ISSUES AROUND THINGS LIKE
5 CLASSIFICATION. INMATES CAN'T ALL BE HOUSED IN THE SAME
6 LOCATIONS. SO IT'S IMPORTANT TO HAVE THAT FLEXIBILITY, YES.

7 Q. OKAY. YOU STATED DURING YOUR DEPOSITION THAT YOUR ASSERTION
8 THAT THE JAIL SYSTEM WOULD BE OVERWHELMED WAS BASED, IN PART, ON
9 AN ASSUMPTION THAT EVERY SINGLE PERSON WHO WAS RELEASED FROM
10 CDCR WOULD SPEND SOME TIME IN THE SANTA CLARA COUNTY
11 CORRECTIONAL FACILITIES, CORRECT?

12 A. I DON'T RECALL SAYING THAT. I THINK THAT THE ASSUMPTIONS
13 THAT WE MADE WERE BASED ON A SIGNIFICANT RELEASE AT ONE TIME OR
14 BASED ON A CAP THAT WOULD PREVENT US FROM TRANSPORTING PEOPLE TO
15 THE STATE SYSTEM.

16 Q. SO IF THERE WAS A PHASED RELEASE OF SOMEWHERE AROUND 78
17 PEOPLE PER MONTH, DO YOU THINK THAT WOULD OVERWHELM THE JAIL
18 SYSTEM?

19 A. I THINK THE CONCERN THERE, OBVIOUSLY, WOULD BE THE
20 CUMULATIVE EFFECT. YOU KNOW, CLEARLY 78 PEOPLE, YOU KNOW, IN
21 ONE MONTH IS NOT GOING TO OVERWHELM US, BUT THE CUMULATIVE
22 EFFECT, I THINK, IS CERTAINLY WHAT WE WOULD BE CONCERNED ABOUT.

23 AS I INDICATED BEFORE, YOU KNOW, IN TERMS OF THE
24 KINDS OF DEFICITS AND THE KINDS OF PRESSURES THAT WE ARE FACING
25 IN OUR SITUATION, ANY KIND OF INCREASE IN THE DEMAND FOR SERVICE

1 OR IN THE NEED TO HOUSE ADDITIONAL INDIVIDUALS IS GOING TO HAVE
2 AN IMPACT. THERE IS NO QUESTION ABOUT THAT IN MY MIND.

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

4 **BY MS. MORRIS:**

5 **Q.** SANTA CLARA RENT OUT BEDS TO OTHER ENTITIES, THE FEDERAL AND
6 STATE GOVERNMENT, CORRECT?

7 **A.** THAT IS CORRECT.

8 **Q.** AND SOME OTHER COUNTIES?

9 **A.** MENTAL HEALTH BEDS TO OTHER COUNTIES.

10 **Q.** AND IT'S ABOUT 400 BEDS TOTAL THAT THEY ARE RENTING OUT?

11 **A.** 400 IS AROUND THE CENSUS. THAT WAS THE LAST INFORMATION
12 THAT I SAW. IT IS NOT ABSOLUTELY RECENT, BUT I THINK THAT'S IN
13 THE BALLPARK.

14 **Q.** AND SANTA CLARA COUNTY HAS CLOSED SOME OF ITS JAIL BEDS,
15 HASN'T IT?

16 **A.** THAT'S CORRECT.

17 **Q.** APPROXIMATELY FIVE HOUSING UNITS?

18 **A.** I THINK THAT'S CORRECT, YES.

19 **Q.** OKAY. MR. GRAVES, YOU THINK THAT SANTA CLARA COUNTY HAS
20 MORE EFFECTIVE SUBSTANCE ABUSE TREATMENT PROGRAMS FOR PEOPLE
21 THAT ARE IN CONTACT WITH THE CRIMINAL JUSTICE SYSTEM THAN CDCR
22 DOES, CORRECT?

23 **A.** YES.

24 **Q.** AND YOU THINK YOU DO A GOOD JOB WITH DIVERSION PROGRAMS,
25 LIKE PROP 36, USING THOSE INSTEAD OF JAIL, CORRECT?

1 **A.** YES.

2 **Q.** AND THAT THOSE OFFER THE POSSIBILITY OF REHABILITATION AND
3 HAVE -- AND THAT WOULD HAVE A POSITIVE IMPACT ON PUBLIC SAFETY,
4 CORRECT?

5 **A.** YES.

6 **Q.** OKAY. HAS THE COUNTY ASKED FOR ADDITIONAL MONIES FOR PROP
7 36?

8 **A.** YES.

9 **Q.** AND WHAT HAPPENED?

10 **A.** WE DIDN'T RECEIVE THEM.

11 **Q.** YOU ESTIMATED THAT 70 PERCENT OF ALL PEOPLE COMING OUT OF
12 CDCR HAVE SUBSTANCE ABUSE PROBLEMS THAT WOULD BENEFIT FROM
13 TREATMENT, CORRECT?

14 **A.** YES.

15 **Q.** YOU DON'T KNOW HOW MANY PAROLEES CURRENTLY ACCESS SUBSTANCE
16 ABUSE TREATMENT THROUGH THE COUNTY PROVIDERS, DO YOU?

17 **A.** HOW MANY CURRENT PAROLEES?

18 **Q.** UH-HUH.

19 **A.** NO, I DON'T KNOW THAT.

20 **Q.** OKAY. AND YOU DON'T KNOW WHAT PERCENTAGE OF PAROLEES
21 CURRENTLY ACCESS SUBSTANCE ABUSE TREATMENT THROUGH THE COUNTY
22 PROVIDERS?

23 **A.** I DON'T KNOW THAT.

24 **Q.** ASSUMING THAT THE 70 PERCENT IS CURRENT, SOME OF THEM WOULD
25 BE LIKELY TO GET HELP THROUGH NON-COUNTY PROVIDERS, WOULDN'T

1 THEY?

2 **A.** I'M NOT SURE THAT -- I CAN ANSWER THAT IN TERMS OF WHAT
3 MEANS THAT THEY WOULD HAVE.

4 GENERALLY SPEAKING, THIS POPULATION, MY ASSUMPTION
5 WOULD BE, WOULD BE PURSUING SERVICES THROUGH THE PUBLIC SECTOR.

6 **JUDGE KARLTON:** WELL, THROUGH THE PUBLIC SECTOR, BUT
7 YOU KNOW THAT PAROLE SUPERVISION IS DONE PRESENTLY BY THE STATE.

8 **THE WITNESS:** YES.

9 **JUDGE KARLTON:** AND IF THERE ARE PAROLE SUBSTANCE
10 ABUSE PROGRAMS, THAT'S PROVIDED BY THE STATE.

11 **THE WITNESS:** IF THEY -- IF THOSE PROGRAMS ARE
12 AVAILABLE, THEN, CERTAINLY, THEY COULD ACCESS THEM THROUGH
13 THERE.

14 **BY MS. MORRIS:**

15 **Q.** AND THERE'S ALSO N.A., CORRECT?

16 **A.** UH-HUH. YES.

17 **Q.** AND A.A. AND THERE ARE SOME PRIVATE PROVIDERS AS WELL.
18 AREN'T THERE?

19 **A.** THERE -- I'M SURE THERE'S PRIVATE PROVIDERS. AGAIN, THE
20 ISSUE IS THE MEANS OF THE INDIVIDUAL THAT IS COMING OUT OF THE
21 STATE SYSTEM. I THINK THAT'S REALLY THE QUESTION.

22 **Q.** BUT YOU DON'T HAVE ANY SPECIFIC INFORMATION ABOUT HOW MANY
23 PEOPLE CURRENTLY OR IN THE FUTURE WOULD ACCESS NON-COUNTY
24 PROVIDERS FOR SUBSTANCE ABUSE TREATMENT?

25 **A.** ALL I CAN TELL YOU IS THAT THE DEMAND CURRENTLY EXCEEDS THE

1 SUPPLY. SO ANY ADDITIONAL PEOPLE, EVEN IF THEY WERE ONE, THEN
2 THAT WOULD PRESENT A PROBLEM FOR US.

3 Q. OKAY. AND YOU ALSO THINK THAT SANTA CLARA COUNTY DOES A
4 GOOD JOB OF PROVIDING MENTAL HEALTH CARE TO THOSE PEOPLE THAT IT
5 PROVIDES SERVICES TO, DON'T YOU?

6 A. YES.

7 Q. BUT THERE AREN'T CURRENTLY ENOUGH RESOURCES?

8 A. THAT'S CORRECT.

9 Q. YOU STATED THAT SANTA CLARA COUNTY HAS GOTTEN MONEY THROUGH
10 THE MENTAL HEALTH SERVICES ACT, CORRECT?

11 A. YES.

12 Q. ISN'T IT TRUE THAT 50 PERCENT OF THE MENTAL HEALTH SERVICES
13 PROVIDER -- SERVICES ACT FUNDS ARE DEDICATED TO FULL SERVICE
14 PARTNERSHIPS?

15 A. I BELIEVE THAT'S CORRECT.

16 Q. OKAY. AND THOSE ARE THE INTENSIVE SERVICES THAT THE PEOPLE
17 WHO ARE THE MOST IN NEED OF ASSISTANCE NEED TO ACCESS, CORRECT?

18 A. YES.

19 Q. OKAY. AT THE SAME TIME THAT SANTA CLARA COUNTY HAS BEEN
20 RECEIVING THESE ADDITIONAL FUNDS THROUGH THE MENTAL HEALTH
21 SERVICES ACT, SANTA CLARA COUNTY HAS BEEN CUTTING THE OTHER
22 FUNDING, THE DISCRETIONARY GENERAL FUND FUNDING, FOR THE MENTAL
23 HEALTH SERVICES IN THE COUNTY, CORRECT?

24 A. YES.

25 Q. SO IF SOME OF THAT MONEY HAD NOT BEEN TAKEN AWAY, THERE

1 WOULD BE MORE MONEY AVAILABLE, WOULDN'T THERE NOT?

2 **A.** THERE WOULD HAVE BEEN, YES.

3 **Q.** OKAY.

4 **A.** AND THEREIN LIES THE PROBLEM.

5 **Q.** YOU DON'T KNOW HOW MANY PAROLEES CURRENTLY ACCESS MENTAL
6 HEALTH HEALTHCARE THROUGH THE COUNTY SERVICES, DO YOU?

7 **A.** NO.

8 **Q.** AND YOU DON'T KNOW WHAT PERCENTAGE OF PAROLEES CURRENTLY
9 ACCESS MENTAL HEALTHCARE THROUGH THE COUNTY?

10 **A.** NO.

11 **Q.** YOU -- ACTUALLY, YOU ALSO DON'T HAVE ANY ESTIMATES AS TO
12 WHAT PERCENTAGE OF PEOPLE COMING OUT OF CDCR BECOME HOMELESS, DO
13 YOU?

14 **A.** NO. I THINK THE INFORMATION THAT I PROVIDED WAS BASED ON A
15 SURVEY THAT WE DO ON AN ANNUAL BASIS THAT INDICATED THAT ROUGHLY
16 10 PERCENT OF THE PEOPLE WHO WERE SURVEYED INDICATED THAT THEIR
17 LAST -- THE LAST PLACE THAT THEY HAD SLEPT WAS IN A JAIL. SO
18 THAT IS THE NUMBER THAT WE ARE ASSUMING IN TERMS OF THE
19 POTENTIAL IMPACT.

20 **Q.** SO YOU ARE ASSUMING -- MY UNDERSTANDING OF THAT IS THAT
21 10 PERCENT OF THE HOMELESS PEOPLE CAME FROM CRIMINAL JUSTICE?

22 **A.** YES.

23 **Q.** THAT'S NOT TO SAY THAT 10 PERCENT OF THE PEOPLE COMING OUT
24 OF CRIMINAL JUSTICE ARE HOMELESS, CORRECT?

25 **A.** THAT'S CORRECT.

1 Q. OKAY.

2 A. I THINK THE POINT THAT IS IMPORTANT THERE IS THAT THE ISSUE
3 IS, IS -- TO THE EXTENT TO WHICH THE HOMELESS POPULATION IS
4 INCREASING, THAT, AGAIN, IS ANOTHER STRAIN ON OUR -- ON THE
5 SERVICES THAT WE PROVIDE THAT WE DON'T HAVE THE SERVICES TO
6 SUPPORT.

7 Q. YOU ALSO DON'T HAVE ANY ESTIMATES OF WHAT PERCENTAGE OF
8 PEOPLE COMING OUT OF PRISON OR OUT OF CDCR ARE REQUESTING PUBLIC
9 ASSISTANCE, CORRECT?

10 A. NO, I DON'T HAVE THAT INFORMATION.

11 Q. AND YOU DON'T HAVE ANY ESTIMATE AS TO HOW MANY PEOPLE THAT
12 MIGHT BE RELEASED IN A PRISONER RELEASE ORDER WOULD BE
13 REQUESTING PUBLIC ASSISTANCE OR BECOME HOMELESS?

14 A. I DON'T HAVE THAT SPECIFIC INFORMATION. AGAIN, THE ISSUE IS
15 TO THE EXTENT TO WHICH ANY OF THOSE INDIVIDUALS WERE TO TRY TO
16 PURSUE SERVICES, THAT'S WHERE OUR CONCERNS ARE.

17 Q. YOU DON'T HAVE ANY ESTIMATES TO WHAT PERCENT OF PEOPLE
18 COMING OUT OF CDCR ARE UNINSURED FOR MEDICAL INSURANCE, CORRECT?

19 A. I DON'T HAVE ANY SPECIFIC INFORMATION, BUT MY ASSUMPTION
20 WOULD BE IT WOULD BE A SIGNIFICANT NUMBER.

21 Q. BUT YOU DON'T HAVE ANY SPECIFIC INFORMATION?

22 A. I DON'T HAVE ANY FACTS TO BACK THAT UP.

23 Q. AND YOU DON'T HAVE ANY ESTIMATES AS TO WHAT PERCENT OF
24 PEOPLE COMING OUT OF CDCR ARE UNINSURED AND ACCESSING COUNTY
25 PUBLIC HEALTH?

1 **A.** CORRECT.

2 **JUDGE KARLTON:** HE DOESN'T KNOW IF PUBLIC HEALTH ARE
3 BEING ACCESSED. HE DOESN'T KNOW HOW MANY -- GO AHEAD AND
4 ANSWER. I'M JUST GETTING FRUSTRATED. GO AHEAD.

5 **A.** THAT'S CORRECT.

6 **BY MS. MORRIS:**

7 **Q.** AND YOU DON'T HAVE ANY ESTIMATE OF HOW MANY PEOPLE WHO MIGHT
8 BE RELEASED IN AN ORDER -- IN A POPULATION REDUCTION ORDER, HOW
9 MANY OF THOSE WOULD BECOME -- WOULD BE UNINSURED AND NEED TO
10 ACCESS PUBLIC HEALTH?

11 **A.** THAT'S CORRECT.

12 **Q.** NO FURTHER QUESTIONS. THANK YOU.

13 **JUDGE HENDERSON:** LET'S TAKE OUR AFTERNOON RECESS FOR
14 15 MINUTES. COURT IS ADJOURNED.

15 (WHEREUPON THERE WAS A BRIEF

16 RECESS IN THE PROCEEDINGS.)

17 **JUDGE HENDERSON:** PROCEED WHEN YOU'RE READY, COUNSEL.

18 **MS. FUENTES:** YOUR HONOR, WAS THERE A RULING ON
19 WHETHER OR NOT THE CRIMINAL JUSTICE STATISTICS CENTER DOCUMENT
20 IS ADMITTED INTO EVIDENCE?

21 **MR. BIEN:** I COULDN'T HEAR.

22 **MS. FUENTES:** I ASKED WHETHER OR NOT THERE WAS A
23 RULING ON WHETHER OR NOT THE CRIMINAL JUSTICE STATISTICS
24 DOCUMENT WAS ADMITTED INTO EVIDENCE?

25 **JUDGE HENDERSON:** I BELIEVE WE ADMITTED IT, DIDN'T

1 WE?

2 **REDIRECT EXAMINATION BY MR. FUENTES**

3 **BY MS. FUENTES**

4 **Q** I WOULD LIKE TO ASK YOU, MR. GRAVES, A QUESTION ABOUT THAT
5 DOCUMENT. DO YOU STILL HAVE IT THERE?

6 **A** THIS ONE? IT WAS ON THE SCREEN, BUT --

7 **MS. FUENTES:** MAY I APPROACH THE WITNESS?

8 **JUDGE HENDERSON:** YOU MAY.

9 **BY MS. FUENTES**

10 **Q** MR. GRACE, WHEN YOU WERE TALKING ABOUT THE CRIME RATE IN
11 SANTA CLARA COUNTY, YOU MENTIONED THAT YOU THOUGHT IT HAD GONE
12 UP. WERE YOU REFERRING TO PROPERTY CRIMES OR VIOLENT CRIMES?

13 **MS. MORRIS:** I'M SORRY. I CAN'T HEAR.

14 **JUDGE HENDERSON:** REPEAT THE QUESTION.

15 **BY MS. FUENTES**

16 **Q** MR. GRACE, WHEN YOU WERE ASKED THE QUESTION ABOUT CRIME
17 DECREASING IN SANTA CLARA COUNTY AND YOU SAID YOU THOUGHT IT
18 INCREASED, WHAT TYPE OF CRIMES WERE YOU REFERRING TO?

19 **JUDGE REINHARDT:** I THOUGHT HE SAID VIOLENT CRIMES,
20 DIDN'T HE?

21 **MS. FUENTES:** I DON'T THINK IT WAS CLEAR, YOUR HONOR.
22 THAT'S WHY I'M TRYING TO CLARIFY.

23 **JUDGE REINHARDT:** EITHER HE SAID VIOLENT OR HE
24 DIDN'T. I THOUGHT THAT'S WHAT HE SAID, AND I THINK THE QUESTION
25 THEN WAS -- I ASKED HIM ABOUT IT -- MAYBE THE QUESTIONER

1 MISUNDERSTOOD, TOO, BUT I THINK SHE SAID YOU SAID VIOLENT
2 CRIMES.

3 **JUDGE HENDERSON:** I REMEMBER POINTING OUT THAT
4 PLAINTIFF'S COUNSEL WAS TALKING ABOUT CRIMES, AND HE WAS TALKING
5 ABOUT VIOLENT CRIMES, AND HE AGREED.

6 **BY MS. FUENTES**

7 **Q** IS THAT CORRECT?

8 **A** THAT CERTAINLY -- I MEAN, BECAUSE I HADN'T SEEN THE
9 DOCUMENT, I THOUGHT WE WERE TALKING ABOUT CRIMES IN GENERAL. I
10 WASN'T BEING SPECIFIC IN TERMS OF VIOLENT OR --

11 **JUDGE REINHARDT:** NOT WITH THE DOCUMENT, BUT DO YOU
12 RECALL WHAT YOUR TESTIMONY WAS ORIGINALLY WHEN YOU SAID --

13 **THE WITNESS:** I WAS REFERRING TO JUST CRIME IN
14 GENERAL. I WASN'T REFERRING TO SPECIFICS, BECAUSE I -- AGAIN,
15 THIS ISN'T THE KIND OF DATA THAT I'M LOOKING AT ON A REGULAR
16 BASIS.

17 YOU KNOW, CLEARLY, FOR US, THE CONCERN THAT WE HAVE,
18 YOU KNOW, IS REGARDING, YOU KNOW, PROPERTY CRIMES, ESPECIALLY IN
19 THIS ECONOMIC ENVIRONMENT, AND THAT'S -- I THINK WHEN WE LOOK
20 AT, YOU KNOW, THE CRIME STATISTICS, AND, YOU KNOW, EVEN THESE
21 CRIME STATISTICS THROUGH 2006, CERTAINLY DEMONSTRATE THAT
22 PROPERTY CRIMES HAVE INCREASED, AT THE SAME TIME RECOGNIZING
23 THAT -- I THINK, AS THE OTHER POINT BEING MADE, THAT VIOLENT
24 CRIMES WERE DECREASING.

25 BUT IN THIS ECONOMIC ENVIRONMENT, ESPECIALLY, IT SORT

1 OF EXACERBATES THE CONCERN WE HAVE AROUND A RELEASE OF
2 ADDITIONAL INDIVIDUALS, IF THEY HAVE A PROPENSITY IN THAT
3 DIRECTION, THAT PROPERTY CRIME RISING IS AN ISSUE AND IS A
4 CONCERN.

5 **BY MS. FUENTES**

6 **Q** AND THEN THE DOCUMENT YOU ARE LOOKING AT, YOU'RE SAYING IT
7 SHOWS THAT PROPERTY CRIMES HAVE INCREASED FROM 1997 TO 2006?

8 **MS. MORRIS:** OBJECTION. LACK OF FOUNDATION. HE
9 TESTIFIED HE WASN'T FAMILIAR WITH THIS DOCUMENT.

10 **JUDGE KARLTON:** THE ATTORNEY IS ASKING THE WITNESS TO
11 READ THE DOCUMENT, BECAUSE, AFTER ALL, WE CAN'T.

12 **THE WITNESS:** YES. ACCORDING TO THE DOCUMENT, THE
13 PROPERTY CRIMES HAVE INCREASED BETWEEN 1997 AND 2006.

14 **MS. FUENTES:** THANK YOU.

15 **JUDGE HENDERSON:** I'M CONFUSED. WE'VE LET THIS
16 DOCUMENT IN, AND I'M WONDERING IF IT'S NOT A MISTAKE. IT WAS
17 LET IN FOR THE PURPOSE OF HAVING THIS WITNESS LOOK AT IT AND SAY
18 THAT SOUNDS RIGHT.

19 **MS. FUENTES:** I THOUGHT IT WAS LET IN BECAUSE THEY
20 ASKED HIM QUESTIONS ABOUT IT TO PROVE THAT THE CRIME RATES HAD
21 GONE DOWN IN SANTA CLARA COUNTY.

22 **JUDGE HENDERSON:** LET'S GO ON.

23 **JUDGE REINHARDT:** I DON'T THINK IT MAKES A LOT OF
24 DIFFERENCE.

25 **JUDGE HENDERSON:** IT DOESN'T. GO ON. GO ON. WE'RE

1 OKAY.

2 **BY MS. FUENTES**

3 **Q** ARE YOU -- DO YOU RECEIVE INFORMATION REGARDING THE DAILY
4 POPULATION AT THE DEPARTMENT OF CORRECTION?

5 **A** I DON'T RECEIVE IT ON A DAILY BASIS. I RECEIVE IT ONCE A
6 WEEK ON MONDAY.

7 **Q** AND ARE YOU FAMILIAR WITH WHETHER THE POPULATION IN THE JAIL
8 CHANGES ON A DAY-TO-DAY BASIS?

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

10 **Q** AND WHEN YOU RENDERED YOUR OPINIONS IN YOUR EXPERT REPORT
11 AND YOU WERE TALKING ABOUT THE IMPACTS TO SANTA CLARA COUNTY ON
12 A RELEASE OF PRISONERS, YOU WEREN'T JUST REFERRING TO -- WERE
13 YOU JUST REFERRING TO THE NUMBER OF PEOPLE THAT WOULD BE
14 RELEASED, OR ARE YOU REFERRING ALSO TO A POPULATION CAP?

15 **MS. MORRIS:** I'M SORRY. I CAN'T HEAR AGAIN.

16 **BY MS. FUENTES**

17 **Q** IN YOUR OPINIONS PROVIDED IN YOUR REPORT, WERE THEY BASED ON
18 A POPULATION RELEASE FROM STATE PRISON, OR WAS IT ALSO BASED ON
19 A POPULATION CAP?

20 **A** WELL, WHAT WE WERE LOOKING AT WERE BOTH OF THOSE AS
21 POTENTIAL OUTCOMES. AND SO, TO THE EXTENT TO WHICH, YOU KNOW,
22 ONE OR THE OTHER OR BOTH ARE ORDERED, OBVIOUSLY, THE IMPACTS
23 WILL RESULT. IF THERE'S SOME KIND OF A RELEASE, PLUS A
24 POPULATION CAP, YOU KNOW, THAT OBVIOUSLY WOULD PRESENT
25 SIGNIFICANT -- MORE PROBLEMS TO US BASED ON THE FACT THAT WE

1 WOULD HAVE PEOPLE COMING INTO THE COMMUNITY, ADDITIONAL PEOPLE;
2 PLUS, WE WOULD NOT HAVE THE ABILITY TO TRANSFER PEOPLE FROM OUR
3 SYSTEM INTO THE STATE SYSTEM.

4 **Q** AND THAT RAISES A CONCERN FOR THE COUNTY?

5 **A** THAT DOES RAISE A CONCERN.

6 **Q** WHY?

7 **A** WELL, AGAIN, BECAUSE OF THE CUMULATIVE EFFECT AND THE FACT
8 THAT OUR SYSTEMS RIGHT NOW ARE SO GREATLY STRAINED, WE -- YOU
9 KNOW, IT APPEARS THAT WE HAVE SOME FLEXIBILITY, BUT THAT
10 FLEXIBILITY, YOU KNOW, CLEARLY WILL DISAPPEAR VERY QUICKLY IF,
11 IN FACT, WE ARE UNABLE TO TRANSFER PRISONERS TO THE STATE
12 SYSTEM.

13 **MS. FUENTES:** NOTHING FURTHER, THANK YOU.

14 **JUDGE HENDERSON:** RECROSS?

15 **RECROSS-EXAMINATION BY MS. MORRIS**

16 **BY MS. MORRIS**

17 **Q** MR. GRAVES, IN YOUR REPORT YOU STATE THAT SANTA CLARA COUNTY
18 IS VERY EFFECTIVE AT MANAGING ITS JAIL POPULATION, CORRECT?

19 **A** WE ARE EFFECTIVE BECAUSE WE HAVE BEEN VERY PROACTIVE.

20 **Q** AND PART OF THAT BEING PROACTIVE MEANS DEVELOPING DIVERSION
21 PROGRAMS, CORRECT?

22 **A** THAT'S CORRECT.

23 **MS. MORRIS:** NO FURTHER QUESTIONS.

24 **MS. FUENTES:** NOTHING FURTHER.

25 **JUDGE HENDERSON:** THANK YOU FOR APPEARING AND

1 TESTIFYING, MR. GRAVES. YOU'RE EXCUSED.

2 YOU MAY CALL YOUR NEXT WITNESS.

3 **MS. FUENTES:** YOUR HONOR, DEFENDANT INTERVENORS HAD
4 PLANNED TO CALL CHARLENE SILVA, WHO IS A HEALTH DIRECTOR AT SAN
5 MATEO COUNTY. THE PARTIES HAVE REACHED A STIPULATION THAT WOULD
6 ELIMINATE THE NEED FOR HER TO TESTIFY LIVE TODAY.

7 **JUDGE REINHARDT:** DO YOU WANT TO TALK TO THEM ABOUT
8 HAVING WITNESSES AVAILABLE?

9 **JUDGE KARLTON:** DOES THAT MEAN THERE ARE NO MORE
10 WITNESSES TODAY?

11 **MS. FUENTES:** THAT'S CORRECT, YOUR HONOR.

12 **JUDGE KARLTON:** THE IDEA OF GETTING THE STIPULATIONS
13 WAS SO WE WOULD BE ABLE TO TAKE UP A NEW WITNESS, NOT THAT WE'D
14 BREAK EARLY.

15 **MS. FUENTES:** YOUR HONOR, THE TIME THAT WAS ALLOTTED
16 FOR THESE WITNESSES, THE TOTAL TIME TODAY WAS SEVEN HOURS AND
17 FIFTY-FIVE MINUTES. SO, ORIGINALLY, YESTERDAY WHEN WE REACHED
18 THE STIPULATION, WE THOUGHT IT WOULD TAKE THE ENTIRE DAY OR
19 MORE.

20 **JUDGE REINHARDT:** YESTERDAY WE BROKE AN HOUR EARLY,
21 TOO.

22 **JUDGE KARLTON:** WE CAN'T DO THIS, FOLKS.

23 **JUDGE REINHARDT:** IT'S JUST A GENERAL RULE WHOEVER IS
24 ON SHOULD BE PREPARED WITH THE NEXT WITNESS IN CASE ANYTHING
25 HAPPENS, WHATEVER IT IS.

1 **JUDGE KARLTON:** BETTER THAT THAT WITNESS BE
2 INCONVENIENCED THAN THIS COURT KEEP BREAKING EARLY AND NOT BEING
3 ABLE TO DISPOSE OF THE CASE. I'M NOT TALKING TO YOU PERSONALLY.
4 I'M TALKING TO ALL OF YOU.

5 I THINK WE ARE GOING TO ESTABLISH A RULE THAT YOU ARE
6 TO -- WHOEVER IS PUTTING ON WITNESSES, THERE BE ONE MORE WITNESS
7 PREPARED TO BE PUT ON THAN YOU THINK YOU NEED TO, AND IF THAT
8 WITNESS IS INCONVENIENCED, I'M TERRIBLY SORRY, BUT WE'VE GOT TO
9 GET THIS DONE.

10 **JUDGE REINHARDT:** AND THAT'S GOING TO BE THAT
11 WITNESS'S OPPORTUNITY TO TESTIFY, AND IF THE WITNESS ISN'T HERE
12 WHEN THE WITNESS IS DUE, THAT'S THE WAY IT GOES.

13 **JUDGE HENDERSON:** COURT IS ADJOURNED UNTIL 9:15
14 TOMORROW.

15 **JUDGE KARLTON:** WE GOT TO TALK ABOUT SOMETHING ELSE.
16 WE WERE IN THE MIDST OF A CROSS-EXAMINATION OF DR. AUSTIN. YOUR
17 CROSS-EXAMINATION, HOW MUCH MORE DO YOU HAVE; DO YOU KNOW?

18 **MS. BARLOW:** YES, YOUR HONOR. I BELIEVE I HAVE ABOUT
19 A HALF AN HOUR.

20 **JUDGE KARLTON:** YOU HAVE ABOUT A HALF HOUR?

21 **MS. BARLOW:** YES.

22 **JUDGE KARLTON:** IS ANYBODY ELSE QUESTIONING?

23 **MR. MELLO:** THEN IT WOULD BE REDIRECT.

24 **JUDGE HENDERSON:** HOW MUCH DO YOU GUYS HAVE?

25 **MS. EVENSON:** WE'VE ESTIMATED ABOUT 15 MINUTES BASED

1 ON THE CROSS SO FAR.

2 **JUDGE KARLTON:** SO MAYBE A HALF HOUR.

3 I THINK, I'M NOT SURE, I'M ASKING, WAS DR. AUSTIN'S
4 HOUR INCLUDED IN THE ESTIMATE TO GET US TO THE 19TH OR NOT?

5 **MS. BARLOW:** I BELIEVE IT WAS, YOUR HONOR.

6 **JUDGE KARLTON:** OH, OKAY. OKAY. GREAT.

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

8 **MS. EVENSON:** HE'S SCHEDULED ON THE 18TH.

9 **MS. BARLOW:** HE'S SCHEDULED ON THE 18TH, AND WE DID
10 INCLUDE THAT TIME, YOUR HONOR.

11 (PROCEEDINGS ADJOURNED.)

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I N D E X

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CERTIFICATE OF REPORTER

WE, JOAN MARIE COLUMBINI AND KATHERINE WYATT, OFFICIAL REPORTERS FOR THE UNITED STATES COURT, NORTHERN DISTRICT OF CALIFORNIA, HEREBY CERTIFY THAT THE FOREGOING PROCEEDINGS IN CIV S-90-0520 LKK JPM, 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

THURSDAY, DECEMBER 11, 2008

**JOAN MARIE COLUMBINI, CSR, RPR
DEBRA L. PAS, CSR, CRR, RMR, RPR
OFFICIAL COURT REPORTERS
415-255-6842**