

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

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

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

TRANSCRIPT OF PROCEEDINGS

SAN FRANCISCO, CALIFORNIA
FRIDAY, DECEMBER 12, 2008

(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: SARA NORMAN, ESQUIRE
ALISON HARDY, ESQUIRE
DONALD SPECTER, ESQUIRE
REBEKAH EVENSON, ESQUIRE**

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

**BY: MICHAEL W. BIEN, ESQUIRE
JANE KAHN, 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

FOR THE COUNTY OF SAN MATEO INTERVENORS: OFFICE OF MICHAEL P. MURPHY
COUNTY COUNSEL, SAN MATEO COUNTY
HALL OF JUSTICE AND RECORDS
400 COUNTY CENTER, 6TH FLOOR
REDWOOD CITY, CALIFORNIA 94063-1662
BY: CAROL L. WOODWARD, ESQUIRE

1 **FRIDAY, DECEMBER 12, 2008**

9:20 O'CLOCK A.M.

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

5 **MR. MITCHELL:** GOOD MORNING, YOUR HONORS. ONE QUICK
6 QUESTION BEFORE WE GET STARTED.

7 WE HAVE TWO WITNESSES SCHEDULED THIS MORNING,
8 DISTRICT ATTORNEY BONNIE DUMANIS FROM SAN DIEGO AND ROD PACHECO
9 FROM RIVERSIDE COUNTY. BOTH ARE DEFENDANT INTERVENOR PARTIES IN
10 THIS ACTION. I WAS WONDERING, DOES THE WITNESS EXCLUSION ORDER
11 APPLY TO THEM PRIOR TO THEIR TESTIMONY?

12 **JUDGE HENDERSON:** NO ONE HAS EVER MADE A WITNESS
13 EXCLUSION ORDER. THERE'S NOT ONE EXISTING AT THIS TIME.

14 **MR. SPECTER:** YES, THERE IS, YOUR HONOR.

15 **JUDGE KARLTON:** I HAVE NO RECOLLECTION OF IT.

16 **JUDGE REINHARDT:** I DO. I REMEMBER.

17 **JUDGE HENDERSON:** OKAY.

18 **JUDGE REINHARDT:** YOU SAID THAT WE ALWAYS DO THAT.

19 **JUDGE HENDERSON:** OKAY. I MAY HAVE. I DON'T
20 REMEMBER. BUT THAT'S THE RULE.

21 **MR. MITCHELL:** I ASSUMED THERE WAS A WITNESS
22 EXCLUSION ORDER. I WAS JUST WONDERING, DOES IT APPLY TO PARTY
23 DEFENDANTS WHO HAVE INTERVENED IN THIS ACTION?

24 **JUDGE HENDERSON:** YES, IT WOULD.

25 **MR. MITCHELL:** THANK YOU, YOUR HONOR.

1 **MS. BARLOW:** THANK YOU VERY MUCH, YOUR HONOR. THE
2 LAW ENFORCEMENT INTERVENORS CALL JERRY DYER TO THE STAND.

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

4 **JERRY DYER,**

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

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

9 **THE WITNESS:** MY NAME IS JERRY DYER. FIRST NAME IS
10 J-E-R-R-Y. LAST NAME IS D-Y-E-R.

11 **MS. BARLOW:** JUST ONE QUICK NOTATION FOR THE COURT.
12 WE DID FILE AN AMENDED DECLARATION FOR MR. DYER, CHIEF DYER,
13 YESTERDAY WITH A VERY MINOR CHANGE IN PARAGRAPH 23, AND WE ADDED
14 NUMBERING AND PAGE NUMBERS TO MAKE IT EASIER FOR THE COURT TO
15 REFERENCE THE PARTICULAR SECTIONS, AND SO I HAVE COPIES OF THOSE
16 HERE.

17 THE AMENDED REPORT WAS SENT TO COUNSEL YESTERDAY, AND
18 I DID ADVISE MS. EVENSON IN COURT BEFORE WE LEFT HERE YESTERDAY
19 THAT THE CHANGES WOULD BE MADE. UNFORTUNATELY, THERE WERE TWO
20 MINOR OMISSIONS THAT WERE ACCIDENTAL FROM THIS VERSION THAT WERE
21 IN THE ORIGINAL VERSION OF THE REPORT. ONE WAS A SINGLE
22 SENTENCE THAT APPEARS AT THE BEGINNING OF PARAGRAPH 23 --

23 **MR. SPECTER:** EXCUSE ME, YOUR HONOR, BUT BEFORE
24 MS. BARLOW GETS TO TALK ABOUT WHAT SHOULD OR SHOULD NOT BE IN
25 THE NEW REPORTS, I HAVE A -- EXCUSE ME, MAY I USE THE MIC SO THE

1 JUDGES CAN HEAR?

2 I HAVE A STRONG OBJECTION TO HER SUBMITTING A REVISED
3 REPORT AS -- IN SUCH AN UNTIMELY MANNER. WE GOT NOTICE THAT IT
4 WAS -- I GOT NOTICE -- AND SHE KNEW I WAS GOING TO BE THE ONE TO
5 CROSS-EXAMINE MR. DYER. I GOT NOTICE AT 6:07 P.M. BY AN E-MAIL
6 AND THEY FILED THE DECLARATION -- THE AMENDED REPORT SHORTLY
7 THEREAFTER, MAKING --

8 **JUDGE HENDERSON:** LET ME INTERRUPT YOU. LET'S TALK
9 ABOUT PREJUDICE, NOT JUST TIME. WHAT --

10 **JUDGE REINHARDT:** I WOULD SAY --

11 **MR. SPECTER:** IT MAKES SUBSTANTIVE CHANGES.

12 **JUDGE REINHARDT:** I WOULD ALSO SAY, I DON'T THINK
13 IT'S A LEGITIMATE OBJECTION THAT SHE GAVE IT TO MS. EVENSON, WHO
14 IS ONE OF YOUR ASSOCIATES RATHER THAN TO YOU.

15 **MR. SPECTER:** MY OBJECTION IS THAT THE REPORTS WERE
16 DUE ON SEPTEMBER 15TH.

17 **JUDGE REINHARDT:** OKAY, THAT'S A LEGITIMATE
18 OBJECTION, BUT NOT THAT -- MS. EVENSON IS AN ABLE REPRESENTATIVE
19 OF YOURS.

20 **MS. BARLOW:** MAY I --

21 **MR. SPECTER:** I WASN'T -- I WASN'T -- ANYWAY, MY
22 OBJECTION --

23 **JUDGE REINHARDT:** LET'S GET TO THE MERITS.

24 **MR. SPECTER:** MY OBJECTION IS THAT IT'S UNTIMELY. MY
25 OBJECTION IS ALSO THAT IT'S PREJUDICIAL.

1 **JUDGE REINHARDT:** HOW IS IT PREJUDICIAL?

2 **MR. SPECTER:** BECAUSE THEY ARE MAKING SUBSTANTIVE
3 CHANGES TO THE REPORT AFTER THE DEPOSITION. THEY ARE TRYING TO
4 CLEAR UP AN ERROR THAT HE MADE IN HIS ORIGINAL REPORT.

5 **JUDGE KARLTON:** IF EVERYBODY AGREES THAT IT'S AN
6 ERROR -- YOU KNOW, YOU PEOPLE ALL THINK THAT YOU'RE ACHIEVING
7 SIGNIFICANT IMPEACHMENT WHEN YOU SHOW SOMEBODY SAID SOMETHING
8 CARELESSLY. I DON'T KNOW ABOUT MY COLLEAGUES, I THINK MOST OF
9 THAT IS A WASTE OF TIME, BUT I -- YOU KNOW, IT'S YOUR CASE; YOU
10 DO WHATEVER YOU WANT TO DO.

11 BUT, MS. BARLOW, I NOW HAVE A DIFFERENT QUESTION --

12 **MS. BARLOW:** YES.

13 **JUDGE KARLTON:** -- WHICH IS THAT IT ASSERTS THAT
14 THERE IS A SUBSTANTIVE CHANGE. YOU HAD INDICATED THAT THERE WAS
15 SIMPLY AN ERROR IN THE TYPING OR SOMETHING.

16 **MS. BARLOW:** WELL, THE CHANGE THAT WAS MADE, YOUR
17 HONOR, WAS TO WHAT APPEARS IN THE COPY YOU HAVE IN FRONT OF YOU,
18 THE VERY FIRST SENTENCE OF PARAGRAPH 23. THE SENTENCE THAT I
19 WAS ABOUT TO READ TO YOU WHEN MR. SPECTER INTERRUPTED WAS
20 ACTUALLY IN THE ORIGINAL REPORT, AND IT WAS DELETED
21 INADVERTENTLY WHEN THEY MADE THE AMENDED DOCUMENT --

22 **JUDGE KARLTON:** NO, NO. YOU MISUNDERSTOOD.
23 MR. SPECTER IS SAYING THE SO-CALLED AMENDED REPORT IS
24 SUBSTANTIVELY DIFFERENT.

25 **MS. BARLOW:** AND IT IS IN ONE VERY MINOR RESPECT,

1 YOUR HONOR. AND, AGAIN, THIS WAS RAISED AT THE DEPOSITION. THE
2 WITNESS INDICATED IT APPEARED TO BE AN ERROR AND HE WAS GOING TO
3 CHECK ON IT. SO THE ONE CHANGE IS, INSTEAD OF SAYING
4 UNEMPLOYMENT IS 2.5 TIMES HIGHER IN FRESNO THAN IN COMPARABLE
5 SIZE CITIES IN CALIFORNIA, IT WAS SUPPOSED TO SAY 2.5 PERCENT
6 HIGHER THAN UNEMPLOYMENT RATE IN CALIFORNIA AS A WHOLE. AND
7 THAT WAS THE ONLY SUBSTANTIVE CHANGE THAT WAS MADE.

8 **JUDGE REINHARDT:** IS THAT THE ONLY SUBSTANTIVE
9 CHANGE, MR. SPECTER?

10 **MR. SPECTER:** THAT'S THE MAJOR SUBSTANTIVE CHANGE.

11 **JUDGE REINHARDT:** YOU KNOW, IT DOESN'T SEEM TO ME HE
12 MADE A MISTAKE ABOUT THE UNEMPLOYMENT RATE IS HARDLY CRITICAL OF
13 THE ISSUES IN THIS CASE.

14 **MR. SPECTER:** I DON'T MIND IF YOU STRIKE THAT. I
15 THINK THE WHOLE THING IS IRRELEVANT. IT SHOULD BE STRICKEN.
16 BUT, I MEAN, WE MADE A MOTION --

17 **JUDGE REINHARDT:** WE ARE NOT STRIKING ANYTHING.
18 WE'VE LISTENED TO A LOT OF IRRELEVANT TESTIMONY.

19 **JUDGE KARLTON:** BOY, IF WE STRUCK ALL THE IRRELEVANT
20 TESTIMONY IN THIS CASE, WE'D HAVE BEEN DONE LAST WEEK.

21 **MR. SPECTER:** I MEAN, IF YOU DON'T STRIKE IT, I HAVE
22 TO DEAL WITH IT. SO THAT'S ALL I'M SAYING.

23 **JUDGE KARLTON:** THEN DEAL WITH IT.

24 **JUDGE REINHARDT:** DEAL WITH IT.

25 IS IT A VERY CONTROVERSIAL ISSUE, WHAT THE

1 UNEMPLOYMENT RATE IN FRESNO IS?

2 **MR. SPECTER:** NO.

3 **JUDGE HENDERSON:** IT'S NOT GOING TO INFORM MY RULING.

4 **MR. SPECTER:** IN THAT CASE, I UNDERSTAND. THAT'S
5 FINE.

6 **JUDGE HENDERSON:** OKAY. LET'S PROCEED.

7 **MS. BARLOW:** THANK YOU.

8 THE SENTENCE THAT SHOULD HAVE BEEN AT THE BEGINNING
9 OF PARAGRAPH 23 THAT WAS OMITTED WAS VERY SHORT:

10 "FRESNO HAS THE GREATEST CONCENTRATION OF
11 URBAN POVERTY IN THE NATION."

12 I'M NOT SURE WHY MY STAFF THOUGHT THAT WAS SUPPOSED
13 TO BE DELETED. THAT WAS IN THE ORIGINAL REPORT.

14 **JUDGE REINHARDT:** THAT'S NOT GOING TO MATTER
15 TREMENDOUSLY EITHER TO THE OUTCOME OF THIS CASE.

16 **MS. BARLOW:** IT WAS IN THE ORIGINAL REPORT, YOUR
17 HONOR. I JUST WANTED TO LET YOU KNOW.

18 FINALLY, ON PAGE 7, THE SECOND LINE UNDER INCIDENT
19 NUMBER 3, THE WORD "NOT" WAS INADVERTENTLY OMITTED IN THE
20 AMENDED VERSION, AND THEY'RE CORRECTING THAT TODAY.

21 SO WITH THAT, IF I MAY PROCEED?

22 **JUDGE HENDERSON:** YOU MAY.

23 **DIRECT EXAMINATION BY MS. BARLOW**

24 BY MS. BARLOW

25 **Q** CHIEF DYER, COULD YOU STATE YOUR JOB TITLE FOR THE RECORD,

1 PLEASE?

2 **A** POLICE CHIEF, CITY OF FRESNO.

3 **Q** AND COULD YOU JUST BRIEFLY DESCRIBE YOUR BACKGROUND,
4 EDUCATION FOR THE COURT?

5 **A** I HAVE BEEN THE POLICE CHIEF SINCE AUGUST 1ST OF 2001, AND I
6 HAVE BEEN EMPLOYED WITH THE FRESNO POLICE DEPARTMENT SINCE 1979,
7 MAY 1ST OF 1979. I CURRENTLY HAVE A BACHELOR OF SCIENCE DEGREE
8 IN CRIMINOLOGY FROM FRESNO STATE UNIVERSITY AND A MASTER'S
9 DEGREE IN MANAGEMENT FROM CAL POLY POMONA.

10 DURING THE COURSE OF MY CAREER I WORKED A VARIETY OF
11 ASSIGNMENTS AND WORKED MY WAY UP THROUGH THE RANKS IN VARIOUS
12 TACTICAL ASSIGNMENTS, NARCOTICS SUPERVISOR, SWAT SUPERVISOR,
13 DISTRICT COMMANDER, DEPUTY CHIEF, ASSISTANT CHIEF. SO A VARIETY
14 OF ASSIGNMENTS OVER THE YEARS THAT'S GIVEN ME A GREAT DEAL OF
15 EXPERIENCE.

16 **Q** DO YOU HAVE ANY AFFILIATION WITH THE CALIFORNIA POLICE
17 CHIEFS ASSOCIATION?

18 **A** I'M CURRENTLY THE PRESIDENT OF THE CALIFORNIA POLICE CHIEFS
19 ASSOCIATION THAT REPRESENTS SOME 338 POLICE CHIEFS IN THE STATE
20 OF CALIFORNIA.

21 **MS. BARLOW:** FOR THE COURT'S REFERENCE, IN THE MORE
22 DETAILED DESCRIPTION OF CHIEF DYER'S BACKGROUND AND EDUCATION
23 ARE IN PARAGRAPHS 1 THROUGH 13 OF THE REPORT.

24 BY MS. BARLOW

25 **Q** IN YOUR CAPACITY AS CHIEF, CHIEF DYER, AND IN YOUR EARLIER

1 EMPLOYMENT, HAVE YOU HAD ONGOING AND REGULAR CONTACT WITH
2 PAROLEES IN THE CITY OF FRESNO?

3 **A** YES.

4 **Q** AND CAN YOU JUST SUMMARIZE A LITTLE BIT ABOUT HOW YOU'VE HAD
5 THAT KIND OF CONTACT, IN WHAT CONTEXT?

6 **A** PRIOR TO BEING A CHIEF?

7 **Q** FOR YOUR CAREER.

8 **A** EARLY ON IN MY CAREER, I SPENT FIVE YEARS AS A POLICE
9 OFFICER IN THE CENTRAL POLICING DISTRICT. I WAS ASSIGNED TO
10 CENTRAL. IT WAS THE HIGHEST CONCENTRATION OF PAROLEES IN THE
11 CITY OF FRESNO. SO I DEALT WITH THEM ON A NIGHTLY BASIS.

12 SINCCE THAT TIME I WAS ASSIGNED AS A -- TO A STREET
13 NARCOTICS ENFORCEMENT TEAM WHICH DEALT WITH THE SIGNIFICANT
14 NUMBER OF INDIVIDUALS THAT WERE INVOLVED IN DRUGS, TO INCLUDE
15 PEOPLE ON PAROLE. ALSO, WAS THE SERGEANT OF A PAROLE TACTICAL
16 TEAM, AND OUR JOB WAS TO FOCUS ON THOSE INDIVIDUALS THAT WERE
17 CONTRIBUTING TO CRIME WITHIN OUR COMMUNITY, CAREER CRIMINALS.
18 AND ALSO SERVED AS A SERGEANT TO A MAJOR NARCOTICS UNIT DEALING
19 WITH DRUG OFFENDERS AND OFTENTIMES INDIVIDUALS THAT HAD BEEN
20 RELEASED ON PAROLE.

21 THEN AS A -- IN MY CAPACITY AS A STAFF OFFICER, AS A
22 DISTRICT COMMANDER IN THE SOUTHEAST POLICING DISTRICT,
23 FREQUENTLY WAS INVOLVED IN THE ANALYSIS OF CRIME TRENDS THAT
24 WERE OCCURRING WITHIN THAT POLICING DISTRICT TRYING TO DETERMINE
25 WHO, IN FACT, WAS RESPONSIBLE FOR THOSE CRIMES. IT WAS DURING

1 THAT TIME THAT WE REALIZED A LARGE NUMBER OF THOSE INDIVIDUALS
2 COMMITTING CRIMES WERE INDIVIDUALS THAT WERE EITHER ON PROBATION
3 OR PAROLE, INDIVIDUALS WE REFERRED TO AS TEN PERCENTERS. TEN
4 PERCENT OF THE PEOPLE COMMIT A LARGE PERCENTAGE OF CRIME. THOSE
5 WERE THE INDIVIDUALS WE FOCUSED ON.

6 AND THEN LATER AS THE POLICE CHIEF I DEVELOPED WHAT
7 WAS REFERRED TO IN OUR DEPARTMENT AS THE CRIME VIEW SYSTEM, AND
8 THAT IS FREQUENT ANALYSIS OF CRIME WITHIN OUR CITY TO DETERMINE
9 WHO, IN FACT, IS RESPONSIBLE FOR COMMITTING CERTAIN TYPES OF
10 CRIMES, WHAT THEIR MOTIVES ARE, WHAT THEIR -- THE TIMES OF DAY,
11 THE DAYS OF WEEK THAT THEY'RE COMMITTING THOSE CRIMES. SO
12 EXTENSIVE RESEARCH IN TERMS OF ANALYSIS OF CRIME.

13 **Q** ALL RIGHT. SO EVEN TODAY YOU CONTINUE TO BE INVOLVED IN
14 WHAT'S GOING ON WITH PAROLEES IN YOUR COMMUNITY?

15 **A** VERY HANDS ON IN THAT ANALYSIS, YES.

16 **Q** ARE YOU FAMILIAR WITH THE CASELOAD AND SERVICES PROVIDED BY
17 THE PAROLE OFFICERS IN THE CITY OF FRESNO?

18 **A** I'M SORRY. I DIDN'T HEAR THAT.

19 **Q** I'M SORRY. ARE YOU FAMILIAR WITH THE CASELOAD AND SERVICES
20 PROVIDED BY PAROLE TO THE PAROLEES IN FRESNO?

21 **A** YES.

22 **Q** DO YOU KNOW HOW MANY PAROLEES THERE ARE IN FRESNO AT THE
23 CURRENT TIME?

24 **MR. SPECTER:** FOUNDATION, YOUR HONOR.

25 **JUDGE HENDERSON:** LAY A FOUNDATION FOR THIS

1 KNOWLEDGE.

2 **MS. BARLOW:** ALL RIGHT. WELL, WE HAVE CDCR DATA. WE
3 COULD PUT UP EXHIBIT DI 633.

4 (DOCUMENT DISPLAYED.)

5 **JUDGE KARLTON:** IS THAT THE BASIS OF YOUR
6 UNDERSTANDING?

7 **THE WITNESS:** YES.

8 BY MS. BARLOW

9 **Q** DO YOU ALSO HAVE INDEPENDENT UNDERSTANDING OF WHAT THE
10 APPROXIMATE NUMBER IS?

11 **A** YES.

12 **JUDGE KARLTON:** HOW WOULD HE DO THAT? DO YOU THINK
13 HE GOES OUT AND COUNTS PAROLEES EVERY DAY?

14 BY MS. BARLOW

15 **Q** CHIEF DYER, WOULD YOU EXPLAIN HOW YOU KNOW HOW MANY PAROLEES
16 THERE ARE IN FRESNO --

17 **A** WE TRACK THE -- WE STAY IN CLOSE CONTACT WITH THE LOCAL
18 PAROLE OFFICE TO FIND OUT HOW MANY PAROLEES ARE WITHIN OUR
19 JURISDICTION AT ANY GIVEN TIME. THAT NUMBER FLUCTUATES
20 SIGNIFICANTLY.

21 YOU KNOW, ONE OF THE OTHER THINGS THAT WE TRACK IS
22 FIND OUT HOW MANY ADMINISTRATIVE PLACEMENTS HAVE BEEN ALLOWED TO
23 OCCUR WITHIN OUR CITY, MEANING THAT FOLKS HAVE BEEN PLACED FROM
24 OTHER JURISDICTIONS INTO OUR CITY.

25 SO WE DO TRY TO KEEP A VERY CONSISTENT LOOK IN TERMS

1 OF PAROLED PAROLEES WITHIN OUR CITY.

2 **Q** ALL RIGHT. AND --

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

4 WHAT'S AN EXAM OF A PAROLEE BEING PLACED IN YOUR
5 JURISDICTION FROM ANOTHER JURISDICTION? HOW DOES THAT WORK?

6 **THE WITNESS:** A GOOD EXAMPLE MIGHT BE, WE HAD ONE
7 HERE RECENTLY WHERE AN INDIVIDUAL HAD COMMITTED A CRIME IN
8 ANOTHER JURISDICTION. SO THAT WAS HIS COUNTY OF COMMITMENT
9 OFFENSE. HE WAS PLACED INTO PRISON. HE WAS RELEASED TO THAT
10 JURISDICTION, OR WAS GOING TO BE, BUT HE HAD MADE THREATS TO THE
11 PAROLE AGENT, AND SO THEY FELT THAT THAT INDIVIDUAL WOULD BE
12 BETTER SUITED IN ANOTHER JURISDICTION. HE WAS THEN PLACED INTO
13 OUR JURISDICTION.

14 ANOTHER EXAMPLE MIGHT BE WHERE, IF AN INDIVIDUAL
15 COMMITS A HEINOUS CRIME IN ANOTHER COUNTY AND THE VICTIM, THE
16 PREVIOUS VICTIM, COMES FORWARD AND ASKS THAT THAT PERSON NOT BE
17 PLACED BACK INTO THAT JURISDICTION, THEY WILL ADMINISTRATIVELY
18 PLACE THAT INDIVIDUAL INTO ANOTHER COUNTY. SOMETIMES THEY GET
19 PUSHED BACK AND FORTH, BUT, GENERALLY, WE TRY TO MONITOR THAT SO
20 IT DOESN'T BECOME TOO MUCH.

21 **JUDGE HENDERSON:** THANK YOU.

22 BY MS. BARLOW

23 **Q** NOW, IF WE COULD, ON EXHIBIT -- I'M SORRY. YOU EXPLAINED
24 WHY YOU KNOW THE NUMBER. WHAT'S THE NUMBER OF PAROLEES
25 CURRENTLY APPROXIMATELY IN FRESNO?

1 **A** JUST UNDER 5,000 PAROLEES IN THE -- IN FRESNO.

2 **Q** IS THAT THE COUNTY, AND THERE'S A SMALLER NUMBER IN THE
3 CITY?

4 **A** WELL, THAT'S THE COUNTY OF FRESNO. GENERALLY, ABOUT 80 TO
5 85 PERCENT OF THE PAROLEES LIVE WITHIN THE CITY OF FRESNO,
6 ALTHOUGH A MUCH HIGHER NUMBER OF THOSE INDIVIDUALS FREQUENT THE
7 CITY OF FRESNO ON A DAILY BASIS.

8 **Q** ALL RIGHT. AND IF I COULD REFER TO EXHIBIT 633, ON THE LINE
9 THAT IS FOR FRESNO, IF WE COULD HIGHLIGHT THAT?

10 CHIEF, DOES THAT REFLECT ACCURATELY ABOUT WHAT YOU
11 HAD AT THE END OF 2007 IN TERMS OF PAROLEES?

12 **A** YES.

13 **Q** AND THAT'S 3.9 PERCENT OF THE CDCR POPULATION, CORRECT?

14 **A** THAT'S CORRECT.

15 **Q** NOW, DO YOU HAVE AN OPINION BASED UPON YOUR INTERACTION WITH
16 PAROLE OFFICERS AND PAROLEES IN YOUR COMMUNITY AS TO THE
17 ADEQUACY -- I'M SORRY -- THE AMOUNT OF SUPERVISION OF PAROLEES,
18 IF IT'S ADEQUATE?

19 **A** YES.

20 **Q** WHAT IS THAT OPINION?

21 **A** WELL, IT'S -- THE LEVEL OF SUPERVISION OF PAROLE -- PAROLEES
22 IN OUR COMMUNITY IS NOT ADEQUATE. IN FACT, CURRENTLY, EACH
23 PAROLE AGENT SUPERVISES APPROXIMATELY ONE HUNDRED INDIVIDUALS
24 THAT ARE ON PAROLE, ALTHOUGH THAT NUMBER VARIES WITH INDIVIDUALS
25 THAT PERHAPS ARE THIRD STRIKERS. THAT NUMBER WOULD CHANGE IN

1 TERMS OF WHAT THE LEVEL OF SUPERVISION IS.

2 I BELIEVE THE CASELOAD FOR THAT IS -- SEX OFFENDERS
3 ARE SUPERVISED AT A RATIO OF 1-TO-20, AND I BELIEVE THIRD
4 STRIKERS ARE SUPERVISED AT A RATE OF ONE PAROLE AGENT FOR 40
5 PAROLEES.

6 **Q** ALL RIGHT. SO YOU THINK IT'S INADEQUATE. IS THAT BASED
7 UPON FUNDING, STAFFING, THE NUMBER OF PAROLE AGENTS, THE
8 CASELOAD?

9 **A** WELL, THAT NUMBER HAS INCREASED SIGNIFICANTLY OVER THE
10 YEARS, THE RATIO. I CAN REMEMBER WHEN THE NUMBER OF PAROLEES
11 BEING SUPERVISED BY AN AGENT WAS FAR LESS.

12 **Q** NOW, DO YOU HAVE AN OPINION ABOUT THE SERVICES THAT ARE
13 PROVIDED TO PAROLEES IN FRESNO?

14 **A** YES.

15 **Q** WHAT IS THAT OPINION?

16 **A** BASED ON -- BASED ON THE -- MY EXPERIENCE IN FRESNO, THE
17 SERVICES BEING PROVIDED FOR INDIVIDUALS GETTING OUT OF PRISON IS
18 NOT ADEQUATE. THERE ARE NOT ENOUGH FACILITIES FOR TREATMENT,
19 ESPECIALLY FOR THOSE INDIVIDUALS THAT ARE ADDICTED TO DRUGS, NOT
20 ONLY FOR PEOPLE GETTING OUT OF PRISON, BUT FOR PEOPLE THAT ARE
21 ON PROBATION IN OUR COUNTY.

22 AND I'VE ALSO SEEN THAT -- IT'S BEEN MY EXPERIENCE
23 THAT EVEN WITH THE SERVICE PROVIDERS BEING AVAILABLE, MANY OF
24 THE INDIVIDUALS GETTING OUT OF PRISON CHOOSE NOT TO TAKE
25 ADVANTAGE OF THOSE SERVICE PROVIDERS.

1 Q ALL RIGHT. NOW, YOU PUT TOGETHER A PAROLE APPREHENSION TEAM
2 IN FRESNO THAT YOU TALKED ABOUT IN YOUR REPORT WHEN YOU BECAME
3 CHIEF. WHY DID YOU DO THAT?

4 A I RECOGNIZED EARLY ON THAT SUPPRESSION OR ENFORCEMENT WASN'T
5 GOING TO BE THE ANSWER. WE WERE NOT GOING TO ARREST OUR WAY OUT
6 OF OUR CRIME PROBLEM. I STILL BELIEVE THAT, AND I BELIEVE THERE
7 HAS TO BE A BALANCED APPROACH, AND THAT IS STRONG ENFORCEMENT,
8 WHAT YOU REFER TO AS THE HAMMER, BUT THERE ALSO HAS TO BE THE
9 TREATMENT PREVENTION-INTERVENTION SIDE, WHICH WE REFER TO AS THE
10 HOPE. SO IT'S THE HAMMER, THE ENFORCEMENT, THAT PROVIDES AN
11 UNCOMFORTABLE ENVIRONMENT FOR MANY OF THESE INDIVIDUALS TO SEEK
12 TREATMENT. IT PROVIDES THE INCENTIVE FOR THESE INDIVIDUALS TO
13 SEEK TREATMENT, TO SEEK COUNSELING, TO TRY TO CHANGE THEIR LIFE.

14 Q AND YOU TALK ABOUT HOPE. DID YOU ESTABLISH ANY PROGRAMS TO
15 WORK ON THAT SIDE?

16 A WE -- AS PART OF OUR -- I WORKED WITH PAROLE. INITIALLY, WE
17 DID NOT HAVE AN ORIENTATION PROGRAM IN FRESNO. OTHER CITIES
18 DID, AND SO I CONTACTED FOLKS IN THE CALIFORNIA DEPARTMENT OF
19 CORRECTIONS IN SACRAMENTO TO TRY TO DETERMINE WHY WE DID NOT
20 HAVE SOMETHING LIKE THAT IN FRESNO.

21 THEY SAID THERE WAS A LACK OF FUNDING. I SAID I
22 WOULD HELP OUT, PROVIDE WHATEVER RESOURCES WE COULD, AND WE DID.
23 AND TODAY WE HAVE A VERY EFFECTIVE ORIENTATION PROGRAM WHERE ON
24 A VERY FREQUENT BASIS, EITHER EVERY OTHER WEEK OR EVERY WEEK
25 WHEN INDIVIDUALS ARE RELEASED FROM PRISON, THEY COME TO AN

1 ORIENTATION. SERVICE PROVIDERS ARE THERE, WHETHER IT BE FOR JOB
2 SKILLS, JOB PLACEMENT, COUNSELING, ALL OF THOSE THINGS ARE MADE
3 AVAILABLE TO INDIVIDUALS GETTING OUT OF PRISON. AS I SAID
4 EARLIER, MANY OF THEM CHOOSE NOT TO TAKE ADVANTAGE OF THOSE
5 SERVICES.

6 **Q** ALL RIGHT. NOW, YOU MENTIONED THE CRIME VIEW PROGRAM THAT
7 YOU STARTED ALSO. HAS THE DATA AND INTELLIGENCE GATHERED IN
8 THAT PROGRAM ALLOWED YOU TO REACH ANY CONCLUSIONS ABOUT THE ROLE
9 OF PAROLEES IN CRIME IN FRESNO?

10 **A** OUR CRIME VIEW MEETINGS FOR ME -- I'M PARTICIPATING ON A
11 MONTHLY BASIS -- AND THAT IS THAT ALL OF OUR COMMANDERS COME
12 TOGETHER. WE REVIEW VERY DETAILED, TIMELY, ACCURATE CRIME DATA
13 IN TERMS OF WHERE CRIME IS BEING COMMITTED, WHO'S COMMITTING
14 THAT CRIME, AND ONE OF THE THINGS THAT I HAVE EXPERIENCED IN
15 THOSE MEETINGS IS THAT THERE IS A REOCCURRING THEME, AND THAT
16 REOCCURRING THEME IS THERE ARE A LARGE PERCENTAGE OF INDIVIDUALS
17 IN OUR COMMUNITY COMMITTING CRIMES THAT ARE ON PAROLE AND/OR ON
18 PROBATION, AND, SO, THAT IS A REOCCURRING THEME THAT HAS COME
19 UP.

20 OUR FOCUS HAS BEEN ON GANGS, DRUGS, AND PAROLE
21 VIOLATORS, BECAUSE WE KNOW THOSE INDIVIDUALS CONTRIBUTE TO A
22 LARGE PERCENTAGE OF CRIME. WE KNOW IN OUR EXPERIENCE AND IN OUR
23 RESEARCH THAT ABOUT TEN PERCENT OF THE PEOPLE COMMIT A MINIMUM
24 OF 50 PERCENT OF THE CRIMES. SO WE TRY TO TARGET THOSE TEN
25 PERCENTERS, AND PAROLEES AND GANG MEMBERS MAKE UP A LARGE

1 PERCENTAGE OF THAT TEN PERCENT.

2 **JUDGE HENDERSON:** COULD I INTERRUPT, COUNSEL?

3 YOU'VE MENTIONED, I BELIEVE AT LEAST TWICE, CHIEF,
4 THAT TEN PERCENT OF THE SERVICES ARE PEOPLE ARE ON PROBATION OR
5 ON PAROLE, AND YOU'VE MENTIONED -- BUT THEN YOUR FOCUS IS ON
6 PAROLE AND YOU SEEM NOT TO WORRY ABOUT PROBATION. IS THAT A
7 CORRECT PERCEPTION, AND WHY IS THAT, IF SO?

8 **THE WITNESS:** WE ACTUALLY FOCUS ON BOTH. WE DO
9 PROBATION SWEEPS. WE DO PAROLE SWEEPS. WE TARGET THOSE
10 INDIVIDUALS IN OUR COMMUNITY THAT WE BELIEVE TO BE INVOLVED IN
11 CRIME ACTIVITY, PEOPLE THAT ARE NOT IN COMPLIANCE WITH THEIR
12 PAROLE CONDITIONS. AND SO, YES, IT IS BOTH PROBATION AND
13 PAROLE. I'VE PROBABLY FOCUSED MORE HERE ON THE PAROLE SIDE
14 SINCE THIS IS --

15 **JUDGE HENDERSON:** FINE.

16 **MS. BARLOW:** THANK YOU.

17 BY MS. BARLOW

18 **Q** IN YOUR REPORT AT PAGE 3 YOU GAVE A SUMMARY OF THE TYPES OF
19 CRIMES WHICH -- THE COMMITMENT CRIMES FOR PAROLEES RELEASED INTO
20 FRESNO. COULD YOU TELL US WHERE THAT DATA IS DRAWN FROM?

21 **A** WHAT ARE YOU REFERRING TO?

22 **JUDGE KARLTON:** THE LONG LIST ON PAGE 3 OF VARIOUS
23 CRIMES --

24 **MS. BARLOW:** IT'S IN PARAGRAPH 15. IT'S ACTUALLY NOW
25 ON PAGE -- PAGE NUMBERED 4. I APOLOGIZE.

1 **THE WITNESS:** COULD YOU REPEAT THE QUESTION THERE?

2 **JUDGE KARLTON:** SHE WANTS TO KNOW WHERE THAT DATA IS
3 DRAWN FROM.

4 **THE WITNESS:** THAT WAS INFORMATION THAT WAS
5 PROVIDED -- PROVIDED TO OUR DEPARTMENT FROM A LOCAL PAROLE
6 SUPERVISOR, DAN RENAREA (PHONETIC). HE WORKS OUT OF THE FRESNO
7 OFFICE. WE HAD ASKED FOR A SNAPSHOT IN TIME. WE KNEW THAT THIS
8 PRISONER RELEASE ISSUE WAS A VERY SIGNIFICANT ISSUE AND THAT IT
9 MIGHT -- THAT IT MIGHT HAVE A SIGNIFICANT IMPACT ON OUR
10 COMMUNITY. SO WE HAD ASKED FOR WHAT WOULD THAT MEAN IF SOME
11 40,000 -- AT THE TIME THE NUMBER 40,000 WAS BEING DISCUSSED --
12 IF 40,000 INMATES WERE RELEASED INTO OUR COMMUNITY, WHAT WOULD
13 THAT MEAN.

14 AT THAT TIME HE PUT TOGETHER A LOOK AT THREE MONTHS
15 OF RECENT INDIVIDUAL -- INDIVIDUALS THAT WERE RECENTLY RELEASED
16 INTO OUR COMMUNITY, AND THERE WAS ABOUT 120 PER MONTH THAT WERE
17 BEING RELEASED, AND HE PROVIDED US WITH A RAW NUMBER OF WHAT
18 THOSE COMMITMENT OFFENSES WERE FOR THOSE 120. AND BASED ON
19 THOSE RAW NUMBERS OVER THAT THREE-MONTH PERIOD, WE EQUATED THOSE
20 TO PERCENTAGES. SO, FOR EXAMPLE, 12.5 PERCENT OF THE 120 THAT
21 WERE RELEASED HAD AN ORIGINAL COMMITMENT OFFENSE FOR AUTO THEFT.

22 **MS. BARLOW:** OKAY.

23 **THE WITNESS:** THAT'S WHERE WE GOT THAT DATA.

24 **JUDGE REINHARDT:** THIS IS NOT DATA FOR THE KINDS OF
25 PEOPLE WHO WOULD BE RELEASED UNDER PLAINTIFFS' PROPOSAL? THIS

1 IS DATA AS TO THOSE WHO ARE CURRENTLY BEING RELEASED?

2 **THE WITNESS:** YES, SIR. BUT THE ONES THAT WE FOCUSED
3 ON WERE THE -- WHAT HAVE BEEN RECENTLY BEING REFERRED TO AS LOW
4 LEVEL OFFENDERS, DRUG POSSESSION AND PROPERTY CRIMES. THOSE
5 TYPES WERE THE ONES THAT MADE UP THE -- PRIMARILY THE LIST,
6 ALTHOUGH THERE WAS A SMALL PERCENTAGE OF SEX OFFENSES IN THERE
7 AS WELL, BUT THAT WAS KIND OF THE MAKEUP OF WHO HAD BEEN
8 RELEASED IN OUR COMMUNITY.

9 **BY MS. BARLOW**

10 **Q** SO THE PURPOSE IN PUTTING THIS INFORMATION IN HERE IS JUST
11 TO SORT OF EXPLAIN HOW YOU -- WHAT YOU WERE LOOKING AT WHEN YOU
12 CAME TO YOUR CONCLUSIONS?

13 **JUDGE KARLTON:** HE DIDN'T DO IT FOR THAT PURPOSE. HE
14 APPARENTLY HAD IT DRAWN FOR USE IN THIS TRIAL, CORRECT?

15 **THE WITNESS:** INITIALLY, NOT FOR THE TRIAL. BUT
16 EVENTUALLY WE USED IT FOR THIS TRIAL, YES, SIR.

17 **JUDGE KARLTON:** NO. I WANT TO HONE IN ON WHAT YOU
18 WERE DOING. IT WAS USED FOR PURPOSES OF BEING PREPARED TO COME
19 TO THIS TRIAL AND TESTIFY AS YOU HAVE?

20 **THE WITNESS:** INITIALLY, SIR, IT WAS USED FOR THE
21 SETTLEMENT DISCUSSIONS THAT WE WERE INVOLVED IN, YES.

22 **JUDGE KARLTON:** FINE. BUT IT WAS ALL INVOLVED IN
23 THIS LITIGATION?

24 **THE WITNESS:** YES.

25 **JUDGE KARLTON:** YOU WOULDN'T HAVE DONE IT OTHERWISE?

1 **THE WITNESS:** THAT'S CORRECT. YES.

2 **MS. BARLOW:** THANK YOU.

3 BY MS. BARLOW

4 **Q** YOU MAKE A REFERENCE IN YOUR REPORT TO THOSE BEING SENTENCED
5 AS CAREER CRIMINALS, AND YOU TALKED ABOUT THE TEN PERCENTERS.

6 AND YOU SAID IN YOUR REPORT THAT THOSE BEING SENTENCED TO STATE
7 PRISON ARE CAREER CRIMINALS. WHAT'S THE BASIS FOR THAT OPINION?

8 **A** IT'S BEEN MY EXPERIENCE OVER THE YEARS THAT INDIVIDUALS THAT
9 COMMIT CRIMES ON THEIR FIRST OFFENSE, OR EVEN SECOND OFFENSE,
10 CRIMES SUCH AS BURGLARY, AUTO THEFT, GENERALLY WHAT HAPPENS IS
11 THOSE INDIVIDUALS ARE EITHER DEFERRED INTO SOME FORM OF A
12 TREATMENT PROGRAM, THEY'RE PLACED ON PROBATION, THEY ARE
13 SENTENCED TO LOCAL TIME, BUT, GENERALLY, THOSE INDIVIDUALS ARE
14 NOT SENTENCED TO STATE PRISON. AND IT ISN'T UNTIL THOSE
15 INDIVIDUALS HAVE GONE THROUGH THE SYSTEM SEVERAL TIMES THAT
16 THEY -- A DECISION IS MADE TO SENTENCE THOSE PEOPLE TO PRISON.

17 **Q** NOW, IN YOUR REPORT YOU ALSO TALK ABOUT 10 PERCENT OF
18 OFFENDERS COMMITTING 80 PERCENT OF CRIME, AND YOU REFER TO
19 STUDIES. WERE THERE PARTICULAR STUDIES THAT YOU REFERENCED?

20 **A** THERE WAS DIFFERENT STUDIES -- I DON'T HAVE THEM IN FRONT OF
21 ME, BUT I'VE REFERENCED THEM AND PROVIDED THEM -- THAT WE LOOKED
22 AT, AND WE USED A CONSERVATIVE ESTIMATE INITIALLY, THAT 10
23 PERCENT COMMITTED 50 PERCENT OF THE CRIME. THERE HAVE BEEN SOME
24 STUDIES THAT SHOW THAT UPWARDS OF 80 PERCENT OF THE CRIME,
25 ESPECIALLY FOR THE CRIMES OF BURGLARY AND ROBBERY, 10 PERCENT OF

1 THE PEOPLE COMMIT 80 PERCENT OF THOSE CRIMES AND, YES.

2 **JUDGE KARLTON:** TEN PERCENT OF THE PEOPLE OR TEN
3 PERCENT OF THE PEOPLE CONVICTED?

4 **THE WITNESS:** TEN PERCENT OF THE PEOPLE THAT WE COME
5 IN CONTACT WITH AND ARREST ARE RESPONSIBLE FOR THOSE, SO I DON'T
6 KNOW IF THAT HAS BEEN TAKEN FURTHER.

7 **JUDGE KARLTON:** TEN PERCENT OF THOSE ARRESTED, IN
8 YOUR VIEW, COMMIT UPWARDS OF 80 PERCENT OF THE CRIMES IN YOUR
9 COMMUNITY?

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

11 **JUDGE HENDERSON:** I UNDERSTOOD, AND IT MAY BE THE
12 SAME THING THAT YOU CALL TEN PERCENTERS, THOSE ON PROBATION OR
13 ON PAROLE?

14 **THE WITNESS:** THEY MAKE UP -- THEY'RE A PART OF THAT
15 TEN PERCENT, YES, SIR.

16 **JUDGE HENDERSON:** THEY'RE A PART OF IT?

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

18 BY MS. BARLOW

19 **Q** ALL RIGHT. AND DID YOU DERIVE THAT INFORMATION FROM
20 "RATIONAL CHOICE AND CRIMINAL BEHAVIOR," THAT 10 PERCENT COMMIT
21 80 PERCENT OF THE CRIME?

22 **A** WHAT WAS THE QUESTION? I'M SORRY.

23 **Q** IF WE COULD PUT UP EXHIBIT NO. 636, THE TEN PERCENT OF
24 CRIMINALS RESPONSIBILITY FOR 80 PERCENT. YOU SAID YOU RELIED ON
25 A STUDY. WAS THAT "RATIONAL CHOICE AND CRIMINAL BEHAVIOR"?

1 **A** YES, IT IS.

2 **Q** IS THAT CONSISTENT WITH YOUR EXPERIENCE IN THE FIELD?

3 **A** YES, IT IS.

4 **Q** NOW, YOU ALSO SAY IN YOUR REPORT THAT THE AVERAGE INMATE HAS
5 COMMITTED 12 CRIMES BEFORE THEIR CURRENT ARREST. WHAT WAS THE
6 SOURCE FOR THAT INFORMATION?

7 **A** THERE WAS A RAND STUDY THAT WAS CONDUCTED, AND I BELIEVE IT
8 OCCURRED IN TWO STATES, ONE OF THEM BEING, I BELIEVE, WISCONSIN,
9 THE OTHER NEW JERSEY. AND IN ONE OF THOSE, ONE OF THE STUDIES,
10 IT SHOWED THAT BEFORE AN INDIVIDUAL WAS EVER ARRESTED, AND THIS
11 WAS THE YEAR BEFORE BEING INCARCERATED, THEY HAD COMMITTED 15
12 FELONY CRIMES, AND THERE WAS ANOTHER STUDY THAT STATED THAT THEY
13 HAD COMMITTED 12, AND THAT WAS SELF REPORTED FOR INDIVIDUALS
14 THAT HAD BEEN CONVICTED.

15 **Q** WE'VE HEARD FROM OTHER WITNESSES THAT THOSE NUMBERS ARE
16 HIGHLY INFLATED. DO YOU AGREE WITH THAT?

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

18 **Q** AND WHY NOT?

19 **A** I THINK GENERALLY THERE'S -- QUITE OFTEN, I SHOULD SAY, THAT
20 THOSE NUMBERS ARE PROBABLY UNDERREPORTED. AND THERE HAS BEEN
21 OTHER STUDIES THAT SHOW THAT THOSE NUMBERS ARE UNDERREPORTED,
22 THAT IN SOME CASES INDIVIDUALS ARE COMMITTING HUNDREDS OF CRIMES
23 BEFORE THEY'RE EVER APPREHENDED, AND WHAT I PREPARED FOR MY
24 REPORT WAS A VERY CONSERVATIVE ESTIMATE.

25 **Q** ALL RIGHT. THANK YOU.

1 **MS. BARLOW:** NOW, WE DO HAVE, YOUR HONORS, EXHIBIT
2 653 AND 637, IF WE COULD PUT UP THE FIRST PAGE 653?

3 (DOCUMENT DISPLAYED.)

4 **BY MS. BARLOW**

5 **Q** IS THIS ONE OF THE ARTICLES THAT CONTAINS THE DATA YOU
6 RELIED ON FOR THIS INFORMATION?

7 **A** THERE WAS AN NIJ STUDY THAT WAS CONDUCTED THAT SHOWED A
8 LARGE NUMBER OF CRIMES IN ADDITION TO THE RESEARCH THAT WE
9 PROVIDED FROM THE RAND STUDY.

10 **Q** IF WE COULD JUST PUT UP THE NEXT PAGE, SECOND PARAGRAPH
11 UNDER "ANNUAL OFFENDER RATES"?

12 **A** I THINK IT WOULD BE THE NEXT PARAGRAPH.

13 **Q** WELL, THIS ONE -- I'M SORRY.

14 THAT INCLUDED INMATES FROM CALIFORNIA, CORRECT?

15 **A** THAT'S CORRECT.

16 **Q** OKAY. AND THEN, YES, THE PARAGRAPH UNDER "THE TABLE
17 REPRESENTS". OKAY.

18 "WHEN SUMMED ACROSS APPROPRIATE CATEGORIES,
19 THE STUDY FOUND THAT INMATES AVERAGE BETWEEN 187
20 AND 287 CRIMES PER YEAR, EXCLUSIVE OF DRUG
21 DEALS."

22 WAS YOUR CALCULATION ABOUT THE NUMBER OF CRIMES
23 COMMITTED ALSO EXCLUSIVE OF DRUG DEALS?

24 **A** THE RESEARCH THAT I RELIED ON, YES, IT WAS EXCLUSIVE OF DRUG
25 ARRESTS, DRUG CRIMES.

1 Q AND ALSO NUMBER 637?

2 (DOCUMENT DISPLAYED.)

3 BY MS. BARLOW

4 Q IS THIS ALSO ONE OF THE STUDIES -- OR SUMMARIES OF A STUDY
5 THAT YOU RELIED UPON?

6 A YES.

7 Q IF WE COULD GO TO BATES PAGE 200, PARAGRAPH BEGINNING
8 "THIRD"? THIS IS A RECITATION OF THE RAND STUDY SHOWING 15
9 CRIMES EXCLUDING DRUG CRIMES, CORRECT?

10 AND THEN IN THE NEXT TWO PARAGRAPHS DOWN -- I'M
11 SORRY. IS THAT CORRECT, CHIEF?

12 A YES.

13 Q AND ALSO WERE YOU LOOKING AT THE STUDIES REFERENCED HERE
14 FROM NEW JERSEY AND WISCONSIN?

15 A THAT'S CORRECT.

16 THE CLERK: FIVE MINUTES, COUNSEL.

17 BY MS. BARLOW

18 Q NOW, IF YOU COULD TELL US WHY YOU BELIEVE, CHIEF, THAT THE
19 REDUCTION IN PRISON POPULATION OF 52,000 THAT'S PROPOSED IS
20 GOING TO CREATE A PUBLIC SAFETY HAZARD; COULD YOU TELL US WHY
21 THAT IS?

22 JUDGE HENDERSON: FOR FRESNO?

23 MS. BARLOW: I'M SORRY?

24 JUDGE HENDERSON: FOR FRESNO?

25 MS. BARLOW: ACTUALLY, YOUR HONOR, HIS REPORT TALKS

1 ABOUT FRESNO AND THE CENTRAL VALLEY.

2 **JUDGE HENDERSON:** OKAY.

3 **THE WITNESS:** THE -- WHEN INDIVIDUALS ARE RELEASED
4 FROM PRISON, THERE IS A HIGH LIKELIHOOD THAT THEY ARE GOING TO
5 CONTINUE IN THEIR CRIMINAL LIFESTYLE. IN FACT, IN CALIFORNIA I
6 BELIEVE THAT NUMBER IS 70 PERCENT OR GREATER THAT RECIDIVATE.
7 AND WHEN WE LOOK AT IF 52,000 INMATES ARE RELEASED BACK INTO OUR
8 COMMUNITY, DEPENDING ON THAT TIMEFRAME, WE HAVE INFORMATION THAT
9 ABOUT 3.9 PERCENT OF THOSE INDIVIDUALS WOULD MORE THAN LIKELY BE
10 PLACED IN FRESNO COUNTY. OF THOSE, ABOUT 80 PERCENT WOULD COME
11 INTO THE CITY OF FRESNO, MINIMUM MAYBE 80 PERCENT. THAT WOULD
12 BE JUST OVER 1,600 INMATES RELEASED BACK INTO THE CITY OF FRESNO
13 PREMATURELY. IF WE FURTHERED WHAT WE'VE ALREADY SAID, THAT
14 THERE IS A 70 PERCENT LIKELIHOOD THAT THEY WOULD REOFFEND --

15 **JUDGE KARLTON:** NO. THAT THEY WOULD RECIDIVATE.

16 **THE WITNESS:** -- RECIDIVATE. AND IF WE LOOK AT THE
17 FACT THAT THOSE INDIVIDUALS WOULD LIKELY COMMIT AT MINIMUM 12
18 CRIMES BEFORE THEY WERE APPREHENDED, THAT WOULD MEAN THERE WOULD
19 BE A SUBSTANTIAL NUMBER OF CRIMES COMMITTED IN THE CITY OF
20 FRESNO, UPWARDS OF 13,000 CRIMES OVER THAT THREE-YEAR PERIOD.

21 **JUDGE REINHARDT:** THAT WOULD BE COMMITTED PREMATURELY
22 AS OPPOSED TO COMMITTING THEM SEVERAL MONTHS LATER.

23 **THE WITNESS:** YES, SIR. THEY WOULD BE COMMITTED AT
24 SOME POINT DURING THAT THREE-YEAR PERIOD. I DON'T KNOW -- YOU
25 KNOW, I KNOW THAT THERE'S --

1 **JUDGE KARLTON:** THOSE PEOPLE THEY'RE TALKING ABOUT
2 RELEASING ARE GOING TO BE RELEASED A COUPLE OF MONTHS LATER IN
3 ANY EVENT. THEY ARE GOING TO BE IN YOUR COMMUNITY IN EXACTLY
4 THE SAME NUMBERS, IN ANY EVENT, AND THEY ARE GOING TO COMMIT THE
5 SAME NUMBER CRIMES, IF THEY COMMIT CRIMES, IN ANY EVENT.

6 **THE WITNESS:** THAT IS A POSSIBILITY. I DON'T REALLY
7 KNOW --

8 **JUDGE REINHARDT:** WELL, IT'S POSSIBILITY THEY WON'T
9 COMMIT CRIMES AT ALL.

10 **JUDGE KARLTON:** AT ALL.

11 **JUDGE REINHARDT:** ANYTHING IS A POSSIBILITY.

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

13 **JUDGE REINHARDT:** WE'VE GONE THROUGH THIS, SEVERAL
14 DAYS OF TRIAL, THAT ANYTHING IS A POSSIBILITY. BUT BEYOND IT
15 BEING A POSSIBILITY, CAN YOU SAY THAT THIS IS A PROBABILITY, AT
16 LEAST, THAT THEY WILL COMMIT CRIMES AND THAT THEY WILL BE
17 DELAYED OR ADVANCED BY A COUPLE OF MONTHS, BUT YOU WILL HAVE THE
18 SAME NUMBER OF CRIMES IN YOUR COMMUNITY?

19 **THE WITNESS:** I UNDERSTAND THAT, SIR. I DO AGREE
20 THAT THOSE CRIMES WILL BE ACCELERATED.

21 **JUDGE REINHARDT:** THEY WILL BE COMMITTED EARLIER
22 RATHER THAN THREE MONTHS LATER.

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

24 BY MS. BARLOW

25 **Q** IF I MAY, THE EARLY RELEASE PORTION IS ONLY PART OF THE

1 PROPOSAL. IT'S TO REDUCE 52,000 ENTIRELY, AND THOSE PEOPLE
2 WOULD NOT JUST BE RELEASED INTO YOUR COMMUNITY. THEY WOULD BE
3 STAYING IN YOUR COMMUNITY, AT LEAST SOME OF THEM.

4 THE COURT HAS HEARD TESTIMONY THAT THERE'S GOING TO
5 BE A MINIMAL AND INSIGNIFICANT IMPACT FROM EITHER THE EARLY
6 RELEASE OR THE DIVERSION OR TAKING PEOPLE OFF PAROLE. DO YOU
7 AGREE WITH THAT?

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

9 **Q** WHY NOT?

10 **A** WELL, IF YOU ARE ONE OF THE VICTIMS THAT ARE GOING TO BE
11 VICTIMIZED BY ONE OF THESE INDIVIDUALS, THAT IMPACT IS NOT
12 MINIMAL. IT MAY BE MINIMALLY -- OR MINIMAL IN THE EYES OF SOME
13 WHO ARE JUST LOOKING AT STATISTICS AND NOT LOOKING AT THE
14 PERSONAL IMPACT THAT IS OCCURRING TO THESE INDIVIDUALS THAT ARE
15 HAVING THEIR HOMES BROKEN INTO; THE FACT THAT SENIORS MAY HAVE
16 THEIR HOUSES BROKEN INTO; THE IMPACT THAT THAT HAS ON THAT
17 INDIVIDUAL PSYCHOLOGICALLY; THE FACT THAT SOMEBODY HAS INVADED
18 THEIR HOME; SOMEONE HAS, AS I'VE REFERRED TO IN A FEW EXAMPLES,
19 HAD THEIR IDENTITY STOLEN BY THESE INDIVIDUALS; SOMEONE THAT HAS
20 BEEN CARJACKED BY SOMEBODY --

21 **JUDGE REINHARDT:** YOU KNOW, I DON'T THINK IT'S
22 NECESSARY TO RUN THROUGH THE WHOLE RANGE OF CRIMES.

23 **THE WITNESS:** SURE.

24 **JUDGE REINHARDT:** NOR TO SUGGEST THAT PEOPLE ARE
25 INSENSITIVE TO THE VICTIMS OF CRIMES.

1 **THE WITNESS:** RIGHT.

2 **JUDGE REINHARDT:** THAT'S REALLY NOT THE ISSUE.

3 MAYBE WE SHOULD BE SENSITIVE TO THE PEOPLE WHO WILL
4 NOT BE VICTIMIZED OR BURGLARIZED BECAUSE THESE PEOPLE HAVE BEEN
5 SENT BACK TO JAIL THREE MONTHS EARLIER AND THEN THE OTHER PEOPLE
6 ARE NOT GOING TO BE THE VICTIMS. WE ARE SENSITIVE TO THOSE
7 PEOPLE EQUALLY. SO SOME BENEFIT, SOME LOSE. IT'S A QUESTION OF
8 WHICH PEOPLE ARE VICTIMIZED.

9 IF YOU ARE FORTUNATE ENOUGH TO ESCAPE CRIME BECAUSE
10 IT WAS COMMITTED THREE MONTHS EARLIER, YOU'RE THE BENEFICIARY.
11 IF YOU ARE THE VICTIM BY TIME BECAUSE THEY WERE THREE MONTHS
12 EARLIER, YOU'RE THE LOSER. BUT AS YOU TESTIFIED, IT'S THE SAME
13 NUMBER OF VICTIMS THAT WE'RE TALKING ABOUT.

14 **THE WITNESS:** WELL, SIR, I BELIEVE THAT THOSE CRIMES
15 WOULD OCCUR EARLIER.

16 **JUDGE KARLTON:** WE AGREE. EVERYBODY AGREES. I DON'T
17 KNOW -- I THINK EVEN THE PLAINTIFFS MAY AGREE. I DON'T KNOW,
18 BUT THE ISSUE IS -- NEVER MIND. THIS IS JUST RHETORICAL.

19 **MS. BARLOW:** IF I COULD JUST --

20 **JUDGE REINHARDT:** YOU ASKED ABOUT DIVERSION --

21 **JUDGE KARLTON:** THIS IS JUST RHETORIC.

22 **JUDGE REINHARDT:** -- AND NOT HAVING AS MANY PEOPLE
23 UNDER PAROLE. AS I UNDERSTOOD YOUR TESTIMONY, ONE OF THE
24 REASONS FOR THE CRIME IS BECAUSE PAROLE OFFICERS ARE OVERWORKED,
25 THEY HAVE TOO HIGH A CASELOAD, AND THEY CAN'T PROVIDE THE KINDS

1 OF SERVICES THAT WILL HELP PREVENT THE CRIME.

2 NOW, IF YOU GAVE MORE INTENSIVE PAROLE -- THIS IS A
3 QUESTION. IF YOU GAVE MORE INTENSIVE PAROLE TO THE PEOPLE WHO
4 ARE MORE LIKELY TO COMMIT CRIMES AND REDUCED THE PAROLE FOR THE
5 ONES THAT DON'T PRESENT AS SERIOUS A RISK, WOULD THAT BE HARMFUL
6 OR WOULD IT HURT THE COMMUNITY?

7 **THE WITNESS:** THE HIGHER LEVEL OF SUPERVISION AND
8 ACCOUNTABILITY THAT'S PROVIDED TO INDIVIDUALS THAT HAVE BEEN
9 RELEASED FROM PRISON PROVIDES THAT PERSON WITH A HIGHER
10 LIKELIHOOD OF SUCCEEDING BECAUSE IT TAKES AWAY THEIR ANONYMITY.
11 IT ALLOWS FOR FREQUENT DRUG TESTING. IT ALLOWS FOR THEM TO KNOW
12 THEY ARE BEING WATCHED. THEY ARE OPEN TO BEING SEARCHED BY LAW
13 ENFORCEMENT, AND THEREFORE, IT DOES TAKE AWAY THEIR ANONYMITY
14 AND THEIR ABILITY IN SOME CASES TO FEEL THEY CAN GET AWAY WITH
15 CRIME. SO, YES, SUPERVISION AND ACCOUNTABILITY ARE VERY
16 IMPORTANT.

17 **JUDGE REINHARDT:** THE QUESTION REALLY IS, IS IT
18 POSSIBLE, TO USE THE COMMON PHRASE THESE DAYS -- ONE OF THE
19 PLAINTIFFS' PROPOSALS IS TO GIVE MORE SUPERVISION TO THOSE MORE
20 LIKELY TO COMMIT CRIMES AND TO ELIMINATE SUPERVISION FOR THOSE
21 WHO ARE LESS LIKELY, THEREBY ALLOWING THE PAROLE OFFICERS TO
22 GIVE MORE ATTENTION AND SUPERVISION TO THOSE MORE LIKELY TO
23 COMMIT CRIMES. IS THAT GOOD OR BAD?

24 **THE WITNESS:** WELL, OBVIOUSLY, IT WOULD BE GOOD FOR
25 THOSE INDIVIDUALS THAT ARE GOING TO GET MORE SUPERVISION.

1 UNFORTUNATELY, FOR THOSE INDIVIDUALS THAT ARE NOT GOING TO GET
2 SUPERVISED, ALTHOUGH SOME OF THEM MAY NOT REENGAGE IN CRIMINAL
3 ACTIVITY JUST BECAUSE THEY'VE CHOSEN TO CHANGE THEIR LIFE,
4 UNFORTUNATELY, I -- BASED ON MY EXPERIENCE, THE VAST MAJORITY OF
5 THOSE INDIVIDUALS WILL CONTINUE WITH THAT LIFESTYLE IF THEY ARE
6 NOT SUPERVISED ACCORDINGLY OR HELD ACCOUNTABLE.

7 **JUDGE REINHARDT:** DO THEY ALL REQUIRE THE SAME DEGREE
8 OF SUPERVISION?

9 **THE WITNESS:** I DO NOT BELIEVE SO.

10 **JUDGE REINHARDT:** SOME MAY REQUIRE LESS AND SOME
11 MORE?

12 **THE WITNESS:** THAT'S CORRECT, BUT I DO BELIEVE THAT
13 THEY ALL DESERVE SOME LEVEL OF SUPERVISION OR ACCOUNTABILITY.

14 **JUDGE REINHARDT:** ALL FOR THE SAME PERIOD OF TIME?
15 IS IT NECESSARY TO SUPERVISE ALL PAROLEES TO THE SAME DEGREE OR
16 THE SAME AMOUNT OF TIME?

17 **THE WITNESS:** I DON'T BELIEVE SO.

18 **JUDGE KARLTON:** THIS IS A QUESTION FAR REMOVED FROM
19 WHAT OUR CONCERNS ARE, I SUPPOSE, BUT SINCE EVERYBODY IS TALKING
20 ABOUT IT AS IF IT WERE AN ISSUE FOR US, I WANT TO RAISE IT WITH
21 YOU.

22 CALIFORNIA HAS THE HIGHEST RECIDIVISM RATE IN THE
23 UNITED STATES. WITHOUT DOUBT THE SYSTEM THAT WE NOW HAVE FAILS.
24 ISN'T PUBLIC SAFETY GOING TO BE CHANGED, I MEAN EFFECTIVELY
25 IMPROVED, IF WE CHANGE THE UTTERLY FAILED SYSTEM THAT WE'RE NOW

1 USING?

2 **THE WITNESS:** YES, SIR, I AGREE WITH YOU TOTALLY.

3 **JUDGE KARLTON:** NOW, I DON'T KNOW WHAT THAT MEANS.

4 WITH THE GREATEST RESPECT, I SUSPECT YOU DON'T EITHER, BECAUSE
5 NONE OF US DO. THE EXPERTS, THE ACADEMIC EXPERTS THAT WE HAVE
6 HEARD -- WELL, I SHOULDN'T SAY THAT. LET ME EXPLORE SOME OTHER
7 QUESTIONS THAT WERE RAISED BY LAW ENFORCEMENT OFFICERS.

8 THERE IS A PROBLEM, APPARENTLY -- IS THERE IN YOUR
9 VIEW A PROBLEM OF SENDING LOW LEVEL OFFENDERS TO PRISON BECAUSE
10 THEY MIX WITH SERIOUS OFFENDERS AND BECAUSE, BY VIRTUE OF
11 THAT -- I'M SORRY, I'VE FORGOTTEN THE PHRASE USED BY ONE OF YOUR
12 PREDECESSORS -- THEY BECOME MORE RECEPTIVE TO COMMITTING SERIOUS
13 CRIMES? DO YOU BELIEVE THAT TO BE TRUE?

14 **THE WITNESS:** I BELIEVE THAT WHEN INDIVIDUALS, THE
15 LONGER THEY ARE -- IN CASES BY PLACING AN INDIVIDUAL THAT
16 COMMITS A PROPERTY CRIME WITH AN INDIVIDUAL THAT'S COMMITTED
17 ROBBERIES, THERE IS A POTENTIAL FOR THAT PERSON THAT'S COMMITTED
18 ROB- -- BURGLARIES TO PERHAPS ESCALATE THEIR LEVEL OF CRIMES,
19 YES.

20 **JUDGE KARLTON:** IF WE HAVE TO CHANGE THE SYSTEM --
21 ALL RIGHT? YOU'RE THE SECOND LAW ENFORCEMENT OFFICER, THE OTHER
22 FELLOW SAID HE THOUGHT THAT WAS CERTAINLY GOING TO HAPPEN. BUT,
23 IN ANY EVENT, THAT SUGGESTS THAT AT LEAST AT SOME LEVEL THE
24 APPROPRIATE PLACE TO OPERATE IS IN TRYING TO SEGREGATE ONE GROUP
25 OF CRIME -- CRIMINALS FROM ANOTHER. WE CAN'T DO THAT IN TODAY'S

1 PRISONS BECAUSE THEY ARE SO OVERCROWDED, PEOPLE ARE JUST SITTING
2 IN BUNKS, AND THEY DON'T DO ANYTHING.

3 **THE WITNESS:** YES.

4 **JUDGE KARLTON:** THAT'S NOT -- AS A PUBLIC POLICY
5 MATTER -- AGAIN, IT DOESN'T HAVE ANYTHING TO DO WITH WHAT
6 WE'RE -- IT DOESN'T DIRECTLY HAVE ANYTHING TO DO WITH WHAT WE'RE
7 CONCERNED WITH, BUT, YOU KNOW, WE OUGHT TO BE CONCERNED WITH
8 THAT -- THEY CAN'T DO THAT BECAUSE THERE'S NO ROOM IN THE INN.
9 EVERYBODY, APPARENTLY -- WELL, LET ME ASK YOU. DO YOU AGREE IT
10 IS IMPORTANT, IN ATTEMPTING TO REDUCE RECIDIVISM, TO PROVIDE
11 APPROPRIATE PROGRAMMING TO PEOPLE WHO ARE IN PRISON?

12 **THE WITNESS:** ABSOLUTELY.

13 **JUDGE KARLTON:** OKAY. WE CAN'T DO THAT, EVERYBODY
14 AGREES, BECAUSE THERE'S NO PLACE AT THE INN?

15 **THE WITNESS:** YES.

16 **JUDGE KARLTON:** NOW, IF YOU CAN'T CLASSIFY PROPERLY
17 BECAUSE THERE'S NO PLACE AT THE INN, AND YOU CAN'T PROVIDE
18 PROGRAMS BECAUSE THERE'S NO PLACE IN THE INN, INEVITABLY, YOU
19 GET 70 PERCENT RECIDIVISM. DOESN'T THAT SUGGEST THAT WE'VE GOT
20 TO DO SOMETHING THAT, AS A MATTER OF PUBLIC POLICY, AGAIN NOT
21 PERHAPS OUR RESPONSIBILITY, THAT WE'VE GOT TO DO SOMETHING TO
22 PROVIDE A SYSTEM THAT PERMITS FOR PROPER CLASSIFICATION AND FOR
23 PROPER PROGRAMMING?

24 **THE WITNESS:** YES.

25 **JUDGE REINHARDT:** LET ME GO BEYOND JUDGE KARLTON'S

1 QUESTION, BECAUSE HE SUGGESTS IT MAY NOT HAVE ANYTHING TO DO
2 DIRECTLY WITH WHAT WE ARE CONCERNED WITH. BUT I WOULD TAKE IT
3 FROM YOUR TESTIMONY THAT IT DOES HAVE SOMETHING TO DO DIRECTLY
4 WITH WHAT WE'RE CONCERNED WITH, BECAUSE ONE OUR ISSUES IS PUBLIC
5 SAFETY, AND YOU ARE TESTIFYING IN AGREEMENT WITH MANY OTHERS
6 THAT IT'S HARMFUL TO PUBLIC SAFETY TO CONTINUE THE KIND OF
7 SYSTEM WITH OVERCROWDING, WITHOUT THE PROPER PROGRAMMING, AND
8 THAT CAN AFFECT, WITHOUT THE PROPER SEGREGATION, ALL OF THE
9 CONSEQUENCES OF OVERCROWDING, YOU SEEM TO AGREE, IS HARMFUL TO
10 THE PUBLIC SAFETY, AND SO WE HAVE TO WEIGH THAT ALONG WITH THE
11 OTHER IMMEDIATE IMPACTS ON PUBLIC SAFETY.

12 **THE WITNESS:** I WOULD LIKE TO RESPOND, IF I COULD, TO
13 ALL THOSE, IF I CAN REMEMBER THEM ALL.

14 THERE IS A POTENTIAL FOR PEOPLE THAT GET
15 INCARCERATED, THAT COMMIT LOWER LEVEL OFFENSES LIKE AUTO THEFT
16 AND BURGLARY, TO BECOME EDUCATED IN PRISON AND THEN GO OUT AND
17 COMMIT MORE SERIOUS TYPES OF CRIMES.

18 **JUDGE KARLTON:** IT'S ALSO DESCRIBED AS SOMETHING --
19 I'M SORRY, I DON'T REMEMBER.

20 **JUDGE REINHARDT:** LIKE CRIMINALIZING.

21 **JUDGE HENDERSON:** CRIMINALIZING.

22 **THE WITNESS:** BUT GENERALLY WHAT I HAVE FOUND, AT
23 LEAST IN MY EXPERIENCE, THAT PEOPLE GET COMFORTABLE COMMITTING A
24 CERTAIN TYPE OF CRIME. FOR EXAMPLE, IT'S NOT UNCOMMON FOR US TO
25 SEE INDIVIDUALS THAT WE ARREST AND SEND TO PRISON FOR COMMITTING

1 WINDOW SMASH BURGLARIES OF BUSINESSES. WHEN THEY GET OUT, THERE
2 IS A LIKELIHOOD FOR THEM TO GO BACK AND COMMIT BUSINESS
3 BURGLARIES THAT ARE WINDOW SMASHES. THEY KEEP THEIR SAME
4 MOTIVE, MOTIVE OF OPERATION OR MODUS OPERANDI. THEY KEEP THE
5 SAME TYPE OF CRIME, AND FORTUNATELY FOR US IN LAW ENFORCEMENT,
6 THAT HELPS US SOLVE THOSE CRIMES.

7 ON OCCASION THEY DO CHANGE, BUT GENERALLY THEY KEEP
8 THEIR SAME TYPE OF CRIMES THEY COMMIT, BUT THEY BECOME SMARTER
9 AT HOW TO GET AWAY WITH THOSE CRIMES.

10 **JUDGE KARLTON:** I MUST RESPECTFULLY SAY I HAVE BEEN
11 SENTENCING PEOPLE FOR 30 YEARS, AND I WAS IN THE STATE SYSTEM
12 FOR TWO. WE SENT AN ENORMOUS NUMBER OF PEOPLE FOR THE HIGH
13 CRIME OF STUPIDITY.

14 **THE WITNESS:** YES, SIR, I AGREE WITH THAT.

15 **JUDGE KARLTON:** AND, YOU KNOW, PEOPLE -- WELL, ALL
16 RIGHT. I'M SORRY.

17 **JUDGE REINHARDT:** THAT WAS ONLY ONE ASPECT OF IT.

18 THE OTHER ASPECT IS YOU WOULD HOPE IF THINGS WORKED
19 WELL, THAT PEOPLE WOULD COME OUT OF PRISON LESS LIKELY TO COMMIT
20 CRIMES INSTEAD OF MORE LIKELY, AND THAT'S WHY SO MANY OF THE
21 WITNESSES WHO SAID WE WANT AN INTEGRATED PROGRAM WHERE YOU
22 STARTED EDUCATING THEM, YOU KNOW, REHABILITATING THEM IN THE
23 PRISON, AND THEN WHEN THEY GET OUT THERE SHOULD BE COMMUNITY
24 PROGRAMS AVAILABLE. THE OBJECTIVE OF LAW ENFORCEMENT IS TO
25 REDUCE THE NUMBER OF CRIMES COMMITTED. AND WHAT JUDGE KARLTON

1 WAS SAYING WAS THAT THE TESTIMONY IS THAT WITH THE EXTENT OF THE
2 OVERCROWDING, NOT ONLY ARE THEY MIXED WITH OTHER TYPES OF
3 CRIMINALS THEY SHOULDN'T BE, BUT THEY DON'T RECEIVE THE PROGRAMS
4 THAT WILL ALLOW THEM TO BE, OR ENCOURAGE THEM TO BE LAW ABIDING
5 WHEN THEY COME OUT. THEY HAVE NO MORE INTEREST IN BEING LAW
6 ABIDING THAN WHEN THEY WENT IN.

7 **JUDGE KARLTON:** LESS.

8 **JUDGE REINHARDT:** LESS. ONE OF THE REASONS FOR THAT
9 IS WE AREN'T ABLE TO USE THEIR TIME IN PRISON TO TRY TO MAKE
10 THEM MORE LAW ABIDING.

11 **THE WITNESS:** I DO AGREE WITH YOU. IT'S BEEN -- I
12 REALLY BELIEVE THAT WE HAVE TO PROVIDE TREATMENT INSIDE OF THE
13 PRISONS, WHICH WE ALL KNOW TODAY IS NOT OCCURRING, BUT WE ALSO
14 HAVE TO, WHEN THEY GET RELEASED FROM PRISON, PROVIDE THEM A
15 FACILITY THAT THEY CAN REINTEGRATE INTO OUR SOCIETY, SIMILAR TO
16 REENTRY FACILITIES LIKE WE'RE OPENING UP IN FRESNO, AND -- BUT
17 IT HAS TO BE, I BELIEVE, A GRADUAL PROCESS.

18 TO TAKE A PERSON FROM PRISON AND THEN SIMPLY PLACE
19 HIM INTO A COMMUNITY, THAT INDIVIDUAL IS DOOMED FOR FAILURE
20 UNLESS THEY GO THROUGH A PROCESS. AND I BELIEVE THE MOST
21 SUCCESSFUL PROCESS IS SOME FORM OF A REENTRY FACILITY IN LOCAL
22 COMMUNITIES THAT ALLOW FOR THE ONGOING TREATMENT OF THESE
23 INDIVIDUALS AND MONITORING AND THEN GRADUALLY RELEASE THEM INTO
24 OUR COMMUNITIES WITH OTHER SANCTIONS AND ACCOUNTABILITY.

25 **JUDGE KARLTON:** YESTERDAY WE HAD A PERSON FROM SONOMA

1 COUNTY -- WELL, WORKING WITH SONOMA COUNTY TO DEVELOP -- HE
2 ARGUED, AND PERHAPS TRUTHFULLY, TO DEVELOP A MORE RATIONAL
3 CRIMINAL SYSTEM, AT THE END OF WHICH THE CROSS-EXAMINATION WAS,
4 ONE, TELL ME, IF YOU DID ALL THE GOOD THINGS THAT YOU SAID WE
5 COULD DO, WOULD YOU OPPOSE THE PROGRAM AND HE SAID NO. THEN I
6 ASKED HIM, WHY AREN'T WE DOING ALL THESE THINGS, AND HIS ANSWER
7 WAS, I DON'T KNOW.

8 **JUDGE REINHARDT:** WELL, HE ALSO SAID YOU CAN'T TRUST
9 THE STATE.

10 **JUDGE KARLTON:** WELL, THAT'S ANOTHER -- THIS IS
11 SOMEBODY ELSE WHO SAID THAT, WHICH IS PROBABLY TRUE, TOO.

12 WHEN WE -- I DON'T -- I WAS NOW ABOUT TO ASK YOU TO
13 SHARE OUR PAIN, WHICH IS REALLY STUPID.

14 **THE WITNESS:** NO, THANK YOU. I'LL KEEP THE ROBE OFF.

15 **JUDGE KARLTON:** WE ALL AGREE THAT SOMETHING HAS GOT
16 TO BE DONE, AND NOBODY KNOWS HOW TO DO IT.

17 GO AHEAD.

18 **MS. BARLOW:** THANK YOU, YOUR HONOR.

19 BY MS. BARLOW

20 **Q** CHIEF DYER, WAS THERE A SURGE IN PAROLEES RELEASED TO FRESNO
21 IN 2005?

22 **A** I DON'T KNOW WITHOUT LOOKING AT A REFERENCE SHEET. THAT
23 NUMBER DOES FLUCTUATE FROM MONTH-TO-MONTH, YEAR-TO-YEAR. I'D
24 HAVE TO LOOK AT THAT.

25 **Q** RIGHT. DO YOU RECALL IN YOUR DEPOSITION BEING ASKED BY

1 MR. SPECTER ABOUT THE BRIDGING PROGRAM AND THE NUMBER OF
2 PAROLEES BEING RELEASED AS A RESULT OF THAT PROGRAM IN 2005
3 GOING UP?

4 **A** I DO.

5 **Q** OKAY. DID YOU EXPERIENCE ANY NEGATIVE IMPACTS FROM THE
6 ADDITIONAL PAROLEES THAT YOUR COMMUNITY RECEIVED IN 2005?

7 **A** 2005 WAS THE ONLY YEAR IN THE LAST SIX-PLUS YEARS THAT WE
8 HAD AN INCREASE IN VIOLENT CRIME IN OUR CITY. 2002, '3 AND '4
9 WE HAD DECREASES. 2005 WE HAD, I BELIEVE, AN 11-1/2 PERCENT
10 INCREASE IN VIOLENT CRIME IN OUR CITY. AND IN 2006 THAT NUMBER
11 DECREASED, AS WELL AS 2007.

12 **Q** DID YOU ALSO HAVE AN INCREASE IN PROPERTY CRIMES IN 2005?

13 **A** I WOULD --

14 **Q** WOULD IT REFRESH YOUR RECOLLECTION TO PUT THE DATA UP ON
15 THE --

16 **A** IN 2005 WE HAD A SLIGHT -- ACCORDING TO OUR RECORDS, WE HAD
17 A SLIGHT DECREASE, 3.7 PERCENT, IN PROPERTY CRIME IN 2005. IN
18 FACT, WE HAVE BEEN FORTUNATE TO HAVE SIX OUT OF THE LAST SEVEN
19 YEARS DECREASES. UNFORTUNATELY, THIS YEAR WE ARE SEEING A
20 SIGNIFICANT UPTAKE IN PROPERTY CRIME IN OUR CITY.

21 **Q** NOW, WHAT ABOUT THE NUMBER OF FELONY ARRESTS, DID THAT ALSO
22 GO UP IN 2005?

23 **A** THE NUMBER OF FELONY ARRESTS HAS GROWN INCREMENTALLY EACH
24 YEAR SINCE 2001, AND I BELIEVE WE'RE UPWARDS OF 18,000 FELONY
25 ARRESTS A YEAR IN OUR CITY.

1 Q NOW, YOU TESTIFIED THAT THERE WERE, AT LEAST AS OF THE END
2 OF 2007, JUST UNDER 5,000 PAROLEES IN THE ENTIRE COUNTY, ABOUT
3 80 PERCENT OF THOSE IN THE CITY OF FRESNO. HOW MANY PAROLEES
4 DID YOU ARREST IN 2007?

5 A I BELIEVE THE NUMBER, IT WAS OVER ABOUT 6,200, I BELIEVE. I
6 CAN REFER -- 6,453 PAROLEES WERE ARRESTED IN 2007.

7 Q WHAT PERCENTAGE OF YOUR FELONY ARRESTS IN 2007 WAS THAT?

8 A APPROXIMATELY 30 PERCENT.

9 Q NOW, IN TERMS OF THE PROPOSAL TO --

10 JUDGE KARLTON: I'M SORRY. I'M JUST BEING STUPID. I
11 DON'T UNDERSTAND WHAT YOU JUST SAID. THERE ARE 6,000 PLUS OR
12 MINUS PAROLEES IN THE ENTIRE -- SO ENTIRE COUNTY. I'M SORRY. I
13 MISUNDERSTOOD TESTIMONY. I UNDERSTAND NOW. GO AHEAD.

14 MS. BARLOW: HE WAS TALKING ABOUT HOW MANY ARRESTS
15 WERE MADE OF PAROLEES.

16 JUDGE KARLTON: I UNDERSTAND NOW.

17 BY MS. BARLOW

18 Q NOW, YOU TALKED ABOUT REMOVING PEOPLE FROM PAROLE AND HOW
19 YOU COULD PERHAPS REDUCE THE PROVISION OF SOME FOLKS. WHAT'S
20 THE IMPORTANCE OF MAINTAINING PAROLE FROM A LAW ENFORCEMENT
21 PERSPECTIVE?

22 A THE PAROLE STATUS IS A TOOL THAT WE USE IN LAW ENFORCEMENT,
23 BUT I THINK FOR THE INDIVIDUAL ON PAROLE, IT IS A MEASURE OF
24 ACCOUNTABILITY THAT STILL REQUIRES THEM TO DO -- TO PROVIDE
25 PAROLE AGENTS THEIR RECORD OF RESIDENCE, WHERE THEY LIVE.

1 SO THEY ARE NOT ABLE TO HAVE THAT ANONYMITY. IT
2 REQUIRES THEM TO DO DRUG TESTING IN MOST CASES. THERE'S
3 CONDITIONS IN TERMS OF WHO THEY CAN ASSOCIATE OR WHERE THEY CAN
4 BE. ALL OF THOSE THINGS ALLOW THESE FOLKS TO CONTINUE TO BE
5 SUCCESSFUL.

6 THE BENEFIT FOR LAW ENFORCEMENT IS THAT IT ALLOWS US
7 THE OPPORTUNITY WHEN WE HAVE CRIME SPREES, OR SPIKE IN CRIMES,
8 OR CRIME TRENDS THAT ARE ELEVATING, THAT WE CAN THEN LOOK AT
9 THOSE INDIVIDUALS THAT ARE ON PAROLE, PERHAPS WITHIN A GIVEN
10 AREA, PERHAPS THAT HAVE A PRIOR COMMITMENT OFFENSE FOR THE
11 PARTICULAR CRIME WE'RE LOOKING AT, AND TO PAY VISITS TO THOSE
12 INDIVIDUALS, AND TO, IN SOME CASES, REMOVE THEM FROM OUR
13 COMMUNITY IF, IN FACT, THEY ARE IN VIOLATION OF THEIR PAROLE.

14 THE OTHER BENEFIT FOR US, IN THE AREA OF GANGS WE USE
15 IT VERY MUCH, WHENEVER WE HAVE A GANG SHOOTING OR A SERIES OF
16 SHOOTINGS AND THERE'S RETALIATION THAT'S GOING TO OCCUR, WE WILL
17 THEN LOOK AT THOSE INDIVIDUALS THAT ARE IN GANGS OR PEOPLE ON
18 PAROLE, AND WE WILL GO OUT AND TAKE AWAY THEIR ANONYMITY SO
19 THERE IS NO RETALIATION. SO IT'S A VERY EFFECTIVE TOOL FOR US
20 IN LAW ENFORCEMENT.

21 **JUDGE REINHARDT:** YOU COMBINED TWO THINGS, GANGS AND
22 PAROLE. YOU SAID FOR THE GANGS YOU CAN LOOK AT THE PEOPLE IN
23 GANGS, WHETHER OR NOT THEY ARE ON PAROLE.

24 **THE WITNESS:** YES, WE TRY TO TARGET THOSE -- WHEN I
25 SAY "TARGET THOSE INDIVIDUALS," THOSE ARE THE INDIVIDUALS WE

1 LOOK AT IN ORDER TO --

2 **JUDGE REINHARDT:** TO INVESTIGATE?

3 **THE WITNESS:** TO INVESTIGATE, TO PAY A VISIT TO, TO
4 FREQUENT THOSE NEIGHBORHOODS, WHATEVER THE CASE MAY BE.

5 **JUDGE REINHARDT:** SO THAT'S PART OF A GANG PROGRAM
6 THAT YOU HAVE IN YOUR CITY?

7 **THE WITNESS:** YES. WE HAVE A VERY, VERY EFFECTIVE
8 GANG PROGRAM THAT WE TRY TO BALANCE WITH SUPPRESSION AND
9 PREVENTION-INTERVENTION, YES.

10 **MS. BARLOW:** JUST A COUPLE MORE.

11 BY MS. BARLOW

12 **Q** YOU MENTIONED SOME ECONOMIC IMPACTS FROM CRIME IN YOUR
13 COMMUNITY. DID YOU RELY, IN PART, UPON ANY STUDY THAT WAS DONE
14 IN FRESNO REGARDING THAT ISSUE?

15 **MR. SPECTER:** I OBJECT TO THIS LINE OF QUESTIONING.
16 HE'S NOT AN ECONOMIST. THERE'S NO FOUNDATION HE HAS ANY
17 EXPERTISE IN THIS AREA.

18 **JUDGE HENDERSON:** I WILL SUSTAIN THE FOUNDATIONAL
19 OBJECTION WITHOUT PREJUDICE.

20 **MS. BARLOW:** THEY MADE A MOTION IN LIMINE TO EXCLUDE
21 HIS TESTIMONY ON THE SAME GROUNDS, WHICH WAS ALREADY DENIED BY
22 THE COURT.

23 **JUDGE KARLTON:** I DON'T KNOW WHY WE DENIED IT, BUT
24 YOU GOT A RULING NOW.

25 **JUDGE REINHARDT:** ARE YOU SURE WE DIDN'T RESERVE IT?

1 **MS. BARLOW:** NO, IT WAS DENIED, YOUR HONOR.

2 BY MS. BARLOW

3 **Q** COULD YOU EXPLAIN, CHIEF DYER, IN YOUR EXPERIENCE, WHAT THE
4 RELATIONSHIP BETWEEN CRIME --

5 **JUDGE KARLTON:** NO, MA'AM. THE OBJECTION WAS
6 SUSTAINED WITHOUT PREJUDICE. THAT MEANS LAY A FOUNDATION.

7 **MS. BARLOW:** THAT'S WHAT I'M TRYING TO DO, YOUR
8 HONOR.

9 **JUDGE KARLTON:** EXCUSE ME. I MISUNDERSTOOD.

10 BY MS. BARLOW

11 **Q** DO YOU HAVE ANY EXPERIENCE, CHIEF DYER, THAT HELPS YOU TO
12 DETERMINE THE RELATIONSHIP BETWEEN CRIME IN YOUR COMMUNITY AND
13 ECONOMIC IMPACTS TO THE COMMUNITY?

14 **A** YES.

15 **Q** COULD YOU EXPLAIN WHAT THAT IS?

16 **A** WELL, TWO AREAS, ONE BEING THAT OF EXPERIENCE BACK IN THE
17 '90'S, LATE '80'S AND '90'S, WE EXPERIENCED A SIGNIFICANT
18 INCREASE IN CRIME IN OUR COMMUNITY. IN FACT, CRIME WAS OUT OF
19 CONTROL. AND WE KNOW THAT IT WAS ALSO DURING THAT TIME, AS WE
20 SPOKE WITH CITIZENS IN OUR COMMUNITY, THAT THERE WAS AN
21 INCREDIBLE AMOUNT OF FEAR THAT FOLLOWED AS A RESULT OF THAT
22 CRIME. CRIME RATES, THE MEDIA COVERAGE OF THAT CRIME, AND
23 PEOPLE WERE FEARFUL TO COME OUTDOORS. PEOPLE WERE FEARFUL TO
24 WALK IN THEIR NEIGHBORHOODS. PEOPLE WERE FEARFUL TO GO OUT INTO
25 SHOPPING CENTERS, ESPECIALLY DURING THE EVENING HOURS.

1 AND SO THERE WAS A DIRECT IMPACT BETWEEN CRIME AND
2 FEAR AND, ULTIMATELY, A PERSON'S ABILITY TO GO OUT AND TO SPEND
3 MONEY AND -- IMPACTS OUR TAX BASE IN THE CITY OF FRESNO. AND WE
4 WERE LATER ABLE TO CONFIRM THAT FEELING WITH A STUDY THAT WE
5 COMMISSIONED A COUPLE YEARS AGO.

6 **MR. SPECTER:** I RENEW MY OBJECTION, YOUR HONOR. HE'S
7 MAKING ECONOMIC CONCLUSIONS WITHOUT ANY BASIS OR EXPERTISE OR
8 FACTUAL BASIS TO SHOW THAT THOSE CONCLUSIONS ARE RELIABLE.

9 **JUDGE HENDERSON:** I'M GOING TO RULE THAT THE
10 OBJECTION GOES TO THE WEIGHT OF THIS, WHETHER IT'S ONE POUND OR
11 ONE MILLIGRAM.

12 **MS. BARLOW:** I UNDERSTAND.

13 **MR. SPECTER:** PARDON ME, YOUR HONOR.

14 **JUDGE HENDERSON:** THE OBJECTION GOES TO THE WEIGHT OF
15 THIS TESTIMONY.

16 **MR. SPECTER:** OKAY.

17 BY MS. BARLOW

18 **Q** ARE THERE ALSO STUDIES THAT SUPPORT THE NOTION THAT FEAR AND
19 CRIME LEAD TO ECONOMIC DOWNTURNS IN COMMUNITIES?

20 **A** THAT'S CORRECT.

21 **Q** AND THAT'S BEEN YOUR ACTUAL EXPERIENCE IN FRESNO?

22 **JUDGE REINHARDT:** I GUESS WE COULD ALL AGREE CRIME IS
23 NOT GOOD FOR SOCIETY IN MANY, MANY RESPECTS.

24 **JUDGE KARLTON:** WE'LL STIPULATE TO THAT.

25 **JUDGE REINHARDT:** AND HAS AN ADVERSE EFFECT ON THE

1 COMMUNITY WHEN WE HAVE CRIME.

2 **MS. BARLOW:** IF I COULD JUST ASK THE WITNESS TO
3 AUTHENTICATE THIS REPORT THAT WAS PREPARED FOR THE CITY ON THAT
4 ISSUE.

5 BY MS. BARLOW

6 **Q** MR. DYER?

7 **A** YES.

8 **MS. BARLOW:** IF WE COULD PUT UP EXHIBIT 641, THE
9 FIRST PAGE, 228. I'M SORRY. HERE. I'LL PUT THE FIRST PAGE UP
10 ON THE ELMO.

11 (DOCUMENT DISPLAYED.)

12 BY MS. BARLOW

13 **Q** IS THAT THE REPORT THAT YOU TALKED ABOUT?

14 **A** YES.

15 **Q** AND THAT WAS DONE FOR THE CITY OF FRESNO?

16 **A** YES. WE WERE CONSIDERING A PUBLIC SAFETY SALES TAX, AND WE
17 WANTED TO DEMONSTRATE THE IMPACT BETWEEN INCREASING LEVELS OF
18 OFFICERS AND DECREASED CRIME TO THAT OF INCREASED ECONOMIC
19 GROWTH.

20 **Q** ALL RIGHT.

21 **JUDGE KARLTON:** DID YOU GET YOUR INCREASE, SALES TAX
22 INCREASE?

23 **THE WITNESS:** WE DIDN'T GO FORTH WITH IT. NO, WE DID
24 NOT.

25 **JUDGE KARLTON:** AND YOU DIDN'T BECAUSE YOU FIGURED IT

1 COULDN'T PASS?

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

3 **JUDGE KARLTON:** THAT TELLS US A LOT ABOUT HOW PEOPLE
4 WANT CRIME PREVENTED BUT ARE ABSOLUTELY UNWILLING TO MAKE IT
5 HAPPEN.

6 **THE WITNESS:** ABSOLUTELY TRUE.

7 BY MS. BARLOW

8 **Q** I'M SORRY. YOU HAD PUT UP THE OTHER PAGE, AND I HAD YOU
9 SWITCH IT. SORRY.

10 **A** I BELIEVE IT IS PAGE 10.

11 **Q** I BELIEVE IT IS PAGE 10. IF YOU COULD JUST HIGHLIGHT THAT
12 AREA?

13 **MR. SPECTER:** I'M GOING TO ALSO OBJECT TO THIS LINE
14 OF QUESTIONING BECAUSE IT'S IRRELEVANT, YOUR HONOR. THE
15 QUESTIONS BEFORE YOU ARE ABOUT PUBLIC SAFETY. THE PLRA DOESN'T
16 SAY ANYTHING ABOUT ECONOMIC IMPACT.

17 **MS. BARLOW:** IT'S LARGELY FOUNDATIONAL, YOUR HONOR.

18 **JUDGE HENDERSON:** TO WHAT? TO PUBLIC SAFETY?

19 **MS. BARLOW:** WELL, ONE OF THE THINGS THAT THE CHIEF
20 WOULD TESTIFY TO, I'LL MAKE AN OFFER OF PROOF, IS THAT FEAR
21 LEADS TO A REDUCTION IN REPORTING OF CRIME.

22 **JUDGE REINHARDT:** THAT'S NOT WHAT HE'S TESTIFYING
23 ABOUT.

24 **JUDGE KARLTON:** THIS DOESN'T HAVE ANYTHING TO DO WITH
25 THAT. YOU CAN ASK HIM DIRECTLY --

1 **MS. BARLOW:** IT DOES, YOUR HONOR. IT TALKS ABOUT
2 CRIME LEADING TO MISTRUST AND FEAR, WHICH, IN TURN, LEADS TO --

3 **JUDGE KARLTON:** WHATEVER.

4 **JUDGE HENDERSON:** DOES CRIME LEAD TO MISTRUST AND
5 FEAR?

6 **THE WITNESS:** ABSOLUTELY.

7 **JUDGE HENDERSON:** AND DOES THAT LEAD TO SOMETHING
8 BEYOND THAT? AND IF SO, WHAT IS IT?

9 **THE WITNESS:** IN MANY COMMUNITIES IT LEADS TO PEOPLE
10 NOT LEAVING THEIR HOMES, NOT GOING OUT AND FREQUENTING SHOPPING
11 MALLS.

12 **JUDGE KARLTON:** SHE WANTS YOU TO SAY IT LEADS TO --

13 **JUDGE REINHARDT:** AN ECONOMIC DOWNTURN, ALMOST AS BAD
14 AS WHAT WE'RE SUFFERING NOW.

15 **JUDGE KARLTON:** SHE WANTS YOU TO TELL US THAT
16 SOMETHING WE DON'T KNOW, THAT THAT WILL --

17 **MS. BARLOW:** I ONLY WANT HIM TO TELL YOU WHAT HE
18 THINKS IS THE TRUTH, YOUR HONOR.

19 **JUDGE KARLTON:** YEAH, RIGHT. WHETHER OR NOT THAT
20 LEADS TO THE REDUCTION OF REPORTING CRIME IN YOUR VIEW.

21 **THE WITNESS:** DOES IT LEAD TO A REDUCTION IN
22 REPORTING OF CRIME?

23 **JUDGE KARLTON:** I THINK THAT'S WHAT SHE WAS TRYING TO
24 GET AT.

25 **MS. BARLOW:** FEAR IN THE COMMUNITY.

1 **THE WITNESS:** I BELIEVE THERE IS COUPLE OF AREAS
2 WHERE A LACK OF TRUST AND FEAR IN A COMMUNITY CAN LEAD TO A
3 REDUCED REPORTING. GENERALLY, THAT MIGHT BE WHERE ILLEGAL
4 IMMIGRANTS ARE AFRAID TO REPORT CRIME BECAUSE THEY ARE AFRAID OF
5 BEING DEPORTED.

6 BUT, ALSO, THERE ARE THOSE INDIVIDUALS OUT THERE -- I
7 KNOW WE EXPERIENCED IT IN THE '90'S. WE HAD SO MANY PROPERTY
8 CRIMES THAT WERE OCCURRING THAT WE FINALLY REALIZED THAT PEOPLE
9 WERE NOT REPORTING CRIME TO US BECAUSE IT WAS OCCURRING SO OFTEN
10 AND IT WASN'T WORTH IT EVEN FOR THEIR INSURANCE BECAUSE THEIR
11 DEDUCTIBLE WAS SO HIGH.

12 SO WE KNOW THE NUMBER OF CRIMES REPORTED AREN'T
13 ALWAYS ACCURATE IN THAT SENSE.

14 **MS. BARLOW:** NOW, QUICKLY, YOUR HONORS, THERE WAS
15 RAISED AN OBJECTION TO SOME SUMMARIES THAT ARE IN CHIEF DYER'S
16 REPORT OF CERTAIN CRIMES THAT OCCURRED AS A RESULT OF PAROLEES
17 IN THE COMMUNITY.

18 **JUDGE HENDERSON:** ARE THOSE OBJECTIONS IN WRITING?

19 **MS. BARLOW:** THEY ARE IN WRITING, YOUR HONOR, AND
20 I -- WE HAVE INCLUDED IN OUR EXHIBITS THE REDACTED COPIES OF THE
21 REPORTS IN QUESTION. I HAVE --

22 **JUDGE KARLTON:** WELL, DO YOU CONCEDE THE OBJECTION IS
23 WELL TAKEN?

24 **MS. BARLOW:** WELL, NO, I DON'T, YOUR HONOR,
25 BECAUSE --

1 **JUDGE KARLTON:** ALL RIGHT.

2 **MS. BARLOW:** THAT'S PART OF --

3 **JUDGE KARLTON:** I DON'T NEED A SPEECH. I NEED A YES
4 OR A NO. I'LL ASK FOR A SPEECH WHEN I GET -- EXCUSE ME. I'M
5 SORRY. WE HAVE BEEN AT THIS A LOT OF DAYS AND SOMETIMES I LOSE
6 MY TEMPER. I APOLOGIZE.

7 **MS. BARLOW:** IT'S OKAY, YOUR HONOR. IN YOUR POSITION
8 I MIGHT DO THE SAME.

9 **JUDGE REINHARDT:** I WON'T LOSE MY TEMPER.

10 **JUDGE KARLTON:** YOU WANT TO OFFER THESE IF THE
11 OBJECTIONS ARE SUSTAINED, IS THAT WHAT YOU WANT TO DO?

12 **MS. BARLOW:** ALL I WANTED TO DO WAS HAVE HIM
13 AUTHENTICATE THAT THOSE ARE, IN FACT, THE REPORTS HE SUMMARIZED
14 IN HIS EXPERT REPORT.

15 **MR. SPECTER:** I'LL STIPULATE TO THAT. I'LL STIPULATE
16 TO THE AUTHENTICITY OF THOSE DOCUMENTS. BUT I STILL OBJECT TO
17 THE ADMISSION OF THE DOCUMENTS. THEY'RE BEING OFFERED FOR THE
18 TRUTH, AND THEY'RE DOUBLE HEARSAY.

19 **MS. BARLOW:** IF I MAY?

20 BY MS. BARLOW

21 **Q** CHIEF DYER, ARE THESE REPORTS PREPARED BY YOUR -- WE'RE
22 REFERRING TO THE REPORTS IN EXHIBIT DI 624 -- PREPARED BY YOUR
23 OFFICERS IN THE ORDINARY COURSE OF THEIR DUTIES?

24 **A** THAT'S CORRECT.

25 **Q** AND THESE ARE OFFICIAL REPORTS OF THE FRESNO POLICE

1 DEPARTMENT?

2 **A** YES.

3 **Q** SO THESE ARE OFFICIAL RECORDS?

4 **A** YES, THEY ARE.

5 **Q** AND YOUR OFFICERS HAVE A LEGAL DUTY TO ACCURATELY RECORD AND
6 REPORT WHAT THEY OBSERVE AND WHAT THEY'RE TOLD DURING
7 INVESTIGATIONS?

8 **A** THAT'S CORRECT.

9 **MS. BARLOW:** THEY'RE OFFICIAL RECORDS, YOUR HONOR.
10 WE WOULD OFFER THEM.

11 **JUDGE KARLTON:** ALL OF THESE OBJECTIONS WILL BE -- IF
12 WE EVER GET THERE, WILL BE RESOLVED WHEN WE TRY AND FIGURE OUT
13 WHAT TO DO.

14 **JUDGE HENDERSON:** AND THEY WILL BE ADMITTED AT THIS
15 TIME WITH THAT UNDERSTANDING.

16 **MS. BARLOW:** THANK YOU, YOUR HONOR.

17 **JUDGE KARLTON:** NO, THEY ARE NOT ADMITTED OVER
18 OBJECTION, BECAUSE WE ARE GOING TO DECIDE WHETHER THE OBJECTION
19 IS GOOD OR NOT.

20 **JUDGE HENDERSON:** I STAND CORRECTED.

21 **MS. BARLOW:** I DO HAVE UNREDACTED COPIES FOR THE
22 COURT IF YOU WOULD LIKE THEM.

23 **JUDGE KARLTON:** GO AHEAD.

24 BY MS. BARLOW

25 **Q** FINALLY, CHIEF DYER, YOU MENTION IN YOUR REPORT THAT YOU

1 BELIEVE THAT NOT ONLY WILL FRESNO HAVE SIGNIFICANT IMPACTS FROM
2 THE PROPOSED RELEASE ORDER, BUT THAT OTHER CENTRAL VALLEY CITIES
3 WILL HAVE ALSO SIMILAR IMPACTS. CAN YOU TELL US WHAT IS THE
4 BASIS FOR YOUR BELIEF THAT THE OTHER CENTRAL VALLEY CITIES WILL
5 SUFFER COMPARABLE TO FRESNO?

6 **A** THERE IS A LOT OF SIMILARITIES BETWEEN CITIES THAT ARE
7 ADJACENT TO ONE ANOTHER IN THE CENTRAL VALLEY, WHETHER THAT BE
8 STOCKTON, MODESTO, MERCED, VISALIA. WE HAVE HISTORICALLY HAD
9 HIGH CONCENTRATION OF POVERTY, HIGH CONCENTRATION OF
10 UNEMPLOYMENT. WE HAVE A HIGH FREQUENCY OF METHAMPHETAMINE USE
11 AND PRODUCTION. AND THE DEMOGRAPHICS ARE VERY SIMILAR IN MANY
12 OF OUR CITIES.

13 SO WHEN THAT IS TAKEN INTO CONSIDERATION, WE KNOW
14 THAT -- AND JUST THE CONVERSATIONS THAT I HAVE HAD AS THE
15 PRESIDENT OF THE CALIFORNIA POLICE CHIEFS, IN SPEAKING WITH
16 CHIEFS THROUGHOUT THE STATE, AND OUR ASSOCIATION FRESNO/MADERA
17 CHIEFS ASSOCIATION, WE KNOW THAT THE IMPACT BASED ON ALL THAT
18 INFORMATION IS GOING TO BE VERY SIMILAR TO WHAT WE SEE IN
19 FRESNO, ALTHOUGH FRESNO WILL BE ON A MUCH GREATER SCALE BECAUSE
20 OF OUR POPULATION DENSITY.

21 **Q** ALL RIGHT. AND DO YOU WORK WITH THE OTHER CENTRAL VALLEY
22 CITIES ON A REGULAR BASIS?

23 **A** I DO.

24 **Q** IN WHAT CAPACITY?

25 **A** IN MY CAPACITY, NUMBER ONE, AS THE PRESIDENT OF CALIFORNIA

1 POLICE CHIEFS, I INTERACT FREQUENTLY WITH A NUMBER OF CHIEFS
2 THROUGHOUT THE STATE, BUT ALSO CENTRAL VALLEY. AND, ALSO, I AM
3 THE -- CURRENTLY I'M THE CHAIR OF THE CENTRAL VALLEY HIDTA, HIGH
4 INTENSITY DRUG TRAFFICKING AREA, AND THAT IS FROM BAKERSFIELD TO
5 SACRAMENTO, AND SO I FREQUENTLY MEET WITH CHIEFS AND SHERIFFS
6 AND FEDERAL AND STATE OFFICIALS REGARDING DRUG TRAFFICKING AND
7 OTHER TYPES OF SIMILAR CONCERNS.

8 **JUDGE REINHARDT:** MAY I ASK YOU A QUESTION ABOUT YOUR
9 TESTIMONY ABOUT THE VALLEY? I HAD THE IMPRESSION FROM WHAT YOU
10 WERE TESTIFYING TO THAT YOU THINK THE PROBLEMS IN FRESNO ARE
11 WORSE THAN THE PROBLEMS IN THE REST OF THE STATE; THAT YOU HAVE
12 THE HIGHEST PROBLEM RATES FOR VARIOUS REASONS.

13 YOU'RE PRESIDENT OF THE STATEWIDE CHIEFS OF POLICE
14 ASSOCIATION. WOULD THAT EXPERIENCE -- WITH THAT EXPERIENCE,
15 WOULD YOU TESTIFY THAT -- I MEAN, IS IT YOUR BELIEF THAT THE
16 OTHER AREAS IN THE STATE ARE -- AT LEAST WILL HAVE AT LEAST NO
17 GREATER IMPACT THAN THERE WILL BE IN FRESNO?

18 **JUDGE KARLTON:** IF THERE'S RELIEF --

19 **THE WITNESS:** I THINK IT'S GOING TO DEPEND ON
20 JURISDICTION. SOME JURISDICTIONS ARE POSITIONED VERY WELL WHERE
21 THEY DO NOT HAVE VERY MUCH CRIME, THEREFORE, THEY WOULD NOT.

22 **JUDGE REINHARDT:** MY QUESTION IS THE OPPOSITE. ARE
23 YOU SATISFIED THAT THERE WILL BE NO OTHER AREA THAT WILL HAVE A
24 GREATER ADVERSE IMPACT?

25 **THE WITNESS:** I COULDN'T SAY THAT. I CAN TELL YOU

1 THAT -- I WOULD SAY THAT FRESNO WOULD HAVE ONE OF THE GREATER
2 IMPACTS, JUST BASED ON THE NUMBER OF PAROLEES THAT WE ARE -- OR
3 INDIVIDUALS THAT WE ARREST AND SEND TO PRISON. WE'RE GOING TO
4 GET ABOUT FOUR PERCENT OF THOSE PEOPLE RELEASED.

5 **JUDGE REINHARDT:** NO, NO. I DON'T NEED ALL THE
6 EXPLANATIONS. THE QUESTION REALLY IS, BECAUSE YOU ARE HEAD OF
7 THE STATEWIDE CHIEFS OF POLICE, AND YOU HAVE TESTIFIED YOU HAVE
8 SERIOUS PROBLEMS IN FRESNO, THE UNEMPLOYMENT, ALL OF THE THINGS
9 THAT LEAD TO CRIME, AND YOU'VE TESTIFIED TO THE LARGE NUMBER OF
10 PAROLEES YOU GET, I HAVE THE IMPRESSION AS YOU WERE TESTIFYING
11 THAT YOU THOUGHT YOURS WERE AT LEAST -- YOURS WERE AT LEAST, IF
12 NOT THE MOST SERIOUS PROBLEM, THAT AT LEAST THERE WERE NO OTHER
13 AREAS THAT HAD MORE SERIOUS PROBLEMS THAN YOURS.

14 **THE WITNESS:** YOU KNOW, I COULDN'T SAY THAT. FOR
15 EXAMPLE, THE CITY OF STOCKTON, THEY GOT SOME SERIOUS ISSUES.
16 RIVERSIDE HAS SOME SERIOUS ISSUES.

17 **JUDGE REINHARDT:** EVERYBODY HAS SERIOUS ISSUES. YOU
18 HAVE SERIOUS ISSUES.

19 **THE WITNESS:** WE HAVE SERIOUS ISSUES, TOO. THE ONE
20 I'M MOST FAMILIAR WITH, YOUR HONOR, IS FRESNO, AND I DO BELIEVE
21 WE WOULD HAVE SIGNIFICANT ISSUES IN FRESNO AS A RESULT OF IT.

22 **JUDGE REINHARDT:** SO YOU ARE NOT TESTIFYING THAT
23 FRESNO'S PROBLEMS ARE MORE SERIOUS THAN ANYBODY ELSE'S?

24 **THE WITNESS:** NO. WE WOULD BE AT THE HIGH END OF THE
25 SPECTRUM, BUT THERE MAY BE OTHERS THAT ARE IN WORSE SHAPE THAN

1 WE WOULD BE. HOPEFULLY NOT.

2 **JUDGE KARLTON:** ALL THINGS ARE POSSIBLE.

3 BY MS. BARLOW

4 **Q** FINALLY, CHIEF, THE -- YOU TALKED ABOUT UNEMPLOYMENT. THE
5 CURRENT UNEMPLOYMENT RATE IN FRESNO IS 11.4 PERCENT; IS THAT
6 CORRECT?

7 **A** THE MOST RECENT STUDY, I BELIEVE IN THE LAST MONTH OR SO,
8 SHOWED IT AT ABOUT 11.4 PERCENT UNEMPLOYMENT.

9 **MS. BARLOW:** WE DO HAVE AN EXHIBIT, YOUR HONOR,
10 THAT'S PUBLIC RECORD FROM EDD THAT SHOWS BOTH THE CURRENT FRESNO
11 AND STATE, AND WE'LL OFFER THAT AS A PUBLIC RECORD AT AN
12 APPROPRIATE TIME.

13 AT THIS POINT, I HAVE NOTHING FURTHER.

14 **JUDGE HENDERSON:** ANYTHING FROM STATE DEFENDANTS?

15 **MR. LEWIS:** YES, YOUR HONOR. GOOD MORNING. KYLE
16 LEWIS FOR THE STATE DEFENDANTS.

17 **DIRECT EXAMINATION BY MR. LEWIS**

18 BY MR. LEWIS

19 **Q** GOOD MORNING, CHIEF DYER.

20 **A** GOOD MORNING, SIR.

21 **Q** CHIEF, IN YOUR REPORT YOU WROTE THAT FOR EVERY ONE CRIME
22 THAT A PERSON IS CAUGHT FOR, THEY MIGHT COMMIT AS MANY AS 12
23 ADDITIONAL CRIMES?

24 **A** THAT'S CORRECT.

25 **Q** WOULD YOU AGREE THAT WHILE A PERSON IS IN PRISON, THEY ARE

1 INCAPACITATED IN THE SENSE --

2 **JUDGE KARLTON:** SIR, IF YOU THINK WE DON'T UNDERSTAND
3 THAT, THEN YOUR CONTEMPT FOR THE COURT IS SHOCKING. OBVIOUSLY,
4 PEOPLE IN PRISON ARE NOT COMMITTING CRIMES OUTSIDE OF PRISON.

5 **MR. LEWIS:** YES, YOUR HONOR. I'M ATTEMPTING TO LAY A
6 FOUNDATION FOR MY FURTHER QUESTIONS.

7 BY MR. LEWIS

8 **Q** WHILE A PERSON IS IN PRISON, THEY ARE INCAPACITATED AND NOT
9 ABLE TO COMMIT CRIMES OUTSIDE OF PRISON, CORRECT?

10 **A** YES, SIR.

11 **Q** IF A PERSON IS ON THE STREETS AND GETS CAUGHT FOR ONLY ONE
12 OF THEIR CRIMES AND THERE'S 12 OTHER ONES OUT THERE THAT HAVE
13 BEEN COMMITTED, WOULD YOU SAY THOSE AGGREGATE CRIMES AFFECT
14 PUBLIC SAFETY?

15 **A** YES, SIR.

16 **Q** IF A PERSON IS RELEASED FROM PRISON EARLY, AS IN THIS CASE
17 THERE ARE -- THERE'S A PRISONER RELEASE ORDER ON THE TABLE
18 POTENTIALLY FOR RELEASE OF A VARIETY OF OFFENDERS OVER A
19 24-MONTH PERIOD -- IF A PERSON IS RELEASED EARLY FROM PRISON, DO
20 THEY HAVE AN OPPORTUNITY TO COMMIT ADDITIONAL CRIMES BEFORE THEY
21 WOULD HAVE OTHERWISE?

22 **JUDGE KARLTON:** SIR -- I'M SORRY, GENTLEMEN. I DON'T
23 WANT TO -- BUT THIS IS ABSURD. THIS ISN'T EVEN YOUR FINAL
24 ARGUMENT. THIS IS SELF-EVIDENT STUFF.

25 **MR. LEWIS:** YOUR HONOR, I'M ASKING THE WITNESS ABOUT

1 A STATEMENT THAT WAS MADE IN HIS REPORT AND AS EXPERTISE AS A
2 POLICE CHIEF OF A LARGE CITY IN CALIFORNIA.

3 **JUDGE REINHARDT:** THAT PEOPLE WHO ARE NOT IN PRISON
4 ARE ABLE TO COMMIT CRIMES --

5 **JUDGE KARLTON:** AND PEOPLE THAT ARE --

6 **JUDGE REINHARDT:** THEY WOULDN'T BE ABLE TO COMMIT IF
7 THEY'RE IN PRISON.

8 **JUDGE KARLTON:** WE GOT THAT. WE UNDERSTOOD THAT.

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

10 BY MR. LEWIS

11 **Q** CHIEF DYER, WOULD AN EARLY RELEASE OF PRISONERS ALLOW FOR AN
12 ADDITIONAL OPPORTUNITY TO COMMIT CRIME?

13 **A** YES, SIR.

14 **Q** DURING THE WINDOW THAT THE PRISONERS WOULD HAVE BEEN
15 RELEASED, THE THREE-MONTH WINDOW THEY MIGHT HAVE BEEN RELEASED
16 EARLY, COULD THEY HAVE COMMITTED AN ADDITIONAL 12 CRIMES FOR
17 EVERY ONE THEY WERE CAUGHT FOR?

18 **JUDGE KARLTON:** ANYTHING IS POSSIBLE.

19 **MR. SPECTER:** OBJECTION TO THE WORD "ADDITIONAL."
20 IT'S VAGUE FOR ALL THE REASONS JUDGE REINHARDT --

21 **JUDGE REINHARDT:** HE ALREADY TESTIFIED THAT, YES,
22 THEY WOULD COMMIT CRIMES DURING THAT PERIOD, AND IF THEY WEREN'T
23 RELEASED, THEN THEY WOULD COMMIT THEM THREE MONTHS LATER.

24 **JUDGE KARLTON:** YOU KNOW, WE ARE REALLY ANXIOUS TO
25 LET YOU PUT ON YOUR CASE. THIS IS SUCH A COMPLICATED PROBLEM,

1 BUT TO STATE THE OBVIOUS, AND THEN RESTATE IT, AND THEN RESTATE
2 IT, AND THEN -- IT'S JUST A PROFOUND WASTE OF TIME. THIS IS
3 CUMULATIVE. YOU GOT ANYTHING NEW THAT YOU WANT TO ASK?

4 **MR. LEWIS:** THANK YOU, YOUR HONOR. I'LL BE SEATED
5 NOW.

6 CROSS-EXAMINATION? DO YOU WANT TO TAKE BREAK? OKAY.
7 WE'LL TAKE A 15-MINUTE RECESS.

8 (RECESS TAKEN.)

9 **JUDGE HENDERSON:** YOU MAY PROCEED WITH CROSS WHEN YOU
10 ARE READY, COUNSEL.

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

12 **CROSS EXAMINATION**

13 **BY MR. SPECTER:**

14 **Q.** GOOD MORNING, MR. DYER.

15 **A.** GOOD MORNING, MR. SPECTER.

16 **Q.** AS I UNDERSTAND YOUR POSITION, IT'S THAT A PRISONER RELEASE
17 ORDER WOULD RESULT IN MORE PAROLEES IN YOUR CITY AND COUNTY FOR
18 SOME PERIOD OF TIME, CORRECT?

19 **A.** THAT'S CORRECT.

20 **Q.** AND THIS WOULD DRAMATICALLY INCREASE THE CRIME IN YOUR
21 COMMUNITY, IS THAT RIGHT?

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

23 **Q.** AND SO YOU WOULD EXPECT THAT AS THE NUMBER OF PAROLEES
24 INCREASE, THE CRIME RATE WOULD INCREASE, RIGHT?

25 **A.** GENERALLY, YES.

1 Q. BUT THAT HASN'T HAPPENED, HAS IT? IN FACT -- WELL, LET ME
2 ASK YOU THIS. BETWEEN 2003 AND 2007 -- REMEMBER WE WENT THROUGH
3 THIS DURING YOUR DEPOSITION?

4 A. YES.

5 Q. (CONTINUING) -- THERE WAS A 28 PERCENT INCREASE IN THE
6 NUMBER OF PAROLEES AND CRIME WENT DOWN DURING THAT PERIOD,
7 RIGHT?

8 A. ALL BUT 2005.

9 Q. RIGHT. AND SO WHAT I DID -- YOU ESTIMATE THAT THERE ARE
10 GOING TO BE ABOUT 1900 PAROLEES FROM A PRISONER RELEASE ORDER,
11 RIGHT?

12 A. THAT WAS BASED ON THE INITIAL NUMBER OF 40,000, YES.

13 Q. SO WE'LL TAKE AROUND 2000 WOULD BE A FAIR ESTIMATE? YES?

14 A. YES.

15 Q. OKAY.

16 MR. SPECTER: COULD WE PLEASE HAVE THE FIRST TABLE?

17 (DOCUMENT DISPLAYED)

18 BY MR. SPECTER:

19 Q. SO, MR. DYER, THIS IS A CHART BASED ON THE NUMBER OF
20 PAROLEES, NEW ADDITIONAL PAROLEES WHICH ARE RELEASED TO THE
21 COUNTY OF FRESNO, AND IT ALSO HAS THE VIOLENT CRIME RATES.

22 MS. BARLOW: I'M SORRY, YOUR HONOR. I'M GOING TO
23 OBJECT. I DON'T KNOW WHERE THIS DOCUMENT CAME FROM. I'VE NEVER
24 SEEN IT BEFORE. I DON'T KNOW WHO PREPARED IT. I DON'T KNOW
25 WHERE IT CAME FROM.

1 **MR. SPECTER:** WE PREPARED IT, YOUR HONOR.

2 **MS. BARLOW:** IT ALSO MISSTATES THE EVIDENCE. THE
3 CDCR DATA DOES NOT SHOW 5992 PAROLEES RELEASED IN 2007 TO FRESNO
4 COUNTY. SO I DON'T KNOW THAT ANY OF THESE NUMBERS ARE ACCURATE.

5 **MR. SPECTER:** I'M GOING TO ASK HIM TO MAKE CERTAIN
6 ASSUMPTIONS AND WE CAN WORRY ABOUT THE ACCURACY OF THE
7 ASSUMPTIONS AT A LATER POINT.

8 **JUDGE HENDERSON:** PROCEED. AND YOU CAN REVISIT IT,
9 COUNSEL, ON REDIRECT.

10 **MR. SPECTER:** IF YOU CAN HIGHLIGHT THE ROWS 94 TO 95,
11 PLEASE? BOTH ROWS?

12 **BY MR. SPECTER:**

13 **Q.** BETWEEN 94 AND 95 THERE WERE AN ADDITIONAL 2068 PAROLEES
14 RELEASED TO FRESNO --

15 **MS. BARLOW:** EXCUSE ME, COUNSEL. CAN I HAVE A HARD
16 COPY THAT CHART?

17 (WHEREUPON DOCUMENT WAS TENDERED
18 TO COUNSEL.)

19 **JUDGE KARLTON:** MR. SPECTER, THIS WHOLE LINE OF
20 QUESTIONING MAY BECOME JUST IRRELEVANT. WHERE DID YOU GET THE
21 FIGURES THAT YOU PUT INTO THIS CHART?

22 **MR. SPECTER:** WE'RE PREPARED TO SUBMIT THAT THESE ARE
23 ALL FROM THE STATE ATTORNEY GENERAL'S OFFICE WEBSITE AND THE
24 CDCR WEBSITE. AND ALL THE WE DID WAS PUT IT ON A SPREADSHEET
25 AND HAVE IT DO SOME CALCULATIONS.

1 **JUDGE KARLTON:** ALL RIGHT.

2 **BY MR. SPECTER:**

3 **Q.** SO IF YOU SEE 94 AND 95 AND YOU TRUST MY MATH, THERE ARE AN
4 ADDITIONAL 2,068 PAROLEES IN FRESNO. YET, BETWEEN THOSE TWO
5 TIMES VIOLENT CRIME WENT DOWN 7.14 PERCENT AND PROPERTY CRIME
6 WENT DOWN 6.09 PERCENT. DO YOU SEE THAT, MR. DYER?

7 **A.** YES.

8 **Q.** AND THE SAME THING BETWEEN 2002 AND 2007. THERE ARE AN
9 ADDITIONAL 2,148 PAROLEES IN FRESNO, AND VIOLENT CRIME WENT DOWN
10 ALL THE YEARS EXCEPT FOR 2005, DIDN'T IT?

11 **MR. MELLO:** YOUR HONOR, PAUL MELLO FOR THE STATE
12 DEFENDANTS.

13 I WOULD JUST LIKE TO INTERPOSE AN ADDITIONAL
14 OBJECTION FOR LACK OF FOUNDATION.

15 ARE ALL OF THESE HYPOTHETICAL QUESTIONS IN LIGHT OF
16 THE FACT THAT NONE OF THIS DATA HAS BEEN ESTABLISHED FOR THE
17 COURT AND FOR THE PARTIES?

18 **JUDGE REINHARDT:** I THOUGHT IT WAS ALL ON THE
19 ASSUMPTION THAT THESE WERE ACCURATE.

20 **MR. SPECTER:** RIGHT.

21 **JUDGE KARLTON:** YOU ARE GOING TO SUPPLY US WITH SOME
22 KIND OF PROOF THAT YOU DIDN'T JUST MAKE THOSE NUMBERS UP?

23 **MR. SPECTER:** I WAS GOING TO SUPPLY THEM WITH IT
24 FIRST AND IF THEY OBJECTED, WE'LL PUT THE PERSON WHO PREPARED IT
25 ON THE STAND AND SHE CAN EXPLAIN EXACTLY IT HOW IT WENT.

1 BUT I HOPE WHEN THEY GET TO QUESTION HER, THEY CAN --
2 THERE WON'T BE ANY MORE OBJECTIONS, JUST LIKE WE HAVE DONE IN
3 OTHER EXHIBITS THAT THEY HAVE REQUESTED THAT WE...

4 **JUDGE HENDERSON:** PROCEED.

5 **BY MR. SPECTER:**

6 **Q.** SO MY QUESTION WAS, MR. DYER, EVEN THOUGH THERE WAS AN
7 INFLUX OF PAROLEES ABOUT THAT -- DURING THAT TIME, THERE WERE --
8 CRIME WENT DOWN IN ALL THE YEARS EXCEPT 2005, ISN'T THAT RIGHT?

9 **A.** YES.

10 **Q.** OKAY. SO, IN FACT, YOU HAVE A PAGE ON THE FRESNO WEBSITE,
11 DO YOU NOT, THE POLICE DEPARTMENT WEBSITE?

12 **A.** YES.

13 **Q.** AND YOU CLAIM THAT FRESNO HAS ENJOYED THE LOWEST CRIME IN 43
14 YEARS, ISN'T THAT RIGHT?

15 **A.** THAT'S CORRECT.

16 **Q.** ALL RIGHT. SO NOW I WOULD LIKE TO SHOW YOU A POWERPOINT
17 DEMONSTRATION, WHICH IS ALL WE DO ON THESE POWERPOINTS IS THE
18 SPREADSHEET MAKES SOME OF THESE CHARTS INTO GRAPHS.

19 (DOCUMENT DISPLAYED)

20 **JUDGE KARLTON:** AGAIN, YOU ARE GOING TO SOMEHOW OR
21 OTHER EITHER SATISFY THE DEFENDANTS OR PUT THE PERSON ON THE
22 STAND?

23 **MR. SPECTER:** YES, YOUR HONOR.

24 **MR. MELLO:** YOUR HONORS, PAUL MELLO ONE LAST TIME.

25 CAN WE JUST HAVE A STANDING OBJECTION FOR LACK OF

1 FOUNDATION WITH RESPECT TO ALL OF THESE SO I DON'T HAVE TO KEEP
2 ON OBJECTING?

3 **MS. BARLOW:** AND JOIN.

4 **JUDGE HENDERSON:** YES.

5 **BY MR. SPECTER:**

6 **Q.** SO THIS CHART, THE PINK LINE ARE THE NEW PAROLEES AND IT'S
7 ADJUSTED FOR POPULATION, AND THE DARKER LINE IS THE VIOLENT
8 CRIME RATE.

9 SO AS YOU SEE -- DO YOU SEE, MR. DYER --

10 **JUDGE REINHARDT:** COUNSEL, THIS JUST CONFIRMS MY
11 THEORY OF STATISTICS, ECONOMIC STATISTICS, BECAUSE UNDER THIS
12 THEORY WE OUGHT TO GIVE THEM AS MANY PAROLEES AS POSSIBLE AND WE
13 WILL REALLY DROP THE CRIME RATE.

14 **MR. SPECTER:** HE MADE THE SAME POINT DURING THE
15 DEPOSITION.

16 **THE WITNESS:** YOU READ MY DEPOSITION.

17 **JUDGE REINHARDT:** THAT SHOWS YOU WHAT THE FIGURES ARE
18 WORTH.

19 **MR. SPECTER:** IT DOES REBUT HIS POINT, YOUR HONOR --

20 **JUDGE REINHARDT:** YOU ARE DOING THE RIGHT THING.

21 **MR. SPECTER:** OKAY. IT'S GOOD TO KNOW.

22 **JUDGE REINHARDT:** I'M SAYING WHAT YOU ARE PROVING IS
23 QUITE CLEAR; THAT THE MORE PAROLEES YOU HAVE, THE LESS CRIME
24 RATE.

25 **MR. SPECTER:** I DON'T PRETEND THAT THERE IS A CAUSAL

1 RELATIONSHIP, BUT MR. DYER DOES, I THINK.

2 AND IF YOU WOULD NOW GO TO THE PROPERTY CRIME RATE
3 FOR FRESNO?

4 (DOCUMENT DISPLAYED)

5 **MR. MELLO:** OBJECTION. VAGUE AS TO "NEW PAROLEE
6 RATES," "PROPERTY CRIME RATES." I DON'T UNDERSTAND WHAT THAT
7 MEANS. I DON'T KNOW IF THE WITNESS DOES.

8 **JUDGE HENDERSON:** DO YOU UNDERSTAND THE QUESTION,
9 CHIEF DYER?

10 **THE WITNESS:** NO, I DO NOT.

11 **BY MR. SPECTER:**

12 **MR. SPECTER:** YOU KNOW WHAT THE CRIME RATES ARE, MR.
13 DYER, DON'T YOU?

14 **A.** WHAT THE CRIME RATES ARE?

15 **Q.** YOU KNOW WHAT A CRIME RATE IS?

16 **JUDGE KARLTON:** WHAT THE TERM MEANS.

17 **A.** OH, YES, I DO.

18 **BY MR. SPECTER:**

19 **Q.** AND YOU KNOW THAT CRIME RATES ARE SEGREGATED INTO TWO
20 CATEGORIES, VIOLENT CRIME AND PROPERTY CRIME?

21 **A.** THAT'S CORRECT.

22 **Q.** THE YELLOW CHART THERE IS A -- THE YELLOW LINE IS AN
23 ILLUSTRATION OF THE PROPERTY CRIME RATE TAKEN FROM THE ATTORNEY
24 GENERAL'S DATA; DO YOU UNDERSTAND THAT?

25 **A.** YES.

1 Q. THE PAROLEE RATE, NEW PAROLEE RATE IS A FUNCTION OF THE
2 NUMBER OF PAROLEES IN FRESNO ADJUSTED FOR THE POPULATION. SO AS
3 IT SAYS, IT'S A RATE PER 100,000 OF THE POPULATION.

4 SO WHAT WE DID, WE WANTED TO DO IS TO MAKE SURE --

5 **MS. BARLOW:** I'M GOING TO OBJECT AGAIN TO FOUNDATION,
6 YOUR HONOR.

7 **JUDGE KARLTON:** YOU HAVE GOT A STANDING -- YOU'VE GOT
8 A STANDING OBJECTION. YOU DON'T HAVE TO KEEP SAYING IT.

9 **JUDGE REINHARDT:** I DON'T UNDERSTAND. WHEN YOU SAY
10 "NEW PAROLEE RATE" --

11 **MR. SPECTER:** THAT'S THE ADDITIONAL PAROLEES WHO ARE
12 ENTERING THE COUNTY.

13 **JUDGE REINHARDT:** SO THAT'S NOT THE TOTAL NUMBER OF
14 PAROLEES IN THE COUNTY, WHICH WOULD BE THE SAME SORT OF THING.

15 **A.** WELL, THOSE ARE THE NUMBERS RELEASED, IS THAT CORRECT.

16 **BY MR. SPECTER:**

17 **Q.** RELEASED.

18 **A.** THAT MEANS IT COULD BE THE SAME PERSON RELEASED FIVE TIMES
19 THAT YEAR, YES.

20 **Q.** IT COULD BE.

21 **A.** IT IS.

22 **Q.** TOTAL FELONS PAROLED AND REPAROLED FROM AN INSTITUTION BY
23 REGION AND COUNTY.

24 **A.** YES.

25 **Q.** RIGHT.

1 **JUDGE REINHARDT:** YOU CAN BE PAROLED FROM PRISON FIVE
2 TIMES IN ONE YEAR?

3 **THE WITNESS:** YES, SIR. WE HAVE CURRENTLY -- IN 2007
4 I THINK WE HAD 5,000 PAROLEES IN FRESNO COUNTY. WE ARRESTED
5 6,453, MEANING THAT WE ARRESTED THE SAME PAROLEES IN MANY CASES
6 OVER AND OVER. IN FACT, THE EXAMPLE I GAVE --

7 **JUDGE REINHARDT:** NO, NO. I UNDERSTAND THE PAROLEES,
8 BUT HAVE THEY BEEN PAROLED BETWEEN EACH ARREST?

9 **JUDGE KARLTON:** OR ARE THEY BEING PUT ON PROBATION OR
10 WHATEVER?

11 **THE WITNESS:** YOU CAN ARREST SOMEONE AND THEY WILL DO
12 TWO MONTHS IN PRISON AND THEN BE REPAROLED.

13 **JUDGE REINHARDT:** FIVE TIMES IN A YEAR?

14 **THE WITNESS:** YES.

15 **JUDGE REINHARDT:** WELL, WHAT KIND OF A SYSTEM IS
16 THAT? I MEAN...

17 **JUDGE KARLTON:** THEY HAVE GOT NO PLACE TO PUT THEM.

18 **JUDGE REINHARDT:** DOES THAT MAKE SENSE TO PUT THOSE
19 PEOPLE IN PRISON FOR TWO MONTHS AT A TIME?

20 **THE WITNESS:** IN MANY RESPECTS, BECAUSE THEY ARE NOT
21 COMMITTING CRIME DURING THOSE TWO MONTHS, YES.

22 **JUDGE REINHARDT:** THERE IS NOTHING BETTER YOU CAN DO
23 WITH THEM THAN SEND THEM TO PRISON FOR TWO MONTHS? I MEAN, THE
24 WHOLE IDEA IS THE PRISON SYSTEM.

25 **THE WITNESS:** I THINK UNDER THE CURRENT SYSTEM THERE

1 MAY NOT BE, BUT THERE CERTAINLY COULD BE, YES.

2 **JUDGE REINHARDT:** DO YOU HAVE FIGURES FOR THE TOTAL
3 NUMBER OF PAROLEES?

4 **MR. SPECTER:** YES.

5 **BY MR. SPECTER:**

6 **Q.** AND I WAS GOING TO ASK MR. DYER IF HE KNOWS, AND I BELIEVE
7 HE DOES, THAT THE TOTAL NUMBER OF PAROLEES IN FRESNO HAS
8 INCREASED OVER THE YEARS, HAS IT NOT, MR. DYER?

9 **A.** HAS INCREASED?

10 **Q.** YES. LIVING IN YOUR COUNTY. I MEAN, IT'S GONE FROM ABOUT
11 4,000 IT'S NOW UP ABOUT 5,000, RIGHT?

12 **A.** I WOULD HAVE TO TAKE A LOOK AT THAT. I THOUGHT THE NUMBER
13 WAS FAIRLY CONSISTENT AND MAY HAVE EVEN DECREASED.

14 **MR. SPECTER:** OKAY. WE WILL WE WILL PROVIDE THAT
15 INFORMATION TO THE COURT.

16 **BY MR. SPECTER:**

17 **Q.** I BELIEVE THAT -- WELL, ANYWAY, I BELIEVE THAT THE CHARTS
18 THAT WE HAVE BEEN SHOWING YOU SHOW THAT THE NUMBER OF PAROLEES
19 IN THE COUNTY HAS INCREASED --

20 **MR. MELLO:** OBJECTION. COUNSEL IS TESTIFYING.

21 **MS. BARLOW:** AGREED. ARGUMENTATIVE.

22 **JUDGE REINHARDT:** LET ME ASK ONE MORE QUESTION.

23 YOU ARE SAYING THAT THE NUMBER OF PAROLEES ISN'T
24 INCREASING? AND SO THAT RELEASING THE PAROLEES EARLIER IS NOT
25 GOING TO REALLY CHANGE THE NUMBER OF PAROLEES?

1 **THE WITNESS:** THE NUMBER OF PAROLEES IN OUR COMMUNITY
2 FROM MONTH-TO-MONTH, YEAR-TO-YEAR CHANGES. I DON'T KNOW WHAT
3 THOSE TOTALS NUMBERS ARE TODAY VERSUS WHAT HE IS REFERRING TO IN
4 1995. I DON'T KNOW WHAT THOSE -- WHAT 1995 WAS.

5 I DON'T HAVE THOSE -- I THINK THAT'S WHAT HE IS
6 ASKING ME, DID IT CHANGE BETWEEN 1995 AND 2007.

7 **BY MR. SPECTER:**

8 **Q.** YES.

9 **A.** I DON'T KNOW BECAUSE I DON'T KNOW WHAT 1995 WAS. OTHER THAN
10 WHAT YOU SHOWED ME HERE, THAT WAS I THINK 6,000 OR --

11 **Q.** ALMOST 6,000 IN 2007.

12 **A.** SO IF THAT'S THE CASE THERE WERE 6,000 IN '95. TODAY
13 THERE'S 5,000. SO IT WOULD HAVE GONE DOWN.

14 **Q.** WELL, OKAY. I WON'T ARGUE WITH YOU ABOUT THE FIGURES SINCE
15 I DON'T HAVE THE TABLE HERE, BUT --

16 **A.** OKAY.

17 **Q.** -- WE WILL PROVIDE THAT TO THE COURT LATER.

18 **MS. BARLOW:** MOVE TO STRIKE, YOUR HONOR, AS
19 ARGUMENTATIVE.

20 **JUDGE REINHARDT:** HE SAID HE IS GOING TO PROVIDE IT
21 TO THE COURT LATER.

22 **JUDGE HENDERSON:** OVERRULED.

23 **MR. MELLO:** WITHOUT THE OPPORTUNITY FOR --

24 **JUDGE KARLTON:** OVERRULED. SIT DOWN. LET'S GET THIS
25 DONE.

1 **MR. MELLO:** THANK YOU, YOUR HONOR.

2 **BY MR. SPECTER:**

3 **Q.** IN YOUR -- WELL, YOU TESTIFIED ON DIRECT EXAMINATION THAT
4 FRESNO DOESN'T HAVE ALL THE RESOURCES IT NEEDS TO PROVIDE THE
5 SERVICES TO THE PAROLEES IN YOUR CITY, RIGHT?

6 **A.** IT'S MY BELIEF THAT THERE'S INSUFFICIENT TREATMENT
7 FACILITIES IN FRESNO, YES.

8 **Q.** BUT YOU HAVEN'T REQUESTED MORE RESOURCES FROM THE STATE
9 GOVERNMENT FOR THESE RESOURCES IN THE LAST THREE YEARS, HAVE
10 YOU?

11 **A.** NO. I PERSONALLY HAVE NOT, NO.

12 **Q.** AND YOU HAVEN'T REQUESTED IT FROM YOUR COUNTY BOARD OF
13 SUPERVISORS EITHER, HAVE YOU?

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

15 **Q.** THE JAIL IN YOUR COUNTY IS UNDER SOME SORT OF COURT ORDER TO
16 RELEASE PRISONERS AT 100 PERCENT OF CAPACITY, ISN'T THAT RIGHT?

17 **A.** YES.

18 **Q.** AND SINCE 1995 THE SHERIFF HAS RELEASED OVER 26,210
19 PRISONERS, IS THAT RIGHT?

20 **A.** I DON'T KNOW THAT TO BE THE NUMBER, BUT I KNOW YOU SHARED
21 THAT WITH ME.

22 **Q.** RIGHT. IT WAS FROM THE SHERIFF'S OWN RESPONSES TO THE
23 INTERROGATORIES. DO YOU REMEMBER THAT?

24 **MS. BARLOW:** ASSUMES FACTS NOT IN EVIDENCE.

25

1 **BY MR. SPECTER:**

2 **Q.** AND YOU DIDN'T EVEN KNOW THAT THE SHERIFF HAD RELEASED THAT
3 MANY PRISONERS FROM JAIL UNTIL I SHOWED YOU THAT FIGURE, DID
4 YOU?

5 **MS. BARLOW:** ASSUMES FACTS NOT IN EVIDENCE. LACKS
6 FOUNDATION.

7 **JUDGE HENDERSON:** IS THAT CORRECT, CHIEF DYER?

8 **JUDGE KARLTON:** PLEASE READ THE -- IF THERE IS AN
9 ARGUMENT ABOUT WHETHER IT'S ACCURATE, THE THING TO DO IS TO GET
10 THE INTERROGATORY AND READ IT TO THE COURT, AND THEN IT'S IN
11 EVIDENCE, AND THESE PEOPLE WILL STOP OBJECTING. OTHERWISE, THEY
12 ARE NOT -- THEY ARE NOT INAPPROPRIATELY OBJECTING, MR. SPECTER.

13 **MR. SPECTER:** YES, YOUR HONOR. OKAY. LET'S MOVE ON.

14 **BY MR. SPECTER:**

15 **Q.** YOU HAVE IN YOUR REPORT INFORMATION PROVIDED TO -- WELL,
16 YOUR REPORT, THE SUBSTANTIVE PORTIONS OF YOUR REPORT WERE
17 WRITTEN BY YOUR CHIEF DEPUTY, ISN'T THAT RIGHT?

18 **A.** THAT'S CORRECT.

19 **Q.** AND YOU HAVE IN YOUR REPORT THAT SOME INFORMATION ABOUT HOW
20 THIS INCREASE OF PAROLEES INTO YOUR COUNTY WOULD AFFECT THE
21 SUPERIOR COURT, CORRECT?

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

23 **Q.** AND THAT WAS INFORMATION THAT A SUPERIOR COURT JUDGE TOLD TO
24 YOUR CHIEF DEPUTY, IS THAT CORRECT?

25 **A.** THAT'S CORRECT.

1 Q. AND THEN YOUR CHIEF DEPUTY TOLD IT TO YOU, RIGHT?

2 A. PLACED IT IN THE REPORT, YES.

3 Q. PLACED IT IN THE REPORT. BUT NEITHER YOU OR YOUR CHIEF
4 DEPUTY DID ANYTHING TO VERIFY THIS INFORMATION, DID YOU?

5 A. THAT'S CORRECT.

6 MR. SPECTER: I MOVE TO STRIKE THAT PORTION OF HIS
7 REPORT --

8 MS. BARLOW: WITH RESPECT, YOUR HONOR --

9 MR. SPECTER: -- AS HEARSAY.

10 MS. BARLOW: I'M SORRY. COULD I RESPOND?

11 JUDGE HENDERSON: I THOUGHT YOU WERE.

12 MS. BARLOW: HE IS AN EXPERT YOUR HONOR. HE IS
13 ENTITLED TO RELY ON HEARSAY STATEMENTS AS THE BASIS FOR HIS
14 OPINIONS THAT THERE WILL BE AN IMPACT TO HIS CITY AND IN HIS
15 COUNTY AND TO HIS OPERATIONS. THAT'S ALL IT'S OFFERED FOR, IS
16 FOUNDATION.

17 JUDGE REINHARDT: I THOUGHT IT WAS OFFERED TO SHOW
18 WHAT THE EFFECT ON THE JUDICIAL SYSTEM WOULD BE. ISN'T THAT THE
19 POINT YOU ARE OBJECTING TO?

20 MR. SPECTER: I CAN'T HEAR YOU, YOUR HONOR.

21 JUDGE REINHARDT: ARE YOU OBJECTING TO THE PART THAT
22 SHOWS YOU THE EFFECT ON THE JUDICIAL SYSTEM?

23 MR. SPECTER: YOUR HONOR, HE HAS NO EXPERTISE IN
24 THAT. THERE IS NO FOUNDATION FOR IT, AND IT'S BASED ON ONE
25 STATEMENT THAT A JUDGE MADE TO SOMEBODY UNDER HIS COMMAND.

1 **THE WITNESS:** THAT'S NOT TOTALLY TRUE.

2 **JUDGE HENDERSON:** TELL US WHAT'S TOTALLY TRUE.

3 **THE WITNESS:** I HAVE HAD CONVERSATIONS WITH A NUMBER
4 OF NUMBER OF JUDGES WITHIN OUR COUNTY REGARDING HOW THE -- WE DO
5 NOT HAVE ENOUGH JUDGES AND COURTS TO HANDLE THE CURRENT CASE
6 LOADS. WE KNOW THAT FOR CERTAIN.

7 WE HAVE ADDED VERY FEW JUDGES OVER THE YEARS IN
8 FRESNO AND, YET, THE CASELOAD INCREASES. SO WE KNOW THAT ANY
9 ADDITIONAL WORKLOAD IS GOING TO OVERBURDEN IT FURTHER. THAT IS
10 FIRSTHAND EXPERIENCE THROUGH CONVERSATIONS THAT I HAVE HAD.

11 THIS WAS A RECENT CONVERSATION FOR THE PURPOSE OF
12 THIS REPORT.

13 **JUDGE REINHARDT:** IF THE CRIME RATE GOES DOWN -- WE
14 ALL KNOW THAT THERE'S A PROBLEM WITH NOT ENOUGH JUDGES
15 EVERYWHERE. AND IF THE CRIME RATE GOES DOWN BECAUSE WE HAVE
16 MORE PAROLEES, THAT WOULD BE GOOD FOR THE COURT, WOULDN'T IT?

17 **THE WITNESS:** I DON'T KNOW. I'D HAVE TO ANALYZE
18 THAT.

19 **MR. SPECTER:** ANYWAY --

20 **JUDGE REINHARDT:** I GUESS THERE ARE A LOT OF WAYS WE
21 COULD REDUCE THE NUMBER OF CRIMINAL CASES AND THAT CERTAINLY
22 WOULD MAKE THE JOB OF JUDGES EASIER.

23 **JUDGE KARLTON:** IT'S IN AND WHATEVER VALUE WE WILL
24 PLACE ON IT, WE WILL PLACE ON IT. WE HAVE ESTABLISHED THE
25 SOURCE AND THE NATURE. LET'S GO.

1 **MR. SPECTER:** RIGHT.

2 **BY MR. SPECTER:**

3 **Q.** AND THE SAME THING APPLIES TO THE DISTRICT ATTORNEY. THAT'S
4 BASED ON A STATEMENT THE DISTRICT ATTORNEY MADE TO YOU. YOU
5 DIDN'T DO ANY INDEPENDENT VERIFICATION OF HER STATEMENTS OR
6 CONDUCT A STUDY OR YOU NEVER WORKED IN THE DISTRICT ATTORNEY'S
7 OFFICE.

8 **JUDGE REINHARDT:** WE ARE GOING TO HAVE ENOUGH
9 DISTRICT ATTORNEYS HERE LATER. YOU CAN GO THROUGH IT WITH THEM.

10 **MR. SPECTER:** I WAS TRYING TO MAKE IT QUICK.

11 **JUDGE REINHARDT:** YOU KNOW, I THINK WE CAN -- THIS IS
12 ALL ACCEPTED FOR THE WEIGHT AND WHEN WE DECIDE THAT, WE WILL
13 CONSIDER WHETHER THE -- HAVING SOME HUNDRED MORE PAROLEES IS
14 GOING TO MAKE THE JOB OF TRIAL JUDGES MORE DIFFICULT.

15 **MR. SPECTER:** YES, YOUR HONOR.

16 **JUDGE REINHARDT:** OKAY.

17 **BY MR. SPECTER:**

18 **Q.** GOING BACK TO THE JAIL, THE SHERIFF RECENTLY RELEASED 72
19 PRISONERS FROM THE JAIL, ISN'T THAT RIGHT?

20 **A.** YES.

21 **Q.** AND THAT WAS BECAUSE SHE DIDN'T BELIEVE SHE HAD RECEIVED
22 ENOUGH FUNDS FROM THE COUNTY, CORRECT?

23 **MS. BARLOW:** I'M SORRY. I CAN'T HEAR YOU MR.
24 SPECTER. CAN YOU SPEAK UP?

25

1 **BY MR. SPECTER:**

2 **Q.** THAT'S BECAUSE THE SHERIFF BELIEVED SHE DIDN'T HAVE ENOUGH
3 FUNDS FROM THE COUNTY TO OPERATE THE JAIL AT THAT LEVEL, IS THAT
4 RIGHT?

5 **MS. BARLOW:** CALLS FOR SPECULATION AS TO WHAT THE
6 SHERIFF BELIEVED.

7 **JUDGE HENDERSON:** LAY A FOUNDATION.

8 **BY MR. SPECTER:**

9 **Q.** THAT'S WHAT SHE SAID TO YOU, ISN'T THAT CORRECT?

10 **A.** THAT'S WHAT SHE SAID TO ME, AND PUBLICLY THAT FUNDING WASN'T
11 PROVIDED SUFFICIENTLY ENOUGH TO ALLOW HER TO HAVE ENOUGH
12 CORRECTIONAL OFFICERS IN THE JAIL. THEREFORE, SHE HAD TO CLOSE
13 DOWN A FLOOR.

14 **Q.** AND SUBSEQUENT TO THAT, THE COUNTY BOARD OF SUPERVISORS, DID
15 THEY GIVE HER ANY ADDITIONAL FUNDS TO RUN THE JAIL?

16 **A.** THEY DID PROVIDE ADDITIONAL FUNDS.

17 **Q.** NOW, AS YOU SAID BEFORE, THE SHERIFF IS RELEASING PRISONERS
18 ONCE THE JAIL REACHES 100 PERCENT OF CAPACITY, RIGHT?

19 **A.** YES.

20 **Q.** AND, YET, YOU ARE HERE OPPOSING A POPULATION RELEASE ORDER
21 FROM PRISONS AND YOU KNOW THAT THE POPULATION OF THE PRISONS IS
22 CLOSE TO 200 PERCENT OF CAPACITY, CORRECT?

23 **A.** TO MY KNOWLEDGE, FRESNO COUNTY HAS NOT RELEASED INMATES
24 BASED ON THAT HUNDRED PERCENT CAPACITY IN MANY YEARS.

25 THE FIGURES YOU PROVIDED WERE PRIMARILY FROM THE 90'S

1 WHEN THEY -- PRIOR TO THEM CONSTRUCTING A NEW JAIL.

2 **Q.** I SEE. AND YOU TOURED SOME OF THE PRISONS, HAVE YOU NOT?

3 **A.** I HAVE.

4 **Q.** AND YOU SAW SOME OF THE OVERCROWDED CONDITIONS?

5 **A.** I HAVE.

6 **MS. BARLOW:** IT'S BEYOND THE SCOPE OF HIS
7 DESIGNATION.

8 **JUDGE KARLTON:** WELL, ACTUALLY, I RAISED THE QUESTION
9 WITH HIM.

10 **MR. SPECTER:** THIS IS GOING TO BE RESPONSIVE TO SOME
11 OF THE THINGS JUDGE REINHARDT WAS ASKING HIM.

12 **BY MR. SPECTER:**

13 **Q.** I'M GOING TO ASK YOU TO MAKE CERTAIN ASSUMPTIONS, CHIEF.

14 PLEASE ASSUME THAT THE COURTS WERE TO FIND THAT
15 OVERCROWDING IS THE PRIMARY CAUSE OF THE CONSTITUTIONAL
16 VIOLATIONS REGARDING HEALTHCARE, OKAY?

17 **A.** OKAY.

18 **Q.** AND ALSO ASSUME THAT THE CONSTITUTIONAL VIOLATIONS ARE
19 CAUSING SERIOUS HARM TO PRISONERS, SERIOUS INJURY AND SOMETIMES
20 DEATH, OKAY?

21 **A.** OKAY.

22 **Q.** ALSO ASSUME THAT THE STATE CANNOT EXPAND ITS CAPACITY
23 THROUGH BUILDING MORE PRISONS, CORRECT -- I MEAN, ASSUME THAT,
24 PLEASE, OKAY?

25 **A.** OKAY.

1 Q. SO IN YOUR OPINION, UNDER THESE CIRCUMSTANCES, SHOULD THE --
2 ANY REDUCTION OF THE POPULATION OCCUR, PRISON POPULATION OCCUR?

3 MS. BARLOW: I'M SORRY, YOUR HONOR. THIS IS WELL
4 BEYOND THE SCOPE OF DESIGNATION OF HIS.

5 JUDGE KARLTON: ACTUALLY, IT CORRESPONDS TO QUESTIONS
6 BOTH JUDGE REINHARDT AND I HAVE ASKED.

7 YOU MAY ANSWER, SIR. IT'S JUST ANOTHER VARIANCE IN
8 WHAT WE HAVE ALREADY DISCUSSED, BUT...

9 A. THE QUESTION OF ME IS -- AND I WILL STATE THIS IN MY BELIEF,
10 EXPERIENCE, OPINION.

11 WHETHER OR NOT AN INDIVIDUAL BELONGS IN PRISON OR A
12 LOCAL JAIL OR ANOTHER FACILITY THAT KEEPS HIM OUT OF OUR
13 COMMUNITY IS THE ANSWER.

14 WHETHER OR NOT THEY REMAIN IN PRISON -- OBVIOUSLY,
15 THE PRISONS ARE FULL, BUT THAT DOESN'T MEAN THERE CANNOT BE
16 OTHER INSTITUTIONS THAT WOULD HOUSE THOSE INDIVIDUALS AND KEEP
17 OUR COMMUNITY SAFE AT A LESSER EXPENSE THAN PRISONS.

18 Q. WELL, ASSUME THERE ARE NOT THOSE OTHER SPACES. THEN WHAT
19 WOULD YOU DO? WHAT WOULD YOU --

20 JUDGE KARLTON: THIS IS NOT FEASIBLE, COUNSEL.

21 MR. SPECTER: OKAY. FINE.

22 BY MR. SPECTER:

23 Q. ASSUMING THAT THE COURT WERE TO ISSUE AN ORDER TO REDUCE THE
24 POPULATION, WHAT MEASURES WOULD YOU RECOMMEND BE DONE, BE TAKEN?

25 A. IF THERE WERE A PRISONER RELEASE ORDER?

1 Q. HOW IN YOUR OPINION SHOULD IT BE STRUCTURED?

2 MR. MELLO: OBJECTION. CALLS FOR A LEGAL CONCLUSION.

3 JUDGE REINHARDT: WELL, I THOUGHT ONE OF THE THINGS
4 WE ARE TRYING TO EXPLORE IN THIS PHASE IS, ARE THERE
5 ALTERNATIVES TO A PRISONER RELEASE ORDER? WHAT ARE THE REMEDIES
6 IF WE FIND A VIOLATION? WHAT SHOULD BE DONE?

7 IT DOESN'T HAVE TO BE A PRISONER RELEASE ORDER. AND
8 HERE WE HAVE ONE OF THE THINGS WE ARE SUPPOSED TO CONSIDER IS
9 LAW ENFORCEMENT. IS THERE SOME REASON THAT YOU DON'T WANT US TO
10 HEAR WHAT MIGHT SOLVE THIS PROBLEM?

11 I ASSUME THE STATE IS GOING TO HAVE AN ARGUMENT AT
12 SOME POINT ABOUT HOW WE CAN SOLVE THIS PROBLEM WITHOUT THE
13 PRISONER RELEASE ORDER. OR IF THERE IS A PRISONER RELEASE
14 ORDER, WHAT HAS THE LEAST IMPACT ON LAW ENFORCEMENT?

15 MR. MELLO: I BELIEVE THE HYPOTHETICAL ASSUMED A
16 PRISONER RELEASE ORDER. IT DIDN'T ASK FOR ALTERNATIVES TO A
17 PRISONER RELEASE ORDER. THAT'S NUMBER ONE.

18 AND, NUMBER TWO, I BELIEVE THAT THERE IS ALREADY
19 EVIDENCE AS TO THE ALTERNATIVES IN THE RECORD IN THE CASE THAT
20 WERE SET FORTH BY DEFENDANTS AND SOME OF THE DEFENDANT
21 INTERVENOR WITNESSES.

22 JUDGE REINHARDT: THERE MAY BE EVIDENCE, BUT, YOU
23 KNOW, WHAT WE HAVE TO CONSIDER IS WHAT -- WHAT IS GOOD FOR LAW
24 ENFORCEMENT? WHAT HAS THE LEAST IMPACT ON LAW ENFORCEMENT?

25 JUDGE KARLTON: AND THE FACT THAT THERE'S SOME

1 EVIDENCE DOESN'T REALLY DEMONSTRATE, DESPITE PROFESSOR
2 MARQUARDT, THAT EVEN THOUGH WE DON'T HAVE TO CONCLUSIVELY DECIDE
3 SOMETHING, THAT SOME THINGS ARE MORE LIKELY THAN OTHERS.

4 SIR, CAN YOU ANSWER THE QUESTION?

5 **THE WITNESS:** I THINK I CAN.

6 **JUDGE KARLTON:** I DIDN'T ASK THIS QUESTION, BUT AS I
7 SAID, YOU HAVE TO SHARE OUR PAIN. BUT, APPARENTLY, MR. SPECTER
8 DOESN'T CARE WHETHER YOU SHARE OUR PAIN OR NOT.

9 THE QUESTION IS: IF YOU HAD YOUR DRUTHERS, IF YOU
10 HAD TO DO SOMETHING BECAUSE THE CONSTITUTION REQUIRED YOU TO
11 ABOUT THE FACT THAT THE PRISONS ARE IN THE CONDITION THEY ARE
12 IN, WHAT WOULD YOU DO?

13 **THE WITNESS:** I WOULD AVOID A PRISONER RELEASE ORDER
14 AT ALL COSTS AND IF THERE WAS GOING TO BE A NEED TO DOWNSIZE THE
15 PRISON POPULATION, I WOULD DO EVERYTHING IN MY POWER TO TRY TO
16 DO IT AT THE FRONT END THROUGH DIVERSION. AND THAT IS DIVERTING
17 THE NUMBER OF INDIVIDUALS THAT ARE SENT FROM LOCAL JURISDICTIONS
18 TO PRISON, BUT STILL HAVING THE FUNDING AT THE LOCAL
19 JURISDICTION TO PUT THOSE INDIVIDUALS IN FACILITIES THAT ARE
20 CONTROLLED BY LOCAL GOVERNMENT FOR THE PURPOSE OF TREATMENT,
21 PREVENTION, REHABILITATION.

22 BUT I DO NOT BELIEVE THE ALTERNATIVE IS TO SIMPLY
23 ALLOW THEM TO REMAIN IN THE COMMUNITIES AND COMMIT CRIMES. I
24 DON'T THINK THAT IS FAIR TO THE COMMUNITY. IT'S NOT FAIR TO THE
25 INDIVIDUAL.

1 BUT I DO THINK LOCAL DIVERSION OVER A PERIOD OF TIME
2 COULD BE AN ALTERNATIVE IN LIEU OF RELEASING PRISONERS EARLY
3 FROM PRISON.

4 **BY MR. SPECTER:**

5 **Q.** AND A LOCAL DIVERSION, WOULD YOU SAY THAT WOULD IMPROVE
6 PUBLIC SAFETY IF THEY WERE PROVIDED PROGRAMS?

7 **A.** IT WOULD HAVE THE POTENTIAL TO, IF THE FACILITIES WERE IN
8 PLACE AND IF IT WAS DONE OVER A PERIOD OF TIME.

9 THE FEAR WOULD BE NOT TO TRY TO ACCELERATE IT TO THE
10 POINT WHERE LARGE NUMBERS OF PEOPLE WOULD SOMEHOW BE FORCED INTO
11 INADEQUATE TREATMENT PROGRAMS AND FACILITIES. THAT WOULD BE THE
12 CONCERN.

13 **Q.** OKAY. NO FURTHER QUESTIONS, YOUR HONOR.

14 **THE COURT:** ANYTHING FROM -- NOTHING FROM -- OH,
15 ANYTHING FROM CCPOA?

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

17 **THE COURT:** REDIRECT?

18 **MS. BARLOW:** JUST VERY BRIEFLY, YOUR HONOR.

19 **REDIRECT EXAMINATION**

20 **BY MS. BARLOW:**

21 **Q.** CHIEF DYER, DO YOU MEET REGULARLY WITH THE DISTRICT
22 ATTORNEY'S OFFICE REGARDING THE CASES YOU SEND TO THEM FOR
23 FILING?

24 **A.** YES.

25 **Q.** AND SO YOU HAVE A PRETTY FAIR UNDERSTANDING, DO YOU NOT, OF

1 HOW MUCH STAFF THEY HAVE AND HOW MANY CASES THEY ACTUALLY FILE
2 FOR YOU?

3 **A.** I DO.

4 **Q.** WHAT'S YOUR CURRENT RATE OF NON-FILING ON CHARGES YOU SEND
5 TO THE DISTRICT ATTORNEY'S OFFICE?

6 **A.** AS OF LAST MONTH, IT WAS 27 PERCENT OF THE CASES THAT WE HAD
7 FILED THAT WAS FELONIES AND MISDEMEANORS THAT WERE NOT FILED
8 UPON.

9 WHEN YOU REMOVE THE -- THE NON-SIGNIFICANT
10 MISDEMEANORS, SUCH AS DRIVING ON A SUSPENDED LICENSE AND SO
11 FORTH, THAT NCF RATE IS MUCH HIGHER.

12 **Q.** SO WOULD YOU ANTICIPATE THAT ASSUMING MORE CRIME WAS
13 COMMITTED IN THE COMMUNITY, AS YOU HAVE PREDICTED AS A RESULT OF
14 AN ORDER, AND YOU WERE ABLE TO APPREHEND THOSE CRIMINALS, THAT
15 WOULD YOU NEED TO SEND MORE CASES FOR FILING TO THE DISTRICT
16 ATTORNEY'S OFFICE?

17 **A.** ARE YOU ASKING IF THERE WAS NO PAROLE?

18 **Q.** RIGHT. IF WE HAD -- NO. IF THERE WAS AN ORDER ENTERED AND
19 THEY --

20 **A.** WELL, TWO THINGS COULD HAPPEN. IF -- IF INDIVIDUALS WERE
21 RELEASED BACK INTO OUR COMMUNITY EARLY AND THEY REOFFEND, THE
22 OPTION FOR THE DISTRICT ATTORNEY IS TO NOT FILE THOSE CASES AND
23 ALLOW THEM TO SIMPLY HAVE THEIR PAROLE VIOLATED AND SENT BACK TO
24 PRISON, WHICH HAPPENS FREQUENTLY IN OUR COMMUNITIES BECAUSE OF
25 AN OVERBURDENED D.A. SYSTEM.

1 BUT IF THEY DID NOT HAVE PAROLE, THEN, YES, THAT
2 WOULD CAUSE THEM TO HAVE TO TAKE FORTH THAT NEW CASE. SO IT
3 WOULD INCREASE, OBVIOUSLY, THE WORKLOAD OF OUR DISTRICT
4 ATTORNEYS SIGNIFICANTLY.

5 **Q.** WOULD YOU EXPECT A CHANGE IN THE WAY OF THE CASES ARE
6 SELECTED FOR PROSECUTION AS A RESULT?

7 **JUDGE KARLTON:** NOW, THAT IS BEYOND THE SCOPE OF HIS
8 EXPERTISE.

9 **BY MS. BARLOW:**

10 **Q.** DO YOU DISCUSS AND MEET REGULARLY WITH THE D.A. --

11 **JUDGE KARLTON:** I HAVE HEARD ALL THAT STUFF.

12 **MS. BARLOW:** ALL RIGHT. I HAVE NOTHING FURTHER.
13 THANK YOU, YOUR HONOR.

14 **THE COURT:** ANYTHING FROM THE STATE DEFENDANTS?

15 **MR. MELLO:** NO.

16 **MR. LEWIS:** NOTHING, YOUR HONOR.

17 **THE COURT:** ANY FURTHER CROSS?

18 **MR. SPECTER:** NO.

19 **JUDGE HENDERSON:** THANK YOU, CHIEF DYER, FOR
20 TESTIFYING.

21 CALL YOUR NEXT WITNESS?

22 **MR. MITCHELL:** DISTRICT ATTORNEY RODRIC PACHECO,
23 RIVERSIDE COUNTY.

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RODRIC PACHECO,

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

THE WITNESS: I DO.

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

THE WITNESS: RODRIC ANTHONY PACHECO. R-O-D-R-I-C,
A-N-T-H-O-N-Y, P-A-C-H-E-C-O.

DIRECT EXAMINATION

BY MR. MITCHELL:

Q. GOOD MORNING. BILL MITCHELL WITH THE DEFENDANT INTERVENORS.

MR. PACHECO, SIR, GOOD MORNING. COULD YOU BRIEFLY
GIVE US A SYNOPSIS OF YOUR SERVICE, YOUR PUBLIC SERVICE, YOUR
CAREER AND YOUR EDUCATION?

A. SURE. I GRADUATED FROM THE UNIVERSITY OF CALIFORNIA AT
RIVERSIDE IN 1980. I THEN WENT TO THE UNIVERSITY OF SAN DIEGO
SCHOOL OF LAW, GRADUATING IN 1983.

I CLERKED A COUPLE OF SUMMERS WITH A FIRM CALLED
SPRAGUE, MILLIGAN AND BESWICK IN THE CITY OF SAN BERNADINO. DID
CIVIL WORK AND CRIMINAL DEFENSE.

I THEN PASSED THE BAR DECEMBER 13, 1983. SOUGHT
EMPLOYMENT AS A DEPUTY DISTRICT ATTORNEY AND WAS HIRED AT THE
RIVERSIDE COUNTY DEPUTY DISTRICT ATTORNEY'S OFFICE AND STARTED
MAY 21ST, 1984.

I SERVED AS A DEPUTY DISTRICT ATTORNEY UNTIL

1 DECEMBER 2ND, 1996, WHEN I ASSUMED OFFICE AS A STATE ASSEMBLYMAN
2 FOR THE WESTERN PORTION OF THE RIVERSIDE COUNTY, 64TH ASSEMBLY
3 DISTRICT. I SERVED THREE TERMS, TWO YEARS APIECE.

4 I THEN RETURNED TO THE DISTRICT ATTORNEY'S OFFICE IN
5 RIVERSIDE COUNTY DECEMBER 2ND, 2002. CAME BACK AS A CHIEF
6 DEPUTY DISTRICT ATTORNEY. IT'S A SENIOR MANAGEMENT POSITION. I
7 MOVED UP. I WAS PROMOTED WITHIN, WHAT WAS IT, ABOUT NINE MONTHS
8 TO A YEAR TO ASSISTANT DISTRICT ATTORNEY, WHICH WAS THE SECOND
9 HIGHEST POSITION IN THE OFFICE.

10 THEN RAN FOR AND WON THE ELECTION IN JUNE OF 2006 FOR
11 DISTRICT ATTORNEY. ASSUMED OFFICE JANUARY 1ST OF 2007 AS THE
12 ELECTED DISTRICT ATTORNEY.

13 **Q.** DURING YOUR TIME, APPROXIMATELY 12 YEARS OR MORE, AS A LINE
14 PROSECUTOR, DID YOU BECOME FAMILIAR WITH AND EXPERIENCED IN ALL
15 ASPECTS OF CRIMINAL JUSTICE FROM THE PROSECUTION STANDPOINT FROM
16 THE INVESTIGATION OF CASES, CASE PROCESSING, NEGOTIATING
17 SETTLEMENTS, GOING THROUGH TRIALS AND SENTENCING DETERMINATIONS?

18 **A.** YES.

19 **Q.** DID YOU LEARN THE DISTINCTIONS BETWEEN PROBATION AND PRISON
20 AND WHAT MAKES SOMEONE ELIGIBLE FOR EITHER OF THOSE?

21 **A.** YES.

22 **Q.** DID YOU BECOME FAMILIAR WITH WHEN PROBATION WOULD BE
23 APPROPRIATE AS OPPOSED TO PRISON?

24 **A.** YES.

25 **Q.** DURING YOUR EXPERIENCE AS AN ADMINISTRATOR IN THE DISTRICT

1 ATTORNEY'S OFFICE AND NOW AS A DISTRICT ATTORNEY, ARE YOU
2 FAMILIAR WITH RUNNING A LARGE PROSECUTION OFFICE?

3 **A.** YES. OUR OFFICE IS THE -- IN TERMS OF PERSONNEL, IS THE
4 THIRD LARGEST IN THE STATE OF CALIFORNIA AND ABOUT THE TENTH IN
5 THE NATION.

6 **Q.** AS THE DISTRICT ATTORNEY OF RIVERSIDE COUNTY, ARE YOU
7 RESPONSIBLE NOT ONLY FOR BUDGET, HIRING AND FIRING OF PEOPLE,
8 BUT ALSO ALLOCATING RESOURCES TO WHERE THEY WILL BEST SERVE
9 PUBLIC SAFETY?

10 **A.** ALL OF THOSE THINGS AND MANY MORE.

11 **Q.** AS THE DISTRICT ATTORNEY, ARE YOU INVOLVED IN DEALING WITH
12 ISSUES THAT TOUCH UPON RECIDIVISM, EARLY RELEASES OF INMATES
13 FROM JAILS, ISSUES SUCH AS THAT?

14 **A.** YES. BECAUSE OF THE NATURE AND DYNAMICS OF OUR PARTICULAR
15 COUNTY, YES.

16 **Q.** CAN YOU TELL US WHAT YOUR LEGISLATIVE EXPERIENCE, WHAT THAT
17 BROUGHT TO THE TABLE FOR YOU AS FAR AS PUBLIC SAFETY ISSUES ARE
18 CONCERNED?

19 **A.** I SERVED ON A NUMBER OF COMMITTEES WHEN I WAS IN THE STATE
20 LEGISLATURE. THE EDUCATION COMMITTEE I SERVED AS A
21 VICE-CHAIRMAN. AT ONE POINT I SERVED AS A VICE-CHAIRMAN ON THE
22 TRANSPORTATION COMMITTEE. SERVED ON THE PUBLIC SAFETY
23 COMMITTEE. SERVED ON THE BUDGET COMMITTEE.

24 THE BUDGET COMMITTEE IS A VERY LARGE COMMITTEE IN THE
25 STATE ASSEMBLY AND IS BROKEN DOWN INTO SUBCOMMITTEES. THE

1 SUBCOMMITTEES DEAL WITH DIFFERENT SPECIALTIES OR AREAS OF THE
2 BUDGET. THE SUBCOMMITTEE THAT I SAT ON DEALT WITH STATE
3 AGENCIES. SO I WAS VERY FAMILIAR WITH THINGS THAT STATE
4 AGENCIES WERE DOING, BOTH IN TERMS OF PROCUREMENT AND PRACTICES
5 AND THINGS LIKE THAT.

6 PROBABLY VOTED ON SEVERAL THOUSAND BILLS A YEAR AND
7 WERE FAMILIAR WITH SEVERAL THOUSAND BILLS A YEAR.

8 HAD A LOT OF EXPERIENCE WORKING WITH A GOVERNOR PETE
9 WILSON IN HIS LAST TWO YEARS ON CORRECTIONAL ISSUES THAT
10 IMPACTED OUR COUNTY IN RIVERSIDE.

11 I WORKED ON A NUMBER OF ISSUES WITH GOVERNOR DAVIS'
12 STAFF AND GOVERNOR DAVIS HIMSELF AS WELL AND, OF COURSE, THE
13 LEGISLATORS BOTH IN THE SENATE AND ASSEMBLY.

14 **Q.** WERE YOU INVOLVED AT ALL WITH PRISON CONSTRUCTION ISSUES?

15 **A.** YES. IN MY FIRST TERM WE HAD AN ESCAPE, I BELIEVE IT WAS
16 APRIL OF 1997, FROM ONE OF OUR PRISONS IN RIVERSIDE COUNTY
17 CALLED CALIFORNIA REHABILITATION CENTER.

18 I THEN WORKED CLOSELY WITH THE GOVERNOR'S STAFF,
19 GOVERNOR WILSON'S STAFF TO ENGAGE IN CONSTRUCTION OF FACILITIES
20 AT THAT PARTICULAR PRISON TO LESSEN THE CHANCES OF ESCAPE.

21 **Q.** IN YOUR EFFORTS AS THE ELECTED DISTRICT ATTORNEY, DO YOU
22 ATTEMPT TO STAY INFORMED REGARDING ISSUES THAT MIGHT IMPACT YOUR
23 EFFECTIVE PROVISION OF PROSECUTORIAL SERVICES TO THE COUNTY OF
24 RIVERSIDE?

25 **A.** YES. IT'S CRITICAL THAT I DO THAT, SO THAT WE CAN SEE

1 TRENDS COMING AND THEN PREPARE FOR THEM, BOTH WITH PERSONNEL AND
2 OTHER RESOURCES AND, ALSO, WITH STRUCTURING OR RESTRUCTURING OUR
3 OFFICE, WHICH HAS BEEN FAIRLY CONSTANT SINCE THE TIME I STARTED
4 THERE IN 1984. OFFICE HAS GROWN QUITE A BIT.

5 **MR. MITCHELL:** I ASK THAT THE WITNESS BE ACCEPTED BY
6 THE COURT AS EXPERT IN THE AREA OF PROSECUTORIAL ENFORCEMENT OF
7 THE LAWS AND CRIMINAL JUSTICE.

8 **JUDGE HENDERSON:** HE WILL BE.

9 **MR. MITCHELL:** THANK YOU.

10 **BY MR. MITCHELL:**

11 **Q.** MR. PACHECO, DID YOU BECOME AWARE AT SOME POINT THAT A THREE
12 JUDGE PANEL HAD BEEN CONVENED IN ORDER TO CONSIDER A PRISONER
13 RELEASE ORDER IN THE STATE OF CALIFORNIA?

14 **A.** YES, I DID.

15 **Q.** WHEN YOU BECAME AWARE OF THAT, WHAT ACTIONS DID YOU TAKE AND
16 WHY?

17 **A.** I'M TRYING TO REMEMBER THE SEQUENCE OF IT. I MAY JUMBLE
18 THAT A LITTLE BIT, BUT BASICALLY I SPOKE TO A NUMBER OF OTHER
19 ELECTED DISTRICT ATTORNEYS. I SOUGHT THEIR COUNSEL, GUIDANCE.
20 PROVIDED MY OWN SUGGESTIONS.

21 WE FORMED A GROUP THAT AGREED TO INTERVENE IN THIS
22 LAWSUIT. WE DID THAT BECAUSE WE WERE CONCERNED ABOUT THE
23 RELEASE, DRAMATIC RELEASE OF TENS OF THOUSANDS OF STATE INMATES
24 IN AN EARLY RELEASE PROGRAM AND, ALSO, A CAP THAT MAY BE CREATED
25 ON THE PRISON SYSTEM ITSELF.

1 Q. AND HAVE YOU STUDIED OR RESEARCHED ARTICLES AND/OR STUDIES
2 THAT EXAMINED THE TOPICS OF EARLY RELEASE, OVERCROWDING IN THE
3 PRISON AND RECIDIVISM ISSUES?

4 A. YES.

5 Q. HAVE YOU FORMED AN OPINION AS TO WHETHER OR NOT A PRISONER
6 RELEASE ORDER WOULD HAVE AN ADVERSE IMPACT ON PUBLIC SAFETY?

7 A. I HAVE NOT ONLY ON PUBLIC SAFETY, BUT ALSO THE OPERATION OF
8 THE CRIMINAL JUSTICE SYSTEM AS WELL, AT LEAST IN RIVERSIDE
9 COUNTY.

10 Q. NOW, IN RIVERSIDE COUNTY ARE THE JAILS OPERATING UNDER A
11 POPULATION CAP AT THIS TIME?

12 A. THEY ARE. IT'S A FEDERAL CONSENT DECREE, I BELIEVE, THAT
13 DATES BACK TO 1993. THE POPULATION IS CAPPED AT ABOUT 3640 BEDS
14 THAT CAN BE FILLED OR PRISONERS THAT CAN EXIST IN THAT JAIL AT
15 ANY ONE TIME.

16 Q. AND WHAT EFFORTS ARE BEING MADE IN RIVERSIDE COUNTY TO
17 RESOLVE THE PROBLEMS THAT ARISE FROM THE POPULATION CAP?

18 A. WELL, JAIL CONSTRUCTION FOR ONE. THERE IS A -- THE BOARD OF
19 SUPERVISORS IS PROCEEDING IN THE CONSTRUCTION OF AN EXTREMELY
20 LARGE HUB JAIL THAT WOULD HOUSE, APPROXIMATELY, 7200 JAIL
21 INMATES. THAT IS ESTIMATED TO COST WELL OVER \$500 MILLION IN
22 ITS CONSTRUCTION.

23 THE LAND HAS BEEN PURCHASED. THE ARCHITECT, I
24 BELIEVE, HAS ALSO BEEN SELECTED AND THEY ARE CURRENTLY HOLDING
25 HEARINGS IN RIVERSIDE COUNTY ESPECIALLY AS OF LATE.

1 THERE ARE OTHER THINGS BEING DONE AS WELL. SOME OF
2 THEM POSITIVE. SOME OF THEM NOT SO POSITIVE.

3 **Q.** ARE THE OVERCROWDING ISSUES IN RIVERSIDE COUNTY, DO THEY
4 RESULT IN INDIVIDUALS BEING EARLY RELEASED FROM THE COUNTY JAIL
5 AT THIS TIME?

6 **A.** A FEW YEARS AGO -- I DON'T KNOW IF THIS WAS DONE WHILE I WAS
7 IN SACRAMENTO --

8 **MR. SANGSTER:** OBJECTION. NONRESPONSIVE.

9 **JUDGE HENDERSON:** HOW DO WE KNOW IT WAS DONE A FEW
10 YEARS AGO?

11 **JUDGE KARLTON:** GO AHEAD.

12 **THE WITNESS:** THANK YOU.

13 **A.** A FEW YEARS AGO THE SHERIFF, THEN-SHERIFF BOB DOYLE, STARTED
14 AN EARLY RELEASE PROGRAM. I'M NOT SURE WHEN THAT BEGAN BECAUSE
15 I WAS GONE FOR SIX YEARS IN SACRAMENTO.

16 BUT I KNOW OF AT LEAST A FEW YEARS AGO THEY LET OUT A
17 FEW HUNDRED THE FIRST YEAR, A FEW THOUSAND THE SECOND YEAR, AND
18 LAST YEAR 6,001 INMATES WERE EARLY RELEASED IN RIVERSIDE COUNTY.

19 **Q.** WHAT TYPE OF ADVERSE IMPACTS HAS THAT HAD ON THE
20 ADMINISTRATION OF JUSTICE IN RIVERSIDE COUNTY?

21 **A.** WELL, IT'S HAD A -- WE HAVE A LOT OF DYNAMICS IN RIVERSIDE
22 COUNTY. THIS HAS EXACERBATED THOSE DYNAMICS AND CREATED NEW
23 ONES.

24 FOR EXAMPLE, WE HAVE SEEN THAT THE FAILURES TO APPEAR
25 ON THE PRISONERS THAT ARE EARLY RELEASED HAVE BECOME MORE

1 FREQUENT AND MORE ROUTINE. AND CASES GET CONTINUED, THOSE CASES
2 GET CONTINUED AND CLOG THE SYSTEM. OUR SYSTEM IS ALREADY
3 CONGESTED, BUT IT BECAUSE MORE CONGESTED WHEN YOU HAVE FOLKS
4 FAILING TO APPEAR ON EARLY RELEASES.

5 WE HAVE SEEN CRIME INCREASE IN VARIOUS CATEGORIES,
6 IDENTITY THEFT. RIVERSIDE COUNTY IS THE -- I BELIEVE NATIONWIDE
7 THE NUMBER TWO REGION IN THE NATION FOR IDENTITY THEFT OFFENSES,
8 THAT IS A FAIRLY RECENT OCCURRENCE, AND OTHER THINGS SUCH AS
9 THAT.

10 ALSO, SUCH NEW OFFENSES THAT WOULD NOT HAVE BEEN
11 COMMITTED HAD THEY NOT BEEN EARLY RELEASED AS WELL.

12 Q. THERE HAS BEEN A PROPOSAL OR ONE ASPECT OF A PROPOSAL FOR A
13 PRISONER RELEASE ORDER IN THIS CASE WHERE THE POPULATION OF THE
14 STATE PRISON SYSTEM WOULD BE SET AT 130 PERCENT OF DESIGN
15 CAPACITY, WHICH WOULD SET A POPULATION OF APPROXIMATELY 104,000
16 TO BE ACHIEVED WITHIN TWO YEARS.

17 ONE WAY OF ACHIEVING THAT WOULD BE JUST TO RELEASE
18 INMATES EARLIER THAN THE COMPLETION OF THEIR TERMS. THIS COULD
19 RESULT IN OVER A TWO-YEAR PERIOD, HYPOTHETICALLY IF IT DOES, AN
20 INCREASE OF APPROXIMATELY 2500 PAROLEES BEING RELEASED EARLY
21 EACH MONTH.

22 ARE YOU AWARE OF THAT PROPOSAL?

23 A. YES.

24 Q. ARE YOU AWARE THAT THAT MAY INCREASE THE NUMBER OF PAROLEES
25 BEING RETURNED TO RIVERSIDE COUNTY ON A MONTHLY BASIS?

1 **A.** YES.

2 **Q.** IN LOOKING AT THE MATH AND THE PERCENTAGE OF PAROLEES THAT
3 COME TO RIVERSIDE AT THIS TIME, BEING APPROXIMATELY 6.6 PERCENT
4 BASED UPON CDCR STATS FROM 2007, IS IT YOUR UNDERSTANDING THAT
5 RIVERSIDE MAY SEE AN ADDITIONAL 150 TO 165 PAROLEES BEING
6 RETURNED TO RIVERSIDE EACH MONTH IF AN EARLY RELEASE PROPOSAL
7 LIKE THAT TOOK PLACE?

8 **A.** I KNOW WE WILL HAVE A SIGNIFICANT NUMBER OF PAROLEES THAT
9 ARE RELEASED BACK TO RIVERSIDE COUNTY THROUGH THE EARLY RELEASE
10 PROGRAM. I'M NOT SO GOOD WITH MATH. THAT'S WHY I'M A LAWYER.
11 BUT THOSE FIGURES SOUND ABOUT RIGHT.

12 **Q.** WOULD YOU HAVE AN OPINION AS TO WHETHER OR NOT AN INCREASE
13 IN THE NUMBER OF PAROLEES COMING TO RIVERSIDE WOULD HAVE AN
14 ADVERSE BEING IMPACT ON PUBLIC SAFETY IN THE AREA OF OCCURRENCE
15 OF NEW CRIMES?

16 **A.** I WOULD.

17 **Q.** WHAT WOULD THAT OPINION BE?

18 **A.** I THINK WE HAVE SEEN -- WE DON'T HAVE TO SPECULATE SO MUCH,
19 IF AT ALL.

20 WE HAVE SEEN IN OTHER JURISDICTIONS, LIKE FLORIDA,
21 ILLINOIS, PHILADELPHIA, LOS ANGELES, WHERE EARLY RELEASE
22 PROGRAMS HAVE BEEN INSTITUTED EITHER ON A STATE-WIDE LEVEL OR ON
23 A LOCAL LEVEL -- LIKE, FOR EXAMPLE, LOS ANGELES -- THAT EARLY
24 RELEASE PROGRAMS HAVE CERTAIN EFFECTS.

25 ONE IS TO REDUCE THE POPULATION OR TO REDUCE THE

1 GROWTH IN THE POPULATION IN CUSTODIAL FACILITIES.

2 THE OTHER EFFECTS THEY TEND TO HAVE ARE TO SHOW
3 INCREASES IN CRIME, VIOLENT CRIME AS WELL AS NON-VIOLENT CRIME.
4 THEY TEND TO SPIKE AND GO UP IN VARIOUS PERCENTAGES. MORE
5 PEOPLE ARE VICTIMIZED. MORE PEOPLE ARE INJURED. SOME ARE EVEN
6 MURDERED.

7 THOSE STATISTICS, WHILE IN SMALLER NUMBERS IN CERTAIN
8 INSTANCES, ARE STILL SIGNIFICANT TO ME. IT WOULD BE A DRASTIC
9 STEP, A FORM OF EARLY RELEASE PROGRAM OR CAP ON THE SYSTEM.

10 **Q.** THERE HAS BEEN TESTIMONY IN THIS CASE TO INDICATE THAT THE
11 INCREASE IN THE NUMBER OF CRIMES COMMITTED BY INDIVIDUALS WHO
12 ARE EARLY RELEASED WOULD BE SUBSTANTIALLY INSIGNIFICANT AND
13 AMOUNT TO LESS THAN 1 PERCENT OF OVERALL ARRESTS IN A PARTICULAR
14 AREA; ARE YOU AWARE OF THOSE?

15 **A.** I AM.

16 **Q.** IS IT STILL YOUR OPINION THAT IT WOULD BE AN ADVERSE IMPACT
17 ON PUBLIC SAFETY IN THE COMMUNITY EVEN THOUGH THE NUMBER OF NEW
18 CRIMES COMMITTED BY THIS EARLY RELEASE POPULATION IS SO
19 SIGNIFICANTLY SMALL, LESS THAN ONE PERCENT?

20 **A.** ASSUMING THAT ACTUALLY IS THE ANSWER, THAT IS A CORRECT
21 GUESS SO TO SPEAK, THAT THE NUMBERS ARE NOT LARGER THAN THAT, IT
22 WOULD STILL BE A SIGNIFICANT IMPACT ON PUBLIC SAFETY.

23 **Q.** WHY IS THAT?

24 **A.** WELL, I WOULD COMPARE IT TO SOME OF THE FINDINGS THAT THIS
25 COURT HAS MADE REGARDING THE PRISON SYSTEM. THIS COURT

1 IDENTIFIED THAT AT LEAST DURING A CERTAIN TIME PERIOD THAT THERE
2 WERE 34 DEATHS IN THE PRISON SYSTEM THAT WERE -- THAT THEY WERE
3 EXTREMELY CONCERNED ABOUT. I SHARE THAT CONCERN THAT THE COURT
4 HAD.

5 THAT'S A RELATIVELY SMALL NUMBER. YOU COULD SAY
6 STATISTICALLY INSIGNIFICANT, TO USE THAT PHRASE FROM SOMEBODY
7 ELSE. BUT IT'S A SIGNIFICANT -- THOSE ARE SIGNIFICANT ACTIONS
8 ON HUMAN BEINGS.

9 IN ANOTHER STUDY THERE WAS 23 MURDERS THAT THEY
10 BELIEVED WERE A RESULT OF -- I BELIEVE THAT WAS MR. AUSTIN.
11 THAT'S A STATISTICALLY INSIGNIFICANT NUMBER, BUT STILL 23 PEOPLE
12 WERE MURDERED AS A RESULT OF THE EARLY RELEASE PROGRAM.

13 I THINK BOTH OF THOSE THINGS ARE BAD AND ABHORRENT
14 AND SHOULD BE AVOIDED.

15 **Q.** YOU WROTE IN YOUR DECLARATION THAT THE FIRST RULE IN TRYING
16 TO FIX SOME OF THE PROBLEMS IN THE CRIMINAL JUSTICE SYSTEM IS TO
17 DO NO HARM.

18 IN YOUR OPINION, WHAT CAN BE DONE TO RESOLVE THE
19 OVERCROWDING ISSUE AND PROTECT PUBLIC SAFETY AT THE SAME TIME OR
20 CAN IT BE DONE?

21 **A.** I THINK IT CAN BE DONE. IF THE COURT DOESN'T MIND ME
22 EXPOUNDING A LITTLE BIT, IT'S A RATHER LONG ANSWER.

23 NUMBER ONE, I THINK THE COURT'S ACTION IN APPOINTING
24 A RECEIVER WAS PROVIDENTIAL, TO USE THAT TERM. THEY WERE
25 RIGHTFULLY VERY FRUSTRATED WITH CDCR, CALIFORNIA DEPARTMENT OF

1 CORRECTIONS AND REHABILITATION, AND THEY TOOK AN EXCEPTIONAL
2 STEP, WHICH WAS A GOOD STEP.

3 THE RECEIVER, AS I UNDERSTAND, HAS MADE SIGNIFICANT
4 PROGRESS IN RESOLVING MANY OF THE CONSTITUTIONAL VIOLATIONS IN
5 THE STATE PRISON SYSTEM. VIOLATIONS THAT I WOULD SAY, IN MY
6 OPINION, ARE NOT RELATED OR WOULD NOT BE SOLVED BY AN EARLY
7 RELEASE PROGRAM OR A CAP IN THE STATE PRISON SYSTEM.

8 SO THAT'S ONE PART OF IT. THE OTHER PART OF IT IS
9 THERE NEED TO BE SOME LEGISLATIVE FIXES TO AB 900, WHICH WAS A
10 BILL PASSED, I BELIEVE, LAST YEAR THROUGH THE LEGISLATURE SIGNED
11 BY THE GOVERNOR INTO LAW. I UNDERSTAND THERE IS ONE PART THAT
12 RECENTLY WHERE THE ATTORNEY GENERAL CERTIFIED THAT BONDS COULD
13 BE RELEASED FOR THE CONSTRUCTION OF REENTRY FACILITIES IN
14 VARIOUS PARTS OF CALIFORNIA, WHICH WOULD AID THOSE INDIVIDUALS.
15 IT WOULD ALSO INCREASE THE SIZE AND CAPACITY OF CDCR, WHICH
16 WOULD BE A GOOD THING AND RELIEVE OVERCROWDING.

17 IN ADDITION TO THAT, THOUGH, THERE ARE A NUMBER OF
18 OTHER THINGS THAT I THINK I WOULD ENCOURAGE SOMEONE TO DO. AND
19 THAT IS, THE DEPARTMENT OF CORRECTIONS NEEDS TO HAVE A MUCH MORE
20 SIGNIFICANT OPERATION WHEN IT COMES TO PAROLE AND THE DELIVERY
21 OF ASSISTANCE TO PEOPLE WHO ARE ON PAROLE.

22 CURRENTLY THEY ARE OVERWHELMED WITH THE NUMBER OF
23 FOLKS THAT ARE ON PAROLE AND, IN MY OPINION, CANNOT MEANINGFULLY
24 PROVIDE ASSISTANCE IN ANY SIGNIFICANT WAY TO THESE INDIVIDUALS
25 THAT ARE BEING RELEASED FROM PRISON ON A DAILY BASIS.

1 SO THOSE, THOSE -- THAT SYSTEM, THAT DELIVERY SYSTEM,
2 IF YOU WILL, FROM PAROLE NEEDS TO BE IMPROVED AND FUNDED.

3 THE LOCAL PROBATION DEPARTMENTS, RIVERSIDE COUNTY TO
4 USE AS ONE EXAMPLE, ARE OVERWHELMED. THE PROBATION -- DEPUTY
5 PROBATION OFFICERS IN OUR COUNTY ROUTINELY HAVE OVER 800-PLUS
6 FOLKS ON THEIR INDIVIDUAL CASE LOADS. THEY CANNOT MEANINGFULLY
7 ASSIST THOSE PEOPLE WHILE THEY ARE ON PROBATION.

8 WHEN YOU FAIL TO ASSIST THESE FOLKS THAT ARE IN GREAT
9 NEED FOR SERVICES, JOB TRAINING, DRUG TREATMENT, ET CETERA, THEY
10 TEND TO REOFFEND. WHEN THEY REOFFEND, SOME OF THE OFFENSES ARE
11 TECHNICAL VIOLATIONS, A DIRTY TEST, A DRUG TEST. OR THEY ARE
12 VERY SIGNIFICANT. UP TO AND INCLUDING MURDER. THAT DOESN'T
13 HELP THE SYSTEM ANY. IT DOESN'T HELP THE INDIVIDUAL THAT'S ON
14 PAROLE OR PROBATION.

15 THERE ARE OTHER THINGS THAT CAN BE DONE AS WELL. THE
16 CONSTRUCTION OF NEW PRISONS, THAT NEEDS TO OCCUR. I BELIEVE
17 THIS COURT HAS ENCOURAGED THE LEGISLATURE AND THE GOVERNOR TO DO
18 THAT, TO CONSTRUCT AT LEAST SEVEN NEW PRISON FACILITIES
19 THROUGHOUT THE STATE OF CALIFORNIA TO INCREASE CAPACITY. THAT
20 NEEDS TO BE DONE.

21 AS OUR POPULATION GROWS IN CALIFORNIA, OF COURSE, THE
22 POPULATION IN OUR STATE PRISONS WILL GROW, AS THE POPULATIONS IN
23 OUR SCHOOLS AND THE POPULATIONS THAT UTILIZE TRANSPORTATION
24 SYSTEMS, ET CETERA.

25 SO THOSE ARE ALL THINGS THAT SHOULD BE DONE AND CAN

1 BE DONE AND ARE IN VARIOUS PHASES OF BEING DONE.

2 **Q.** DO YOU BELIEVE THAT INCREASING THE FUNDING TO PROBATION
3 SERVICES CAN INCREASE THE EFFECTIVENESS OF PROBATION AND LEAD TO
4 AN ACTUAL REDUCTION IN THE NUMBERS THAT ARE GOING INTO PRISON?

5 **A.** ABSOLUTELY. IF YOU HAVE MORE PROBATION OFFICERS -- I MEAN,
6 IT'S A FAIRLY SIMPLISTIC, YOU KNOW, FORMULA, I GUESS.

7 BUT WHEN YOU HAVE MORE PROBATION OFFICERS, THEY HAVE
8 MORE TIME TO SPEND WITH THE FOLKS THAT ARE ON PROBATION; TO HELP
9 THEM FIND JOBS, TO HELP COUNSEL THEM, TO CHOOSE A BETTER PATH
10 RATHER THAN THE WRONG ONE. AND RECIDIVISM CAN AND SHOULD GO
11 DOWN IN THOSE INSTANCES.

12 WHEN DO YOU THE OPPOSITE, WHEN YOU DON'T PROVIDE
13 SUFFICIENT OR MEANINGFUL FUNDING FOR THOSE PROGRAMS, THEN
14 RECIDIVISM WILL GO UP.

15 **Q.** IT'S BEEN PROPOSED THAT ALTERNATIVE SANCTIONS IN THE FORM OF
16 LESSER ALTERNATIVES THAN CUSTODY SHOULD BE APPLIED TO TECHNICAL
17 PAROLE VIOLATORS; THOSE THAT AREN'T ARRESTED FOR COMMITTING NEW
18 CRIMES, THOSE THAT ARE MERELY ARRESTED OR TAKEN INTO CUSTODY FOR
19 VIOLATING TERMS OF THEIR PAROLE.

20 DO YOU AGREE THAT TECHNICAL PAROLE VIOLATORS,
21 ALTERNATIVE SANCTIONS MIGHT BE WARRANTED FOR A PERCENTAGE OF
22 THAT POPULATION?

23 **A.** DEPENDS ON WHAT THE SANCTIONS ARE. IT IS IMPORTANT THAT
24 THEY FOLLOW THE RULES GIVEN TO THEM BY THE DEPARTMENT OF
25 CORRECTIONS WHILE THEY ARE ON PAROLE. IT DEPENDS.

1 NEW OFFENSES ARE DIFFERENT, OF COURSE, AND YOU ARE
2 NOT ASKING ME ABOUT THAT, BUT IT DEPENDS ON WHAT THOSE
3 ALTERNATIVE SANCTIONS ARE.

4 I THINK WHATEVER PATH IS TAKEN, THE ULTIMATE GOAL IS
5 TO MAKE SURE THAT THIS PERSON IS A LAW ABIDING PRODUCTIVE MEMBER
6 OF SOCIETY. SO WHATEVER PATH GETS US THERE EFFECTIVELY IS
7 PROBABLY A GOOD IDEA.

8 **Q.** IT'S COME UP DURING THIS TRIAL THAT THERE IS A PRACTICE
9 AMONG DISTRICT ATTORNEYS OFFICES OF ALLOWING A PAROLE VIOLATION
10 TO TAKE PLACE IN LIEU OF PROSECUTION ON A NEW CRIME. ARE YOU
11 AWARE OF THOSE ALLEGATIONS?

12 **A.** YES. YOU APPRISED ME OF THOSE, I BELIEVE, YESTERDAY.

13 **Q.** AND TO YOUR KNOWLEDGE, DOES THAT OCCUR?

14 **A.** WELL, I MEANT IN MY TIME SINCE --

15 **MR. SANGSTER:** OBJECTION, YOUR HONOR. I'M GOING TO
16 OBJECT, UNLESS HE IS ANSWERING BASED ON HIS PERSONAL KNOWLEDGE.

17 IF IT'S THE HEARSAY HE HEARD FROM SOMEBODY ELSE, IT'S
18 NOT PROPER EVEN FOR AN EXPERT.

19 **JUDGE KARLTON:** IT'S PERFECTLY PROPER FOR YOU TO
20 DISCUSS WHAT GOES ON IN RIVERSIDE.

21 **THE WITNESS:** I WOULD BE HAPPY TO DO THAT. THANK
22 YOU, YOUR HONOR.

23 **A.** SINCE I STARTED IN 1984, IT HAS NEVER BEEN THE PRACTICE OF
24 THE RIVERSIDE COUNTY DISTRICT ATTORNEYS OFFICE TO DO THAT.

25 ONE, IT WAS NEVER A POLICY DECISION BY THE OFFICE.

1 IT WAS NEVER A PRACTICE THAT WAS INSTITUTED BY THE OFFICE. AND
2 IN ADDITION TO THAT, IT'S NOT POSSIBLE.

3 PEOPLE THAT ARE ARRESTED AND A PAROLE HOLD IS PLACED
4 ON THEM ARE IN CUSTODY. THAT REQUIRES OUR OFFICE TO FILE, WHEN
5 THEY ARE IN CUSTODY, WITHIN 48 HOURS.

6 WE HAVE NO MECHANISM TO GET ANY INFORMATION FROM THE
7 DEPARTMENT OF CORRECTIONS AS TO WHETHER OR NOT THEY WERE
8 VIOLATED LATER. SO WE MAKE A DECISION AT THAT TIME WHETHER OR
9 NOT THEY HAVE COMMITTED A CRIME BEYOND A REASONABLE DOUBT AND
10 WHETHER OR NOT WE CAN PROVE IT BEYOND A REASONABLE DOUBT.

11 IT'S IRRELEVANT, AND ALWAYS HAS BEEN IN RIVERSIDE
12 COUNTY, WHETHER THEY HAVE A PAROLE HOLD OR A PAROLE VIOLATION OR
13 WHATEVER. WE FILE IT. I'M AWARE OF NO COUNTY THAT DOES IT
14 DIFFERENTLY.

15 **Q.** EXCUSE ME ONE MOMENT. I LOST MY TRAIN OF THOUGHT.

16 OH, IN CONSIDERING THE ISSUES THAT THIS COURT MUST
17 ADDRESS, THE IDEA OF A POPULATION CAP ON THE STATE PRISON, AND
18 OVER AND ABOVE A RELEASE OF INDIVIDUALS EARLY FROM PRISON, THE
19 IMPACT THAT A POPULATION CAP MIGHT HAVE ON THE ADMINISTRATION OF
20 JUSTICE, PROSECUTION OF CASES IN RIVERSIDE COUNTY. IF THERE WAS
21 A CAP ON THE STATE PRISON SYSTEM, DO YOU ANTICIPATE THAT THERE
22 MIGHT BE A BACKLOG OF STATE PRISON INMATES IN THE COUNTY JAIL
23 UNABLE TO BE TRANSPORTED TO PRISON BECAUSE OF THE POPULATION
24 CAP?

25 **A.** YES, AS WELL AS MANY OTHER MANIFESTATIONS OF THAT CAP.

1 Q. IF THAT DID MATERIALIZE WHERE THE NUMBER OF PRISON INMATES
2 BEING COMMITTED FROM RIVERSIDE COUNTY COULD NOT BE TRANSPORTED
3 IN A TIMELY MANNER TO CDCR INSTITUTIONS, WHAT WOULD THAT DO TO
4 FURTHER IMPACT AND ADVERSELY AFFECT RIVERSIDE COUNTY JAIL AND
5 CRIME IN THE COMMUNITY?

6 A. WELL, IT WOULD IMPACT OUR PUBLIC SAFETY AND IT WOULD IMPACT
7 THE OPERATION OF OUR CRIMINAL JUSTICE SYSTEM.

8 IT WOULD IMPACT PUBLIC SAFETY BECAUSE THE NUMBER OF
9 PEOPLE THAT ARE IN OUR JAILS WOULD -- THE COMPOSITION OF OUR
10 JAILS WOULD CHANGE.

11 TODAY ABOUT 80 PERCENT OF THE FOLKS IN OUR JAIL
12 SYSTEM IN RIVERSIDE COUNTY ARE PRETRIAL DETAINEES, THOSE FOLKS
13 WAITING FOR TRIAL. THE REST ARE FOLKS THAT HAVE BEEN SENTENCED
14 OR BEING HELD FOR A VARIETY OF SMALL THINGS. THEY MAY BE
15 WITNESSES, FOR EXAMPLE, THAT ARE BEING HELD, THINGS LIKE THAT.

16 IF YOU INCLUDE FOLKS THAT ARE SENTENCED TO STATE
17 PRISON BUT THAT CANNOT GO, THEN ALL OF THOSE FOLKS WILL QUICKLY
18 BE CROWDED OUT.

19 OUR JAIL CONSTRUCTION IN RIVERSIDE COUNTY HAS NOT
20 KEPT UP WITH OUR ASTRONOMICAL GROWTH. RIVERSIDE COUNTY'S
21 POPULATION IS THE FASTEST GROWING POPULATION IN THE STATE OF
22 CALIFORNIA, AND THE SECOND FASTEST GROWING IN THE NATION AND HAS
23 BEEN FOR MANY YEARS.

24 WE HAVE GONE -- WHEN I STARTED IN 1984, WE HAD ABOUT
25 500,000 PEOPLE IN THE COUNTY, AND NOW WE HAVE OVER 2.1 MILLION.

1 OUR COUNTY HAS GROWN DRAMATICALLY.

2 IF A CAP IS CREATED, IF THAT DOMINO FALLS, THEN IT
3 TILL HIT OTHER DOMINOES. THE OTHER DOMINO THAT IT HITS IN OUR
4 COUNTY, IS OUR JAIL WILL SOON BE FILLED WITH FOLKS THAT ARE
5 WAITING OR SERVING THEIR SENTENCE FOR STATE PRISON COMMITMENTS.
6 IT WILL THEN NOT HAVE THE OPPORTUNITY -- OUR JAIL SYSTEM WILL
7 NOT HAVE THE OPPORTUNITY TO HAVE PEOPLE SERVING TIME. THOSE
8 PEOPLE WILL BE EARLY RELEASED EVEN MORE THAN THEY ALREADY ARE IN
9 OUR COUNTY.

10 IN ADDITION TO THAT, THE FOLKS THAT ARE PRETRIAL
11 DETAINEES WILL AT SOME POINT BE RELEASED EVEN MORE THAN THEY
12 ALREADY ARE. THOSE FOLKS WILL COMMIT NEW CRIMES THAT WOULD NOT
13 HAVE BEEN COMMITTED BEFORE BECAUSE THEY WOULD HAVE BEEN IN
14 CUSTODY.

15 IN ADDITION TO THAT, OUR JAIL COMPOSITION HAS ALREADY
16 CHANGED RATHER DRAMATICALLY OVER THE LAST TEN YEARS. IT HAS
17 BECOME MUCH MORE SERIOUS OFFENDERS THAT ARE BEING HELD FOR
18 PRETRIAL DETAINEES.

19 THE JAIL SYSTEM WILL HAVE TO START RELEASING GANG
20 MEMBERS THAT ARE BEING PROSECUTED FOR ATTEMPTED MURDER AND
21 MURDER AND SEXUAL PREDATORS, ET CETERA. THOSE FOLKS TEND TO
22 COMMIT VERY VIOLENT ACTS ON THE POPULATION. SO THAT WILL BE
23 IMPACTED.

24 IT WILL SLOW DOWN THE COURT SYSTEM EVEN MORE THAN
25 IT'S ALREADY CONGESTED. THE COURT SYSTEM IN RIVERSIDE COUNTY

1 HAS BEEN DESCRIBED AS HAVING CULTURE CONTINUANCES THAT ALL OF US
2 ARE TRYING TO BREAK. THIS WILL ONLY EXACERBATE THAT NOW THAT
3 PEOPLE WHO ARE NORMALLY IN CUSTODY THAT HAD A MOTIVE OR
4 INCENTIVE TO GO TO TRIAL ARE NOW OUT OF THAT CUSTODY AND HAVE
5 LITTLE INCENTIVE TO GO TO TRIAL.

6 SHOULD INCREASE OUR FAILURES TO APPEAR AS WELL,
7 INCREASE THE NUMBER OF CONTINUANCES THOSE CASES HAVE. THAT WILL
8 ALSO INCREASE THE NUMBER OF WARRANTS THAT ARE PUT INTO OUR
9 SYSTEM. THAT WILL ALSO INCREASE THE NUMBER OF OFFICERS THAT
10 NEED TO SERVE THOSE WARRANTS. IF WE FAIL TO SERVE THOSE
11 WARRANTS, THEN WHEN THEY ARE FINALLY ARRESTED YEARS LATER, THERE
12 IS A LEGITIMATE DUE PROCESS MOTION THAT WILL BE FILED AND THOSE
13 CASES CAN AND PROBABLY WILL BE DISMISSED.

14 SO THERE ARE MANY DOMINOES THAT WILL FALL WITH A CAP
15 IN OUR STATE PRISON SYSTEM, AT LEAST IN RIVERSIDE COUNTY.

16 **Q.** CAN YOU GIVE US A SPECIFIC OR A CASE EXAMPLE OF HOW AN EARLY
17 RELEASE SYSTEM NOW IS IMPACTING CRIME IN RIVERSIDE?

18 **A.** THERE'S A NUMBER OF EXAMPLES I WOULD GIVE. FORGIVE ME IF I
19 DON'T RECALL THE EXACT NAMES OF THE INDIVIDUALS, BUT IN ONE
20 INSTANCE WE HAVE A CASE WHERE A WOMAN WAS -- OR IS BEING
21 PROSECUTED FOR A GRAND THEFT TYPE OF OFFENSE, AN EMBEZZLEMENT
22 OFFENSE. SHE IS A PERFECT CANDIDATE FOR EARLY RELEASE FROM OUR
23 JAIL SYSTEM. SHE HAS BEEN EARLY RELEASED. EVERY TIME SHE IS
24 EARLY RELEASED AFTER HER INITIAL ARRAIGNMENT, SHE FAILS TO
25 APPEAR AT THE PRELIMINARY HEARING. AT SOME POINT SHE GETS

1 ARRESTED, IS BROUGHT BACK IN, ARRAIGNED AND EARLY RELEASED
2 AGAIN. IT HAS TAKEN US ABOUT SEVEN YEARS AND WE STILL HAVEN'T
3 GOTTEN HER TO PRELIMINARY HEARING.

4 THERE IS ANOTHER CASE WHERE AN INDIVIDUAL --
5 RELATIVELY RECENTLY IN THE LAST, I THINK, YEAR OR SO, WHO WAS
6 RELEASED AND COMMITTED NEW -- A NEW CRIME. ACTUALLY, FAILED TO
7 APPEAR ABOUT TWO DAYS BEFORE HE COMMITTED AN ATTEMPTED MURDER.
8 HE IS A GANG MEMBER. HE WAS LATER PROSECUTED FOR THAT AND WAS
9 GIVEN 12 YEARS IN STATE PRISON. THAT'S A CRIME THAT NEVER WOULD
10 HAVE OCCURRED IF HE HAD STAYED IN CUSTODY IN HIS ORIGINAL CASE,
11 WHICH WAS A LOW LEVEL FELONY. BUT OUR JAIL SYSTEM KICKED HIM
12 AND RELEASED HIM EARLY AND HE FAILED TO APPEAR A NUMBER OF TIMES
13 AND THEN WOULD GET PICKED UP ON A WARRANT AND THEN FINALLY
14 COMMITTED A NEW OFFENSE.

15 THOSE TWO ANECDOTES ARE BECOMING MORE COMMON AND NOT
16 SO ANECDOTAL, BUT MORE ROUTINE.

17 **Q.** HOW DO EARLY RELEASES AND POPULATION REDUCTION ORDERS, HOW
18 DO THEY IMPACT THE INTEGRITY OF THE CRIMINAL JUSTICE SYSTEM?

19 **A.** WELL --

20 **MR. SANGSTER:** OBJECTION. VAGUE AND AMBIGUOUS.

21 **JUDGE KARLTON:** YOU MAY ANSWER.

22 **THE WITNESS:** THANK YOU.

23 **A.** IF THE COURT DOESN'T MIND, I HAVE FOUR CHILDREN AND, YOU
24 KNOW, IF --

25 **MR. SANGSTER:** OBJECTION. NONRESPONSIVE.

1 **JUDGE HENDERSON:** PROCEED, MR. PACHECO.

2 **THE WITNESS:** THANK YOU.

3 **A.** WE HAVE VARIOUS PUNISHMENTS THAT WE IMPOSE ON THEM WHEN THEY
4 VIOLATE THE RULES OF THE HOUSE, SO TO SPEAK. IF THEY DO NOT
5 FEEL SOME CONSEQUENCES, THEY TEND TO REPEAT THOSE OFFENSES WITH
6 GREATER FREQUENCY.

7 IT'S NO DIFFERENT. THEY ARE HUMAN BEINGS, LIKE
8 ADULTS. IF YOU FAIL TO LIVE UP TO THE CONSEQUENCES YOU CLAIM,
9 THEY WILL SUFFER.

10 CRIMINALS WILL REPEAT THOSE OFFENSES AND MORE. THEY
11 WILL IDENTIFY THAT THE SYSTEM CANNOT AND WILL NOT HOLD THEM
12 ACCOUNTABLE. IF YOU TELL SOMEBODY YOU ARE GOING TO STATE PRISON
13 FOR TWO YEARS, THAT YOU ARE SENTENCED TO STATE PRISON AND THEY
14 DON'T GO, THEY ARE EARLY RELEASED AND THEY DON'T EVEN ACTUALLY
15 TAKE A BUS TO STATE PRISON, THAT'S GOING TO SEND A VERY POWERFUL
16 MESSAGE AND DIMINISH THE ABILITY OF THE SYSTEM TO CORRECT ITS
17 MOST DIFFICULT MEMBERS OF SOCIETY.

18 IT HAS ANOTHER EFFECT. AT SOME POINT THE PUBLIC WHO
19 SEES THIS PROBLEM, SPIKES IN CRIME AND OTHER -- SOME OF THE
20 PROBLEMS I HAVE MENTIONED, WILL LOSE CONFIDENCE IN THE SYSTEM
21 AND THAT WILL HAVE A DELETERIOUS EFFECT AS WELL. THOSE ARE JUST
22 SOME OF THE PROBLEMS.

23 **JUDGE REINHARDT:** COUNSEL, IT'S NOW ALMOST DOUBLE THE
24 TIME YOU ESTIMATED.

25 **MR. MITCHELL:** ONE MORE QUESTION?

1 **JUDGE REINHARDT:** SURE.

2 **BY MR. MITCHELL:**

3 **Q.** DESPITE THE CONGESTION IN THE COURTS AND IN THE JAILS IN
4 RIVERSIDE COUNTY AND THE GROWTH OF THE POPULATION IN RIVERSIDE
5 COUNTY BEEN SUCCESSFUL IN MAINTAINING A LOWERING CRIME RATE. TO
6 WHAT DO YOU ATTRIBUTE THAT?

7 **A.** CAN YOU REPEAT THAT? I'M SORRY.

8 **Q.** CRIME RATES FOR VIOLENT CRIME ESPECIALLY HAVE CONSISTENTLY
9 BEEN GOING DOWN IN RIVERSIDE COUNTY, IS THAT CORRECT?

10 **A.** THEY HAVE.

11 **Q.** HOW DO YOU ACCOUNT FOR THAT?

12 **JUDGE REINHARDT:** MAYBE BECAUSE IT'S THEY HAVE SUCH
13 AN EXCELLENT DISTRICT ATTORNEY.

14 **THE WITNESS:** THEY HAVE BEEN GOING DOWN LONGER THAN I
15 WAS THERE, YOUR HONOR.

16 **A.** I WOULD MAKE TWO OBSERVATIONS, AND I'M SURE THERE ARE MANY
17 OTHER REASONS AS WELL.

18 ONE, THE DISTRICT ATTORNEYS OFFICE IN RIVERSIDE
19 COUNTY SINCE JANUARY OF 1983 HAS BEEN A VERY AGGRESSIVE
20 PROSECUTORIAL AGENCY, ESPECIALLY ON VIOLENT CRIME. THE FORMER
21 DISTRICT ATTORNEY MADE THAT ONE OF THE HALLMARKS OF HIS TENURE,
22 AND HE HAS BEEN VERY AGGRESSIVE. THAT'S THE CULTURE IN WHICH I
23 WAS RAISED AS A PROSECUTOR AND IN WHICH YOU WERE RAISED. SO OUR
24 OFFICE HAS ALWAYS TAKEN THAT VERY SERIOUSLY AND TAKEN GREAT
25 STEPS TO PUSH THAT VIOLENT CRIME DOWN.

1 THE OTHER THING I WOULD POINT TO IS SOMETHING THAT IS
2 MENTIONED IN PERIODICALS AND ARTICLES FROM COLUMNISTS AND THINGS
3 LIKE THAT THAT I HAVE SEEN WITH MY OWN EYES, AND THAT IS THE
4 EFFECT OF THREE STRIKES. THE THREE STRIKES LAW IN CALIFORNIA.

5 OUR VIOLENT CRIME RATE IS ABOUT HALF OF WHAT IT WAS
6 IN 1993, APPROXIMATELY. THAT BEGAN GOING DOWN ALMOST AS SOON AS
7 THE LAW WAS PASSED IN MARCH OF 1994 AND THEN REAFFIRMED BY THE
8 VOTERS IN NOVEMBER OF '94. THAT HAS HAD A DRAMATIC EFFECT. WE
9 SEE IT WITH THE INDIVIDUALS WHEN THE OFFICE MAKES -- OR THE
10 INDIVIDUALS IN OUR OFFICE MAKE DECISIONS TO PROSECUTE THE THREE
11 STRIKES CASES. THEY HAVE LONG LISTS OF CRIMES THAT THEY HAVE
12 COMMITTED. WITH THOSE FOLKS OUT OF THE COMMUNITY, THEY ARE NOT
13 REOFFENDING IN THE COMMUNITY AND SO OUR CRIME RATE TENDS TO GO
14 DOWN.

15 IN OUR OFFICE WE TEND TO FOCUS ON PEOPLE WITH VIOLENT
16 CRIME IN THEIR HISTORY, AS WELL AS THE CURRENT OFFENSE IN ORDER
17 TO DISCOURAGE THEM FROM COMMITTING MORE CRIMES IN OUR COMMUNITY.

18 Q. ARE YOU AWARE OF EVIDENCE THAT INDICATES THAT AGGRESSIVE
19 PROSECUTORIAL STRATEGIES, SUCH AS ARE EMPLOYED IN RIVERSIDE, ARE
20 EFFECTIVE IN REDUCING VIOLENT CRIMES?

21 JUDGE KARLTON: SIR --

22 JUDGE REINHARDT: YOU HAVE --

23 JUDGE HENDERSON: YOU NOW HAVE MORE QUESTIONS AND
24 DOUBLED YOUR TIME ESTIMATE.

25 MR. MITCHELL: TRYING TO TAKE ADVANTAGE. THANK YOU.

1 NO FURTHER QUESTIONS.

2 **THE COURT:** ANYTHING FROM THE STATE DEFENDANTS?

3 **MR. LEWIS:** NOTHING, YOUR HONOR.

4 **THE COURT:** CROSS-EXAMINATION?

5 **MR. SANGSTER:** YES, YOUR HONOR. ED SANGSTER FOR THE
6 PLAINTIFFS.

7 **CROSS EXAMINATION**

8 **BY MR. SANGSTER:**

9 **Q.** MR. PACHECO, WHEN YOU WERE TESTIFYING, YOU WERE TALKING
10 ABOUT EARLY RELEASES CAUSING FAILURES TO APPEAR.

11 ARE YOU EQUATING EARLY RELEASES WITH PRETRIAL
12 RELEASES?

13 **A.** YES. THE EARLY RELEASES IN RIVERSIDE COUNTY.

14 **Q.** SO WHEN YOU ARE TALKING ABOUT AN EARLY RELEASE AND THE
15 IMPACT ITS HAVING, YOU ARE TALKING ABOUT THE RELEASE ON SOMEBODY
16 WHO HAS NOT YET BEEN SENTENCED, IS THAT CORRECT?

17 **JUDGE KARLTON:** NOT YET BEEN CONVICTED.

18 **BY MR. SANGSTER:**

19 **Q.** EXCUSE ME. NOT YET BEEN CONVICTED.

20 **A.** IT INCLUDES THAT GROUP, AS WELL AS POTENTIALLY THE GROUP
21 THAT WOULD BE INCLUDED IF THE COURT ORDERED A -- AS YOU HAVE
22 REQUESTED.

23 **Q.** HOW LONG HAS YOUR JAIL BEEN IN THE WORKS, THE NEW JAIL?

24 **A.** UMM, THE NEW JAIL BECAME THE NUMBER ONE PRIORITY FOR THE
25 BOARD OF SUPERVISORS IN FEBRUARY OF 2007.

1 Q. AND HAS CONSTRUCTION STARTED ON THAT JAIL YET?

2 A. NO, BUT THE LAND -- I'M SORRY, BEING NONRESPONSIVE. NO,
3 CONSTRUCTION HAS NOT STARTED.

4 Q. SO THE LAND HAS BEEN PURCHASED, BUT CONTRACTS HAVEN'T YET
5 BEEN LET FOR THE JAIL?

6 A. THE LAND HAD BEEN PURCHASED. THE PROJECT HAS BEEN PLANNED.
7 I BELIEVE THE ARCHITECT HAS BEEN HIRED. THEY ARE GOING THROUGH
8 PUBLIC HEARINGS NOW, WITH THE COMMENSURATE OBJECTIONS BY LOCAL
9 FOLKS, AND THEY ARE MOVING EXPEDITIOUSLY. THE MONEY HAS BEEN
10 SET ASIDE, THE \$350 MILLION-PLUS HAS BEEN IN THE BANK FOR SOME
11 TIME.

12 Q. WHAT'S THE ESTIMATED DATE FOR COMPLETION OF THIS JAIL THAT
13 BECAME A PRIORITY IN FEBRUARY OF '07?

14 A. ACCORDING TO THE FACILITIES MANAGEMENT DIRECTOR AND THE
15 OTHER OFFICIALS I HAVE SPOKEN TO ABOUT THE JAIL, HAD MANY
16 CONVERSATIONS, THE PROJECTED COMPLETION DATE IS 2012.

17 Q. SO FIVE YEARS FROM THE TIME IT BECAME A PRIORITY UNTIL THE
18 TIME IT'S EXPECTED TO BE COMPLETED, IS THAT RIGHT?

19 A. APPROXIMATELY. IT MIGHT BE TOWARDS THE END OF 2012, SO IT
20 MIGHT BE A LITTLE MORE THAN FIVE YEARS.

21 Q. ONE OF THE THINGS YOU REFERRED TO IN YOUR TESTIMONY WAS THE
22 PRISON CONSTRUCTION ASSOCIATED WITH AB 900 WAS AN ALTERNATIVE TO
23 A PRISONER RELEASE ORDER IN THIS CASE; DO YOU REMEMBER THAT?

24 A. YES, SIR.

25 Q. AND AS OF TODAY, NO FUNDS HAVE BEEN AUTHORIZED FOR THE

1 CONSTRUCTION OF THAT PRISON, IS THAT CORRECT?

2 **JUDGE KARLTON:** NOT ONLY THAT, BUT NO BONDS HAVE BEEN
3 SOLD YET.

4 **THE WITNESS:** NO BONDS HAVE BEEN SOLD YET, THAT'S
5 CORRECT.

6 **BY MR. SANGSTER:**

7 **Q.** AND THE LEGISLATURE STILL HAS NOT ENACTED THE CLEAN-UP
8 LEGISLATION THAT'S BEEN DISCUSSED FOR CLOSE TO A YEAR?

9 **A.** MY UNDERSTANDING IT'S TWO ISSUES; ONE OF WHICH IS THE
10 LEGISLATURE, THE OTHER OF WHICH IS THE ATTORNEY GENERAL'S
11 OFFICE.

12 **Q.** I WAS ASKING ABOUT THE LEGISLATURE.

13 **A.** I'M SORRY. COULD YOU REPEAT THE QUESTION?

14 **Q.** IS IT TRUE THAT THE CLEAN-UP LEGISLATION NECESSARY TO GET AB
15 900 GOING HAS BEEN IN PROCESS FOR CLOSE TO A YEAR AND HASN'T YET
16 PASSED?

17 **A.** WELL, LEGISLATION HAS NOT PASSED. I'M NOT SURE IT'S
18 NECESSARY. THERE'S A DISAGREEMENT ABOUT THAT.

19 **JUDGE KARLTON:** AND TO -- NEVER MIND. JUST GO.

20 **BY MR. SANGSTER:**

21 **Q.** OKAY. YOU TALKED ABOUT THE NEED TO INCREASE REHABILITATION
22 EFFORTS BY THE STATE?

23 **A.** YES, SIR.

24 **Q.** THAT NEED HAS BEEN AN APPARENT FOR SOME TIME?

25 **A.** IT HAS.

1 Q. THAT'S BEEN APPARENT TO THE LEGISLATURE FOR SOME TIME?

2 A. I BELIEVE SO YES, SIR.

3 Q. THE LEGISLATURE HAS FAILED TO INCREASE THE REHABILITATION
4 PROGRAMS DURING THAT TIME?

5 A. THEY HAVE IN SOME SMALL INSTANCES, BUT NOT A GENERAL
6 OVERHAUL OF THOSE SYSTEMS, CORRECT.

7 Q. SO THE LEGISLATURE HAS BEEN AWARE OF AN ALTERNATIVE TO A
8 PRISONER RELEASE ORDER, BUT HAS FAILED TO ACT ON IT?

9 A. CAN I GET SOME CLARIFICATION ON THE LEGISLATURE? WHAT YOU
10 MEAN BY THE LEGISLATURE? EVERY MEMBER OF THE LEGISLATURE?

11 JUDGE KARLTON: THE BODY AS A WHOLE.

12 THE WITNESS: I WOULDN'T SAY THAT THE BODY AS A WHOLE
13 WAS AWARE OF ALL OF THOSE CONDITIONS AND, THEREFORE, FAILED TO
14 ACT. INDIVIDUAL MEMBERS MAY HAVE BEEN AND WERE.

15 JUDGE KARLTON: BUT THAT'S THE WAY THE LEGISLATURE
16 ALWAYS WORKS. MAYBE IT DOESN'T ANY MORE. THIRTY YEARS AGO WHEN
17 I HAD SOMETHING TO DO WITH IT IT DID.

18 THE WAY THE LEGISLATURE USED TO WORK, AND MAYBE IT
19 DOESN'T ANY MORE, WERE THAT SPECIFIC COMMITTEES BECAME THE
20 CONDUIT FOR ALL LEGISLATION AND THE MEMBERS OF THOSE COMMITTEES
21 WERE EXPECTED TO ACT FOR THE LEGISLATURE AS A WHOLE IN MAKING
22 DECISIONS ABOUT WHAT OUGHT TO BE DONE FOR THE PUBLIC.

23 WAS THAT NOT YOUR EXPERIENCE WHEN YOU WERE IN THE
24 LEGISLATURE, SIR?

25 THE WITNESS: THAT WAS NOT MY EXPERIENCE, YOUR HONOR.

1 IT WAS DIFFERENT.

2 **JUDGE KARLTON:** HOW DID IT WORK THEN? EVERYBODY HAD
3 TO BECOME EXPERT IN EVERYTHING?

4 **THE WITNESS:** WELL, IN 1996 TO 2002 WHEN I SERVED,
5 INDIVIDUAL MEASURES WOULD BE DRIVEN BY INDIVIDUALS.

6 AND SO, FOR EXAMPLE, THE LAST PRISON CONSTRUCTED IN
7 THE STATE OF CALIFORNIA WAS APPROVED WHILE I WAS IN THE
8 LEGISLATURE. I BELIEVE THAT'S CORCORAN 2. THAT WAS DRIVEN BY
9 AN ASSEMBLYMAN OUT OF THE CENTRAL VALLEY.

10 IT WAS NOT, TO BE QUITE CANDID WITH YOU, THE WILL OF
11 THE MAJORITY OF THAT BODY THAT THAT PRISON GET CONSTRUCTED. IN
12 FACT, I BELIEVE THERE WAS SIGNIFICANT OPPOSITION TO IT, BUT
13 BECAUSE OF THE WORK THAT HE DID BOTH WITH THE THEN GOVERNOR
14 WILSON -- EXCUSE ME, NOT GOVERNOR WILSON, GOVERNOR DAVIS AND
15 OTHER MEMBERS, THAT MEASURE PASSED AND THE PRISON WAS
16 CONSTRUCTED.

17 SO IT WASN'T THE COMMITTEE, IF YOU WILL, THAT WAS
18 ACTING. IT WAS AN INDIVIDUAL. SO WE HAVE SEEN PERFORMANCE DONE
19 AT LEAST DURING MY TIME ON THAT BASIS.

20 **JUDGE REINHARDT:** I DON'T QUITE UNDERSTAND. IF THE
21 LEGISLATURE IS NOT AWARE OF THIS PROBLEM, WHAT DOES IT TAKE TO
22 MAKE THE LEGISLATURE AWARE OF THE PROBLEM?

23 **THE WITNESS:** I BELIEVE YOU HAVE MADE THEM AWARE OF
24 THE PROBLEM, AND I WOULD DARE SAY THAT 120 OF THEM ARE NOW AWARE
25 OF THE PROBLEM.

1 BUT IN 1996 TO 2002 WHEN I WAS THERE, I WOULD NOT SAY
2 THAT THE OVERWHELMING MAJORITY OF FOLKS WERE AWARE THAT THERE
3 WAS A SIGNIFICANT PROBLEM.

4 **JUDGE REINHARDT:** SINCE THEY HAVE BECOME AWARE
5 BECAUSE OF THIS COURT, WHAT HAVE THEY DONE TO SOLVE THE PROBLEM.

6 **THE WITNESS:** AB 900 WAS, I BELIEVE, A FAIRLY RARE
7 OCCURRENCE. THE MAJORITY, AT LEAST WHEN I WAS THERE, WAS
8 OPPOSED TO PRISON CONSTRUCTION.

9 SO ALLOWING A BILL TO PASS THAT ALLOWED PRISON
10 CONSTRUCTION, AB 900 PRISON FACILITIES WAS A SIGNIFICANT STEP BY
11 THE LEGISLATURE. I THINK IT WAS THIS COURT THAT SPURRED THEM TO
12 DO IT, TO BE QUITE FRANK WITH YOU, AND OVERCAME THEIR NATURAL
13 INCLINATION AGAINST PASSING SUCH A BILL.

14 **JUDGE KARLTON:** NOTHING HAS BEEN DONE. THE MONEY HAS
15 NOT BEEN ALLOCATED, FUNDING HAS NOT -- NEVER MIND. GO AHEAD.

16 **JUDGE REINHARDT:** WELL, FOR INSTANCE, YOU DID TALK
17 ABOUT THE NEED FOR MORE PAROLE AND PROBATION OFFICERS. I DON'T
18 REMEMBER WHICH FIGURES YOU USED FOR PAROLE OR PROBATION, BUT
19 WITH THAT BEING AN IMPORTANT ALTERNATIVE, HAS ANYTHING BEING
20 DONE TO PROVIDE ADDITIONAL FUNDING FOR THAT?

21 **THE WITNESS:** IN THE LEGISLATURE?

22 **JUDGE REINHARDT:** YES.

23 **THE WITNESS:** I'M NOT AWARE OF ANYTHING RECENTLY IN
24 THAT RESPECT.

25 IN FACT, I BELIEVE THAT THE FUNDING HAS GONE THE

1 WRONG WAY FOR THOSE, THOSE AGENCIES.

2 BUT THERE ARE -- I'M SORRY, I'M ADDING. THERE ARE
3 OTHER ISSUES DEALING WITH THAT, AND THAT IS THE INADEQUACY AND
4 EFFECTIVENESS THAT GOES ON IN THAT ORGANIZATION. THAT HAS
5 NOTHING TO DO WITH THE LEGISLATURE.

6 **JUDGE REINHARDT:** CAN THE COURT COUNT ON ALL THOSE
7 PROBLEMS BEING CORRECTED, FUNDING COMING FORWARD, THE CDCR WHICH
8 IS QUITE CRITICAL OF OPERATING MORE EFFICIENTLY.

9 **THE WITNESS:** THE COURT IDENTIFIED A NUMBER OF
10 CONSTITUTIONAL VIOLATIONS IN ITS ORDERS AND IN ITS OPINIONS. IT
11 IS MY OPINION THAT THE OVERWHELMING MAJORITY OF THOSE VIOLATIONS
12 HAVE LITTLE, IF ANYTHING, TO DO WITH OVERCROWDING. MAYBE ONE OR
13 TWO OF THEM DO.

14 IF I MAY GIVE AN EXAMPLE TO THE COURT? A FACTUAL
15 EXAMPLE THAT WAS CITED BY THE COURT WAS A DENTIST THAT WAS NOT
16 SANITARY AND WAS USING THE SAME GLOVES TO LOOK IN THE MOUTHS OF
17 PRISONER AFTER PRISONER. THAT'S NOT AN OVERCROWDING ISSUE;
18 THAT'S A MALPRACTICE ISSUE.

19 **JUDGE REINHARDT:** I'M ASKING YOU REALLY ABOUT
20 PHASE 2. I'M SURE YOU ARE FAMILIAR WITH WHERE WE ARE IN THIS
21 TRIAL.

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

23 **JUDGE REINHARDT:** THE FIRST PHASE, WHICH I GATHER YOU
24 ARE NOT HERE TO TESTIFY ABOUT SINCE WE ARE IN PHRASE 2, WAS
25 ABOUT WHETHER OVERCROWDING WAS A CAUSE.

1 BUT NOW LOOKING AT THE REMEDY PHASE, THAT'S WHAT I
2 WAS REALLY ASKING YOU ABOUT. AND I WANT TO SEE WHAT HOPE THERE
3 IS FOR SOME REMEDY. YOU SAY THERE ARE ALTERNATIVES TO PRISONER
4 RELEASE ORDERS. THAT'S A VERY BROAD TERM.

5 BUT YOUR SUGGESTIONS WERE, I THOUGHT, THAT WE NEEDED
6 MORE PAROLE OFFICERS, MORE PROBATION OFFICERS, BUILD MORE
7 PRISONS. ARE ANY OF THOSE THINGS IMMEDIATE PROSPECTS? WHAT IS
8 THE STATUS OF ANY OF THOSE THINGS?

9 JUDGE KARLTON SAID YOU SEEM TO AGREE THAT THERE
10 HASN'T BEEN ANYTHING DONE OTHER THAN TO PASS PROPOSITION -- AB
11 900. NO FUNDING HAS BEEN MADE AVAILABLE.

12 **THE WITNESS:** IF I MAY?

13 **JUDGE REINHARDT:** YES, PLEASE.

14 **THE WITNESS:** I DON'T BELIEVE IT'S A QUESTION OF A
15 LACK OF CAPACITY OR, AS THE COURT HAS MENTIONED IN ONE OF ITS
16 DOCUMENTS, TRAINED INCAPACITY IN THE LEGISLATURE.

17 THE LEGISLATURE CAN ACT VERY QUICKLY. IN MY FIRST
18 YEAR THERE THERE WAS A \$1 BILLION TAX CUT IN A MATTER OF HOURS
19 THAT WAS PASSED.

20 **JUDGE KARLTON:** CUTTING TAXES THEY ARE VERY GOOD AT.
21 IT'S A QUESTION OF RAISING MONEY AND SPENDING IT IN WAYS THAT
22 ARE PERCEIVED NOT TO GET VOTES.

23 **THE WITNESS:** I SAW THAT DONE AS WELL, YOUR HONOR.
24 IN THE EXPENDITURE PART WE HAD NUMEROUS BILLS THAT WOULD COME UP
25 AT THE LAST MINUTE. THE LEGISLATURE CAN ACT VERY QUICKLY AND

1 HANDLE THOSE MATTERS.

2 TO ANSWER THE COURT'S QUESTION, I BELIEVE THE COURT'S
3 INTERVENTION CAN RESOLVE MANY, IF NOT MOST, OF THE
4 CONSTITUTIONAL VIOLATIONS THROUGH ITS USE OF THE RECEIVER, AND
5 THAT CAN BE DONE. AND THOSE ARE NOT NECESSARILY CONNECTED TO
6 THE OVERCROWDING.

7 **JUDGE KARLTON:** THE RECEIVER SAID HE NEEDS -- I'M
8 SORRY, I DON'T REMEMBER. \$8 MILLION, \$8 BILLION, WHATEVER THE
9 NUMBER IS.

10 **THE WITNESS:** 8 BILLION.

11 **JUDGE KARLTON:** AND THAT HE NEEDED SEVERAL MILLION
12 DOLLARS IN THE NEXT YEAR, AND THE LEGISLATURE HAS NOT PROVIDED
13 ANY OF THAT MONEY. THAT'S THE REAL WORLD, ISN'T IT?

14 **THE WITNESS:** YES.

15 **JUDGE KARLTON:** SO WHATEVER THE ABSTRACT
16 POSSIBILITIES ARE -- AND WHETHER WE HAVE AS MUCH CONFIDENCE AS
17 YOU DO IS ANOTHER MATTER, BUT WHATEVER THE ABSTRACT
18 POSSIBILITIES ARE, THERE IS A REAL WORLD OUT THERE.

19 **THE WITNESS:** I DON'T KNOW THAT YOU -- THE COURT AND
20 I ARE THAT FAR APART ABOUT THE LEGISLATURE.

21 **JUDGE REINHARDT:** AS YOU UNDOUBTEDLY KNOW, ALSO, WHEN
22 JUDGE HENDERSON'S RECEIVER ASKED FOR A COMPARATIVELY SMALL
23 AMOUNT OF MONEY TO GET STARTED, THE STATE REFUSED TO PAY AND
24 APPEALED TO THE NINTH CIRCUIT.

25 SO HOW CAN WE HAVE ANY CONFIDENCE THAT THE STATE

1 WANTS TO IMPLEMENT THIS?

2 **JUDGE KARLTON:** OR ANYTHING.

3 **THE WITNESS:** SO MUCH OF WHAT OCCURS IN SACRAMENTO,
4 AGAIN, BASED ON MY EXPERIENCE IN SACRAMENTO, DEALS WITH THE
5 MANNER IN WHICH YOU DO SOMETHING AS OPPOSED TO THE SUBJECT
6 MATTER. THE SUBJECT MATTER CAN EVOKE VARIOUS EMOTIONS AND
7 THINGS LIKE THAT THAT CAN OPERATE AS OBSTACLES, BUT IT'S THE
8 MANNER IN WHICH I WOULD USE THE CURRENT DISCUSSIONS OR LACK
9 THEREOF THAT ARE GOING ON BEYOND THE GOVERNOR AND BUDGET
10 PROBLEMS. THEY CAN'T SEEM TO MEET OR REACH A MEANINGFUL
11 RESOLUTION, AND I BELIEVE IT'S BECAUSE OF THE MANNER OF THE
12 DISCUSSIONS THAT ARE PRECLUDING THAT RESOLUTION.

13 **BY MR. SANGSTER:**

14 **Q.** SO IF THIS COURT SAYS "PRETTY PLEASE," YOU THINK ALL THE
15 SOLUTIONS WOULD BE FORTHCOMING?

16 **A.** I WOULDN'T SUGGEST THAT, COUNSEL.

17 **MR. SANGSTER:** I HAVE NO FURTHER QUESTIONS, YOUR
18 HONOR.

19 **JUDGE HENDERSON:** REDIRECT?

20 **MR. MITCHELL:** NO REDIRECT.

21 **JUDGE HENDERSON:** OKAY. THANK YOU VERY MUCH.

22 **THE WITNESS:** THANK YOU.

23 (WITNESS EXCUSED.)

24 **JUDGE HENDERSON:** OKAY. WE ARE GOING TO RECESS FOR
25 LUNCH.

1 IT SEEMS WORTH OBSERVING THAT WE HAVE WHAT APPEARS TO
2 BE SEVEN HOURS AND 45 MINUTES OF TESTIMONY LINED UP FOR ONE,
3 TWO, THREE, FOUR, FIVE, SIX, SEVEN WITNESSES. WE HAVE FINISHED
4 TWO. WE ARE NOT LIKELY TO FINISH, AND WE ENCOURAGED YOU TO HAVE
5 PEOPLE READY. I CAN'T IMAGINE -- TAKE THAT IN MIND.

6 **JUDGE REINHARDT:** OR TO STIPULATE TO THEIR TESTIMONY.

7 **JUDGE HENDERSON:** OR STIPULATE TO THEIR TESTIMONY.

8 BUT ANYWAY, COURT IS IN RECESS FOR AN HOUR.

9 DO YOU HAVE SOMETHING?

10 **MS. WOODWARD:** YES, YOUR HONOR. I WAS GOING TO
11 MENTION TO THE COURT THAT THE TESTIMONY OF MR. BOSCH IS GOING TO
12 COME IN BY STIPULATION IN LIEU OF LIVE TESTIMONY, WHICH WE
13 REACHED LAST NIGHT. I'M SORRY WE DIDN'T REACH IT SOONER.

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

15 **MS. WOODWARD:** SO HE IS NOT ON THE LIST ANY MORE
16 TODAY.

17 **MR. SANGSTER:** AS IS THE TESTIMONY OF MISS JOHNSON.

18 **MS. WOODWARD:** I'M SORRY. THAT'S CORRECT.

19 MISS JOHNSON ALSO HAS BEEN SUBMITTED IN LIEU OF LIVE TESTIMONY.
20 SHE IS THIS AFTERNOON.

21 **JUDGE HENDERSON:** I DON'T SEE A MISS JOHNSON ON THIS
22 LIST.

23 **MS. WOODWARD:** SHE MAY ALREADY HAVE BEEN TAKEN OFF.

24 **JUDGE HENDERSON:** IT'S NOT ON THE LIST WE WERE GIVEN.

25 OKAY COURT IS ADJOURNED FOR AN HOUR.

1 (WHEREUPON AT 12:06 P.M. PROCEEDINGS
2 WERE ADJOURNED FOR NOON RECESS.)

3 **THE REPORTER:** GOOD AFTERNOON.

4 **JUDGE HENDERSON:** BEFORE WE START, AND WE'LL DO THAT
5 IN JUST A MINUTE, COUNSEL, WE COLLECTIVELY UP HERE HAVE VERY
6 SERIOUS CALENDARING PROBLEMS AFTER THE 19TH. WE'RE GOING TO ASK
7 YOU TO GIVE US ANOTHER, WHEN WE RECONVENE NEXT WEEK, WHAT WE
8 THINK WOULD BE A MORE REALISTIC SCHEDULE FOR THE REST OF THE
9 TRIAL. WITH THE ESTIMATES TODAY, EVEN TAKING INTO ACCOUNT THE
10 QUESTIONING BY THE COURT, ARE NOT AS HELPFUL AS THEY MIGHT BE,
11 SO WE ARE GOING TO ASK YOU TO DO THAT. RECALL THAT NEXT WEEK WE
12 HAVE TWO MORE DAYS, THE 18TH AND THE 19TH. AFTER THAT WE HAVE
13 DIRE PROBLEMS IF WE DON'T FINISH.

14 WE ARE GOING TO HAVE TO LOOK AT OUR CALENDARS, WHICH
15 ARE OBVIOUSLY DIFFERENT FROM EACH OTHER'S, AND PATCH TOGETHER A
16 SCHEDULE THROUGH THE HOLIDAYS, AND WE'RE GOING TO INSIST THAT
17 YOU BE AVAILABLE UNTIL WE CAN FIGURE OUT WHAT THAT IS. AND ONE
18 FURTHER THING YOU SHOULD KNOW THAT, FOR TODAY, WE ARE GOING TO
19 END AT 4:15.

20 SO, WITH THAT, YOU CAN BEGIN, MR. MITCHELL.

21 **JUSTICE REINHARDT:** IF YOU WOULD GET THE SCHEDULES IN
22 ON WEDNESDAY IN WRITTEN FORM, AND THEN, AS JUDGE HENDERSON SAID,
23 IF WE DON'T FINISH ON THE 19TH, UNDER YOUR SCHEDULES IT DOESN'T
24 LOOK LIKE IT SHOULD TAKE MORE THAN ANOTHER DAY OR TWO AT THE
25 MOST.

1 **JUDGE KARLTON:** I DON'T AGREE WITH THAT, BUT GO
2 AHEAD.

3 **JUSTICE REINHARDT:** LOOKING AT YOUR SCHEDULES, I
4 DON'T THINK IT'S GOING TO TAKE MORE THAN A DAY OR TWO ONCE YOU
5 REALLY ELIMINATE THE ONES YOU CAN ELIMINATE. IT WOULD BE NICE
6 TO HEAR FROM EVERY DISTRICT ATTORNEY IN EVERY COUNTY THAT THEY
7 ARE GOING TO SUFFER MORE OR LESS THAN ONE IN THE OTHER COUNTY,
8 OR EVERY SHERIFF CAN TELL US THAT, BUT REALLY, I THINK IF WE
9 COULD JUST GET REPRESENTATIVE TESTIMONY, THEN I THINK WE CAN --
10 IF WE DON'T FINISH ON THE 19TH, I THINK WE CAN FINISH IN A DAY
11 OR TWO.

12 WHAT JUDGE HENDERSON IS SAYING IS DON'T MAKE ANY
13 PLANS OVER THE HOLIDAYS BECAUSE WE EXPECT ALL OF YOU TO BE HERE
14 ON WHATEVER DAY OR SO WE CAN WORK OUT TO FIND A DAY OR TWO OVER
15 THE HOLIDAYS. SO I HOPE NOBODY IS GOING ANYWHERE BECAUSE WE
16 EXPECT YOU HERE IF YOU DON'T FINISH.

17 **MR. MELLO:** ONE QUESTION OF CLARIFICATION, YOUR
18 HONOR. DID YOU SAY YOU WANT NEXT WEDNESDAY THE SCHEDULE OR NEXT
19 MONDAY?

20 **JUDGE HENDERSON:** I SAID MONDAY.

21 **JUSTICE REINHARDT:** I'M SORRY. I THOUGHT YOU DIDN'T
22 GIVE THEM A DAY.

23 **JUDGE HENDERSON:** WEDNESDAY IS FINE.

24 **MR. MELLO:** THANK YOU, YOUR HONOR.

25 **JUDGE HENDERSON:** YES, YOU MAY BEGIN, MR. MITCHELL.

1 **MR. MITCHELL:** THANK YOU, YOUR HONOR. WE CALL SAN
2 DIEGO COUNTY DISTRICT ATTORNEY BONNIE DUMANIS TO THE STAND.

3 **BONNIE DUMANIS,**
4 HAVING BEEN CALLED AS A WITNESS BY THE DEFENDANT INTERVENORS
5 WAS FIRST DULY SWORN AND EXAMINED AS FOLLOWS:

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

8 **THE WITNESS:** MY NAME IS BONNIE DUMANIS, B-O-N-N-I-E,
9 D-U-M-A-N-I-S.

10 **DIRECT EXAMINATION BY MR. MITCHELL**

11 **BY MR. MITCHELL**

12 **Q** COULD YOU BRIEFLY TELL US YOUR LEGAL EXPERIENCE AND OFFICIAL
13 POSITIONS THAT YOU HAVE HELD?

14 **A** DO YOU WANT MY EDUCATIONAL BACKGROUND OR JUST THE LEGAL
15 EXPERIENCE?

16 **Q** HOW ABOUT BOTH?

17 **A** OKAY. I GOT MY UNDERGRADUATE DEGREE IN 1973 FROM THE
18 UNIVERSITY OF MASSACHUSETTS IN AMHERST WITH A SPECIAL BA IN
19 SOCIOLOGY. I WENT TO WESTERN STATE UNIVERSITY, GRADUATED IN
20 1976. IT'S NOW KNOWN AS THOMAS JEFFERSON. BECAME A DEPUTY DA.
21 WORKED IN THE DISTRICT ATTORNEY'S OFFICE AS A DEPUTY DA FROM
22 1978 UNTIL 1990, WHEN I WAS APPLY TO THE COURT AS A JUVENILE
23 COURT, SUPERIOR COURT JUVENILE COURT REFEREE. SERVED THERE FOR
24 FOUR YEARS, WHEN I WAS ELECTED TO THE MUNICIPAL COURT IN SAN
25 DIEGO. TOOK OFFICE IN 1995, RAN FOR THE SUPERIOR COURT IN 1998,

1 WAS ELECTED TO THE SUPERIOR COURT, WHERE I WAS ELECTED AND THEN
2 APPOINTED, AND THEN THE COURT UNIFIED.

3 I SERVED ON THE SUPERIOR COURT UNTIL, I'M NOT SURE
4 EXACTLY WHEN, BUT I RAN FOR DISTRICT ATTORNEY AND WAS ELECTED.
5 IN JANUARY OF '03 I TOOK OFFICE. AS A JUDGE IN THE SUPERIOR
6 COURT AND IN THE MUNICIPAL COURTS, I STARTED THE DRUG COURT IN
7 DOWNTOWN SAN DIEGO AND SPENT FIVE YEARS OUT OF THE TEN YEARS ON
8 THE JUVENILE COURT.

9 **Q** AS A PROSECUTOR DID YOU GAIN -- BECOME EXPERIENCED IN ALL
10 ASPECTS OF CRIMINAL JUSTICE FROM A PROSECUTION POINT OF VIEW,
11 FROM INVESTIGATION OF CASES THROUGH NEGOTIATING SETTLEMENT,
12 PRESENTING TRIALS AND THROUGH SENTENCING?

13 **A** YES, I PRETTY MUCH HANDLED THE GAMUT.

14 **Q** ALL TYPES OF CASES FROM --

15 **A** FROM CHILD SUPPORT, WELFARE FRAUD, TO MURDERS, RAPES,
16 ROBBERIES, AND EVERYTHING IN BETWEEN.

17 **Q** AND FROM A JUDICIAL EXPERIENCE, DID YOU HAVE THAT SAME TYPE
18 OF WIDE RANGES OF CASES THAT YOU HANDLED, AND WHAT WERE THEY?

19 **A** YES, I DID TRIALS FOR COUPLE OF YEARS, BUT A LOT OF WHAT I
20 DID WAS CALENDARS THAT INVOLVED THE RESOLUTION OF CASES, THE
21 SENTENCING OF DEFENDANTS, AND I WAS ALWAYS IN CRIMINAL AND
22 HANDLED EVERYTHING FROM THE MISDEMEANOR CALENDAR TO THE FELONY
23 CALENDAR, AND IN THE JUVENILE COURT WE -- I HANDLED ABOUT A
24 THOUSAND CASES A YEAR.

25 **Q** WHAT'S THE SIZE OF THE SAN DIEGO COUNTY DISTRICT ATTORNEY'S

1 OFFICE, THE OFFICE THAT YOU NOW MANAGE?

2 **A** WE HAVE ROUGHLY 310 DEPUTY DISTRICT ATTORNEYS, 150
3 INVESTIGATORS THAT ARE SWORN PEACE OFFICERS, ABOUT A THOUSAND
4 EMPLOYEES TOTAL.

5 **Q** THE SECOND LARGEST PROSECUTION OFFICE IN THE STATE?

6 **A** YES, IT IS.

7 **Q** I TAKE IT YOU'VE BECOME FAMILIAR WITH MANY OF THE ISSUES
8 THAT CONFRONT THE PROSECUTION OF CRIMINAL CASES IN THE CRIMINAL
9 JUSTICE SYSTEM, THE ISSUES THAT RANGE FROM OVERCROWDING OF YOUR
10 JAILS TO RECIDIVISM AND ISSUES SUCH AS THAT?

11 **A** YES.

12 **Q** AT SOME POINT YOU BECAME AWARE THAT THE THREE-JUDGE PANEL IN
13 THIS CASE WAS CONVENED IN ORDER TO DETERMINE WHETHER OR NOT A
14 PRISONER RELEASE ORDER SHOULD ISSUE TO REMEDY THE OVERCROWDING
15 THAT EXISTS, OR TO DETERMINE WHETHER OR NOT OVERCROWDING IS A
16 PRIMARY CAUSE OF THE CONSTITUTIONAL VIOLATIONS OF INADEQUATE
17 HEALTHCARE AND MENTAL HEALTHCARE IN THE PRISONS; YOU ARE AWARE
18 OF THAT?

19 **A** YES.

20 **Q** YOU UNDERSTAND THESE PROCEEDINGS ARE HERE TO DETERMINE
21 WHETHER OR NOT A PRISONER RELEASE ORDER SHOULD ISSUE SHOULD THEY
22 DETERMINE THAT OVERCROWDING IS A PRIMARY CAUSE OF THE
23 VIOLATIONS?

24 **A** YES. AS THE DISTRICT ATTORNEY AND THE PRESIDENT OF THE
25 CALIFORNIA DISTRICT ATTORNEYS' ASSOCIATION, I AM VERY CONCERNED

1 WITH THE PUBLIC SAFETY IMPLICATIONS OF A PRISON RELEASE ORDER.

2 **Q** HAVE YOU FORMED AN OPINION AS TO WHETHER OR NOT AN
3 ACCELERATED RELEASE OF PRISONERS SUCH AS HAS BEEN PROPOSED IN
4 THIS CASE WOULD HAVE AN ADVERSE IMPACT ON CRIMINAL JUSTICE AND
5 THE ADMINISTRATION OF JUSTICE AND PUBLIC SAFETY IN THE COMMUNITY
6 OF SAN DIEGO?

7 **A** YES, I HAVE FORMED AN OPINION.

8 **Q** WHAT IS THAT OPINION?

9 **A** THE OPINION IS THAT IT WOULD BE ADVERSE. I THINK THAT WE
10 WILL SEE MORE CRIMES BEING COMMITTED. WE WILL ALSO SEE
11 PRISONERS THAT ARE COMING OUT OF PRISON WITH NO RESOURCES, AND
12 THEY WILL BE SET UP FOR FAILURE. AND I SEE AN IMPACT ON OUR
13 CURRENT PROGRAM WHICH IS SB 618, THAT HAS BEEN THUS FAR VERY
14 SUCCESSFUL, AND WHICH I THINK REALLY PROVIDES A GOOD FRAMEWORK
15 AND TEMPLATE FOR HOW WE CAN SUCCEED IN STOPPING THE REVOLVING
16 DOOR.

17 **Q** BASED UPON YOUR EXPERIENCE AS A PROSECUTOR AND YOUR JUDICIAL
18 EXPERIENCE, DO YOU BELIEVE THAT THERE ARE VIABLE ALTERNATIVES TO
19 REDUCING CROWDING IN THE PRISONS OTHER THAN A RELEASE ORDER?

20 **A** YES, I DO.

21 **Q** WHAT ARE SOME OF THOSE?

22 **A** WELL, I KNOW THAT THE DEPUTY DISTRICT ATTORNEY, LISA
23 RODRIGUEZ, SPOKE WITH YOUR HONORS EARLIER THIS WEEK, I BELIEVE,
24 ABOUT OUR PROGRAM SB 618. I THINK THAT PROGRAM HAS BEEN WELL
25 RESEARCHED AND HAS ALL THE FUNDAMENTALS THAT EXPERTS ACROSS THE

1 NATION SAY ARE NECESSARY IN TERMS OF STOPPING PEOPLE FROM
2 REVOLVING IN THE CRIMINAL JUSTICE SYSTEM, AND A LOT OF THAT
3 COMES FROM MY EXPERIENCE AS A DRUG COURT JUDGE AS WELL IN THE
4 JUVENILE COURT. AND SO I CAN GO THROUGH THE ENTIRE PROCESS, IF
5 YOU LIKE.

6 **JUDGE KARLTON:** IT'S BEEN DONE ONCE, MA'AM. YOU
7 DON'T HAVE TO DO IT AGAIN.

8 **MR. MITCHELL:** THANK YOU, YOUR HONOR.

9 **BY MR. MITCHELL**

10 **Q** DO YOU BELIEVE THAT THE SB 618, IF FULLY IMPLEMENTED AND
11 EXPANDED, COULD REALIZE A SIGNIFICANT REDUCTION IN THE PRISON
12 POPULATION OVER A PERIOD OF TIME?

13 **A** YES, I DO, AND PART OF THE REASON WHY IT WOULD SIGNIFICANTLY
14 REDUCE, I THINK, THE POPULATION IS BECAUSE IN THE LOCAL AREA,
15 FOR INSTANCE RIGHT NOW, THE ASSESSMENT THAT OCCURS BY PROBATION
16 AND A LOCAL REPRESENTATIVE FROM THE DEPARTMENT OF CORRECTIONS
17 AND REHABILITATION PUTS THAT AT THE FRONT END.

18 SO AT THE FRONT END WE'RE ACTUALLY DOING THE
19 CLASSIFICATION. WE ARE ASSESSING THEM FOR DRUG TREATMENT, FOR
20 MENTAL HEALTH, FOR ALL OF THOSE THINGS THAT THEY'RE GOING TO
21 NEED IN PRISON. AND, MOST IMPORTANTLY, WE HAVE THE
22 PARTICIPATION OF THE PRISONER IN THAT PROCESS, SO THEY HAVE THIS
23 LIFE PLAN THAT GOES WITH THEM.

24 BUT THE KEY TO THIS WHOLE THING IS THEY THEN DON'T
25 HAVE TO SPEND SO MUCH TIME IN THE RECEPTION CENTERS IN THE

1 DEPARTMENT OF CORRECTIONS WHERE THEY LANGUISH WITHOUT
2 PROGRAMMING, WHERE THEY ARE FORCED TO FIT INTO A POPULATION THAT
3 MIXES THE REAL VIOLENT PEOPLE WITH THOSE WHO AREN'T NECESSARILY
4 VIOLENT, AND IT FORCES THEM TO JOIN GANGS AND DO ALL THOSE
5 THINGS, AND THAT'S WHERE PEOPLE ARE HURT MORE SIGNIFICANTLY.

6 SO IT'S THAT PORTION THAT IS REALLY -- EXCUSE ME --
7 CRITICAL. BUT ALSO PROGRAMMING IN THE PRISON IS CRITICAL AS
8 WELL AS THE CASE MANAGEMENT SYSTEM WHERE YOU HAVE SOMEONE THAT
9 IS FOLLOWING THEM FROM THE PRISON SYSTEM, AS WELL AS SOMEBODY
10 FROM THE COMMUNITY THAT COMES IN TO FOLLOW THEM BEFORE -- IF YOU
11 RELEASE PRISONERS AS THEY DO NOW.

12 **MR. SANGSTER:** YOUR HONOR, I OBJECT AT THIS POINT.
13 IT'S LONG SINCE NON-RESPONSIVE, AND THIS IS CUMULATIVE. THIS IS
14 THE SAME STUFF COVERED BY MS. RODRIGUEZ EARLIER.

15 **JUSTICE REINHARDT:** WHEN WAS THIS BILL PASSED?

16 **THE WITNESS:** THE BILL WAS PASSED, I BELIEVE, IN
17 2005, AND WE BEGAN THE PROGRAM IN 2006.

18 **JUSTICE REINHARDT:** HOW MANY PEOPLE -- YOU ARE NOT
19 THE ONLY ONE COVERED BY THIS?

20 **THE WITNESS:** YES, WE ARE ONLY COUNTY COVERED BY
21 THIS.

22 **JUSTICE REINHARDT:** NO, NO, THE BILL, UNDER THE BILL.

23 **THE WITNESS:** UNDER THE BILL, YOUR HONOR, YES, YOU'RE
24 CORRECT. THREE COUNTIES ARE ALLOWED TO DO IT. WE ORIGINALLY
25 ATTEMPTED TO GET ALL COUNTIES. IT WAS THE LEGISLATURE THAT

1 DETERMINED THAT WE SHOULD START WITH THREE COUNTIES, BUT THERE
2 IS THE AVAILABILITY THAT THREE COUNTIES COULD DO IT RIGHT NOW.

3 **JUDGE KARLTON:** THERE'S ONLY ONE COUNTY DOING IT NOW?

4 **JUSTICE REINHARDT:** IT'S NOW BEEN AT LEAST THREE
5 YEARS SINCE WE'VE HAD THIS PROGRAM AND YOU COVERED 200 PEOPLE?

6 **THE WITNESS:** RIGHT NOW WE HAVE MORE THAN 400 PEOPLE
7 IN THE PROGRAM AT VARIOUS ASPECTS. ONLY, I BELIEVE, A LITTLE
8 OVER 70 HAVE ACTUALLY COME OUT OF CUSTODY AT THIS POINT. BUT AS
9 WE PLANNED, WE ARE TRYING TO INCREASE THE NUMBERS. WE STARTED
10 OUT SMALL, AGAIN, TO WORK OUT ALL THE PROBLEMS, AND WE INTEND TO
11 INCREASE, OF COURSE, AS TIME GOES ON.

12 **JUSTICE REINHARDT:** ARE YOU FROM MASSACHUSETTS
13 ORIGINALLY?

14 **THE WITNESS:** I PARK THE CAR IN THE HARVARD YARD. I
15 CERTAINLY AM, YOUR HONOR.

16 **JUSTICE REINHARDT:** THE REASON I WAS ASKING YOU THE
17 QUESTION, OF COURSE, IS WE'RE TALKING ABOUT A SOLUTION TO A
18 CONSTITUTIONAL PROBLEM THAT EXISTS CURRENTLY, AND IF, IN THREE
19 YEARS, THIS PROGRAM HAS BEEN APPLIED TO ONLY 400 PEOPLE AND ONLY
20 70 OF WHOM HAVE COME OUT OF PRISON, THAT -- HOW LONG DO YOU
21 THINK IT WOULD TAKE FOR A STATEWIDE PROGRAM TO REALLY BE
22 IMPLEMENTED THAT WOULD SOLVE THIS PROBLEM?

23 **JUDGE KARLTON:** ASSUMING THAT THE LEGISLATURE WOULD
24 EVER PROVIDE THE FUNDS.

25 **THE WITNESS:** WELL, WE DON'T GET ANY FUNDS FROM THE

1 LEGISLATURE IN SAN DIEGO RIGHT NOW. OUR FUNDS COME FROM THE
2 FUNDS FROM THE DEPARTMENT OF CORRECTIONS AND REHABILITATION,
3 BECAUSE, IN ESSENCE, WE ARE DOING THEIR JOB IN THE LOCAL
4 COMMUNITY.

5 **JUDGE KARLTON:** BUT FOR THE CDCR TO BE ABLE TO PAY
6 FOR THE ENTIRE COMMUNITY FOR ALL THE STATES, THEY WOULD HAVE TO
7 GET THE MONEY FROM THE LEGISLATURE BECAUSE THEY DON'T HAVE FUNDS
8 TO DO THAT NOW. THEY MAY HAVE ONE OR TWO, I DON'T THINK THEY
9 GOT TWO EITHER, BUT FOR ONE ANYHOW.

10 **THE WITNESS:** THEY MAY. I THINK THEY COULD PROBABLY
11 TAKE IT FROM THEIR BUDGET BECAUSE WE'RE DOING THEIR FUNCTIONS.

12 WHAT YOUR HONOR IS ASKING, I THINK, IS -- I THINK NOW
13 THAT WE HAVE THE TEMPLATE -- WHY IT TOOK SO LONG, PART OF IT WAS
14 THE PROCESS OF PUTTING IT TOGETHER WITH THE COMMUNITY AND
15 WORKING -- THIS WAS A FIRST TIME IT EVER HAPPENED.

16 AND NOW WE HAVE THE TEMPLATE, AND WE KNOW WHAT WE'RE
17 DOING, AND WE COULD TAKE THAT ACROSS THE STATE, I THINK, VERY
18 EASILY. IT STILL IS GOING TO TAKE SOME TIME, AND, YOU KNOW, THE
19 HOPE WOULD BE THAT WE COULD ALSO GET PROGRAMMING WITHIN THE
20 DEPARTMENT OF CORRECTIONS, AND PERHAPS THE COURT COULD ORDER
21 THAT PROGRAMMING, BUT I THINK WE COULD DO -- WITHIN A TWO-YEAR
22 PERIOD I THINK WE COULD DO IT.

23 **JUDGE KARLTON:** MA'AM, WE HAVE BEEN TOLD OVER AND
24 OVER AGAIN TWO THINGS. ONE, THAT THE SYSTEM IS SO OVERCROWDED
25 THAT THERE'S NO PRACTICAL WAY TO PROVIDE ADEQUATE PROGRAMMING IN

1 THE PRISONS. IN LIGHT OF THAT, IT'S NECESSARY TO GET PEOPLE OUT
2 OF PRISONS JUST TO PROVIDE SPACE FOR PROGRAMMING. NEVER MIND.
3 I MADE THE SPEECH.

4 GO AHEAD. ASK YOUR QUESTION, MR. MITCHELL.

5 **BY MR. MITCHELL**

6 **Q** WHAT EFFORTS ARE THE DISTRICT ATTORNEYS DOING TO EXPAND
7 SB 618 OR OTHER ALTERNATIVES TO REDUCE PRISON POPULATION?

8 **A** WELL, WE HAVE HAD --

9 **MR. SANGSTER:** OBJECT, YOUR HONOR. I OBJECT ON
10 SB 618 TO THE EXTENT IT'S ALREADY BEEN COVERED BY ANOTHER
11 WITNESS FROM THIS COUNTY. IF IT'S THE OTHER ALTERNATIVES, FINE.

12 **JUDGE KARLTON:** THE QUESTION NOW IS WHAT ARE DISTRICT
13 ATTORNEYS DOING STATEWIDE, AND THAT IS A NEW TOPIC.

14 YOU MAY ANSWER, MA'AM, PLEASE.

15 **THE WITNESS:** ALTHOUGH SB 618 IS THE ONLY PRISON
16 REENTRY PROGRAM RIGHT NOW, THERE ARE TWO OTHER REENTRY PROGRAMS
17 AT THE LOCAL LEVEL WHICH HELP IN CUTTING OFF THE SUPPLY, SO TO
18 SPEAK, TO THE PRISON. KAMALA HARRIS IN SAN FRANCISCO HAS THE
19 BACK-ON-TRACK PROGRAM, WHICH TAKES YOUNGER OFFENDERS AND HOOKS
20 THEM UP WITH JOBS, AND I THINK IT'S GOODWILL INDUSTRIES, AND
21 ALSO HAS THEM APPEAR BEFORE THE COURT. I THINK JUDGE HENDERSON
22 IS FAMILIAR WITH THAT PROGRAM.

23 **JUDGE HENDERSON:** I SAT ON THAT COURT FOR A NUMBER OF
24 YEARS, YES.

25 **THE WITNESS:** AND IT'S VERY SUCCESSFUL.

1 AS WELL AS IN SANTA BARBARA, THERE IS A REENTRY
2 PROGRAM THAT WORKS WITH THE COMMUNITY IN THE LOCAL AREA, AS
3 WELL.

4 SINCE I HAVE BECOME THE PRESIDENT, WE HAVE A NEW
5 COMMITTEE THAT WAS FORMED JUST A COUPLE OF MONTHS AGO FOR
6 REENTRY. KAMALA HARRIS AND CHRISTIE STANLEY, THE ELECTED
7 DISTRICT ATTORNEYS OF BOTH OF THOSE AREAS, ARE THE CHAIRS, THE
8 COCHAIRS, OF THAT COMMITTEE, AND WE HAVE ALREADY SCHEDULED IN
9 JANUARY OF THIS YEAR FOR OUR WINTER RETREAT A WORKSHOP ON
10 REENTRY.

11 AND WE'VE ALSO HEARD FROM ABOUT THREE OR FOUR
12 COUNTIES ALREADY IN SAN DIEGO, AT LEAST ONE OF WHICH HAS COME
13 AND OBSERVED US IN SAN DIEGO, THAT ARE ACTUALLY INTERESTED IN
14 THE SB 618 PROGRAM.

15 WHEN WE BEGAN THE SB 618, WE STARTED -- JUDGE
16 MILLIKEN, WHO WAS THE PRESIDING JUDGE OF THE JUVENILE COURT AT
17 THE TIME THAT I HAD SERVED THERE, WE WENT TO THE BOARD OF
18 DIRECTORS OF THE CALIFORNIA DISTRICT ATTORNEYS' ASSOCIATION FOR
19 THEIR SUPPORT ON SB 618, AND TO A PERSON THEY EMBRACED THE
20 PROGRAM AND THE CONCEPT OF TRYING TO KEEP PEOPLE FROM GOING BACK
21 TO PRISON AND FOCUS OUR RESOURCES VERY MUCH LIKE THE DRUG COURT
22 IN THAT AREA.

23 SO WE ARE MOVING ALONG. THAT HAS BEEN ONE OF THE
24 MAJOR FOCUSES OF MY PRESIDENCY AS THE CALIFORNIA DISTRICT
25 ATTORNEYS' ASSOCIATION AND ONE THAT I WOULD LIKE TO SEE, OF

1 COURSE, SUCCEED.

2 **BY MR. MITCHELL**

3 **Q** AN ISSUE CAME UP DURING THESE PROCEEDINGS WHERE IT WAS
4 INDICATED IF THERE WERE INCREASED FUNDING PROVIDED TO PROBATION,
5 LOCAL PROBATION OFFICES AROUND THE STATE, THAT THEY COULD COME
6 UP WITH MORE EFFECTIVE EVIDENCE-BASED PROGRAMS THAT WOULD PROVE
7 INSTRUMENTAL IN KEEPING PEOPLE OUT OF PRISON IF THEY WERE FULLY
8 FUNDED. DO YOU AGREE WITH THAT OPINION?

9 **A** YES, I THINK NATIONWIDE THERE HAVE BEEN -- AND JUST IN
10 CALIFORNIA, OVER 15 STUDIES THAT BASICALLY HAVE ALL THE
11 COMPONENTS OF SB 618 IN IT. WE KNOW WHAT WE NEED TO DO. WE
12 JUST HAVE TO DO IT.

13 **JUDGE KARLTON:** AND WE'VE KNOWN IT FOR YEARS.

14 **THE WITNESS:** I THINK THAT'S ACCURATE, YOUR HONOR.

15 **JUDGE KARLTON:** AND WE HAVEN'T DONE IT FOR YEARS.

16 **THE WITNESS:** WELL, SOME PEOPLE HAVEN'T DONE IT.

17 **JUDGE KARLTON:** THE STATE OF CALIFORNIA HASN'T DONE
18 IT.

19 **THE WITNESS:** I AGREE. IT'S -- WHAT WAS THE PHRASE?
20 TRAINED INCAPACITY. I CALL IT BUREAUCRACY, BUT IT IS TRUE THAT
21 WE'VE EVEN EXPERIENCED IN OUR TIME DOING THIS DIFFICULTIES IN
22 WINDING OUR WAY THROUGH THE BUREAUCRACY OF THE DEPARTMENT OF
23 CORRECTIONS AND REHABILITATION IN MAKING THINGS HAPPEN.

24 **JUDGE REINHARDT:** AS ONE OF THE LOCAL WITNESSES TOLD
25 US YESTERDAY, YOU JUST CAN'T TRUST THE STATE.

1 **THE WITNESS:** WELL, I DON'T KNOW THAT I WANT TO GO
2 THAT FAR.

3 **JUDGE REINHARDT:** THAT WAS ONE COUNTY HEARD FROM.

4 **THE WITNESS:** IT'S -- I CAN UNDERSTAND THIS COURT'S
5 FRUSTRATION WITH WHAT HAS HAPPENED IN THE PAST, AND, CERTAINLY,
6 WE ARE CONCERNED ABOUT THE MEDICAL SITUATION WITH THE PRISONERS
7 AND, CERTAINLY HAVE READ A LOT OF INFORMATION, THE COURT ORDER
8 AND THAT SORT OF THING, AND SO I -- AS YOUR HONOR SAID, IT HAS
9 BEEN MANY, MANY YEARS, I KNOW, AND SO I UNDERSTAND THE
10 FRUSTRATION. I ONLY HOPE THAT THE COURT WILL CONSIDER THAT THE
11 ANSWER TO THE FRUSTRATION ISN'T RELEASING PRISONERS WITHOUT
12 GIVING THEM THE TOOLS TO DO WHAT THEY NEED TO DO. OTHERWISE, WE
13 ARE GOING TO SET THEM UP FOR FAILURE, AND WE WILL HAVE MORE
14 CRIME.

15 **BY MR. MITCHELL**

16 **Q** IF THERE WERE INCREASED EFFECTIVE PROGRAMS AVAILABLE THROUGH
17 PROBATION ON THE LOCAL LEVEL, WOULD JUDGES BE INCLINED TO
18 UTILIZE THOSE AND AVOID SENDING INDIVIDUALS AMENABLE TO
19 REHABILITATION TO PROBATION RATHER THAN PRISON?

20 **A** YES. AS A FORMER JUDGE AND FAMILIAR WITH THE CRIMINAL
21 JUDGES IN SAN DIEGO, AND WATCHING IT NOW AS WELL, WE DON'T
22 GENERALLY SEND SOMEONE THAT HASN'T FAILED ON PROBATION ABOUT
23 FOUR TIMES, FOUR TO FIVE TIMES, TO PRISON NOW LOCALLY. IF WE
24 HAD ADDITIONAL PROGRAMS, WE CERTAINLY WOULD PUT THEM IN THE
25 ADDITIONAL PROGRAMS, BUT WE HAVE RIGHT NOW ONLY ONE THOUSAND

1 SPOTS FOR REHABILITATION, BASICALLY, FOR SUBSTANCE ABUSE,
2 AVAILABLE TO US IN THE COMMUNITY, AND THAT'S FOR ADULT PROBATION
3 FOR PAROLE PROGRAMS, AS WELL AS FOR WOMEN'S PROGRAMS WITH
4 CHILDREN.

5 SO IF WE HAD A LOT OF PRISONERS THAT CAME OUT INTO
6 THE COMMUNITY, WE WOULD HAVE NO, VIRTUALLY NO SERVICES TO
7 PROVIDE THEM WITHOUT A PERIOD OF TIME FOR TRYING TO SET THOSE
8 PROGRAMS UP.

9 **Q** YOU PROVIDED OR CREATED SOME CHARTS THAT INDICATE WHAT THAT
10 IMPACT ON THE PROGRAM SB 618 WOULD BE OF EARLY RELEASE; IS THAT
11 CORRECT?

12 **A** YES, I DID.

13 **Q** AND I'M SHOWING YOU WHAT'S BEEN MARKED AS DI 513 --

14 **MR. SANGSTER:** OBJECTION, YOUR HONOR. CUMULATIVE.
15 MS. RODRIGUEZ WAS ASKED AND TESTIFIED ABOUT THE IMPACT OF THIS
16 ON 618.

17 **MR. MITCHELL:** I BELIEVE THERE WAS SOME CONFUSION AS
18 TO WHAT THE ACTUAL 618, AND MS. DUMANIS, AS A CREATOR OF SB 618,
19 HAS TAKEN THE STEPS TO CLARIFY WHAT THE ACTUAL IMPACT WOULD BE.

20 **JUDGE HENDERSON:** PROCEED.

21 **THE WITNESS:** AS YOU LOOK AT THIS DIAGRAM, WHAT IT
22 SHOWS YOU IS THE DIFFERENCE BETWEEN A REGULAR INMATE AND INMATE
23 THAT COMES TO THE COURT FROM SB 618, AND, AS YOU SEE IN THE
24 REGULAR INMATE, THEY RECEIVE THEIR PRESENTENCING, PROBATION DOES
25 A REPORT, BUT THAT REPORT DOESN'T HAVE ANY ASSESSMENTS, REALLY,

1 AND THERE'S A SENTENCING HEARING. IN SB 618 THERE'S AN
2 ASSESSMENT, THERE'S A LIFE PLAN, AND THAT ASSESSMENT INCLUDES
3 RISK AND NEEDS.

4 AND I THINK THAT'S ONE OF THE THINGS THAT IS VERY
5 IMPORTANT IN SB 618, AND THAT IS, WE OFTEN TEND TO LOOK AT THE
6 CRIME TO DETERMINE WHETHER OR NOT WHAT THE PERSON PLED GUILTY
7 TO -- OR THE HIGHEST CHARGE THAT THEY'VE DONE AND WHETHER OR NOT
8 THAT MAKES THEM A HIGH RISK, WHEN, IN FACT, WHAT YOU NEED TO
9 LOOK AT IS THE CRIMINOGENIC FACTORS AND THEIR CRIMINAL THINKING
10 IN TERMS OF WHETHER THEY'RE A HIGH RISK. AND NOT EVERYBODY IS A
11 HIGH RISK WITH HIGH NEEDS. SOME PEOPLE ARE A LOW RISK WITH LOW
12 NEEDS, WHICH MEANS THEY DON'T NEED A LOT OF PROGRAMMING.

13 SO WE LEARN THAT ABOUT THE INMATE FROM THE BEGINNING,
14 AND WE HAVE THIS PLAN THAT GOES WITH THEM TO THE DEPARTMENT OF
15 CORRECTIONS.

16 IN THE PLAN RIGHT NOW THE WAY A PRISONER WOULD BE
17 HANDLED, THAT PRISONER WOULD GO TO THE CORRECTIONS -- TO THE
18 RECEPTION CENTER AND WOULD THEN LANGUISH FOR ABOUT 90 DAYS
19 BEFORE THEY GO ON TO POSSIBLE PROGRAMMING.

20 IN OUR PROGRAM, THE CASE MANAGER IS ASSIGNED IN THE
21 PRISONS. THEY WORK TO MAKE SURE THAT THESE PEOPLE GET THE
22 PROGRAMS AND THEY FOLLOW THEM. THEY NEED SOME ACCOUNTABILITY IN
23 THIS PROCESS. THEY -- IN THE REGULAR PROCESS, THE INMATE AWAITS
24 RELEASE FROM PRISON, OFTENTIMES NOT HAVING ANY PROGRAMMING, AND
25 OUR -- SIX MONTHS BEFORE OUR CASE MANAGER FROM THE COMMUNITY

1 COMES IN AND HELPS THEM PREPARE SOCIAL SECURITY, DRIVER'S
2 LICENSE, ALL THOSE KINDS OF THINGS THAT ARE NEEDED ONCE THEY GET
3 OUT. AND RIGHT NOW THE INMATE WITHOUT THE PROGRAMMING IS
4 RELEASED WITH \$200 AND A BUS TICKET, AND THEY ARE RELEASED OUT
5 INTO THE COMMUNITY AND IN PAROLE.

6 ON SB 618 THEY ARE MET RIGHT AT THE DOOR OF THE
7 PRISONS. THEY PICK UP THE INMATE, AND THEY TAKE THAT INMATE TO
8 A RESIDENCE, GET THEM INTO PROGRAMMING AND HAVE THEM
9 ACCOUNTABLE.

10 AND AS YOU CAN SEE, THESE TWO --

11 **MR. SANGSTER:** YOUR HONOR, I OBJECT TO THIS NARRATIVE
12 ANSWER. COUNSEL REPRESENTED THE PURPOSE OF THIS WAS TO CLARIFY
13 ISSUES IN 618, AND WE ARE COVERING EXACTLY THE SAME PRESENTATION
14 MS. RODRIGUEZ GAVE US.

15 **THE WITNESS:** I'M GETTING TO THE POINT WHERE IT DOES
16 THAT, IF YOUR HONORS WOULD ALLOW ME TO PROCEED.

17 **JUDGE HENDERSON:** GO ON, BUT LET ME SAY BEFORE, AND
18 THIS IS NOT PERSONAL TO YOU, BUT ONE REASON WE ARE ASKING FOR
19 NEW MORE REALISTIC ESTIMATES, WE CAN'T MANAGE A TRIAL. YOU
20 ESTIMATED 15 MINUTES. YOU ARE TEN MINUTES OVER, YOU WERE TWICE
21 OVER ON -- WE CAN'T DO OUR JOBS OF MANAGING A TRIAL DURING A
22 HOLIDAY WITH THIS KIND OF --

23 **MR. MITCHELL:** I CAN FINISH IN FIVE MINUTES IF I'M
24 ALLOWED TO, YOUR HONOR.

25 **THE WITNESS:** THE BOTTOM LINE IS WHAT IT SHOWS IS

1 THAT THE POOL OF PEOPLE, BOTH THOSE THAT HAVE RECEIVED NO
2 PROGRAMMING AND HAVE NO PLANNING, ARE GOING TO FUNNEL INTO THE
3 VERY SAME PROGRAMS THAT WE HAVE NOW. SO THOSE 1,000 SPOTS THAT
4 ARE -- AND THE RESOURCES FOR VOCATION, EMPLOYMENT, MEDICAL, AND
5 REHAB, HOUSING, AND MENTAL HEALTH, ARE GOING TO BE -- BOTH SETS
6 OF PEOPLE ARE GOING TO GO IN THERE, AND IF YOU STOP THE PERSON
7 BEFORE THEY HAVE FINISHED THEIR PROGRAMMING IN PRISON, IT ALSO
8 SETS THEM UP FOR FAILURE.

9 **BY MR. MITCHELL**

10 **Q** SHOWING YOU QUICKLY DI 514, DOES THIS ILLUSTRATE SOME OF
11 THOSE IMPACTS THAT YOU'RE DISCUSSING?

12 **A** YES, IT DOES. THE IMMEDIATE IMPACTS ARE WHAT I THINK THE
13 COURT IS INTERESTED IN, AND THAT IS -- THAT, AS I SAID,
14 INSUFFICIENT TIME TO COMPLETE AND PREPARE FOR THEIR RELEASE,
15 PUTTING THEM INTO THE POPULATION, NOT HAVING ENOUGH PEOPLE IN
16 OUR SB 618 TO TAKE ON THAT POPULATION IN SAN DIEGO, AND NOT
17 ENOUGH COMMUNITY RESOURCES THAT WILL BE AVAILABLE.

18 **MR. MITCHELL:** THANK YOU.

19 **THE WITNESS:** THERE WAS ONE OTHER SLIDE.

20 **MR. SANGSTER:** THERE'S NO QUESTION PENDING.

21 **JUDGE KARLTON:** HE'S TRYING TO DO WHAT HE PROMISED TO
22 DO.

23 **THE WITNESS:** OKAY.

24 **JUDGE KARLTON:** YOU'RE BEING --

25 **MR. MITCHELL:** THANK YOU, YOUR HONOR.

1 **JUDGE HENDERSON:** STATE DEFENDANT HAVE ANY QUESTIONS?

2 **MR. MELLO:** NO QUESTIONS.

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

4 **MR. SANGSTER:** NO CROSS, YOUR HONOR.

5 **JUDGE HENDERSON:** WE'RE GAINING TIME. OKAY. THANK
6 YOU VERY MUCH.

7 **THE WITNESS:** THANK YOU VERY MUCH.

8 **MS. FUENTES:** GOOD AFTERNOON. THERESA FUENTES FROM
9 SANTA CLARA COUNTY. THE DEFENDANT INTERVENORS CALL DR. NANCY
10 PENA TO THE STAND.

11 **NANCY PENA,**

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

14 **THE WITNESS:** NANCY DANE PENA.

15 **JUDGE KARLTON:** SPELL YOUR LAST NAME, MA'AM.

16 **THE WITNESS:** P-E-N-A.

17 **DIRECT EXAMINATION BY MS. FUENTES**

18 **BY MS. FUENTES**

19 **Q** DR. PENA, WHERE ARE YOU CURRENTLY EMPLOYED?

20 **A** SANTA CLARA COUNTY.

21 **Q** WHAT IS YOUR CURRENT POSITION?

22 **A** I'M THE DIRECTOR OF MENTAL HEALTH DEPARTMENT FOR SANTA CLARA
23 VALLEY HEALTH AND HOSPITAL SYSTEM.

24 **Q** CAN YOU BRIEFLY DESCRIBE YOUR EDUCATION AND PROFESSIONAL
25 BACKGROUND?

1 **A** YES, I HAVE A PH.D. IN CLINICAL PSYCHOLOGY, WHICH I RECEIVED
2 FROM CALIFORNIA SCHOOL OF PROFESSIONAL PSYCHOLOGY IN 1980. I
3 HAVE BEEN WORKING IN PUBLIC MENTAL HEALTH SINCE ABOUT 1978.

4 **Q** HOW LONG HAVE YOU BEEN EMPLOYED WITH THE COUNTY OF SANTA
5 CLARA?

6 **A** SINCE 1985.

7 **Q** CAN YOU BRIEFLY DESCRIBE WHAT YOUR ROLE IS, WHAT YOUR DUTIES
8 HAVE BEEN WITH THE COUNTY OF SANTA CLARA?

9 **MS. TILLMAN:** IF I COULD ASK THE WITNESS TO RAISE HER
10 VOICE.

11 **THE WITNESS:** AND I CAN'T HEAR YOU VERY WELL.

12 **MS. FUENTES:** THE ACOUSTICS ARE --

13 **THE WITNESS:** THANK YOU. CAN YOU SAY IT AGAIN?

14 **JUDGE KARLTON:** WHAT DO YOU DO FOR A LIVING?

15 **THE WITNESS:** I AM THE DIRECTOR OF MENTAL HEALTH, AND
16 THAT'S THE PUBLIC MENTAL HEALTH SYSTEM IN SANTA CLARA COUNTY. I
17 HAVE BEEN IN THAT ROLE SINCE 2000. PRIOR TO THAT, I WAS THE
18 DEPUTY DIRECTOR FOR FOUR YEARS, AND PRIOR TO THAT, ALL THE WAY
19 BACK TO 1985, I WAS RESPONSIBLE FOR CHILDREN'S SERVICES,
20 INTENSIVE CHILDREN'S SERVICES, AND ACUTE PSYCHE SERVICES.

21 **BY MS. FUENTES**

22 **Q** OKAY. HOW MANY MENTALLY ILL PERSONS DOES THE COUNTY SERVE
23 THROUGH YOUR DEPARTMENT?

24 **A** APPROXIMATELY 17,000 TO 19,000 A YEAR.

25 **Q** DOES THAT NUMBER REPRESENT EVERYBODY THAT SEEKS MENTAL

1 HEALTH TREATMENT IN THE COUNTY?

2 **A** NO. WE ESTIMATE ON AVERAGE ABOUT 30 PERCENT OF THOSE WHO
3 CALL FOR SERVICES OR SEEK SERVICES ACTUALLY ARE SCREENED IN TO
4 RECEIVE SERVICE.

5 **Q** SO ARE YOU SAYING YOU'RE ONLY ABLE TO PROVIDE SERVICES TO
6 30 PERCENT OF THE PEOPLE WHO SEEK THEM?

7 **A** YES.

8 **Q** AND --

9 **JUDGE KARLTON:** ONLY ABLE TO OR ONLY CHOOSE TO? DO
10 YOU HAVE RESOURCES TO DO MORE BUT DON'T DO IT?

11 **THE WITNESS:** WE DO NOT HAVE RESOURCES.

12 **JUDGE KARLTON:** I DO NOT KNOW WHAT SCREENING -- WHAT
13 ARE YOU SCREENING FOR THAT GETS 30 PEOPLE IN AND 70 PERCENT OF
14 THE PEOPLE OUT?

15 **THE WITNESS:** WE SCREEN ON TWO CRITERIA, ONE BEING
16 FINANCIAL AND INSURANCE, ABILITY TO PAY, BUT, PRIMARILY, WHETHER
17 OR NOT THEY HAVE OTHER RESOURCES. AND THEN THE OTHER CRITERIA
18 IS THEIR PSYCHIATRIC NEED. AND SO AS OUR RESOURCES DIMINISH, WE
19 BECOME MORE RESTRICTIVE IN TERMS OF PSYCHIATRIC NEED, ATTENDING
20 TO THOSE WHO HAVE MOST EMINENT AND URGENT NEED.

21 **JUDGE REINHARDT:** WHEN YOU SAY THE RESOURCES ARE
22 DIMINISHED, DO YOU MEAN FINANCIAL RESOURCES?

23 **THE WITNESS:** CORRECT.

24 **JUDGE REINHARDT:** IF THE COUNTY WERE TO GIVE YOU MORE
25 MONEY, YOU WOULD SEE MORE PEOPLE?

1 **THE WITNESS:** CORRECT. CONCEIVABLY, IF INFLATION IS
2 NOT CONSUMING RESOURCES, BUT THAT IS CONCEIVABLE, YES.

3 **BY MS. FUENTES**

4 **Q** DO YOU HAVE THE CAPACITY -- TO FOLLOW UP ON JUDGE
5 REINHARDT'S QUESTION, DO YOU HAVE THE CAPACITY TO SEE MORE
6 PEOPLE IF YOU HAD THE MONEY TO DO SO?

7 **A** IF WE HAD MORE RESOURCES, YES, WE DO. UNFORTUNATELY, IT'S
8 NOT GOING IN THAT DIRECTION RIGHT NOW IN OUR COUNTY.

9 **Q** WHICH DIRECTION IS IT GOING IN?

10 **A** THE RESOURCES THAT WE HAVE ARE THOSE THAT ARE PROVIDED BY
11 THE COUNTY GENERAL FUND, AND THOSE ARE DISCRETIONARY DOLLARS,
12 AND THOSE ARE BEING ELIMINATED PRETTY MUCH STEADILY FOR THE LAST
13 SIX YEARS.

14 **Q** HAVE YOU HAD ANY CUTS THIS YEAR?

15 **A** YES. ACTUALLY, THIS PAST WEEK -- THIS WEEK, I BELIEVE IT
16 WAS THE 12TH, WE RECEIVED ANOTHER -- THE BOARD APPROVED A
17 REDUCTION OF ABOUT FOUR MILLION OUT OF MY DEPARTMENT AS A RESULT
18 OF THE STATE BUDGET, IMPACT OF THE STATE BUDGET ON OUR
19 DEPARTMENT.

20 **Q** AND HOW MUCH HAVE YOUR CUTS BEEN SO FAR ALTOGETHER THIS
21 FISCAL YEAR?

22 **A** UP UNTIL THIS PAST WEEK, THERE HAD BEEN 45 MILLION REMOVED
23 OUT OF OUR DEPARTMENT BUDGET, AND WITH THIS ADDITIONAL
24 FOUR MILLION -- WE ARE COMING BACK FOR A MID-YEAR REVIEW THE END
25 OF JANUARY.

1 I HAVE TO ALSO RECONCILE AN EIGHT MILLION DOLLAR
2 SHORTFALL. I HAVE -- AND THEN I ALSO HAVE A TARGET THAT I HAVE
3 BEEN ASSIGNED OF 22-1/2 MILLION TO BE EFFECTIVE JULY 1, 2009.

4 **JUDGE REINHARDT:** YOU SAY THIS IS BECAUSE -- YOU SAID
5 IMPACT. IT WAS AN IMPACT OR IMPASSE, DID YOU MEAN?

6 **THE WITNESS:** IMPACT.

7 **JUDGE REINHARDT:** IMPACT OF THE STATE BUDGET, AND WE
8 DON'T HAVE A BUDGET?

9 **THE WITNESS:** THIS WAS THE BUDGET THAT WAS PASSED IN
10 SEPTEMBER, AND NOW WE'RE BACK IN SESSION AGAIN, IS MY
11 UNDERSTANDING, AND THERE WILL LIKELY BE ANOTHER IMPACT AS A
12 RESULT OF THAT THAT COMES TO THE COUNTIES. AND THEN WE'RE
13 USUALLY DIRECTED BY THE COUNTY EXECUTIVE TO ASSESS WHAT THAT
14 IMPACT IS AND TO PROVIDE REMEDIES, WHICH ARE USUALLY REDUCTIONS.

15 **BY MS. FUENTES**

16 **Q** CAN YOU TELL US GENERALLY WHAT KIND OF SERVICES THE MENTAL
17 HEALTH DEPARTMENT PROVIDES?

18 **A** THE COUNTY PROVIDES EVERYTHING FROM EMERGENCY PSYCHIATRIC
19 SERVICE, TO OUTPATIENT CARE, TO INPATIENT CASE MANAGEMENT,
20 RESIDENTIAL TREATMENT, ALL THE WAY TO LONG-TERM SKILLED NURSING,
21 AND, ACTUALLY, STATE HOSPITAL CARE, WHICH WE'RE REQUIRED TO
22 PURCHASE FROM THE STATE.

23 **Q** AND, GENERALLY, YOU HAD MENTIONED THAT YOU HAVE TO TRIAGE.
24 WHAT DID YOU MEAN BY THAT, AND WHO'S ABLE TO ACCESS SERVICES
25 FROM THE COUNTY?

1 **A** WELL, WE HAVE SEVERAL POPULATIONS THAT WE ARE REQUIRED TO
2 ADDRESS. THE ENTITLEMENT POPULATIONS THAT WE ARE REQUIRED TO
3 SERVE IN OUR CONTRACT WITH THE STATE DEPARTMENT OF MENTAL HEALTH
4 ARE MEDICAID BENEFICIARIES, THE COUNTY PROGRAMS, THE MANAGED
5 CARE, MENTAL HEALTH MANAGED CARE, PROGRAMS FOR MEDICAID
6 BENEFICIARIES.

7 SO MEDICAID BENEFICIARIES COME TO THE COUNTY FOR
8 THEIR MENTAL HEALTH SERVICES. THAT'S ONE POPULATION ENTITLED
9 FOR SERVICES, IF THEY MEET OUR MEDICAL NECESSITY CRITERIA.

10 THE SECOND POPULATION THAT'S AN ENTITLEMENT GROUP IS
11 SPECIAL EDUCATION STUDENTS WHO ARE ENTITLED UNDER SPECIAL
12 EDUCATION LAW TO RECEIVE MENTAL HEALTH SERVICES, AND THAT IS
13 ANOTHER MANDATE THAT WE FULFILL THROUGH THE COUNTY PUBLIC
14 SYSTEM.

15 WE ARE REQUIRED FOR THOSE WHO COME TO US UNDER LPS,
16 LANTERMAN-PETRIS-SHORT, WHERE THEY'RE UNDER INVOLUNTARY
17 DETENTION. WE ALSO MUST SERVE THEM IF THEY COME TO OUR
18 EMERGENCY ROOM.

19 AND THEN WITH THE RESOURCES THAT ARE REMAINING, WE
20 ARE THE SAFETY NET FOR THOSE WHO ARE UNINSURED OR UNABLE TO
21 PURCHASE INSURANCE.

22 **Q** ARE YOU AWARE OF THE NEEDS OF THE MENTALLY ILL INDIVIDUALS
23 COMING FROM THE COUNTY JAIL?

24 **A** YES.

25 **Q** WHAT ARE THOSE NEEDS?

1 **A** SIGNIFICANT. I DO NOT RUN THE CUSTODY HEALTH AND MENTAL
2 HEALTH SERVICES; HOWEVER, WE DO HAVE A RELATIONSHIP. IT IS PART
3 OF THE HEALTH AND HOSPITAL SYSTEM THAT I WORK FOR, SO IT'S A
4 SISTER DEPARTMENT IN THE AGENCY I WORK FOR, AND WE ARE FAMILIAR
5 WITH THE NEEDS OF THE POPULATION THERE.

6 THE MENTAL HEALTH NEEDS ARE ACTUAL FULLY FUNDED
7 THROUGH MY BUDGET, WHICH GOES TO THE DEPARTMENT OF CUSTODY
8 HEALTH SERVICES, AND THEY PROVIDE THE MENTAL HEALTHCARE. ABOUT
9 20 PERCENT OF THE POPULATION IN OUR JAIL SYSTEM ARE RECEIVING
10 PSYCHIATRIC MEDICATION SERVICES AND CONSIDERED TO BE MENTAL
11 HEALTH CLIENTS.

12 **Q** WHAT ARE THEIR NEEDS ONCE THEY'RE RELEASED FROM JAIL; DO YOU
13 KNOW?

14 **A** WELL, ALL OF THOSE WHO ARE RECEIVING MEDICATION PRESCRIBED
15 FROM THE CUSTODY SETTING ARE IN NEED OF ONGOING MENTAL HEALTH
16 TREATMENT, AND SO I WOULD SAY A HUNDRED PERCENT OF THOSE WHO
17 RECEIVE CARE IN THE JAIL SYSTEM ARE IN NEED OF CARE AS THEY
18 EXIT.

19 **Q** DO THEY NEED ANYTHING BESIDES MEDICATIONS, IN YOUR OPINION?

20 **A** YES.

21 **Q** WHAT IS THAT?

22 **A** CASE MANAGEMENT, MEANING CONNECTING WITH SERVICES AND
23 FACILITATION OF LINKAGE TO SERVICE, AS WELL AS ASSISTANCE IN
24 OTHER AREAS OF THEIR LIVES. OUTPATIENT THERAPY, RESIDENTIAL
25 TREATMENT, SUBSTANCE ABUSE TREATMENT. ABOUT 75 PERCENT ALSO

1 HAVE CONCURRENT CONDITIONS WHERE THEY HAVE A MENTAL HEALTH AND A
2 SUBSTANCE ABUSE PROBLEM.

3 **Q** YOU SAID RESIDENTIAL. DID YOU MEAN HOUSING OR --

4 **A** ACTUALLY HOUSING IS A HUGE NEED, BUT I WAS SPEAKING ABOUT
5 RESIDENTIAL TREATMENT, WHICH IS TREATMENT FOR THOSE WHO REALLY
6 REQUIRE 24-HOUR CARE.

7 **Q** BUT YOU ALSO SAY THEY DO NEED HOUSING?

8 **A** YES. HOUSING IS A HUGE NEED.

9 **Q** OKAY. DO YOU HAVE ANY INFORMATION AS TO WHETHER STATE
10 PRISONERS WOULD HAVE THOSE SAME TYPES OF NEEDS THAT YOU'RE
11 SEEING FROM PEOPLE FROM THE COUNTY JAIL?

12 **A** THE INFORMATION THAT I HAVE IS REALLY FROM TWO SOURCES, BOTH
13 OF THEM COMING FROM THE CDCR; ONE, IN CONVERSATIONS THAT I'VE
14 HAD RECENTLY IN THE LAST YEAR WITH REPRESENTATIVES FROM CDCR AS
15 WE HAVE WORKED ON A COLLABORATIVE RELATIONSHIP FOR THE COUNTY TO
16 SERVE PAROLEES IN OUR MENTAL HEALTH SYSTEM. AND THE OTHER IS A
17 DOCUMENT THAT WAS PRESENTED BY CDCR IN THE PAST YEAR OR SO.

18 IT DOES APPEAR, IN FACT, IN SPEAKING TO THEM AND
19 LOOKING AT THEIR DATA, THAT THEY DO HAVE A SIMILAR POPULATION OR
20 A SIMILAR LEVEL OF NEED IN THE POPULATION THAT WE DO IN OUR JAIL
21 POPULATION.

22 **Q** SO THAT WOULD BE MEDIATION AND SUPPORT AND HOUSING AND ALL
23 THE THINGS THAT YOU'VE MENTIONED?

24 **A** AND A HIGH INCIDENCE OF CONCURRENT PROBLEMS WITH SUBSTANCE
25 ABUSE AND MENTAL ILLNESS.

1 **Q** ARE YOU AWARE OF WHETHER ANY STATE PAROLEES USE THE COUNTY
2 MENTAL HEALTH SYSTEM?

3 **A** YES. AS A MATTER OF FACT, WHEN WE WERE DIALOGUING ABOUT THE
4 POSSIBILITY OF THE CDCR CONTRACTING WITH THE COUNTY TO PROVIDE
5 SERVICES FOR PAROLEES WHO NEEDED A HIGHER LEVEL OF CARE THAN
6 THEIR OUTPATIENT SYSTEM COULD PROVIDE, WE WERE DISCUSSING WHAT
7 THEY WANTED TO PURCHASE, AND THAT INCLUDED SOME THERAPEUTIC
8 HOUSING, MEANING SUPPORTED HOUSING WITH TREATMENT, AND INTENSIVE
9 TREATMENT BEYOND OUTPATIENT.

10 WE DISCUSSED THE NEED OF THEIR POPULATION TO UTILIZE
11 EMERGENCY AND INPATIENT CARE. EXCUSE ME. AND WE DISCUSSED THE
12 POTENTIAL FOR THEM TO REIMBURSE US FOR ACUTE INPATIENT CARE.

13 THEY PROVIDED US WITH A LIST OF APPROXIMATELY ONE
14 HUNDRED PAROLEES WHO ARE RECEIVING -- WERE ENROLLED IN THEIR
15 OUTPATIENT SERVICES, AND WE CROSSED THOSE WITH OUR DATABASE AND
16 DETERMINED THAT 60 PERCENT -- OR 60 OUT OF A HUNDRED OF THE
17 CLIENTS THAT THEY SERVED HAD ALSO BEEN SERVED IN OUR SYSTEM
18 THROUGH OUR EMERGENCY DEPARTMENT OR OUR JAIL, MENTAL HEALTH UNIT
19 OR INPATIENT CARE.

20 **Q** WHAT DID YOU ATTRIBUTE THAT TO, THE 60 PERCENT USING YOUR
21 JAIL OR YOUR EMERGENCY FACILITY?

22 **A** THE ACUITY OF THEIR CONDITIONS, AND IT DOES APPEAR THAT THEY
23 DO HAVE A CLIENT POPULATION WHICH WAS REALLY THE REASON WHY THEY
24 WERE COMING TO US, THAT THEY CANNOT MEET THEIR NEEDS WITH JUST
25 OUTPATIENT SERVICES.

1 Q IN YOUR OPINION, WHAT, IF ANYTHING, HAPPENS TO MENTALLY ILL
2 INDIVIDUALS WHO DO NOT HAVE THEIR NEEDS MET?

3 A WELL, AS ANYBODY WHO HAS A HEALTH CONDITION THAT'S
4 UNTREATED, THERE'S A HIGH LIKELIHOOD OF DETERIORATION. AND WE
5 DO SEE THAT WITH INDIVIDUALS WHO HAVE SERIOUS MENTAL ILLNESS,
6 THAT THEY DO HAVE A DETERIORATION OF THEIR MENTAL CONDITION OR
7 THEIR STATUS, THEIR MENTAL STATUS IT'S OFTEN CALLED. SO YOU
8 WILL SEE AN IMPACT ON THEIR BEHAVIOR, THEIR JUDGMENT, THEIR USE
9 OF SUBSTANCES TO SEEK IN THEIR OWN ATTEMPTS TO ADDRESS THEIR
10 SYMPTOMS. BUT, BASICALLY, AN INCREASE IN PROBLEMATIC SYMPTOMS
11 THAT GET IN THE WAY OF THEIR BEING ABLE TO FUNCTION EFFECTIVELY
12 IN SOCIETY.

13 Q HAVE YOU SEEN AN INCREASED USE IN PSYCHIATRIC CRISIS AND
14 URGENT CARE IN THE COUNTY IN THE LAST YEAR?

15 A IN THE LAST YEAR IN URGENT CARE WE HAVE ACTUALLY A NEW
16 SERVICE THAT WE'VE JUST CREATED, AND THE REASON THAT WE CREATED
17 THAT SERVICE IS THAT WE WERE RECOGNIZING THAT WE HAD A
18 SIGNIFICANT NUMBER OF PEOPLE WHO WERE SEEKING SERVICE IN OUR
19 EMERGENCY ROOM. IT'S NOT UNLIKE WHAT IS HAPPENING IN THE
20 HEALTHCARE ARENA AS WELL, WHERE INDIVIDUALS WHO DON'T HAVE
21 INSURANCE, SO THEY DON'T HAVE A BENEFIT, WILL GO TO AN EMERGENCY
22 ROOM FOR THEIR SERVICE.

23 SO WE WERE FINDING THAT WE WERE USING A VERY
24 EXPENSIVE SERVICE TO MEET THE NEEDS OF A POPULATION THAT WAS
25 USING US AS THEIR SAFETY NET. SO WE CREATED URGENT CARE

1 ADJACENT TO OUR SAFETY NET. IT IS ACTUALLY JUST A FEW MONTHS
2 OLD, AND AS WE HAVE OPENED THAT, WE HAVE SEEN A SIGNIFICANT
3 INCREASE IN THE NUMBER OF PEOPLE WHO ARE COMING TO US.

4 WE'VE RESTRICTED THE USE OF THE URGENT CARE ONLY TO
5 POLICE JURISDICTION TO BEGIN WITH BECAUSE WE REALLY HAVE BEEN
6 ATTEMPTING TO RESPOND TO THE COMMUNITY DEMAND FOR SERVICES, AND
7 PARTICULARLY FROM THE POLICE AND LAW ENFORCEMENT.

8 **Q** DO YOU BELIEVE THAT UNTREATED MENTALLY ILL INDIVIDUALS IN
9 THE COMMUNITY POSE A RISK TO PUBLIC SAFETY?

10 **A** I BELIEVE THEY CAN -- YES, I DO BELIEVE THEY CAN.

11 **Q** AND WHY IS THAT?

12 **A** BECAUSE WHEN INDIVIDUALS HAVE MENTAL -- MENTAL CONDITIONS OR
13 PSYCHIATRIC CONDITIONS, THEY OFTEN HAVE SIGNIFICANT IMPAIRMENT
14 IN JUDGMENT. THEY HAVE BEHAVIOR THAT IS OFTEN IMPULSIVE OR
15 DISINHIBITED.

16 SO IT IS NOT UNCOMMON TO SEE INDIVIDUALS WHO HAVE
17 UNTREATED MENTAL ILLNESS IN THE COMMUNITY WITH BEHAVIOR THAT IS
18 EITHER UNSAFE TO THEMSELVES OR OTHERS OR PERCEIVED TO BE SUCH,
19 THAT THERE IS CONCERN ABOUT THEIR SAFETY OR THE SAFETY OF
20 OTHERS. AND, IN FACT, THERE ARE INSTANCES OF INDIVIDUALS WHO DO
21 HARM OTHERS AS A RESULT OF DECOMPENSATION OR PSYCHIATRIC
22 ILLNESS.

23 **Q** DO YOU SEE -- IN YOUR OPINION, IS THERE A RELATIONSHIP
24 BETWEEN POLICE INVOLVEMENT AND PSYCHIATRIC DECOMPENSATION?

25 **A** IS THERE A RELATIONSHIP?

1 Q YES.

2 A WELL, THE RELATIONSHIP THAT I'M AWARE OF IS THAT WHEN THE
3 PUBLIC IS CONCERNED ABOUT THE BEHAVIOR OF INDIVIDUALS, WHETHER
4 IT BE FROM ANTI-SOCIAL BEHAVIOR OR BIZARRE BEHAVIOR IN THE
5 COMMUNITY, THE POLICE ARE THE ONES WHO ARE CALLED AND ASKED TO
6 INTERVENE, AND OFTENTIMES THEY ARE RESPONDING TO SITUATIONS
7 WHERE THEY'RE DEALING WITH INDIVIDUALS WHO HAVE MENTAL
8 ILLNESSES, AND THIS IS WHAT HAS BEEN REPORTED TO US BY LAW
9 ENFORCEMENT AND REQUESTED OF US BY LAW ENFORCEMENT AS WE HAVE
10 TRIED TO RESPOND TO THEIR NEEDS.

11 Q I'M SORRY. WHAT HAS LAW ENFORCEMENT REQUESTED?

12 A ADDITIONAL SERVICES FOR THOSE IN THE COMMUNITY, IN
13 PARTICULAR, TO IMMEDIATE URGENT RESPONSE, MOBILE RESPONSE.

14 I THINK IDEALLY LAW ENFORCEMENT IN OUR AREA WOULD
15 LOVE IF WE COULD HAVE SERVICES SIMILAR TO WHAT THEY HAVE IN SAN
16 DIEGO, THE PSYCHIATRIC EMERGENCY RESPONSE, WHERE MENTAL HEALTH
17 PROFESSIONALS ARE PARTNERED WITH POLICE. WE JUST DON'T HAVE
18 THAT CAPACITY TO BE ACTUALLY IN THE FIELD RESPONDING WITH POLICE
19 OFFICERS IN THE COMMUNITY.

20 Q DID YOU FORM AN OPINION AS TO WHAT IMPACT, IF ANY, STATE
21 PRISONER POPULATION REDUCTION WOULD HAVE ON THE COUNTY OF SANTA
22 CLARA?

23 A DID I FORM AN OPINION?

24 Q YES.

25 A YES.

1 Q WHAT IS THAT OPINION?

2 A THAT IT WOULD BE A NEGATIVE IMPACT ON OUR COMMUNITY AND, I
3 WOULD SAY, MOST COMMUNITIES IN CALIFORNIA.

4 Q WHY IS THAT?

5 A BECAUSE WE DO NOT HAVE IN OUR LOCAL COMMUNITIES THE
6 RESOURCES TO BE ABLE TO RESPOND TO THE NEEDS OF THIS POPULATION.
7 WE JUST DO NOT HAVE THE CAPACITY TO RESPOND TO THE INFLUX OF ANY
8 NEW POPULATION RIGHT NOW. AND, UNFORTUNATELY, WE ARE
9 EXPERIENCING SOCIAL CONDITIONS RIGHT NOW IN CALIFORNIA, IF NOT
10 THE WHOLE COUNTRY, WHERE THERE ARE MORE AND MORE INDIVIDUALS WHO
11 ARE IN AN ECONOMIC SITUATION WHERE THEY NEED TO RELY ON THE
12 PUBLIC SERVICE SECTOR TO GET THEIR NEEDS MET.

13 Q WELL, THERE ARE SOME EXPERTS THAT HAVE TESTIFIED IN THIS
14 CASE THAT BELIEVE THAT SOME OF THE CONCERNS OF THE COUNTIES ARE
15 OVERSTATED. WOULD YOU AGREE WITH THAT?

16 A NO.

17 Q AND WHY NOT?

18 A BECAUSE WE HAVE EVIDENCE IN TERMS OF THE RECIDIVISM RATES,
19 MEANING INDIVIDUALS WHO HAVE MENTAL ILLNESS, TEND TO HAVE
20 RECIDIVISM RATES THAT ARE FAIRLY SIGNIFICANT, SO THEY'RE
21 RETURNING TO CUSTODY SETTINGS. THEY'RE CONTINUING TO HAVE
22 CONTACT WITH LAW ENFORCEMENT IN THE COMMUNITY, AND WE ARE NOT
23 REALLY ABLE TO PROVIDE THE LEVEL OF INTERVENTION THAT IS REALLY
24 NEEDED, I THINK, TO AVOID THAT.

25 I DO BELIEVE IT'S AVOIDABLE. I JUST DON'T BELIEVE WE

1 HAVE THE RESOURCES TO PROVIDE THE KIND OF SUPPORT AND SERVICES
2 THAT ARE NEEDED TO AVOID THAT.

3 **MS. FUENTES:** THANK YOU.

4 **MR. LEWIS:** NOTHING, YOUR HONOR.

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

6 **CROSS-EXAMINATION BY MS. MORRIS**

7 **MS. MORRIS:** MARIA MORRIS. GOOD AFTERNOON, DR. PENA.
8 MARIA MORRIS FOR PLAINTIFFS.

9 **BY MS. MORRIS**

10 **Q** THE CURRENT BUDGET FOR THE SANTA CLARA COUNTY DEPARTMENT OF
11 PUBLIC HEALTH, ACCORDING TO YOUR DECLARATION, IS \$250 MILLION?

12 **A** CORRECT.

13 **Q** AND IN FISCAL YEAR 2006, IT WAS \$190 MILLION, CORRECT?

14 **A** I DO NOT HAVE THAT IN FRONT OF ME, BUT IT SOUNDS ABOUT
15 RIGHT, YES.

16 **Q** YOU USED ESTIMATES IN YOUR REPORT OF BETWEEN 1,500 AND 3,500
17 PEOPLE RETURNING TO SANTA CLARA COUNTY; DO YOU RECALL THAT?

18 **A** YES.

19 **Q** AND THESE WERE ESTIMATES THAT WERE JUST GIVEN TO YOU; YOU
20 DID NOT CALCULATE THEM, CORRECT?

21 **A** CORRECT.

22 **Q** IN YOUR DECLARATION YOU EXPLAINED THAT THE 3,500 NUMBER YOU
23 GOT FROM USING THE STATE LEGISLATIVE ANALYSIS PROPOSAL TO
24 RELEASE 71,000 ADULT OFFENDERS FROM STATE TO LOCAL PRISON,
25 RESULTING IN APPROXIMATELY 3,500 INDIVIDUALS COMING TO SANTA

1 CLARA COUNTY, AND YOU CITE TO THE COUNTY EXHIBIT R. DOES THAT
2 SOUND FAMILIAR TO YOU?

3 **A** YES.

4 **Q** HOW DID YOU BECOME AWARE THAT THE LAO WAS PROPOSING TO
5 RELEASE 71,000 PEOPLE FROM STATE TO LOCAL PRISONS?

6 **A** I BELIEVE THROUGH COUNSEL.

7 **Q** OKAY. DID THEY JUST TELL YOU ABOUT IT?

8 **A** I'M ASSUMING THAT IT WAS IN THE CONTEXT OF DESCRIBING TO ME
9 THE CASE IN THE CASE THAT I WOULD BE ASKED TO TESTIFY ABOUT.

10 **Q** OKAY. DO YOU UNDERSTAND THAT THAT'S A PAROLE REALIGNMENT
11 PROPOSAL THAT WAS MADE?

12 **A** I AM AWARE THAT THERE IS A PAROLE REALIGNMENT PROPOSAL THAT
13 WAS MADE IN ADDITION TO THIS PARTICULAR CASE, YES.

14 **Q** BUT THAT -- THAT THE LAO REPORT WAS A PAROLE REALIGNMENT
15 PROPOSAL; DO YOU RECALL THAT?

16 **A** I UNDERSTAND THAT IF YOU ARE TELLING ME NOW.

17 **Q** BUT YOU DIDN'T UNDERSTAND IT AT THE TIME?

18 **A** IT MAY BE, VERY WELL.

19 **Q** OKAY. DO YOU UNDERSTAND THE DIFFERENCE BETWEEN RELEASING
20 PRISONERS AND TRANSFERS OF SUPERVISION OF PAROLEES?

21 **A** TRANSFERRING SUPERVISION OF PAROLEES, I BELIEVE I
22 UNDERSTAND.

23 **Q** WHAT WOULD TRANSFERRING SUPERVISION MEAN?

24 **A** I AM ASSUMING THAT YOU ARE TALKING ABOUT TRANSFERRING
25 SUPERVISION FROM THE STATE AND STATE PAROLE SYSTEM TO A LOCAL --

1 A LOCAL OR ANOTHER JURISDICTION.

2 Q THAT'S MY UNDERSTANDING AS WELL. SO THOSE ARE PEOPLE THAT
3 ARE ALREADY IN THE COMMUNITY, CORRECT?

4 A I WOULD ASSUME.

5 Q OKAY. I'D LIKE TO -- WITHDRAWN.

6 DO YOU UNDERSTAND THAT UNDER CALIFORNIA LAW, WHEN
7 PEOPLE COME OUT OF THE CDCR, THEY'RE RETURNED TO THE COUNTY THAT
8 THEY WERE SENT TO CDCR FROM?

9 A I'M SORRY. I COULDN'T HEAR YOU.

10 Q DO YOU UNDERSTAND THAT UNDER CALIFORNIA LAW, WHEN PEOPLE
11 COME OUT OF CDCR, THEY'RE GENERALLY RETURNED TO THE COUNTY FROM
12 WHICH THEY WERE SENT TO CDCR FROM?

13 A YES, I AM AWARE OF THAT.

14 Q AND DO YOU UNDERSTAND THAT, AS TO THOSE PEOPLE IN CDCR,
15 PLAINTIFF'S PROPOSAL WOULD ONLY RESULT IN THEM BEING RELEASED A
16 FEW MONTHS EARLY?

17 A I DO UNDERSTAND THAT.

18 Q AND YOU UNDERSTAND THAT PLAINTIFFS ARE NOT PROPOSING THAT
19 PEOPLE WHO WOULD NOT OTHERWISE BE PAROLED BE RELEASED; DO YOU
20 UNDERSTAND THAT AS WELL?

21 A I DO UNDERSTAND THAT.

22 Q OKAY. SO YOU UNDERSTAND THEN THAT UNDER PLAINTIFFS'
23 PROPOSAL, THE PEOPLE THAT WOULD BE RELEASED TO SANTA CLARA
24 COUNTY WOULD JUST BE PEOPLE WHO WOULD BE COMING BACK TO SANTA
25 CLARA COUNTY A FEW MONTHS LATER REGARDLESS OF THIS LITIGATION?

1 **A** I DO UNDERSTAND THAT. I HAVE READ THAT.

2 **Q** OKAY. PLAINTIFFS HAVE PROPOSED A RELEASE OF 52,000 PEOPLE
3 FROM CDCR, AND 3.6 PERCENT OF THAT, WHICH IS THE SANTA CLARA
4 COUNTY PROPORTION OF THE PRISONERS, WOULD BE 1,872 PEOPLE. AND
5 PLAINTIFFS HAVE PROPOSED THIS BE DONE OVER TWO YEARS; EVERY
6 MONTH A GROUP OF PEOPLE BEING RELEASED. SO THAT BREAKS DOWN TO
7 AN AVERAGE OF 78 PEOPLE PER MONTH.

8 **A** I UNDERSTAND THAT.

9 **Q** OKAY. AND YOU ESTIMATE THAT 20 PERCENT OF THE PEOPLE COMING
10 OUT OF CDCR WOULD BE MENTALLY ILL, CORRECT?

11 **A** I ESTIMATE THAT, YES.

12 **Q** SO 20 PERCENT OF 78 IS ROUGHLY 15 PEOPLE PER MONTH, CORRECT?

13 **A** IF YOU SAY SO, I WILL ACCEPT YOUR MATH.

14 **Q** OKAY. YOU DON'T KNOW THE BREAKDOWN OF LEVELS OF NEED FOR
15 MENTAL HEALTHCARE AMONG THE PEOPLE IN CDCR AROUND COMING OUT OF
16 CDCR, CORRECT?

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

18 **Q** AND YOU DON'T KNOW THE BREAKDOWN OF LEVELS OF MENTAL
19 HEALTHCARE NEED AMONG THE MENTALLY ILL PAROLEES THAT ARE ALREADY
20 IN YOUR COMMUNITY, CORRECT?

21 **A** I DON'T.

22 **Q** YOU DON'T KNOW HOW MANY OF THE PEOPLE -- OF THE PAROLEES
23 THAT ARE ALREADY IN SANTA CLARA COUNTY THAT ARE MENTALLY ILL,
24 HOW MANY OF THEM NEED A HIGH LEVEL OF CARE OR A LOW LEVEL OF
25 CARE; YOU DON'T KNOW THAT INFORMATION, DO YOU?

1 **A** NO, NOT OTHER THAN -- AND I WASN'T GIVEN PRECISE STATISTICS
2 ABOUT IT THAN -- OTHER THAN WHAT THE CDCR HAS EXPLAINED TO US IN
3 TERMS OF THEIR CASELOAD IN OUR COMMUNITY AND THE NEED THAT
4 THEY'RE ATTEMPTING TO MEET.

5 **Q** OKAY. WHEN THEY WERE TALKING TO YOU ABOUT THE NEED THAT
6 THEY WERE ATTEMPTING TO MEET WITH YOUR ASSISTANCE, THEY WERE
7 TALKING ABOUT THE MOST SEVERELY MENTALLY ILL PEOPLE, WEREN'T
8 THEY?

9 **A** YES.

10 **Q** WAS THAT LIST OF 100 INDIVIDUALS YOU MENTIONED, WAS THAT A
11 GROUP OF THE PEOPLE FOR WHOM THEY WERE LOOKING FOR SERVICES
12 THROUGH YOU?

13 **A** YES.

14 **Q** SO THOSE WOULD HAVE BEEN SOME OF THE MOST SEVERELY MENTALLY
15 ILL PAROLEES ALREADY, CORRECT?

16 **A** I AM ASSUMING, BUT I DON'T RECALL IF THEY ACTUALLY STATED
17 THAT TO ME, BUT I'M ASSUMING THAT'S THE POPULATION THEY WERE
18 TALKING ABOUT.

19 **Q** OKAY. ALL RIGHT.

20 YOU SAID THAT CURRENTLY YOUR DEPARTMENT SERVES 17,000
21 TO 19,000 CLIENTS PER YEAR?

22 **A** CORRECT.

23 **Q** BUT YOU DON'T KNOW EXACTLY HOW MANY?

24 **A** IT CHANGES EVERY YEAR.

25 **Q** IT CHANGES EVERY YEAR. OKAY. SO THAT'S BETWEEN ROUGHLY

1 1,400 AND 1,600 CLIENTS EVERY MONTH?

2 **A** NO. IN TERMS OF WHO WE SERVE? WE -- OF THE 17- TO 19,000,
3 WE HAVE SORT OF AN -- THAT'S OUR ANNUAL NUMBER SERVED, BUT AT
4 ANY ONE TIME WE CAN BE SERVING UP TO 12,000 INDIVIDUALS WHO ARE
5 OPEN AND RECEIVING ONGOING SERVICES.

6 SO YOU HAVE PEOPLE ENROLLING AND DISCHARGING, AND
7 THAT ADDS TO THE DYNAMIC CAPACITY THAT WE HAVE IN A YEAR, AND
8 THEN WE HAVE A STATIC CASELOAD AT A MOMENT IN TIME.

9 **Q** OKAY. ALL RIGHT. YOU SAID THAT CURRENTLY YOUR DEPARTMENT
10 CAN SERVE ONLY ABOUT 30 PERCENT OF THE PEOPLE WHO CALL AND ASK
11 FOR SERVICES, CORRECT?

12 **A** YES.

13 **Q** SO THAT MEANS IF YOU GOT 17- TO 19,000 PEOPLE THAT YOU ARE
14 SERVING, AND THAT'S ABOUT 30 PERCENT, MY CALCULATION IS THAT
15 THAT'S ABOUT 35,000 PEOPLE IN SANTA CLARA COUNTY WHO ARE GOING
16 UNTREATED EVERY YEAR, CORRECT?

17 **JUDGE KARLTON:** OR GOING TO SOMEPLACE ELSE WHERE THEY
18 COULD GET INSURED AID OR SO FORTH.

19 **THE WITNESS:** OR SO FORTH, YES.

20 **BY MS. MORRIS**

21 **Q** SO SOME OF THEM ARE UNTREATED, AND SOME OF THEM MAY BE
22 SEEKING OUT SERVICES ELSEWHERE?

23 **A** CORRECT.

24 **Q** AND YOU SAID THAT YOUR DEPARTMENT PERFORMS A TRIAGE THAT'S
25 FINANCIAL AND BASED ON PSYCHIATRIC NEED?

1 **A** YES.

2 **Q** OKAY. IS YOUR STAFF TRAINED IN HOW TO DO INTAKE SCREENINGS?

3 **A** YES.

4 **Q** AND DO YOU DO OUTCOME STUDIES TO SEE WHAT HAPPENS WITH SOME
5 OF THE PEOPLE WHO ARE NOT ACCEPTED INTO YOUR SERVICES?

6 **A** I'M NOT SURE WE WOULD BE ABLE TO DO THAT. HOW WOULD WE HAVE
7 THE STATISTICS? WE DON'T HAVE CONTACT WITH THOSE PEOPLE, SO I
8 DON'T KNOW WHAT KIND OF OUTCOME STUDY WE COULD DO.

9 **JUDGE KARLTON:** THE ANSWER IS, AS OF NOW, FORGETTING
10 THE QUESTION, WHETHER THAT'S A LACK OF IMAGINATION, THE QUESTION
11 IS WHETHER YOU ARE PERFORMING AS SUCH A STUDY. AND THE ANSWER
12 IS NO?

13 **THE WITNESS:** CORRECT.

14 **BY MS. MORRIS**

15 **Q** SO, YOU DON'T KNOW HOW MANY OF THOSE PEOPLE BECOME HOMELESS,
16 THE PEOPLE THAT YOU SAY NO TO?

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

18 **JUDGE HENDERSON:** NOT HAVING STUDIED IT, YOU DON'T
19 KNOW ANYTHING ABOUT IT?

20 **JUDGE KARLTON:** PLEASE DON'T ASK HER FIVE QUESTIONS
21 ABOUT WHAT SHE DIDN'T KNOW. IT'S ESTABLISHED THEY DIDN'T DO A
22 STUDY.

23 **BY MS. MORRIS**

24 **Q** SO YOU DON'T KNOW THE PUBLIC SAFETY OUTCOME OF THOSE PEOPLE
25 YOU SAY NO TO?

1 **A** OF -- BASED ON A STUDY OF INDIVIDUALS THAT WE'VE TURNED
2 AWAY, WHICH WAS YOUR QUESTION, I DO NOT.

3 **Q** OKAY.

4 **A** I MEAN, IF YOU WOULD LIKE ME TO SPEAK TO IT, I DO KNOW ABOUT
5 PEOPLE WHO REPEATEDLY COME TO OUR SYSTEM AND ARE EVENTUALLY
6 HOSPITALIZED, OR THEY WILL COME BACK. SO IF THEY COME BACK
7 AFTER REPEATED ATTEMPTS TO GET IN, IT'S USUALLY AT A HIGHER
8 LEVEL OF CARE.

9 **Q** BUT IF THEY DON'T COME BACK, YOU DON'T KNOW THAT?

10 **A** I DO NOT.

11 **Q** SO IF THERE WERE 15 PEOPLE RETURNING TO SANTA CLARA COUNTY A
12 FEW MONTHS EARLIER EVERY MONTH FOR THE NEXT COUPLE OF YEARS AND
13 THEY NEEDED MENTAL HEALTHCARE OR THEY FELT THEY NEEDED MENTAL
14 HEALTHCARE, THEY, TOO, WOULD GO THROUGH YOUR SCREENING PROCESS,
15 CORRECT, IF THEY CALLED?

16 **A** IF THEY WERE INSTRUCTED TO OR ELECTED TO, YES.

17 **Q** AND YOU COULDN'T TURN THEM AWAY JUST FOR BEING A PAROLEE,
18 CORRECT?

19 **A** IF THEY WERE ENROLLED IN THE PAROLE OUTPATIENT SERVICE, WE
20 WOULD REFER THEM THERE.

21 **Q** I'M SORRY. I DIDN'T UNDERSTAND THAT ANSWER.

22 **A** IF THEY WERE CLIENTS OF THE PAROLE OUTPATIENT SERVICES, WE
23 WOULD TURN THEM AWAY BACK TO THEIR PAROLE OUTPATIENT SERVICE.

24 **Q** IS THAT BECAUSE YOU BELIEVE THEY'RE GETTING APPROPRIATE
25 TREATMENT THROUGH THE PAROLE OUTPATIENT CLINIC?

1 **A** THAT WOULD MEAN THEY WERE IN TREATMENT. I WOULDN'T HAVE A
2 JUDGMENT ABOUT WHETHER IT WAS APPROPRIATE.

3 **Q** IF THEY WEREN'T GETTING TREATMENT THROUGH A PAROLEE
4 OUTPATIENT CLINIC, THEY WOULD JUST GO THROUGH THE SCREENING,
5 JUST THE WAY EVERYONE ELSE DOES?

6 **A** THEY WOULD.

7 **Q** AND IF THEY WERE SUFFICIENTLY SICK, ESSENTIALLY, THEN THEY
8 WOULD GET ACCEPTED INTO YOUR PROGRAMS, AND IF THEY WERE NOT,
9 THEY'D BE TURNED AWAY?

10 **A** IF THEY HAD INSURANCE, THEY WOULD BE TURNED AWAY. IF THEY
11 WERE SUFFICIENTLY SICK WITH NO INSURANCE, THEY WOULD BE
12 ACCEPTED.

13 **Q** OKAY. SO, ESSENTIALLY, THEY WOULD BE TREATED LIKE EVERYBODY
14 ELSE OF THE 55 OR SO THOUSAND PEOPLE THAT CALL YOU EVERY YEAR?

15 **A** THEY WOULD BE.

16 **Q** OKAY. YOU DON'T KNOW HOW MANY PAROLEES THERE ARE IN SANTA
17 CLARA COUNTY NOW, DO YOU?

18 **A** I DO NOT.

19 **Q** AND YOU DON'T KNOW HOW MANY ARE ACCESSING DMH SERVICES NOW
20 IN SANTA CLARA COUNTY?

21 **A** I DO NOT.

22 **Q** SANTA CLARA COUNTY -- DURING YOUR DEPOSITION, YOU DISCUSSED
23 TWO LEVELS OF CARE PROVIDED BY DMH AS AN OUTPATIENT MODEL OF
24 CARE AND A FULL SERVICE PARTNERSHIP MODEL, CORRECT?

25 **MS. FUENTES:** EXCUSE ME, YOUR HONOR. THE QUESTION IS

1 A LITTLE VAGUE. I THINK THE WITNESS MIGHT THINK DMH MIGHT BE
2 THE STATE DEPARTMENT AS OPPOSED TO COUNTY. MAYBE SHE COULD
3 CLARIFY?

4 **BY MS. MORRIS**

5 **Q** IN FACT, I WAS TALKING ABOUT THE COUNTY DEPARTMENT OF MENTAL
6 HEALTH, AND YOU WERE AS WELL?

7 **A** I HAVE BEEN UP TO NOW.

8 **Q** AS HAVE I.

9 **A** OKAY.

10 **Q** YOUR OUTPATIENT SERVICE IS A TRADITIONAL CASE MANAGEMENT
11 MODEL INVOLVING PSYCHIATRIC MEDICATION AND MINIMAL CASE
12 MANAGEMENT, CORRECT?

13 **A** THE OUTPATIENT SERVICE, YES.

14 **Q** AND THAT'S WHAT YOU PROVIDE FOR; THAT'S SORT OF THE BULK OF
15 WHAT YOUR DEPARTMENT DOES, CORRECT?

16 **A** NO, I WOULDN'T SAY IT'S THE BULK, BUT IN OUTPATIENT SERVICES
17 IT'S THE BULK OF OUTPATIENT.

18 **Q** AND THAT'S MAYBE AN HOUR OF CASE MANAGEMENT A MONTH, AND
19 MAYBE SOMETIMES SEEING A PSYCHIATRIST; IS THAT --

20 **A** VIRTUALLY ALWAYS SEEING A PSYCHIATRIST. ALMOST A HUNDRED
21 PERCENT OF OUR CLIENTS ARE ON PSYCHIATRIC MEDICATION IN THE
22 ADULT SYSTEM.

23 **Q** SO THAT COULD BE ONCE-A-MONTH PSYCHIATRY OR --

24 **A** USUALLY IT'S ONCE EVERY SIX WEEKS TO TWELVE WEEKS, ACTUALLY.

25 **Q** OKAY. AND THEN THE FULL SERVICE PARTNERSHIP IS A

1 COMPREHENSIVE MULTI-DISCIPLINARY APPROACH THAT HAS HOUSING AND
2 24-HOUR ACCESS TO TREATMENT AND CASE MANAGEMENT AND FUNDING THAT
3 CAN BE USED FOR BENEFITS FOR HOUSING OR HELPING WITH EMPLOYMENT,
4 CORRECT?

5 **A** CORRECT.

6 **Q** AND THESE KINDS OF SERVICES, THESE FULL SERVICE
7 PARTNERSHIPS, THOSE ARE NOT INTENDED FOR PEOPLE WHO CAN BE
8 SERVED IN THE OUTPATIENT MODEL OF TREATMENT, CORRECT?

9 **A** CORRECT.

10 **Q** AND IT'S AN EXPENSIVE WAY OF CARING FOR PEOPLE, CORRECT?

11 **A** YES, YES.

12 **Q** IT COSTS APPROXIMATELY \$19,000 A YEAR IN SANTA CLARA COUNTY?

13 **A** APPROXIMATELY, YES.

14 **Q** HOWEVER, THIS IS LESS EXPENSIVE THAN EMERGENCY CARE, ISN'T
15 IT?

16 **A** FREQUENT EMERGENCY CARE, YES.

17 **Q** IT'S USED ON A SMALL NUMBER OF PEOPLE, CORRECT?

18 **A** EXCUSE ME?

19 **Q** IT'S USED FOR A FAIRLY SMALL NUMBER OF PEOPLE?

20 **A** CORRECT.

21 **Q** SANTA CLARA HAS ONLY BETWEEN 300 AND 350 OF THESE SPACES?

22 **A** YES.

23 **Q** AND 175 PEOPLE OF THOSE -- 175 OF THOSE ARE FOR PEOPLE
24 COMING OUT OF THE JAIL SYSTEM; IS THAT CORRECT?

25 **A** YES.

1 Q AND YOU HAVE CURRENTLY BETWEEN 2,000 AND 2,500 PEOPLE IN
2 NEED OF ONGOING PSYCHIATRIC SERVICES LEAVING THE COUNTY JAIL
3 EVERY YEAR, CORRECT?

4 A THAT'S WHAT WE HAVE ESTIMATED, YES.

5 Q OKAY. AND YOU THINK THOSE PEOPLE HAVE, IN GENERAL, THE SAME
6 LEVEL OF NEED AS PEOPLE THAT WOULD BE COME OUT OF CDCR? THAT'S
7 YOUR ESTIMATION?

8 A THAT IS THE ESTIMATION, YES.

9 Q THOSE 175 BEDS AREN'T JUST FOR THE PEOPLE COMING OUT OF THE
10 JAIL, BUT THEY ARE ALSO FOR PEOPLE INVOLVED WITH THE CRIMINAL
11 JUSTICE SYSTEM IN SANTA CLARA COUNTY THAT ARE NOT GOING TO JAIL,
12 CORRECT, IF THEY MEET THE OTHER CRITERIA?

13 A MOST OF THEM ARE, IF NOT CURRENTLY INCARCERATED WHEN THEY'RE
14 REFERRED, THEY HAVE RECENTLY BEEN INCARCERATED.

15 Q OKAY. SO TAKING THAT 2,000 A YEAR FIGURE, AND YOU'VE ONLY
16 GOT 175 BEDS, SO THAT'S ONLY SPACE FOR LESS THAN TEN PERCENT OF
17 THE PEOPLE THAT ARE COMING OUT OF THE JAIL SYSTEMS, CORRECT?

18 A IN THIS LEVEL OF SERVICE, YES.

19 Q AND SO THE OTHER PEOPLE THAT ARE COMING OUT THE JAIL SYSTEM
20 THAT HAVE ONGOING PSYCHIATRIC NEEDS, THEY'RE EITHER BEING
21 TREATED AS OUTPATIENTS OR GETTING TREATMENT SOMEWHERE ELSE OR
22 THEY'RE GOING UNTREATED, CORRECT?

23 A CORRECT.

24 Q WOULD YOU LIKE TO HAVE MORE FSP'S, FULL SERVICE
25 PARTNERSHIPS?

1 **A** WOULD I LIKE TO HAVE MORE CAPACITY TO SERVE THEM?

2 **Q** MM-HMM.

3 **A** YES, I WOULD.

4 **Q** YOU HAD DISCUSSIONS WITH THE STATE REGARDING CONTRACTING FOR
5 SOME OF THESE SAME TYPES OF SERVICES FOR STATE PAROLEES,
6 CORRECT?

7 **A** CORRECT.

8 **Q** AND OUT OF -- IT WAS SPECIFICALLY FOR THE FULL SERVICE
9 PARTNERSHIP POSITIONS?

10 **A** YES, AND THERAPEUTIC HOUSING COMBINED.

11 **Q** OKAY. IN SEPTEMBER OF THIS YEAR, YOU WERE CLOSE TO HAVING
12 AN AGREEMENT FOR 30 OF THESE SLOTS FOR THE STATE, CORRECT?

13 **A** YES.

14 **Q** AND AT THAT TIME YOU HAD BEEN IN DISCUSSION WITH THE STATE
15 ABOUT THIS POSSIBLE CONTRACT FOR ABOUT SIX MONTHS?

16 **A** WE HAD BEEN IN DISCUSSION FOR ABOUT SIX MONTHS?

17 **Q** MM-HMM.

18 **A** I CAN'T RECALL EXACTLY, BUT IT WAS AT LEAST SIX MONTHS.

19 **Q** OKAY. AND AT THAT POINT, WHEN THE CONTRACT WAS CLOSE TO
20 DONE, YOU THOUGHT THAT IT WOULD TAKE APPROXIMATELY -- IT MIGHT
21 TAKE APPROXIMATELY SIX MONTHS TO GET ANOTHER OF THESE -- TO GET
22 THESE 30 BEDS READY AND GOING, CORRECT?

23 **A** CORRECT.

24 **Q** AND YOU THOUGHT THAT TEN OF THEM WERE GOING TO BE READY BY
25 NOVEMBER?

1 **A** CORRECT. THAT'S WHAT I STATED.

2 **Q** I'M SORRY?

3 **A** THAT'S WHAT I STATED; THEY'RE NOT READY, BUT THAT WAS OUR
4 PLAN.

5 **Q** OKAY. AND YOU THINK -- YOU THOUGHT THAT WAS GOING TO BE
6 POSSIBLE --

7 **A** I DID.

8 **Q** WAS IT JUST A CONTRACTING PROBLEM?

9 **A** MULTIPLE PROBLEMS HAVE OCCURRED, BUT THE CONTRACT ISN'T
10 SIGNED, AND THE FACILITY ISN'T READY, AND WE'VE HAD FREEZES
11 BECAUSE OF BUDGET CUTS, AND THEY HAD PROBLEMS BECAUSE OF THE
12 STATE BUDGET SITUATION. SO THERE HAVE BEEN HANG-UPS ALONG THE
13 WAY.

14 **Q** THE STATE'S GOING TO BE PAYING FOR THE FULL SERVICE BEDS --

15 **A** YES.

16 **Q** -- WHEN IT HAPPENS, CORRECT? ARE THEY GOING TO BE PAYING
17 THE \$19,000, ROUGHLY?

18 **A** YES.

19 **Q** ARE YOU AWARE THAT THAT IS APPROXIMATELY \$24,000 LESS PER
20 YEAR THAN THE AVERAGE COST OF \$43,000 PER FOR INCARCERATING
21 SOMEONE?

22 **MS. FUENTES:** OBJECTION. LACK OF FOUNDATION.

23 **JUDGE HENDERSON:** ARE YOU AWARE OF IT, YES OR NO?

24 **JUDGE KARLTON:** THERE'S BEEN NO DISPUTE ABOUT THAT
25 FIGURE. IT IS ESTIMATED THAT, AT LEAST AS FAR AS MENTALLY ILL

1 PRISONERS ARE CONCERNED, IT FIGURES ABOUT \$43,000. ARE YOU
2 AWARE OF THAT, MA'AM?

3 **THE WITNESS:** I DO BELIEVE I AM AWARE OF THAT. I'VE
4 HEARD THAT FIGURE.

5 **JUDGE REINHARDT:** ARE YOU AWARE OF THE DIFFERENCE
6 BETWEEN 43,000 AND 19,000?

7 **THE WITNESS:** I SURE HOPE SO, BUT I'M GETTING OLD.

8 **MS. MORRIS:** I WOULD HAVE SKIPPED THAT ONE.

9 **BY MS. MORRIS**

10 **Q** WHEN YOU WERE WRITING YOUR REPORT AND OPINING THAT SANTA
11 CLARA COUNTY COULDN'T ABSORB AN INFLUX OF MENTALLY ILL PAROLEES,
12 YOU BELIEVED THAT A LARGE OR SOME SUBSTANTIAL PROPORTION OF THE
13 MENTALLY ILL PAROLEES WOULD NEED CARE AT AN EQUIVALENT OF THE
14 FULL SERVICE PARTNERSHIP LEVEL, CORRECT?

15 **A** I AM ASSUMING THAT.

16 **Q** HOWEVER, THE PEOPLE THAT ARE -- ONLY NINE PERCENT OF THE
17 PEOPLE THAT ARE COMING OUT OF THE JAIL RIGHT NOW, OF THE
18 MENTALLY ILL PEOPLE COMING OUT OF THE JAIL, ARE RECEIVING THAT
19 LEVEL OF CARE?

20 **A** ONLY -- EXCUSE ME?

21 **Q** ABOUT NINE PERCENT?

22 **A** NINE PERCENT?

23 **Q** MM-HMM.

24 **A** THAT'S A CAPACITY ISSUE AND NOT RELATED TO THE NEED.

25 **Q** BUT THAT IS THE SITUATION RIGHT NOW?

1 **A** YOU'RE SPEAKING ABOUT THE SLOTS, THE 175 SLOTS THAT WE HAVE
2 FOR THIS LEVEL OF CARE?

3 **Q** YES.

4 **A** CORRECT.

5 **Q** OKAY. YOUR FIGURES ON RECIDIVISM CAME FROM THE STATE,
6 CORRECT?

7 **A** YES.

8 **Q** AND THEY CAME FROM THE -- WHAT'S BEEN MARKED SANTA CLARA
9 COUNTY'S EXHIBIT O, THE CDCR DIVISION OF ADULT PAROLE
10 OPERATIONS, MENTALLY ILL PAROLEE POPULATION REPORT OF MARCH 28,
11 2008; IS THAT --

12 **A** YES.

13 **Q** ACCORDING TO THAT CHART, THE EOP -- THE RECIDIVISM RATE FOR
14 PEOPLE WHO ARE AT THE EOP LEVEL OF CARE DROPS 12 PERCENTAGE
15 POINTS, FROM 75 PERCENT TO 63 PERCENT, IF THERE'S ANY PAROLE
16 OUTPATIENT CLINIC CONTACT, CORRECT?

17 **A** I DO NOT HAVE IT IN FRONT OF ME, UNFORTUNATELY, AND I JUST
18 CANNOT ANSWER.

19 (DOCUMENT DISPLAYED.)

20 **MS. MORRIS:** MAY I APPROACH THE WITNESS?

21 **JUDGE HENDERSON:** YOU MAY.

22 **BY MS. MORRIS**

23 **Q** IS THIS DOCUMENT THAT YOU ARE LOOKING AT, WHICH WAS MARKED
24 AS PLAINTIFF'S -- OR AS SANTA CLARA COUNTY'S EXHIBIT O AND IS
25 NAMED, "THE DIVISION OF ADULT PAROLE OPERATIONS MENTALLY ILL

1 PAROLEE POPULATION, " MARCH 28TH, 2008, IS THIS THE DOCUMENT YOU
2 RELIED ON TO DETERMINE THE RECIDIVISM RATES THAT YOU TALK ABOUT
3 IN YOUR REPORT?

4 **A** YES.

5 **MS. FUENTES:** EXCUSE ME, YOUR HONOR. JUST FOR THE
6 RECORD, IT'S NOW MARKED AS DEFENDANT INTERVENOR EXHIBIT 323.

7 **JUDGE KARLTON:** THANK YOU, MA'AM.

8 **MS. MORRIS:** SORRY, I WAS USING THE WRONG LIST.

9 **BY MS. MORRIS**

10 **Q** IF YOU TURN TO PAGE 4 OF THIS DOCUMENT, THERE IS A CHART IN
11 THE MIDDLE OF THE PAGE THAT TALKS ABOUT RECIDIVISM RATES OF
12 MENTALLY ILL PAROLEES, DO YOU SEE THAT?

13 **A** YES.

14 **Q** AND FOR EOP, WHICH ARE THE PORTION OF THE PAROLE -- WELL,
15 THE PORTION OF THE CDCR POPULATION AT A HIGHER LEVEL OF MENTAL
16 HEALTHCARE, IT GIVES A RECIDIVISM RATE FOR PAROLEES WITHOUT POC
17 CONTACT PRIOR TO THE PAROLEE BEING RETURNED TO CUSTODY OF
18 75 PERCENT; DO YOU SEE THAT?

19 **A** YES.

20 **Q** AND FOR PAROLEES WITH POC CONTACT PRIOR TO BEING RETURNED TO
21 CUSTODY, THAT RATE DROPS TO 63 PERCENT, CORRECT?

22 **A** CORRECT.

23 **Q** SO, IN FACT, THE RECIDIVISM RATE DROPS BY 12 PERCENTAGE
24 POINTS JUST WITH CONTACT WITH PAROLEE OUTPATIENT CLINICS,
25 CORRECT?

1 **A** IT APPEARS SO.

2 **Q** AND, SIMILARLY, FOR THE 3CMS, THE LOWER LEVEL OF MENTAL
3 HEALTHCARE IN CDCR, THAT RATE DROPS FROM 77 PERCENT WITHOUT POC
4 CONTACT TO 54 PERCENT WITH POC CONTACT?

5 **A** CORRECT.

6 **Q** SO THAT IS A DROP OF 23 PERCENTAGE POINTS JUST WITH POC --
7 WITH PAROLE OUTPATIENT CLINIC CONTACT?

8 **A** YES.

9 **Q** WOULD YOU EXPECT THAT IF SOME OF THESE PEOPLE WERE ABLE TO
10 ACCESS FULL SERVICE PARTNERSHIPS, THAT THAT RECIDIVISM RATE
11 WOULD DROP EVEN FARTHER?

12 **A** YOU KNOW, I REALLY DON'T KNOW, BECAUSE I'M NOT SURE THAT
13 THIS EOP POPULATION IS WHAT WE ARE TALKING ABOUT IN TERMS OF
14 POPULATION THAT WOULD BE IN A FULL-SERVICE PARTNERSHIP. I JUST
15 DON'T KNOW IF THEY HAVE THE SAME LEVEL OF PSYCHIATRIC ILLNESS OR
16 NEED.

17 **Q** OKAY. WOULD YOU EXPECT FOR WHOEVER -- WHATEVER PAROLEES
18 ENTERED INTO A FULL SERVICE PARTNERSHIP PROGRAM BEING ELIGIBLE
19 FOR IT, WOULD YOU EXPECT THEIR RECIDIVISM RATE TO DROP AS WELL?

20 **A** I WOULD.

21 **Q** OKAY. ONE LAST QUESTION.

22 IN YOUR REPORT YOU TALK ABOUT A SNAPSHOT THAT WAS
23 TAKEN OF -- A METAPHORICAL SNAPSHOT OF 175 MENTALLY ILL INMATES
24 IN THE MAIN JAIL IN SANTA CLARA COUNTY.

25 **A** YES.

1 Q YOU DON'T KNOW ANYTHING ABOUT HOW THOSE PARTICULAR 175
2 MENTALLY ILL --

3 JUDGE HENDERSON: YOU LOST A THOUSAND DOLLARS,
4 BECAUSE JUDGE KARLTON SAID HE WAS GOING TO GIVE A THOUSAND
5 DOLLARS TO THE FIRST ATTORNEY WHO SAID "ONE MORE QUESTION" AND
6 ACTUALLY ASKED ONE MORE, BUT HE PROBABLY WON'T DO IT NOW. GO
7 ON.

8 MR. MELLO: I HAVE ONE MORE QUESTION.

9 BY MS. MORRIS

10 Q YOU DON'T KNOW HOW THOSE PARTICULAR 175 MENTALLY ILL INMATES
11 WERE CHOSEN, CORRECT?

12 A I DO NOT.

13 Q SO YOU DON'T KNOW IF THEY WERE THE MOST ILL OR THE MOST
14 RECIDIVISTIC OR WHATEVER?

15 A NO, IT WAS A SAMPLE THAT THEY LOOKED AT OUT OF THE OPEN
16 CASELOAD, BUT I DON'T KNOW ANYTHING FURTHER BEYOND THAT.

17 MS. MORRIS: NO FURTHER QUESTIONS.

18 JUDGE HENDERSON: ANYTHING FROM CCPOA?

19 MS. LEONARD: NO, YOUR HONOR.

20 JUDGE HENDERSON: ANY REDIRECT?

21 MS. FUENTES: I HAVE ONE QUESTION.

22 THE WITNESS: DO I GET PAID A THOUSAND --

23 REDIRECT EXAMINATION BY MS. FUENTES

24 JUDGE HENDERSON: OFFER LAPSED UPON MY ANNOUNCEMENT.

25

1 **BY MS. FUENTES**

2 **Q** THE NUMBERS MS. MORRIS MENTIONED, THAT THE RESULT OF THE
3 RELIEF THAT THEY'RE SEEKING WOULD BE 15 MENTALLY ILL PAROLEES
4 RETURNING TO SANTA CLARA COUNTY, IS THAT A PROBLEM FOR SANTA
5 CLARA COUNTY, IF YOU HAD 15 PER MONTH MENTALLY ILL PAROLEES
6 COMING INTO THE COUNTY?

7 **A** YES, IT IS A PROBLEM. AS I THINK I STATED IN MY REPORT, WE
8 HAVE HAD TO ELIMINATE OUR WAITING LIST ONCE WE HIT 500. WE
9 DECIDED WE WOULD NO LONGER HAVE A WAITING LIST. SO FOR US TO
10 ADD ANOTHER 15 INDIVIDUALS, ALONG WITH EVERY OTHER POPULATION
11 THAT IS NOW APPEARING TO BE COMING TO OUR DOOR MORE AND MORE
12 FREQUENTLY, I THINK THAT WHAT WE ARE EXPECTING TO EXPERIENCE IS
13 A GREATER AND GREATER POOL OF NEED THAT IS GETTING LESS AND LESS
14 ACCESS TO SERVICES.

15 I BELIEVE THAT THAT IS A PROBLEM, BECAUSE I THINK IT
16 CREATES CONDITIONS IN THE COMMUNITY THAT WILL INEVITABLY LEAD TO
17 SEVERE NEGATIVE IMPACT ON PUBLIC SAFETY. THAT'S MY OPINION.

18 **MS. FUENTES:** THANK YOU.

19 **RE CROSS-EXAMINATION BY MS. MORRIS**

20 **BY MS. MORRIS**

21 **Q** IF THOSE 15 PAROLEES RETURNED FOUR MONTHS FROM NOW INSTEAD
22 OF TODAY, WOULD THAT BE ESSENTIALLY THE SAME PROBLEM?

23 **A** IF THEY RETURNED FOUR MONTHS FROM NOW AS OPPOSED TO TODAY,
24 IT WOULD BE A PROBLEM ON THAT DAY, AS OPPOSED TO EVERY MONTH
25 THAT WE DEAL WITH 15, BUT IT WOULD BE -- ARE YOU SAYING WOULD

1 THE PROBLEM CHANGE?

2 **Q** RIGHT.

3 **A** IT JUST DEPENDS ON HOW YOU LIKE YOUR PROBLEMS, DRAWN OUT OR
4 ONE BIG DOSE.

5 **JUDGE KARLTON:** THE ANSWER IS IT'S THE SAME PROBLEM
6 YOU'VE GOT NOW OR THREE MONTHS FROM NOW OR WHENEVER THEY'RE
7 RELEASED, RIGHT?

8 **THE WITNESS:** YEP.

9 **JUDGE KARLTON:** SEE HOW SIMPLE THE QUESTION IS?

10 **JUDGE HENDERSON:** THANK YOU VERY MUCH FOR TESTIFYING,
11 MS. PENA. YOU'RE EXCUSED. YOU MAY CALL YOUR NEXT WITNESS.

12 **MS. WANG:** GOOD AFTERNOON, YOUR HONORS. THERESA WANG
13 FOR THE LEGISLATOR INTERVENORS. THE LEGISLATOR INTERVENORS CALL
14 FORMER ASSEMBLY MEMBER TODD SPITZER TO THE STAND.

15 **TODD SPITZER**

16 HAVING BEEN CALLED AS A WITNESS BY THE DEFENDANT INTERVENOR WAS
17 FIRST DULY SWORN AND EXAMINED AS FOLLOWS:

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

20 **THE WITNESS:** TODD, T-O-D-D, SPITZER, S-P-I-T-Z-E-R.

21 **DIRECT EXAMINATION BY MS. WANG**

22 **BY MS. WANG**

23 **Q** GOOD AFTERNOON, MR. SPITZER.

24 **A** GOOD AFTERNOON.

25 **Q** CAN YOU BRIEFLY DESCRIBE FOR ME YOUR EDUCATIONAL BACKGROUND

1 AND WORK HISTORY?

2 **A** MY EDUCATIONAL BACKGROUND, I HAVE A BACHELOR'S DEGREE FROM
3 UCLA, A MASTER'S DEGREE FROM THE UNIVERSITY OF CALIFORNIA
4 BERKELEY, MY LAW DEGREE FROM THE UNIVERSITY OF CALIFORNIA
5 HASTINGS COLLEGE OF THE LAW.

6 I HAVE A POST CERTIFICATE FROM THE STATE OF
7 CALIFORNIA AS A PEACE OFFICER. I WAS A PEACE OFFICER FOR LOS
8 ANGELES POLICE DEPARTMENT FOR TEN YEARS FROM 1990 TO 2000.

9 I HAVE BEEN A PROSECUTOR IN THE ORANGE COUNTY
10 DISTRICT ATTORNEY'S OFFICE FROM -- SIX YEARS FROM 1990 TO 1996,
11 A COUNTY SUPERVISOR FOR SIX YEARS AFTER THAT, BEEN A MEMBER OF
12 THE STATE LEGISLATURE FOR SIX YEARS, AND NOW I'M A PROSECUTOR
13 AGAIN IN THE ORANGE COUNTY DISTRICT ATTORNEY'S OFFICE.

14 **Q** AND FROM WHAT TIME DID YOU SERVE AS ASSEMBLYMAN?

15 **A** I WAS IN THE STATE LEGISLATURE FROM 1992 TO NOVEMBER 30TH OF
16 THIS YEAR. I'M SORRY, 2002 TO NOVEMBER 30TH OF THIS YEAR.

17 **Q** DURING YOUR TIME IN THE CALIFORNIA STATE ASSEMBLY DID YOU
18 SERVE ON ANY COMMITTEES?

19 **A** YES, I WAS A MEMBER OF THE PUBLIC SAFETY COMMITTEE FOR FOUR
20 YEARS AND FOR THE LAST ABOUT YEAR AND A HALF, COULD BE TWO
21 YEARS, I WAS THE CHAIRMAN OF THE SELECT COMMITTEE THAT OVERSEES
22 OUR STATE PRISONS.

23 **Q** AND WHAT WERE YOUR RESPONSIBILITIES IN THAT POSITION AS HEAD
24 OF THE SELECT COMMITTEE?

25 **A** I WAS THE ONLY REPUBLICAN TO CHAIR A COMMITTEE. MY

1 RESPONSIBILITIES WERE MORE ON PAPER THAN IN ACTUALITY. SO WHAT
2 I TOOK ON AS MY JOB WAS TO DO THE BEST I COULD AS A MEMBER OF
3 THE MINORITY PARTY TO TRY TO OVERSEE THE SUCCESSFUL DRAFTING AND
4 PASSAGE OF LEGISLATION THAT WOULD HELP DEAL WITH OUR PRISON
5 OVERCROWDING SYSTEM, AND ALSO WORK AND NEGOTIATE WITH ALL THE
6 PARTIES, MANY OF THEM PRESENT AND PART OF THIS LITIGATION, TO
7 TRY TO SEE IF WE COULD CRAFT, IN CONJUNCTION WITH THE
8 LEGISLATURE AND THE DEPARTMENT OF CORRECTIONS AND THE
9 ADMINISTRATION, REMEDIES TO HELP WITH OUR PRISON OVERCROWDING
10 AND RECIDIVISM PROBLEM WITHOUT AN EARLY RELEASE FROM STATE
11 PRISON OR INTERVENTION BY THE FEDERAL COURT.

12 **Q** AND WHEN YOU REFER TO THAT LEGISLATION, ARE YOU SPEAKING OF
13 ASSEMBLY BILL 900?

14 **A** AB 900 WAS PROBABLY THE KEY CENTRAL LEGISLATION THAT WE
15 ENDED UP IN EFFECTUATING AND PASSING, ALTHOUGH THERE'S OBVIOUSLY
16 OTHER ANCILLARY PIECES OF LEGISLATION THAT ADMITTEDLY WAS
17 PROBABLY THE KEY PIECE OF LEGISLATION THAT I PUT ALL MY EGGS IN
18 THAT BASKET, YES.

19 **Q** WHAT IS AB 900?

20 **A** AB 900 WAS LEGISLATION, ABOUT A \$7 BILLION PACKAGE, THAT WAS
21 DESIGNED TO HELP WITH INCREASED CAPACITY IN OUR COUNTY JAILS,
22 BUILD ADDITIONAL CAPACITY IN OUR STATE PRISON SYSTEM TO
23 ALLEVIATE OVERCROWDING, TO BUILD REENTRY FACILITIES IN LOCAL
24 COMMUNITIES IN ORDER TO ALLOW INMATES WHO WERE COMING BACK IN
25 PROBABLY THEIR LAST 12 TO 18 MONTHS OF INCARCERATION, TO SERVE

1 THEIR TIME IN THE LOCAL COMMUNITIES, WHAT I WOULD CALL INTENSIVE
2 REHABILITATION.

3 THOSE ARE PROBABLY THE PRIMARY COMPONENTS OF THAT
4 LEGISLATION.

5 **Q** IS AB 900 AN ALTERNATIVE TO A PRISONER RELEASE ORDER?

6 **A** I THINK THAT AS A LEGISLATOR AND LOOKING AT IT FROM, I
7 THINK, THE PERSPECTIVE OF THE LEGISLATURE I WAS SERVING WITH, WE
8 WERE VERY AWARE OF THE THREAT OF LITIGATION AND THE THREAT OF AN
9 EARLY RELEASE ORDER AS A RESULT OF ANY LITIGATION, AND WE WERE
10 DEEPLY MOTIVATED TO DO WHAT WE COULD AS MEMBERS OF THE
11 LEGISLATURE TO PASS LEGISLATION IN AB 900 SO THAT WE WOULD NOT
12 HAVE EARLY RELEASE.

13 BUT IN ALL FAIRNESS, IT WASN'T ALWAYS ABOUT EARLY
14 RELEASE. IT WAS ALWAYS ABOUT TRYING TO DO THE RIGHT THING. WE
15 HAVE A TERRIBLE OVERCROWDING PROBLEM IN CALIFORNIA. WE ALL KNOW
16 THAT. I HAVE BEEN IN MANY OF OUR PRISONS, AND IT'S, IN MY
17 OPINION, RELATIVELY INHUMANE.

18 SECONDLY, WE HAVE TO DO A MUCH BETTER JOB AT HOW WE
19 ARE DEALING WITH PRISONERS WHILE THEY'RE IN CUSTODY, AND OUR
20 RECIDIVISM RATE IS COMPLETELY UNACCEPTABLE. SO IT WASN'T JUST
21 SAYING, HEY, HOW DO WE STOP EARLY RELEASE. IT WAS INTENDED TO
22 BE A COMPREHENSIVE PACKAGE TO SAY ONCE AND FOR ALL THAT WE WERE
23 NOT GOING TO ACCEPT THE STATUS QUO OF HOW WE DEAL WITH PRISONS
24 AND INCARCERATION, REHABILITATION IN THE STATE OF CALIFORNIA.

25 **Q** HAVE THE BEDS AUTHORIZED BY AB 900 BEEN BUILT YET?

1 **A** TO MY KNOWLEDGE, THERE HAS BEEN NO NEW CONSTRUCTION ON ANY
2 OF OUR EXISTING PRISONS IN CALIFORNIA. IT'S ALSO MY
3 UNDERSTANDING THAT THERE ARE SOME REENTRY FACILITIES, ONE HERE
4 IN SAN FRANCISCO. I BELIEVE SANTA BARBARA HAS ONE. BUT AS
5 ALLOWED BY AB 900, I BELIEVE THE ANSWER IS NO.

6 **Q** WHY NOT?

7 **A** WELL, BELIEVE ME, I HAVE WRITTEN ABOUT THIS. I HAVE OPINED
8 ABOUT IT. I FINGERPOINTED A LOT AT THIS. I KNOW THE BENCH IS
9 VERY FRUSTRATED. I KNOW MANY OF THE PARTY LITIGANTS ARE
10 FRUSTRATED. I AM VERY FRUSTRATED.

11 IN MY OPINION, WHEN WE PASSED AB 900, I BELIEVE IN
12 MAY OF 2007, IT WAS WITH THE UNDERSTANDING IT WAS GOING TO BE
13 IMPLEMENTED FORTHWITH. IT IS COMPLETELY UNACCEPTABLE TO ME,
14 ALTHOUGH I'M NOW A RETIRED LEGISLATOR, THAT AB 900 HAS NOT BEEN
15 SUCCESSFULLY IMPLEMENTED. IT'S UNACCEPTABLE.

16 **JUDGE KARLTON:** THE QUESTION IS WHY WAS IT NOT
17 IMPLEMENTED?

18 **THE WITNESS:** I WOULD ARGUE, YOUR HONOR, THERE'S
19 SEVERAL FACTORS. I BELIEVE THE CALIFORNIA DEPARTMENT OF
20 CORRECTIONS HAS DRAGGED ITS FEET ON THE IMPLEMENTATION OF AB
21 900. AND I BELIEVE THAT THE ATTORNEY GENERAL OF THE STATE OF
22 CALIFORNIA, JERRY BROWN, HAS NOT PLAYED THE KIND OF LEADERSHIP
23 ROLE THAT IS NECESSARY TO ENSURE THAT HIS OFFICE, WHICH IS
24 RESPONSIBLE FOR ISSUING A CLEAN BOND OPINION AT SOME POINT WITH
25 RESPECT TO THE AB 900 BONDS, THAT THAT OPINION AND THE WORK

1 RELATED THERETO TO HONE DOWN TO THE SATISFACTION OF THE
2 LEGISLATURE SO THAT AB 900 COULD BE IMPLEMENTED.

3 IN OTHER WORDS, WHEN WE PASSED AB 900, WE BELIEVED
4 THAT IT WAS GOING TO BE IMPLEMENTED FORTHWITH. NOTHING HAPPENED
5 FOR ALMOST A YEAR. THEN WE WERE TOLD BY THE ADMINISTRATION
6 DURING OUR SETTLEMENT NEGOTIATIONS, WHICH WERE SANCTIONED BY
7 THIS COURT, AND I WAS PARTY TO THAT, WE WERE TOLD PRETTY MUCH
8 HAPHAZARDLY AND BY QUITE SURPRISE THAT AB 900 COULD NOT BE
9 IMPLEMENTED BECAUSE THE ATTORNEY GENERAL HAD NOT ISSUED A CLEAN
10 BOND OPINION. MUCH TO MY CHAGRIN AND SHOCK AND SURPRISE, THAT
11 WAS NOT DISCLOSED BY THE ADMINISTRATION --

12 **JUDGE REINHARDT:** BY "THE ADMINISTRATION," YOU MEAN
13 JERRY BROWN, THE ATTORNEY GENERAL?

14 **THE WITNESS:** BY THE GOVERNOR'S OFFICE. THE
15 GOVERNOR'S OFFICE NEVER TOLD US THAT THERE WERE ANY PROBLEMS
16 WITH THE IMPLEMENTATION OF AB 900 SUBSEQUENT TO THE TIME THAT
17 THE LEGISLATURE PASSED AB 900. AND WHEN WE WERE IN SETTLEMENT
18 NEGOTIATIONS, AND I FOUND OUT THAT FACT, I --

19 **MS. TILLMAN:** OBJECTION, YOUR HONOR. I BELIEVE THE
20 SETTLEMENT DISCUSSIONS ARE NOT TO BE DISCLOSED DURING THIS
21 PROCEEDING.

22 **JUDGE REINHARDT:** WELL, HE'S NOT TALKING ABOUT WHAT
23 HAPPENED BETWEEN THE PARTIES. HE'S TALKING ABOUT WHAT HE WAS
24 TOLD. BY WHOM WERE YOU TOLD THIS? IF HE LEARNED SOMETHING FROM
25 THE GOVERNOR OR THE ATTORNEY GENERAL --

1 **JUDGE KARLTON:** THAT WOULD BE DIFFERENT. THAT'S
2 OUTSIDE OF --

3 **JUDGE HENDERSON:** DID YOU LEARN THIS FROM THE
4 GOVERNOR SEPARATELY?

5 **THE WITNESS:** I LEARNED IT FROM THE GOVERNOR'S LEGAL
6 COUNSEL, ANDREA HOCH.

7 **JUDGE KARLTON:** YOU LEARNED IT IN THE COURSE OF THE
8 SETTLEMENT NEGOTIATIONS?

9 **THE WITNESS:** NO, NO, OUTSIDE THE SETTLEMENT
10 NEGOTIATIONS.

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

12 **THE WITNESS:** AND SO I LEARNED THAT OUTSIDE THE
13 SETTLEMENT NEGOTIATIONS AND BROUGHT THAT TO THE SETTLEMENT
14 DISCUSSIONS, AND I WON'T, OF COURSE, TALK ABOUT THAT.

15 **JUDGE REINHARDT:** YOU CAN'T.

16 **THE WITNESS:** HOWEVER, IT WAS -- I THINK IT WAS AN
17 AMAZING DECLARATION THAT THERE WAS SOME FACTS, SOME LEGAL
18 HURDLE, THAT WAS INHIBITING THE ABILITY TO FLOAT AND LEVERAGE
19 THE AB 900 BONDS WITHOUT COMING BACK TO THE LEGISLATURE AT THE
20 EARLIEST POSSIBLE MOMENT AND TELLING US THAT WE HAD A PROBLEM.
21 IT'S KIND OF LIKE NASA, YOU HAVE A PROBLEM. NO ONE TOLD US.
22 BECAUSE I WAS HIGHLY MOTIVATED TO GET MOVING AS QUICKLY AS
23 POSSIBLE.

24 SO THEN I SAT DOWN WITH THE ATTORNEY GENERAL
25 ONE-ON-ONE, NOT IN THE SETTLEMENT NEGOTIATIONS. IT WAS DURING

1 THE PEACE OFFICER MEMORIAL CEREMONY, AND THE ATTORNEY GENERAL
2 AND I HAD SOME TIME TO HAVE A CONVERSATION, AND I TALKED TO THE
3 ATTORNEY GENERAL, AND I EXPLAINED TO HIM THAT THE IMPLEMENTATION
4 OF AB 900 WAS CRITICAL, AND IT WAS LAGGING, AND I FELT IT WAS
5 IRRESPONSIBLE. AND I ASKED HIM AND IMPORED UPON HIM TO TAKE A
6 LEADERSHIP ROLE IN AB 900. HE TOLD ME HE WOULD GO BACK TO HIS
7 OFFICE AND TALK TO HIS MANAGEMENT, DEPUTIES, PERSONNEL, AND THAT
8 HE WOULD GET BACK TO ME.

9 SUBSEQUENT TO THAT -- THEN AFTER, I THINK EVERYBODY
10 WELL KNOWS, AND IT'S PART OF THE RECORD, THERE WAS SOME
11 QUOTE/UNQUOTE CLEAN-UP LEGISLATION TO AB 900, WHICH THE
12 LEGISLATURE DID NOT PASS, AND THE REASON -- THAT WAS THE SAME
13 NIGHT THAT MR. KELSO'S REQUEST FOR RECEIVER BEDS WAS PART OF THE
14 PACKAGE. AND I INQUIRED THAT NIGHT OF MS. HOCH OF THE
15 GOVERNOR'S OFFICE WHETHER OR NOT JERRY BROWN HAD ISSUED ANY KIND
16 OF DECLARATION THAT THE AB 900 FIX, NOW WE ARE CALLING IT THE
17 CLEAN-UP TO AB 900, WHETHER EVERYBODY IN THE CHAIN OF COMMAND
18 WAS SATISFIED THAT IF WE PASSED THIS LEGISLATION, THE CLEAN-UP
19 LEGISLATION TO AB 900, THE ORIGINAL AB 900, WOULD THIS GET
20 AB 900 OFF THE DIME, BECAUSE I WANTED TO VOTE FOR MR. KELSO'S
21 BEDS, BUT I ALSO WANTED TO KNOW I WAS GETTING THE BENEFIT OF THE
22 BARGAIN OF AB 900 ALMOST A YEAR LATER.

23 THE ATTORNEY GENERAL DID NOT CALL ME BACK. THEY
24 TRIED TO PUT ME IN TOUCH WITH A DEPUTY ATTORNEY GENERAL OR
25 ASSISTANT ATTORNEY GENERAL, AND I MADE IT VERY CLEAR THAT WAS

1 NOT GOOD ENOUGH. I WANTED TO KNOW FROM THE ATTORNEY GENERAL
2 HIMSELF IF HE WAS GOING TO -- IF HE WAS SATISFIED THAT THE
3 AB 900 FIX WOULD ACTUALLY MOVE AB 900 FORWARD, AND I NEVER GOT
4 AN ANSWER TO THAT QUESTION. AND THAT IS WHY WE DID NOT PASS THE
5 AB 900 FIX, BECAUSE I MADE IT CLEAR TO MY CAUCUS THAT WE WERE
6 NOT GOING TO FASHION AN AB 900 FIX AND GIVE MR. KELSO HIS BEDS
7 UNLESS WE KNEW WE WERE GOING TO GET THE FUNDING FOR AB 900,
8 BECAUSE, AGAIN -- AND I KNOW NOW I'M BEING REDUNDANT --

9 **JUDGE KARLTON:** DON'T BE.

10 **THE WITNESS:** DON'T BE. I'M SORRY. THEN I'LL STOP.

11 **BY MS. WANG**

12 **Q** YOU MENTIONED MR. KELSO'S BEDS. IS PERMITTING MR. KELSO,
13 THE RECEIVER, TO CONTINUE HIS WORK ALSO AN ALTERNATIVE TO A
14 PRISONER RELEASE ORDER?

15 **A** I BELIEVE IT WAS AUGUST OF THIS YEAR. THE ANSWER IS YES.
16 IN AUGUST OF THIS YEAR, I ATTENDED A PRESS CLUB MEETING IN
17 SACRAMENTO. I DID THIS WHEN MR. SILLEN WAS THE RECEIVER, AND HE
18 SPOKE IN SACRAMENTO, AND I DID IT WHAT -- MR. KELSO WAS THE
19 RECEIVER. I PERSONALLY WENT TO THE SACRAMENTO PRESS CLUB TO
20 HEAR THEM SPEAK. MR. KELSO WAS UNEQUIVOCAL THAT IF HE GOT
21 HIS -- LET ME REPHRASE THAT. MR. KELSO WAS UNEQUIVOCAL IN
22 RESPONSE TO A QUESTION.

23 **MR. BIEN:** OBJECTION, CALLS FOR HEARSAY.

24 **JUDGE KARLTON:** NOT FOR THE TRUTH OF THE MATTER.

25 IT'S WHAT WAS SAID WHICH INFLUENCED THIS WITNESS'S CONDUCT,

1 APPARENTLY. YOU MAY ANSWER. I ASSUME THAT'S RIGHT.

2 **THE WITNESS:** IT'S FOR THE EFFECT IT HAD ON ME, YOUR
3 HONOR. THANK YOU.

4 SO I SAT THERE AND HEARD MR. KELSO INDICATE THAT THE
5 QUESTION WAS SOMETHING TO THE EFFECT OF, DOES THE NUMBER -- THE
6 POPULATION IN PRISON -- DOES THE NUMBER OF INMATES HAVE AN
7 IMPACT ON WHETHER OR NOT YOU BELIEVE YOU CAN DELIVER
8 CONSTITUTIONAL HEALTHCARE? AND MR. KELSO SAYS, I CAN DELIVER
9 CONSTITUTIONAL HEALTHCARE IRRESPECTIVE OF THE NUMBER OF INMATES
10 THAT ARE PRESENTLY HOUSED OR WILL BE HOUSED IN THE FUTURE IN OUR
11 PRISON SYSTEM. AND I SAT THERE LITERALLY DUMBFUNDED, BECAUSE
12 THAT WAS NOT THE THEORY OR THE LINE I HAD ALWAYS BEEN TOLD AS A
13 MEMBER OF THE STATE LEGISLATURE.

14 I WAS ALWAYS TOLD THAT THERE WAS A RELATIONSHIP
15 BETWEEN THE NUMBER OF INMATES AND THE ABILITY TO DELIVER
16 CONSTITUTIONAL HEALTHCARE.

17 AND SO WHEN I HEARD THAT, THAT COMPLETELY
18 CORROBORATED AND WENT TO THE HEART OF THE MATTER FOR ME THAT IF
19 WE DID AB 900 FIX, WITH ITS COMPONENTS THAT I'VE ALREADY
20 OUTLINED, AND WE DID, MR. KELSO, ON BEHALF OF THE COURT, THE
21 RECEIVER BEDS, THAT ALL THOSE TAKEN TOGETHER WOULD -- WE WOULD
22 HAVE THE ABILITY TO DEAL WITH BOTH OVERCROWDING, REHABILITATION,
23 AND THE ABILITY TO DEAL WITH THE CONSTITUTIONAL ISSUES OF THE
24 DELIVERY OF HEALTHCARE.

25 **JUDGE REINHARDT:** MR. SPITZER, SUPPOSE YOU HAD BEEN

1 TOLD, AS WE HAVE, BY EVERY EXPERT THAT'S COME IN TO TESTIFY FROM
2 ACROSS THE COUNTRY, THAT THE OVERCROWDING IS THE PRIMARY CAUSE
3 OF THE CONSTITUTIONAL VIOLATION, AND THAT IT IS NOT ONLY
4 RELEVANT, BUT THE ACTUAL MAJOR CAUSE OF THE NUMBER OF PEOPLE IN
5 PRISON?

6 **JUDGE HENDERSON:** EVERY PLAINTIFFS' EXPERT.

7 **JUDGE REINHARDT:** WE HAVE ONE PERSON WHO SAID
8 ANYTHING IS POSSIBLE. BUT DISCOUNTING HIM, EVERY NATIONAL
9 EXPERT, ALL OF WHOM SERVED CALIFORNIA, BEEN APPOINTED BY THIS
10 GOVERNOR, PREVIOUS GOVERNOR, ALL OF WHOM ARE NATIONALLY
11 RECOGNIZED EXPERTS, WOULD THAT PUT YOU BACK ORIGINALLY WHERE YOU
12 WERE ORIGINALLY, TO THE UNDERSTANDING THAT OVERCROWDING DOES
13 HAVE AT LEAST AN EXTREMELY SUBSTANTIAL EFFECT ON THE ABILITY TO
14 DELIVER CONSTITUTIONALLY ADEQUATE HEALTHCARE?

15 **MR. MELLO:** IF I MAY RESPECTFULLY INTERPOSE AN
16 OBJECTION FOR THE RECORD, THAT THAT MISSTATES EVIDENCE IN THE
17 CASE.

18 **JUDGE REINHARDT:** CERTAINLY.

19 **JUDGE KARLTON:** YOU MAY.

20 **THE WITNESS:** YOUR HONOR, I'D ANSWER THE QUESTION FOR
21 THE RECORD, THERE'S TWO MAJOR INCIDENTS THAT OCCURRED THAT
22 INFLUENCED ME. ONE WAS MR. KELSO'S COMMENTS THAT I TESTIFIED
23 TO. THE OTHER WAS A LETTER TO SENATOR MACHADO FROM JUDGE
24 HENDERSON WITH RESPECT TO WHAT HIS OPINION WAS ABOUT THE PASSAGE
25 OF THE RECEIVER BEDS AND WHAT, IF ANY, IMPACT THAT WOULD HAVE ON

1 THE PENDING LITIGATIONS, YOU KNOW, THE PENUNDRA TO PENUNDRA OF
2 CASES THAT ARE LITIGATED, BEING LITIGATED AND HAVE BEEN
3 LITIGATED.

4 I TOOK THOSE TWO REPRESENTATIONS, ONE FROM JUDGE
5 HENDERSON AND ONE FROM MR. KELSO, TO SAY TO ME AS A MEMBER OF
6 THE LEGISLATURE AT THAT TIME THAT, IF WE PASS THE RECEIVER BEDS
7 AND IF WE DID THE AB 900 FIX, THAT TAKEN TOGETHER, THOSE WOULD
8 ADDRESS THE CONSTITUTIONAL ISSUES AND WOULD NOT RESULT IN EARLY
9 RELEASE.

10 **JUDGE KARLTON:** MEANWHILE, OF COURSE, NEITHER HAS
11 BEEN DONE.

12 **THE WITNESS:** NEITHER? I'M SORRY, YOUR HONOR.

13 **JUDGE KARLTON:** NEITHER AB 900 CLEAN-UP BILL, NOR THE
14 BEDS FOR THE RECEIVER, NEITHER HAVE BEEN DONE.

15 **THE WITNESS:** YOU ARE ABSOLUTELY CORRECT, AND I
16 TESTIFIED AS SUCH. THAT'S WHY I, IF I MAY, YOUR HONOR, IN MY
17 OPINION, THERE'S ONE -- ONE LYNCHPIN THAT WILL UNBREAK THE LOG
18 JAM ON WHETHER OR NOT WE MOVE FORWARD IN THE STATE OF CALIFORNIA
19 TOWARDS A REMEDY SHORT OF EARLY RELEASE. AND IF I MAY, FOR THE
20 RECORD, IT'S SIMPLE.

21 IF THE ATTORNEY GENERAL WOULD COME FORWARD AND TELL
22 US WHY TO DATE HE'S BEEN UNWILLING TO ISSUE A CLEAN BOND OPINION
23 ON AB 900 AND TELL THAT TO THE LEGISLATURE, THAT WOULD END THE
24 CRISIS, AND THE LEGISLATURE WOULD MOVE FORWARD.

25 WE WERE PREPARED TO VOTE THAT NIGHT FOR THE AB 900

1 FIX AND FOR MR. KELSO'S BEDS, AND BUT FOR THE FACT WE COULD NOT
2 GET AN ANSWER, A LEGITIMATE ANSWER AND REPRESENTATION FROM THE
3 ATTORNEY GENERAL, THAT IS WHY WE HAVE NOT VOTED TO FIX AB 900.

4 **JUDGE KARLTON:** MR. SPITZER, YOU CAN SPEAK ABOUT WHY
5 YOU DIDN'T VOTE FOR IT, AND I'LL ACCEPT YOUR REPRESENTATION THAT
6 THAT'S WHY YOU DIDN'T. YOU CAN'T SPEAK FOR ANYBODY ELSE'S
7 REASON FOR NOT. THEY MAY BE JUST PEOPLE WHO WANT TO SAY NO TO
8 ANY SOLUTION. THEY MAY BE PEOPLE, LIKE IN THE PRESENT BUDGET
9 CRISIS, WHO ARE UNWILLING TO BITE THE BULLET. THERE MAY BE ALL
10 KINDS OF REASONS THAT PEOPLE ARE NOT DOING IT. WHAT WE KNOW IS
11 IT'S NOT BEING DONE, CORRECT?

12 **THE WITNESS:** CORRECT.

13 **JUDGE HENDERSON:** CAN I ASK YOU, MR. SPITZER, IN YOUR
14 SIX YEARS IN THE ASSEMBLY IS THAT --

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

16 **JUDGE HENDERSON:** IS THIS BEHAVIOR BY THE ATTORNEY
17 GENERAL UNUSUAL, OR DOES THIS HAPPEN -- HAS THIS HAPPENED IN
18 OTHER BOND MEASURES, WHERE YOU JUST DON'T GET AN OPINION, OR IS
19 THIS UNUSUAL?

20 **THE WITNESS:** YOUR HONOR, WITH RESPECT TO BOND
21 OPINIONS, THERE'S CLEARLY A POINT IN TIME WHERE A BOND OPINION
22 IS ISSUED. BUT I WILL CONTRAST THE BEHAVIOR, FOR EXAMPLE, OF
23 JERRY BROWN AS AGAINST BILL LOCKYER. MR. LOCKYER WAS A
24 PROACTIVE AGENT WHEN HE WAS AN ATTORNEY GENERAL, JUST LIKE HE IS
25 AS THE TREASURER.

1 AS YOU KNOW, WE ARE GOING THROUGH A CRISIS, AND
2 MR. LOCKYER IS PLAYING A SIGNIFICANT ROLE IN TRYING TO RESOLVE
3 THE ISSUE IN THE STATE OF CALIFORNIA. WHEN I MET WITH THE
4 ATTORNEY GENERAL EARLIER IN THE YEAR AND HE INDICATED TO ME THAT
5 HE WAS GOING TO GO BACK AND GET BRIEFED AND THEN DECIDE WHAT, IF
6 ANY, ROLE HE WAS GOING TO TAKE, AND THEN THE LEGISLATURE NEVER
7 HEARD FROM THE ATTORNEY GENERAL, AND TO DATE HAS NOT HEARD FROM
8 THE ATTORNEY GENERAL, I AM BESIDE MYSELF WHY THE TOP LAW
9 ENFORCEMENT OFFICER IS NOT TAKING A PROACTIVE ROLE IN TRYING TO
10 DEAL WITH THE PRISON OVERCROWDING CRISIS. AS THIS BENCH KNOWS,
11 THE ATTORNEY GENERAL IS THE LITIGATOR ON CRIMINAL CASES IN THE
12 STATE OF CALIFORNIA. THE ATTORNEY GENERAL'S DEPUTIES ARE THE
13 ONES THAT ARGUE ON APPEAL WHETHER OR NOT SOMEBODY SHOULD REMAIN
14 INCARCERATED.

15 **JUDGE REINHARDT:** I THINK WE DO KNOW WHAT THE
16 ATTORNEY GENERAL DOES, AND I THINK MR. LOCKYER IS GOING TO BE
17 GRATEFUL FOR YOUR ENDORSEMENT. I THINK YOU MADE YOUR POINT
18 ABOUT JERRY BROWN, AND I DON'T KNOW --

19 **JUDGE KARLTON:** OBVIOUSLY, THE ENTIRE PRISON PROBLEM
20 RESTS UPON HIS LAP.

21 **JUDGE REINHARDT:** WELL, THERE ARE A LOT OF OTHERS.
22 YOU'VE CERTAINLY EXPLAINED HIS -- PART OF HIS ROLE, WHICH IS --
23 IN THIS CASE, AND THERE ARE OTHERS WHO, AS JUDGE KARLTON POINTS
24 OUT REGULARLY, ARE RESPONSIBLE AS WELL.

25 **JUDGE KARLTON:** OR IRRESPONSIBLE.

1 **JUDGE REINHARDT:** I DON'T KNOW. NO POINT ASKING YOU
2 HOW DO WE GO FROM HERE, BECAUSE NOBODY KNOWS WHETHER ANYTHING IS
3 EVER GOING TO HAPPEN THE WAY --

4 **JUDGE KARLTON:** WHAT WE'RE FACED WITH IS A
5 POTENTIAL -- WELL, AN UNCONSTITUTIONAL CONDITION, WHICH IS --
6 POTENTIALLY IN THIS CASE WILL BE RESOLVED AS A PRIMARY CAUSE
7 BEING OVERCROWDING. MEANWHILE ALL OF THESE POLITICAL JUDGMENTS
8 AND POLITICAL MACHINATIONS ARE GOING ON, AND PEOPLE ARE NOT
9 RECEIVING THE CARE THAT THEY REQUIRE.

10 THERE'S NO GUARANTEE AS YOU SIT HERE, YOU'RE OUT OF
11 THE LEGISLATURE NOW, BUT THERE IS NO GUARANTEE THAT ANYBODY WILL
12 DO ANYTHING UNLESS THIS COURT DOES SOMETHING EXTREMELY SERIOUS.

13 **JUDGE REINHARDT:** YOU KNOW, THE PROBLEM IS YOU CAN
14 TELL US WHAT THE LEGISLATURE OUGHT TO DO AND WHETHER OR NOT --

15 **JUDGE KARLTON:** AND WHAT THE ATTORNEY GENERAL OUGHT
16 TO DO.

17 **JUDGE REINHARDT:** WHO KNOWS WHETHER ANY OF THEM ARE
18 GOING TO DO ANYTHING. AS ONE OF THE WITNESSES FROM THE COUNTY
19 SAID YESTERDAY, A COUNTY, AND I SAID THIS BEFORE. ONE OF THE
20 WITNESSES FROM THE COUNTY SAID, WE CAN'T TRUST STATE. WELL,
21 THAT IS ONE OF THE THINGS THAT SEEMS TO BE COMING OUT OF THIS
22 TRIAL, WHETHER IT IS THE ATTORNEY GENERAL, THE LEGISLATURE,
23 WHOEVER HAPPENS TO BE RESPONSIBLE.

24 AS YOU KNOW THE STATE'S ON APPEAL NOW TRYING TO BLOCK
25 JUDGE HENDERSON IN HIS CASE FROM GETTING MONEY TO TRY TO SOLVE

1 THIS PROBLEM. WHY SHOULD WE HAVE ANY EXPECTATION THAT ANYBODY
2 IS GOING TO REALLY DO ANYTHING IN THE FORESEEABLE FUTURE --

3 **THE WITNESS:** YOUR HONOR, I APPRECIATE THE QUESTION.
4 I CAN SAY --

5 **JUDGE REINHARDT:** -- WITHOUT A COURT ORDER?

6 **THE WITNESS:** WELL, I CAN SAY THIS: ON THE NIGHT THE
7 QUESTION WAS PRESENTED ON THE CLEAN UP ON AB 900 AND THE KELSO
8 BEDS, THE LEGISLATURE WAS PREPARED AND THE VOTES WERE THERE FOR
9 THAT VOTE, BUT FOR THE FACT THAT WE DID NOT KNOW WHETHER OR NOT
10 THE ATTORNEY GENERAL, BUT FOR THE FACT WE PASSED THE CLEAN-UP,
11 WAS GOING TO SAY THAT THAT WAS ADEQUATE. SO I CAN ONLY
12 REPRESENT THE FOLLOWING: THERE WAS A MOMENT IN TIME WHEN THE
13 VOTES WERE THERE.

14 NOW, UNDER THE PRESENT CONDITION STATE, IT IS
15 SPECULATION, AND WE ALL KNOW IT'S SPECULATION ABOUT WHAT, IF
16 ANYTHING, THE LEGISLATURE IS GOING TO DO OR NOT DO. BUT I CAN
17 TELL YOU THIS, NO ONE IN THE STATE LEGISLATURE WANTS TO BE
18 RESPONSIBLE FOR THE EARLY RELEASE OF PRISONERS IN THE STATE OF
19 CALIFORNIA.

20 **JUDGE KARLTON:** AND IF WE TELL THEM THAT THEY WILL
21 BE, THEY'LL SAY, IT'S NOT US, IT'S THOSE CRAZY GUYS IN BLACK
22 ROBES. THAT'S WHAT THEY ARE GOING TO DO, BECAUSE THAT'S
23 THEIR -- THAT'S THEIR LIFE. THAT'S WHAT THEY'RE SUPPOSED TO DO,
24 I GOT TO GET ELECTED, LET SOMEBODY ELSE --

25 **JUDGE REINHARDT:** IT'S NOT JUST THE LEGISLATURE.

1 IT'S OTHER PUBLIC OFFICIALS WHO WILL SAY THAT.

2 **JUDGE KARLTON:** OF COURSE.

3 **JUDGE REINHARDT:** BECAUSE THEY HAVE POLITICAL
4 AMBITIONS.

5 **JUDGE KARLTON:** IT'S ALWAYS SOMEBODY ELSE'S
6 RESPONSIBILITY.

7 **THE WITNESS:** JUDGES, I AGREE, AND I'M WORRIED NOW
8 THAT IF COURT WILL ORDER THIS REMEDY, THAT'S EXACTLY WHAT WILL
9 HAPPEN. THE LEGISLATORS WILL STAND UP AND SAY THEY PASSED AB
10 900 SO THEY WILL HAVE CLEAN HANDS, AND THEY WILL BE ABLE TO
11 POINT THE FINGER AT THE COURT. IT'S THE LEGISLATURE'S
12 RESPONSIBILITY TO SOLVE THIS PROBLEM.

13 **JUDGE KARLTON:** YOU HAVE NO IDEA, I THINK, BECAUSE, I
14 DON'T SUSPECT ANYBODY WHO ISN'T SITTING WHERE JUDGE HENDERSON
15 AND JUDGE REINHARDT AND I ARE SITTING, THE RELUCTANCE WITH WHICH
16 WE WILL DO AS THE PLAINTIFFS HAVE ASKED. I DON'T THINK THEY
17 UNDERSTAND EITHER. BUT THERE COMES A POINT IN WHICH -- YOU
18 KNOW, I'VE ASKED ALMOST EVERY WITNESS FROM THE DEFENSE SIDE,
19 TELL ME WHAT YOU THINK I OUGHT TO DO.

20 **THE WITNESS:** I CAN TELL YOU FOR -- FIRST, IF YOU LET
21 ME, I WOULD SAY ONE THING. EITHER ON THE COURT'S OWN MOTION,
22 ORDER THE PARTIES HAVE THE ATTORNEY GENERAL TO COME HERE UNDER
23 OATH AND ANSWER THE QUESTION, WHAT IS IT GOING TO TAKE FOR YOU
24 TO ISSUE -- WHAT IS YOUR ISSUE WITH AB 900?

25 I MEAN, WE CAN'T GET HIM TO DO IT AT THE REQUEST OF

1 THE LEGISLATORS, SO HE SHOULD BE COMPELLED TO COME HERE UNDER
2 SUBPOENA AND TELL US WHY HE HAS BEEN OUT OF ACTION, MISSING IN
3 ACTION ON THE WHOLE ISSUE OF AB 900, AND I THINK ONCE YOU GET AN
4 ANSWER TO THAT QUESTION, ASSUMING HE SAYS, IF I HAD A THROUGH Z,
5 I WOULD BE WILLING TO ISSUE A CLEAN BOND OPINION, THEN THERE ARE
6 NO MORE BUMPS IN THE ROAD, AND ONLY THE LEGISLATURE WILL BE TO
7 BLAME IF IT DOESN'T TAKE THESE REMEDIES INTO EFFECT.

8 **JUDGE REINHARDT:** AFTER WE DO THAT, WE HAVE TO
9 SUBPOENA EACH MEMBER OF THE LEGISLATURE AND FIND OUT WHY THEY
10 DON'T DO THINGS.

11 **JUDGE KARLTON:** RIGHT.

12 **JUDGE REINHARDT:** WE CAN'T OPERATE THAT WAY, I'M
13 AFRAID.

14 **JUDGE KARLTON:** YOU MAY NOT RECALL, BUT A COLLEAGUE
15 OF JUDGE HENDERSON'S AND MYSELF IN LOS ANGELES SAID HE WANTED
16 THE ATTORNEY GENERAL PERSONALLY TO BE PRESENT, AND HE SAID SOME
17 OTHER VERY BAD THINGS, BUT HE SAID THAT AS WELL, AND THAT FELLOW
18 IS NOW ON THE HOUSE JUDICIARY COMMITTEE, THAT FORMER ATTORNEY
19 GENERAL, AND HE'S NEVER FORGOTTEN THAT HE HAD TO GO TO LOS
20 ANGELES BECAUSE SOME CRAZY FEDERAL JUDGE ORDERED HIM TO.

21 **JUDGE REINHARDT:** ANYWAY IT'S -- YOU KNOW, IT'S NOT
22 EASY TO FIND OUT WHO TO BLAME, AND EVERYBODY BLAMES SOMEONE
23 ELSE, BUT THE END RESULT IS THE STATE DOESN'T DO ANYTHING, AND
24 WE CAN'T COME TO A DECISION ON THE BASIS THAT MAYBE POLITICIANS
25 WILL BE MORE INTERESTED IN SAFETY THAN THEY ARE IN ELECTION. WE

1 CAN'T ASSUME THAT, AND WE JUST HAVE TO, YOU KNOW, ASSUME THAT
2 AFTER ALL THESE YEARS WHEN NOBODY HAS ACTUALLY DONE ANYTHING,
3 THAT WE HAVE TO ACT ON THE BASIS THAT NOBODY IS GOING TO DO
4 ANYTHING.

5 AND, AS YOU KNOW, IN ADDITION TO THAT, ALL THESE
6 THINGS DO COST MONEY, ASIDE FROM THE BOND MONEY. EVERYTHING
7 COSTS MONEY. THERE'S NO MONEY TO SPEND FOR ANYTHING THESE DAYS.
8 WE ARE GOING TO CUT EDUCATION. WE ARE GOING TO CUT BASIC RIGHTS
9 TO PEOPLE. BASIC ENTITLEMENTS AND HEALTH WE ARE GOING TO CUT
10 BENEFITS FOR. WHY WOULD ANYBODY THINK THEY ARE GOING TO SPEND
11 MORE MONEY FOR PRISONERS?

12 **THE WITNESS:** YOUR HONOR, THE ANSWER TO THAT QUESTION
13 IS I THINK THAT THE LEGISLATURE HAD THE POLITICAL WILL, BUT JUST
14 LIKE THE COURTS WHO HAS CHARGED MR. KELSO AND OTHER RECEIVERS
15 WITH CERTAIN DUTIES -- AND YOU WANT TO KNOW, FOR EXAMPLE, THERE
16 WAS A CHANGE IN THE RECEIVER, MR. SILLEN AND MR. KELSO, BECAUSE
17 THE COURT AT SOME TIME FELT THEY NEEDED TO MAKE A CHANGE FOR
18 CERTAIN REASONS. SAME THING HERE. THE LEGISLATURE NEEDS TO
19 KNOW IT'S GETTING WHAT IT BARGAINED FOR WHEN IT MAKES ITS VOTE.

20 **JUDGE KARLTON:** YOU KNOW, SIR --

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

22 **JUDGE KARLTON:** -- THE FACT OF THE MATTER IS -- I
23 SHOULDN'T SAY THAT. WE HAVE HAD REPEATED TESTIMONY THAT THE
24 STATE PRISONS ARE CRIMINOGENIC. THEY PRODUCE CRIMINALS. THEY
25 ARE A DANGER TO PUBLIC SAFETY.

1 NOW, IF I WERE A LEGISLATOR AND I WAS TOLD THAT WHAT
2 I WAS RESPONSIBLE FOR IS PRODUCING CRIMINALS, I'D DO SOMETHING
3 ABOUT IT. NOW, I FIND -- I'M SORRY. IT'S NOT YOUR DOING. I
4 MEAN, IT IS YOURS TOO, BUT, YOU KNOW --

5 **JUDGE REINHARDT:** NO MORE THAN ANYONE ELSE'S IN THE
6 LEGISLATURE.

7 I THINK SOME PEOPLE HAVE TRIED HARD AND SOME HAVEN'T,
8 AND YOU KNOW WHO THEY ARE.

9 **MS. WANG:** IF I COULD? IF I MAY, YOUR HONORS?

10 **JUDGE HENDERSON:** PROCEED.

11 **BY MS. WANG**

12 **Q** SO ASSUMING FOR THE MOMENT THAT THE COURT IS SERIOUSLY
13 CONSIDERING ISSUING A PRISONER RELEASE ORDER, WHAT EFFECT WOULD
14 SUCH A MEASURE HAVE ON PUBLIC SAFETY?

15 **A** I'M REALLY CONCERNED ABOUT THE FACT THAT THE INMATES -- NOW
16 I'M BACK IN COURT DEALING WITH A LOT OF THESE INDIVIDUALS WHO
17 HAVE PRISON PRIORS, 667(A) PRIORS, FIVE-YEAR PRIORS
18 667.(5)(B)(1) PRIORS. THEY HAVE BEEN OUT OF THE JOINT. IT'S
19 NOT ALL DRUG POSSESSION. IT'S NOT PEOPLE CHURNING THROUGH
20 BECAUSE THEY KEEP GOING BACK FOR DRUGS. THEY ARE GOING BACK FOR
21 VIOLENT FELONIES AND SERIOUS FELONIES.

22 WHAT I'M VERY CONCERNED ABOUT WHEN WE HAVE THEM AS A
23 CAPTIVE AUDIENCE, WE ARE NOT INFLUENCING THEIR BEHAVIOR. IF YOU
24 LET THEM OUT EARLY, YOU CUT INTO THE TIME YOU TRY TO INFLUENCE
25 THEM.

1 **JUDGE KARLTON:** SIR, THE PROBLEM WITH THAT IS WE HAVE
2 BEEN TOLD REPEATEDLY THERE'S NO SPACE FOR PROGRAMMING WITHIN THE
3 PRISON, SO THEY ARE NOT -- THEY CERTAINLY ARE GETTING AN
4 EDUCATION, BUT IT'S NOT THE EDUCATION THAT SENSIBLE PEOPLE WOULD
5 WANT.

6 **THE WITNESS:** BUT, YOUR HONOR, WE KNOW NOW THE
7 DEPARTMENT OF CORRECTIONS IS CUTTING PAROLE TO 13 MONTHS IN MOST
8 INSTANCES. THE REENTRY FACILITIES WERE SUPPOSED TO GRAB A LOT
9 OF THOSE BODIES AND TAKE THEM INTO THE COMMUNITY WHERE THEY ARE
10 GOING TO BE RELEASED ON PAROLE AND DO WHAT ALL THE MODELS HAVE
11 SHOWN, THAT WHEN YOU ARE BEING TREATED CLOSE TO THE COMMUNITY
12 YOU ARE GOING TO EVENTUALLY BE RETURNED TO AND YOUR FAMILY AND
13 CHILDREN ARE THERE, YOUR PROBABILITY OF SUCCESS IS GREATER. SO
14 I THINK THE MODEL IS A VERY GOOD MODEL.

15 WE ALSO HAVE DONE SUBSTANTIAL NUMBER OF OUT-OF-STATE
16 TRANSFERS. THAT'S HELPED ALLEVIATE A LOT OF THE GYM DAYBEDS SO
17 THAT WE COULD HAVE THAT ROOM. BUT ARE WE THERE YET? OF COURSE
18 NOT.

19 THAT'S WHY I AM SAYING WE NEEDED AB 900, AND WE NEED
20 AB 900 TO GET TO THE POINT WHERE WE DON'T HAVE TO JUST DO A
21 BLANKET RELEASE.

22 I MEAN, L.A. COUNTY UNDER THIS SCENARIO IS LOOKING AT
23 30,000 INMATES AT ONE TIME COMING BACK INTO THAT COMMUNITY. HOW
24 IN THE WORLD IS L.A. COUNTY GOING TO DEAL WITH THAT? IN ONE
25 FELL SWOOP? I MEAN, THE IMPACT ON COUNTIES, EVEN PHASED IN, IS

1 GOING TO BE SUBSTANTIAL.

2 AND AS YOU KNOW, AND AS WE ALL KNOW, SOCIAL SERVICES
3 AND MENTAL HEALTH SERVICES ARE PASSED THROUGH THROUGH
4 REALIGNMENT MONEY. IT'S NOT GENERAL FUND MONEY. IT'S GENERALLY
5 STATE MONEY. IF THE STATE IS NOT GOING TO FUND IT, YOU ARE
6 GOING TO HAVE THOUSANDS OF PAROLEES IN THE COMMUNITY WHO HAVE
7 ABSOLUTELY NO SAFETY NET, AND THEY WILL COMMIT CRIMES. THEY ARE
8 COMMITTING CRIMES, ONE, BECAUSE SOME HAVE A PROPENSITY, IT'S A
9 LIFESTYLE, AND OTHERS BECAUSE THEY ARE RECEIVING NO SERVICES.

10 SO IF WE ARE GOING TO DO IT, WE BETTER FIGURE OUT HOW
11 TO DO IT AND HOW TO DO IT SMART, AND WHAT I'M AFRAID OF IS -- WE
12 HAVE A HORRIBLE TRACK RECORD OF DOING IT SMART. SO THE QUESTION
13 BECOMES, IF WE DO IT -- THAT'S WHY, I KNOW WE CAN'T TALK ABOUT
14 THE SETTLEMENT, BUT I WAS VERY PROUD OF THE WORK WE DID IN THE
15 SETTLEMENT DISCUSSIONS BECAUSE THERE WAS --

16 **JUDGE KARLTON:** AND THAT DIDN'T TAKE EITHER. AB 900
17 HASN'T TAKEN. MR. KELSO'S BEDS HASN'T TAKEN. THE SETTLEMENT
18 HASN'T TAKEN, AND HERE WE ARE.

19 **THE WITNESS:** MR. KELSO'S BEDS, THOUGH, YOUR HONOR,
20 WILL TAKE. THERE ARE THE VOTES FOR IT. WE HAVE NO OBJECTION AS
21 LONG AS WE KNOW WE GET AB 900. I MEAN, I KNOW THE COURT -- I
22 THINK THE COURTS KNOW, AND THE RECORD PROBABLY IS REplete WITH
23 THIS, I MEAN, I'VE WRITTEN EXTENSIVELY ABOUT MY FRUSTRATION
24 DATING BACK A YEAR AND A HALF AGO. IT'S UNACCEPTABLE.

25 I HAVE BEEN ON YOUR TEAM, YOU KNOW, AND I HAVE BEEN

1 TRYING TO DRIVE THIS ISSUE. BUT I KNOW MY COLLEAGUES WILL NOT
2 VOTE -- IT'S KIND OF LIKE THE AUTO BAILOUT. PEOPLE ARE NOT
3 GOING TO VOTE UNTIL THEY KNOW WHAT IT MEANS. WE DON'T KNOW WHAT
4 AB 900 MEANS, AND THE ATTORNEY GENERAL NEEDS TO TELL US HE'S
5 OKAY WITH IT.

6 **JUDGE REINHARDT:** YOU SEE, TO TAKE AUTO BAILOUT, THE
7 PRESIDENT TOLD THE MINORITY WHAT HE WANTED. ALMOST EVERYBODY
8 AGREED, EXCEPT A FEW PEOPLE, YOU KNOW, IN ONE OF THE HOUSES.
9 YOU KNOW, YOU DON'T KNOW THAT WON'T HAPPEN WITH THE PRISONS.
10 YOUR HOUSE WAS REASONABLE ON THE AUTO BAILOUT BILL, THE HOUSE OF
11 REPRESENTATIVES, LIKE THE ASSEMBLY, BUT THEY COULDN'T DELIVER
12 THE SENATE. SO YOU DON'T KNOW WHAT THE SENATE IS GOING TO DO,
13 THE STATE SENATE.

14 **JUDGE KARLTON:** AND YOU DON'T KNOW WHAT EVEN YOUR
15 COLLEAGUES, YOUR PAST COLLEAGUES, WILL DO NOW THAT THE STATE IS
16 IN ABSOLUTE FINANCIAL DISASTER.

17 **JUDGE REINHARDT:** BUT LET ME SAY ONE THING TO YOU,
18 WHATEVER HAPPENS IN THIS TRIAL, WHAT IT'S ALL -- WHEN ALL THE
19 EVIDENCE IS OVER AND THE TESTIMONY IS OVER, OR WE COME TO SOME
20 KIND OF DECISION, THE BEST SOLUTION TO THE PROBLEM AND THE ONE
21 THAT WE WANT IS WHAT YOU TALKED ABOUT.

22 **JUDGE KARLTON:** FOR THE LEGISLATURE --

23 **JUDGE REINHARDT:** WE STILL WANT A SETTLEMENT BETWEEN
24 ALL THE PARTIES WHO ARE INVOLVED IN OUR PRIOR EFFORTS TO GET A
25 SETTLEMENT. I MEAN, THAT'S STILL THE BEST SOLUTION, AND IF YOU

1 HAVE ANY IDEAS -- YOU DON'T HAVE TO TELL THEM NOW, BUT IF YOU
2 HAVE ANY IDEAS ABOUT WHETHER A SETTLEMENT CAN BE BROUGHT ABOUT
3 IN THIS CASE, YOU'LL BE A HERO. YOU'LL BE THE OPPOSITE OF THE
4 PERSON YOU THINK IS PREVENTING THIS FROM GOING FORWARD.

5 **THE WITNESS:** YOUR HONOR, IF I COULD, FOR THE RECORD,
6 I THINK THIS PART -- I JUST WANT TO SAY THIS BEFORE I'M EXCUSED;
7 AND THAT'S THE FOLLOWING: IF THE COURT MAKES AN EARLY RELEASE
8 ORDER, IT ABSOLUTELY PROVIDES THE ULTIMATE EXCUSE FOR THE
9 LEGISLATURE AND THE PUBLIC NOT TO DO ANYTHING.

10 **JUDGE KARLTON:** YOU ARE RIGHT ABOUT THAT.

11 **THE WITNESS:** SO WHAT HAPPENS IS ANY POTENTIAL
12 PROGRESS THAT WE MAY HAVE MADE AND ANY HOPE THAT WE HAVE TO
13 ACTUALLY REFORM CORRECTIONS AND BE A MODEL, AS OPPOSED TO, YOU
14 KNOW, AN EXAMPLE NO ONE WANTS TO FOLLOW, WHICH WE OBVIOUSLY ARE
15 IN THAT STATE TODAY, THEN WE ARE GOING TO LOSE ANY
16 OPPORTUNITY -- WHICH IS WHY I RESPECT THE FACT THAT THE COURT
17 GAVE TIME WHEN I STOOD WHERE MS. WANG IS NOW AND ASKED FOR SOME
18 MORE TIME, AND YOU WERE KIND ENOUGH TO GIVE IT TO ME TO TRY TO
19 CONTINUE TO WORK --

20 **JUDGE KARLTON:** WE WEREN'T BEING KIND. WE THOUGHT,
21 WE STILL THINK, THAT'S THE APPROPRIATE RESULT. WE JUST AT SOME
22 POINT HAVE TO GIVE UP.

23 **THE WITNESS:** IF THE COURT ORDERS THIS, YOUR HONOR,
24 IF THE COURT ORDERS THIS REMEDY, I AM ABSOLUTELY CONFIDENT WE
25 WILL NEVER EVER GET BACK THE PSYCHE OF THINKING OF CORRECTIONS

1 DIFFERENTLY IN THE STATE OF CALIFORNIA, AND WE WILL MOVE AWAY
2 FROM A REHABILITATION MODEL TO A MODEL JUST LIKE YOU SAID, YOUR
3 HONOR, WE GIVE UP, AND WE ARE JUST GOING TO CHURN MORE INMATES
4 IN AND OUT BECAUSE WE ARE GOING TO PUT THEM IN THE SYSTEM. THEY
5 ARE GOING TO GET OUT AND THEY ARE GOING TO DO WHATEVER, AND THEY
6 WILL PROBABLY GO BACK AND THE SYSTEM WILL NEVER IMPROVE.

7 THAT'S WHY I THOUGHT, WOW, WE FINALLY HAVE AN
8 OPPORTUNITY, BUT WE JUST NEED THE RIGHT LEADERSHIP. THERE'S
9 SOME PLAYERS IN THIS ALGORITHM WHO HAVE NOT STEPPED UP TO
10 PARTICIPATE IN THE SIGNIFICANT WAY THAT THEY NEED TO
11 PARTICIPATE, AND I'D IMPLORE THE COURT TO HEAR FROM THEM BEFORE
12 THE COURT ORDERS A REMEDY. I JUST THINK IT'S IMPORTANT TO HEAR
13 FROM SOME OF THE MOST CRITICAL ACTORS WHO CAN ACTUALLY INFLUENCE
14 THIS WHO HAVE BEEN SILENT, AND THAT'S WHY I CAME TODAY TO
15 TESTIFY.

16 **JUDGE REINHARDT:** IT'S CERTAINLY NOT SOLELY THE
17 ATTORNEY GENERAL. I MEAN, I DON'T -- I'M NOT AGREEING OR
18 DISAGREEING WITH YOUR STATEMENTS AS TO HIS RESPONSIBILITY, BUT
19 THERE ARE CERTAINLY A LOT OF OTHER PARTIES THAT ARE GOING TO
20 HAVE TO AGREE TO SOME SOLUTION, AND I DON'T KNOW THAT WE CAN
21 SUBPOENA THEM ALL IN HERE TO DISCUSS IT, BUT WE CAN -- WE'VE
22 GIVEN ONE OPPORTUNITY FOR SETTLEMENT DISCUSSION. MAYBE IF THE
23 PARTIES KNOW THE ALTERNATIVE IS A PRISON RELEASE ORDER AND THAT
24 THAT'S VERY CLEAR, MAYBE WITH A LITTLE MORE DISCUSSION, YOU CAN
25 SOLVE IT. WHAT I THINK YOU'RE SAYING IS SOME OF THE PLAYERS

1 WILL BE HAPPY TO HAVE US DO THAT BECAUSE THEN THEY CAN SAY, ALL
2 RIGHT, THE COURT DID IT, MAYBE THAT'S WHAT THEY WANT. I THINK,
3 IN FACT, I KNOW SOME WHO DO WANT THAT.

4 **THE WITNESS:** I AGREE. I AGREE WITH THAT.

5 **JUDGE HENDERSON:** LET ME ASK A QUESTION, MR. SPITZER,
6 AND I MAY SHOW MY NAIVETE. CERTAINLY IN THE STATE COURT SYSTEM,
7 IF A JUDGE SITS ON A RULING TOO LONG, THEY DON'T GET PAID. IS
8 THERE ANY DEVICE THAT WILL GET THE ATTORNEY GENERAL TO DO WHAT I
9 PERCEIVE IS HIS JOB, WHICH IS TO RENDER AN OPINION ON THE BOND?
10 IS THERE ANYTHING THAT CAN --

11 **THE WITNESS:** YOU KNOW, YOUR HONOR, I'M GLAD YOU
12 ASKED ME THAT QUESTION. I MEAN, I THINK THE ATTORNEY GENERAL
13 HONESTLY IS TRYING TO DO EVERYTHING HE CAN RIGHT NOW TO STAY OUT
14 OF HARM'S WAY ON ANY CONTROVERSIAL ISSUES BECAUSE OF HIS
15 POLITICAL FUTURE AND AMBITION.

16 THIS IS A TOUGH ISSUE. STEPPING UP ON THE
17 CORRECTIONS ISSUE AND TAKING A POSITION IS A HUGE POLITICAL
18 RISK. I MEAN, I'M BACK IN THE DA'S OFFICE. WHEN I TALK ABOUT
19 REENTRY FACILITIES IN MY COMMUNITY IN THE CITY I LIVE IN, I WENT
20 TO THE CITY COUNCIL TO ADVOCATE FOR REENTRY FACILITIES, I
21 THOUGHT THEY WERE GOING TO RUN ME OUT OF TOWN BECAUSE I THINK A
22 REENTRY FACILITY IS THE RIGHT THING TO DO.

23 SO DID I PUT MYSELF IN HARM'S WAY? ABSOLUTELY. BUT
24 ISN'T THAT WHAT THIS IS ALL ABOUT IN THE END, TO TAKE THE RISK?

25 SO I'M NOT SAYING THE ATTORNEY GENERAL HAS TO SAY HE

1 WILL ISSUE A CLEAN BOND OPINION. ALL THE ATTORNEY GENERAL NEEDS
2 TO SAY TO THE LEGISLATURE IS, THESE ARE THE FACTORS I NEED IN
3 THE LEGISLATION FOR THE AB 900 FIX, CLEAN-UP, AND IF IT CONTAINS
4 THESE PROVISIONS, I'M MORE THAN LIKELY OR I'M MORE LIKELY THAN
5 NOT GOING TO ISSUE A BOND OPINION TO WALL STREET SO WE CAN
6 LEVERAGE THESE BONDS. THAT'S ALL WE NEED. THAT'S ALL WE NEED,
7 YOUR HONOR.

8 **MS. WANG:** MR. SPITZER, I JUST HAVE A FEW MORE
9 QUESTIONS TO WRAP UP.

10 **JUDGE HENDERSON:** MORE THAN ONE THOUGH, RIGHT?

11 **BY MS. WANG**

12 **Q** JUST TO BE CLEAR, WHAT IS MARCY'S LAW, OTHERWISE KNOWN AS
13 THE CRIME VICTIMS BILL OF RIGHTS OF 2008?

14 **A** MARCY'S LAW WAS PASSED BY THE VOTERS IN THE LAST GENERAL
15 ELECTION HERE IN THE STATE. THE CONSTITUTION NOW IN THE STATE
16 OF CALIFORNIA HAS BEEN AMENDED. THE PEOPLE OF THE STATE OF
17 CALIFORNIA HAVE NOW SAID IN THE CALIFORNIA CONSTITUTION THAT
18 EARLY RELEASE IS NOT A REMEDY THAT CAN BE USED IN THE STATE OF
19 CALIFORNIA, AND THAT THE LEGISLATURE, BY CONSTITUTIONAL LAW, IS
20 NOW STATUTORILY -- ACTUALLY CONSTITUTIONALLY REQUIRED TO FULLY
21 FUND OUR PRISON SYSTEM IN ORDER TO STOP ANY POTENTIAL EARLY
22 RELEASE, AND THE VOTERS PASSED THAT BY A SEVEN PERCENT MARGIN ON
23 THE NOVEMBER 4TH BALLOT.

24 **MS. WANG:** I GUESS I ONLY HAD ONE FURTHER QUESTION.

25 **JUDGE REINHARDT:** TOO BAD YOU PASSED UP THE CHANCE TO

1 GET A THOUSAND DOLLARS.

2 **MS. WANG:** I KNOW. THANK YOU ANYWAY.

3 **JUDGE KARLTON:** NO, IT'S BEEN WITHDRAWN.

4 **JUDGE HENDERSON:** IT'S BEEN WITHDRAWN.

5 **MS. WANG:** THANK YOU, MR. SPITZER, NO FURTHER
6 QUESTIONS.

7 **JUDGE KARLTON:** STATE DEFENDANTS HAVE ANYTHING?

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

9 **JUDGE HENDERSON:** CROSS-EXAMINATION?

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

11 **JUDGE HENDERSON:** WOULD YOU -- OKAY. THANK YOU VERY
12 MUCH, MR. SPITZER.

13 **MS. FUENTES:** YOUR HONOR, WE SHOULD HAVE MR. GARNER
14 HERE, BUT I WAS WONDERING IF WE COULD TAKE A BREAK FIRST.

15 **JUDGE HENDERSON:** OKAY. WE'LL TAKE A 15-MINUTE
16 RECESS.

17 (RECESS TAKEN.)

18 **MS. FUENTES:** THE DEFENDANT INTERVENORS CALL
19 MR. ROBERT GARNER TO THE STAND.

20 **ROBERT GARNER,**
21 CALLED AS A WITNESS FOR THE DEFENDANT INTERVENORS HEREIN,
22 HAVING BEEN FIRST DULY SWORN, WAS EXAMINED AND TESTIFIED AS
23 FOLLOWS:

24 **THE WITNESS:** I DO.

25 **THE CLERK:** PLEASE HAVE A SEAT.

1 STATE AND SPELL YOUR FULL NAME FOR THE RECORD.

2 **THE WITNESS:** MY NAME IS ROBERT GARNER, R-O-B-E-R-T,
3 G-A-R-N-E-R.

4 **DIRECT EXAMINATION**

5 **BY MS. FUENTES:**

6 **Q.** MR. GARNER, WHERE ARE YOU CURRENTLY EMPLOYED?

7 **A.** SANTA CLARA COUNTY.

8 **Q.** AND WHAT IS YOUR POSITION THERE?

9 **A.** I'M DIRECTOR OF THE DEPARTMENT OF ALCOHOL AND DRUG SERVICES.

10 **Q.** HOW LONG HAVE YOU HAD THAT POSITION?

11 **A.** AS IT'S EVOLVED, ABOUT 38 YEARS.

12 **Q.** CAN YOU BRIEFLY DESCRIBE YOUR EDUCATION AND PROFESSIONAL
13 BACKGROUND?

14 **A.** YES. I HAVE A B.A. FROM STANFORD UNIVERSITY AND OVER THE
15 COURSE OF THE 38 YEARS HAVE TAKEN A LOT OF CLASSES AND COURSES,
16 BUT THERE IS NO ADVANCED DEGREE. JUST THE TRAINING AS A
17 PROFESSION.

18 **Q.** AND WHAT POSITIONS HAVE YOU HAD IN THE COUNTY OF SANTA
19 CLARA?

20 **A.** WELL, IT STARTED WITH JUST BEING AN ANALYST IN THE COUNTY
21 EXECUTIVE'S OFFICE. I WAS ASSIGNED TO THIS AREA OF DRUG ABUSE
22 COORDINATION, THAT EVOLVED INTO WHAT IT IS TODAY, WHICH ALCOHOL
23 AND DRUG COMBINED.

24 FOR A SHORT TIME I WAS THE COUNTY'S ADMINISTRATOR
25 GUARDIAN, THE PUBLIC ADMINISTRATOR GUARDIAN FOR ABOUT A YEAR AND

1 A HALF, AND I STARTED AND FOR A SHORT TIME HEADED THE OFFICE OF
2 CRIMINAL JUSTICE PLANNING FOR THE COUNTY.

3 **Q.** ARE YOU CURRENTLY INVOLVED WITH ANY PROFESSIONAL
4 ASSOCIATIONS?

5 **A.** YES. THERE'S THE STATE ASSOCIATION OF COUNTY AND ALCOHOL
6 AND DRUG PROGRAM ADMINISTRATORS, WHICH IS THE OFFICIAL STATE
7 TITLE OF MY JOB.

8 **Q.** OKAY. HOW MANY DRUG AND ALCOHOL CLIENTS DOES THE COUNTY
9 SERVE THROUGH YOUR DEPARTMENT?

10 **A.** IT'S ABOUT 8,000 A YEAR.

11 **Q.** DOES THE COUNTY HAVE A DRUG TREATMENT COURT?

12 **A.** YES, IT DOES. IT HAS SEVERAL OF THEM.

13 **Q.** CAN YOU EXPLAIN THOSE, PLEASE?

14 **A.** YES. IT'S A STANDARD MODEL WHERE UNDER THE LAW THERE, IT'S
15 POSSIBLE FOR THE COURT TO HAVE DIVERSION FROM INCARCERATION INTO
16 TREATMENT AND OTHER ACTIVITIES. IF THE CLIENT ATTENDS AND IS
17 SUCCESSFUL, HE WOULD ESSENTIALLY DISCHARGE HIS OBLIGATION.

18 WE HAVE STAFF IN THESE COURTS. WE DO THE
19 ASSESSMENTS. THEY ARE ALL DIFFERENT. THERE'S WHAT'S CALLED
20 PROPOSITION 36 COURT. THAT'S A SPECIFIC STATE LAW THAT HAS
21 CERTAIN REQUIREMENTS. THERE IS A DRUG DEPENDENCY COURT THAT'S
22 LINKED TO THE CHILD WELFARE SYSTEM. THERE IS A MENTAL HEALTH
23 COURT FOR INDIVIDUALS WHO HAVE AN ALCOHOL, DRUG AND MENTAL
24 HEALTH PROBLEM, THINGS LIKE THAT.

25 **Q.** AND ARE THESE COURTS GENERALLY DIVERSIONARY FROM KEEPING

1 PEOPLE OUT OF COUNTY JAIL?

2 **A.** YES, THEY ARE.

3 **Q.** AND DO YOU KNOW HOW MANY OF THE 8,000, APPROXIMATELY,
4 CLIENTS THAT YOU HAVE COME FROM THOSE COURTS?

5 **A.** I DON'T KNOW HOW MANY COME FROM THE COURTS, BUT WE HAVE OVER
6 70 PERCENT ARE CLIENTS WHO ARE IN SOME WAY A CRIMINAL JUSTICE
7 LINK. THEY ARE EITHER FROM THE DRUG COURT OR THEY HAVE SOME
8 KIND OF A CRIMINAL JUSTICE OBLIGATION. THEY ARE ON PROBATION OR
9 PAROLE OR SOMETHING LIKE THAT.

10 **Q.** DOES THE COUNTY PROVIDE SERVICES TO PAROLEES?

11 **A.** YES, WE DO.

12 **Q.** AND HOW ELSE ARE CLIENTS -- HOW ELSE DO CLIENTS COME TO YOU
13 FROM THE CRIMINAL JUSTICE IF THEY DON'T COME FROM THE COURTS?

14 **A.** YOU MAY HAVE A CLIENT ON PROBATION AND THE PROBATION
15 DEPARTMENT STRONGLY RECOMMENDS THAT THEY ENGAGE IN TREATMENT.

16 YOU MIGHT HAVE SOMEONE WHO IS ON STATE PAROLE, BUT
17 NOT COMING THROUGH A PAROLE PROGRAM. SO THERE ARE LOTS OF WAYS
18 OUTSIDE OF HAVING A SPECIFIC REFERRAL FROM THE COURT.

19 **Q.** AND HOW MUCH IS YOUR DEPARTMENT'S BUDGET?

20 **A.** JUST OVER \$50 MILLION.

21 **Q.** HAVE YOU HAD ANY CUTS THIS YEAR?

22 **A.** YES. WE HAD ONE IN MID YEAR AS A RESULT OF THE STATE BUDGET
23 BEING LATE OF ABOUT 800,000 AND IN THE UPCOMING YEAR THAT STARTS
24 JULY 1 WE HAVE A REDUCTION TARGET OF \$9 MILLION.

25 **Q.** THAT'S FOR FISCAL YEAR 2010?

1 **A.** YES.

2 **Q.** GENERALLY, WHAT KIND OF SERVICES DOES YOUR DEPARTMENT
3 PROVIDE?

4 **A.** IT PROVIDES A WHOLE CONTINUUM OF SERVICES BEGINNING ON ONE
5 SIDE WITH PREVENTION -- WHAT IS KNOWN AS PREVENTION,
6 SCHOOL-BASED AND COMMUNITY-BASED, THINGS LIKE THAT.

7 IT HAS WHAT'S CALL EARLY INTERVENTION, SORT OF THE
8 INITIAL SIGNS OF DRUG USE AND TRYING TO INVOLVE YOURSELVES EARLY
9 SO IT DOESN'T PROGRESS.

10 A RANGE OF TREATMENT, EVERYTHING FROM WHAT'S CALLED
11 LOW LEVEL, MAYBE OUTPATIENT COUNSELING, LOW LEVEL COUNSELING ON
12 THROUGH RESIDENTIAL TREATMENT, METHADONE MAINTENANCE. WE HAVE
13 SPECIALTY PROGRAMS FOR PREGNANT ADDICTS, PARENTING ADDICTS,
14 ADOLESCENT TREATMENT AND THINGS LIKE THAT.

15 **Q.** HOW ARE THESE SERVICES PAID FOR?

16 **A.** A VARIETY OF FUNDING SOURCES; MOST OF THEM PUBLIC, STATE AND
17 FEDERAL WITH SOME COUNTY GENERAL FUND. SMALL AMOUNT OF
18 INSURANCE AND CLIENT FEES.

19 **Q.** AND WHAT ABOUT THE FUNDING FOR THOSE PROGRAMS?

20 **A.** EXCUSE ME?

21 **Q.** WHERE DOES THE FUNDING COME FROM FOR THOSE PROGRAMS?

22 **JUDGE KARLTON:** THAT'S WHAT HE JUST SAID.

23 **A.** STATE AND FEDERAL AND COUNTY, AND THEN SOME CLIENT FEES,
24 VERY LITTLE INSURANCE.

25

1 **BY MS. FUENTES:**

2 **Q.** AND FROM THE STATE AND THE FEDERAL WHAT DO THEY FUND? IS
3 THERE ANYTHING IN PARTICULAR?

4 **A.** SOMETIMES THEY ARE SPECIFIC GRANTS FOR THINGS. THERE IS A
5 GRANT, FOR EXAMPLE, THAT FUNDS A PART OF A SPECIFIC DRUG COURT.
6 THE FEDERAL MONEY COMES IN A BLOCK GRANT AND PARTS OF THE BLOCK
7 GRANT WILL BE FOR, AS AN EXAMPLE, PREVENTION OR HIV SERVICES,
8 AND A CERTAIN PART OF ALL THAT FUNDING IS DISCRETIONARY.

9 **JUDGE REINHARDT:** WHAT PERCENTAGE ROUGHLY COMES FROM
10 THE STATE?

11 **THE WITNESS:** I'M GOING TO HAVE TO GUESS --

12 **JUDGE KARLTON:** NOT GUESS, YOUR BEST ESTIMATE.

13 **THE WITNESS:** THANK YOU. I'M SORRY. MY BEST
14 ESTIMATE IS SIX TO EIGHT MILLION OF THE FIFTY.

15 **JUDGE REINHARDT:** THANK YOU.

16 **BY MS. FUENTES:**

17 **Q.** AND WHAT PERCENTAGE OF YOUR BUDGET IS THAT?

18 **A.** TWELVE TO WHATEVER TIMES TWO WOULD BE.

19 **Q.** AND HOW MUCH OF YOUR BUDGET IS COUNTY DISCRETIONARY FUNDS,
20 DO YOU KNOW?

21 **A.** WE HAVE ABOUT \$20 MILLION OF THE 50 MILLION IS COUNTY
22 GENERAL FUND.

23 **Q.** AND DO YOU KNOW WHAT THE BULK OF THAT MONEY PAYS FOR IN YOUR
24 DEPARTMENT?

25 **A.** WELL, WE USE IT ACROSS ALL OF THE SERVICES. SO I CAN'T

1 REALLY ANSWER THAT ANY MORE SPECIFICALLY THAN THAT.

2 **Q.** DOES THE COUNTY -- WHAT IS THE COUNTY'S CURRENT CAPACITY TO
3 PROVIDE DRUG AND ALCOHOL SERVICES TO PEOPLE WHO NEED THEM?

4 **A.** WELL, AS I SAY, WE TREAT ABOUT 8,000 CLIENTS A YEAR. WE
5 HAVE WAITING LISTS IN ALL OF THE TREATMENT MODALITIES.

6 WE DON'T REALLY CONSCIOUSLY TURN PEOPLE AWAY. WHAT
7 HAPPENS IS IF THEY CAN'T GET IN, THEY DON'T STAY AND KEEP
8 TRYING. SO -- BUT WE ACTUALLY SEE 8,000 A YEAR ROUGHLY.

9 **Q.** CAN YOU EXPLAIN THAT A LITTLE BIT? YOU SAY THEY COME IN,
10 BUT THEY KEEP TRYING?

11 **A.** SURE. WE HAVE WAITING LISTS FOR THOSE WHO APPLY AND ARE --
12 WE AREN'T ABLE TO ACTUALLY ACCEPT THEM IN THE MOMENT. BUT
13 ADDICTION AND DEPENDENCE IS A CHRONIC AND RELAPSING BRAIN
14 DISEASE, AND THESE ARE CLIENTS WHO ARE NOT HIGHLY MOTIVATED TO
15 START WITH.

16 SO TO BE ON A WAITING LIST AND STAY THERE, THEY HAVE
17 TO CALL IN REGULARLY, FOR EXAMPLE, AND THEY AREN'T REAL GOOD AT
18 THAT. SO THEY GET LOST AND THE WORD GETS OUT THAT YOU CAN'T GET
19 IN OR THEY TRY OUR PHONE SYSTEM AND CAN'T GET THROUGH AND THEN
20 THEY STOP TRYING.

21 SO MY GUESS IS THAT, YOU KNOW, WHEN YOU LOOK AT THE
22 WAITING LIST, IT'S THE WAITING LIST OF THOSE WHO ARE STRONG
23 ENOUGH OR HAVE ENOUGH INCENTIVE TO WANT TO KEEP TRYING UNTIL
24 THEY GET IN. AND MY GUESS IS THOSE NEEDING IT WHO AREN'T IN IS
25 A GREATER NUMBER.

1 Q. AND WHAT HAPPENS TO THE PEOPLE WHO DON'T PUT THEMSELVES ON
2 THE WAITING LIST? WHAT DO THEY DO, DO YOU KNOW?

3 A. WELL, IT'S, YOU KNOW, A CHRONIC RELAPSE IN CONDITION AND IT
4 GETS WORSE WITHOUT TREATMENT. AND SO I WOULD SAY FOR THE VAST
5 MAJORITY OF THEM WHO CONTINUE TO USE, THEY GET WORSE IN THEIR
6 ADDICTION.

7 THEY CERTAINLY ARE IN RISK OF ARREST BECAUSE IT'S A
8 CRIMINAL ACT BY DEFINITION. THEY AREN'T TAKING CARE OF
9 THEMSELVES, SO YOU GET A WHOLE RANGE OF ATTENDANT HEALTH
10 PROBLEMS; THINGS LIKE THAT.

11 Q. DO YOU KNOW IF THE COUNTY'S JAIL POPULATION HAS BEEN REDUCED
12 AT ALL IN LIGHT OF THE DIVERSIONARY DRUG COURT PROGRAMS THAT WE
13 JUST DISCUSSED?

14 A. YES. ACTUALLY, AFTER PROPOSITION 36, WHICH WAS A STATE
15 INITIATIVE FOR ESSENTIALLY DRUG DIVERSION FROM JAIL, WE WERE
16 ABLE TO SHOW, AND I THINK EVERYONE IN THE CRIMINAL JUSTICE
17 SYSTEM AGREED, THAT THE JAIL POPULATION HAD BEEN REDUCED ABOUT
18 21 PERCENT AS A RESULT OF THAT.

19 AND THERE WERE -- THERE WERE OTHER DIVERSION PROGRAMS
20 GOING ON. SO IT'S HARD TO ISOLATE IT, BUT I THINK THERE WAS
21 COMMON AGREEMENT THAT WAS THE CAUSE OF IT.

22 Q. SO DO YOU THINK THE PROPOSITION 36 PROGRAM IN SANTA CLARA
23 COUNTY IS SUCCESSFUL?

24 A. I THINK SO.

25 Q. HOW MUCH FUNDING DO YOU RECEIVE FROM THE STATE FOR YOUR

1 PROPOSITION 36 PROGRAM?

2 **A.** ABOUT 6 MILLION A YEAR. ABOUT A QUARTER OF THAT AND A
3 LITTLE MORE GOES TO PROBATION AND THE REST GOES INTO TREATMENT.

4 **Q.** IS THAT ENOUGH TO SERVE ALL THE CLIENTS THAT ARE ELIGIBLE
5 FOR PROP 36?

6 **A.** NO. WE HAVE TO SPEND A GREAT DEAL MORE THAN THAT. LAST I
7 CHECKED IT WAS ABOUT \$8 MILLION OF MONEY FROM OUR OTHER FUNDING
8 SOURCES TO TREAT PROPOSITION 36 CLIENTS, BECAUSE THE PROP 36
9 FUNDING WASN'T ADEQUATE TO MEET THEIR NEEDS.

10 **Q.** DOES THE COUNTY HAVE THE ABILITY TO PROVIDE IMMEDIATE
11 TREATMENT TO PRISONERS WHO MAY BE RELEASED UNDER A PRODUCT?

12 **A.** I'M SORRY. I COULDN'T HEAR ALL THAT.

13 **Q.** YOU ARE AWARE THAT THIS COURT IS CONSIDERING WHETHER TO
14 ISSUE A PRISONER RELEASE ORDER, CORRECT?

15 **A.** YES.

16 **Q.** WOULD THE COUNTY IMMEDIATELY BE ABLE TO PROVIDE TREATMENT TO
17 PRISONERS WHO ARE SUBJECT TO THAT RELEASE?

18 **A.** NO.

19 **Q.** WHY NOT?

20 **A.** AS I SAID, WE ARE FULL AND HAVE WAITING LISTS. SO UNLESS
21 THERE ARE RESOURCES TO EXPAND TREATMENT, THEY WOULD HAVE TO GET
22 IN LINE, WAIT.

23 **Q.** DO YOU BELIEVE THAT THE INABILITY OF THE COUNTY TO
24 IMMEDIATELY TREAT THE INDIVIDUALS WOULD POSE A RISK TO PUBLIC
25 SAFETY?

1 **A.** I THINK SO. FROM MY EXPERIENCE, THESE INDIVIDUALS -- THIS
2 IS A POPULATION THAT'S HEAVILY INVOLVED IN CRIMINAL ACTIVITY.
3 NOT JUST THE CRIME OF DRUG USE AND RELATED THINGS, BUT THE CRIME
4 RELATED TO THAT, WHICH IS PROPERTY CRIME PRIMARILY AND THINGS
5 LIKE THAT. SO THEY ARE CERTAINLY AT RISK FOR REARREST.

6 **Q.** DID YOU FORM AN OPINION AS TO WHAT IMPACT, IF ANY, A
7 PRISONER POPULATION REDUCTION WOULD HAVE ON THE COUNTY OF SANTA
8 CLARA?

9 **A.** YES. IF THEY END UP IN THE COUNTY, FROM ALL OF THE EVIDENCE
10 I HAVE SEEN AND HAVING TALKED TO OFFICIALS, IT'S, AGAIN, ABOUT
11 TWO-THIRDS, OR 70 PERCENT, OF THE INMATE POPULATION HAVE SERIOUS
12 DRUG AND ALCOHOL PROBLEMS. SO WHATEVER NUMBER COMES TO THE
13 COUNTY, THAT PERCENTAGE, I WOULD EXPECT, TO BE ACTIVELY USING
14 AND WOULD BE AT RISK AS I DESCRIBED.

15 **Q.** WHAT PERCENTAGE -- IN YOUR OPINION, WHAT PERCENTAGE OF
16 PEOPLE BEING RELEASED FROM JAIL WOULD HAVE SUBSTANCE ABUSE OR
17 DRUG ABUSE PROBLEMS?

18 **JUDGE KARLTON:** FROM JAIL OR FROM PRISON?

19 **A.** FROM PRISON?

20 **BY MS. FUENTES:**

21 **Q.** FROM PRISON, YES.

22 **MR. SANGSTER:** OBJECTION. PERSONAL KNOWLEDGE,
23 EXPERTISE.

24 **BY MS. FUENTES:**

25 **Q.** IF YOU KNOW. DO YOU KNOW?

1 **A.** NO, I DON'T KNOW. NO ONE DOES.

2 **Q.** DO YOU HAVE AN OPINION AS TO WHAT PERCENTAGE OF INDIVIDUALS
3 RELEASED FROM PRISON WOULD HAVE -- WOULD HAVE SUBSTANCE ABUSE OR
4 DRUG ABUSE PROBLEMS?

5 **MR. SANGSTER:** LACKS FOUNDATION. PERSONAL KNOWLEDGE.
6 EXPERTISE.

7 **JUDGE REINHARDT:** DIDN'T HE JUST ASK IF HE KNEW.

8 **JUDGE KARLTON:** THAT'S THE SAME QUESTION I THINK.

9 **JUDGE HENDERSON:** HOW DOES THAT DIFFER FROM THE
10 PREVIOUS QUESTION?

11 **MS. FUENTES:** I'M ASKING HIM IF HE KNOWS BASED ON HIS
12 OPINION, HIS EXPERTISE.

13 **JUDGE HENDERSON:** WELL, HOW DOES IT DIFFER FROM THE
14 PREVIOUS QUESTION OF WHETHER HE KNEW?

15 **BY MS. FUENTES:**

16 **Q.** ALL RIGHT. WELL, LET'S ASK IT THIS WAY.

17 DO YOU KNOW IN THE COUNTY JAIL WHAT PERCENTAGE OF
18 INDIVIDUALS HAVE SUBSTANCE ABUSE PROBLEMS?

19 **A.** ABOUT 70 PERCENT.

20 **Q.** AND DO YOU HAVE ANY REASON TO BELIEVE THAT THAT WOULD BE THE
21 SAME PERCENTAGE IN THE STATE PRISON POPULATION?

22 **JUDGE KARLTON:** THAT --

23 **A.** I'M ASSUMING IT WOULD BE THE SAME. A CRIMINAL JUSTICE
24 POPULATION GENERALLY IS ABOUT THAT FIGURE.

25 **MR. SANGSTER:** MOVE TO STRIKE. NONRESPONSIVE.

1 SPECULATION.

2 **JUDGE HENDERSON:** I'M GOING TO ALLOW IT. IT GOES TO
3 THE WEIGHT OF HIS BELIEF AND EXPERIENCE.

4 **BY MS. FUENTES:**

5 **Q.** SO THE PLAINTIFFS HAVE BEEN PROPOSING A RELEASE OF 52,000
6 PRISONERS OVER A PERIOD OF TWO YEARS. IF 52,000 WERE RELEASED
7 OVER A PERIOD OF TWO YEARS AND LET'S ASSUME 70 PERCENT OF THOSE
8 HAD SUBSTANCE ABUSE PROBLEMS, WOULD THE COUNTY BE ABLE TO
9 PROVIDE SERVICES TO THOSE INDIVIDUALS?

10 **JUDGE REINHARDT:** TO ALL 52,000?

11 **JUDGE KARLTON:** HE ALREADY SAID THAT THE ANSWER IS NO
12 TO ANY NUMBER.

13 **A.** THE ANSWER IS NO.

14 **JUDGE KARLTON:** HOW MANY TIMES DO YOU WANT TO ASK
15 THAT QUESTION, COUNSEL, BEFORE YOU CAUSE THE COURT TO SAY
16 SOMETHING UNPLEASANT.

17 **MS. FUENTES:** WELL, THANK YOU. YOU ANSWERED THE
18 QUESTION FOR HIM.

19 **BY MS. FUENTES:**

20 **Q.** THE ANSWER IS NO?

21 **A.** YES.

22 **Q.** OKAY.

23 **A.** YES, THE ANSWER IS NO.

24 **JUDGE HENDERSON:** AND IT WAS NO EARLIER WHEN SHE
25 ASKED YOU THE SAME QUESTION, RIGHT?

1 **BY MS. FUENTES:**

2 **Q.** AND, IN YOUR OPINION, IF THE COUNTY HAD TO PROVIDE -- THERE
3 ARE CERTAIN MANDATED SERVICES THAT HAVE TO BE PROVIDED TO
4 CRIMINAL JUSTICE OFFENDERS, IS THAT RIGHT?

5 **A.** THERE'S SOME, YES.

6 **Q.** AND WHAT ARE THOSE MANDATED SERVICES?

7 **A.** THERE IS A MANDATE UNDER PROPOSITION 36 THAT ANY CLIENT WHO
8 IS ELIGIBLE HAS TO BE OFFERED TREATMENT, AND SO THAT'S A
9 MANDATED SERVICE.

10 THE OTHER MANDATES ARE REALLY TIED TO GRANTS WHERE
11 THERE'S A FUNDING REQUIREMENT. THE FUNDING IS FOR A SPECIFIC
12 POPULATION OR A SPECIFIC SERVICE.

13 **Q.** DOES THE COUNTY ALSO SERVE PEOPLE WHO ARE NOT CRIMINAL
14 JUSTICE OFFENDERS?

15 **A.** YES.

16 **Q.** AND WOULD THERE BE ANY IMPACT TO THOSE PEOPLE'S ABILITY TO
17 OBTAIN SERVICES IF THE COUNTY WERE TO PROVIDE SERVICES -- DEVOTE
18 ITS RESOURCES MORE TO CRIMINAL JUSTICE OFFENDERS?

19 **A.** YES. TO THE EXTENT THAT MORE OF THE CLIENTS ARE CRIMINAL
20 JUSTICE CLIENTS AND COMPETING FOR A FIXED NUMBER OF TREATMENT
21 SLOTS, THEN THOSE WHO ARE NOT CRIMINAL JUSTICE CLIENTS WOULD
22 HAVE A HARDER TIME GETTING IN.

23 **Q.** WHAT IF THERE WERE A POPULATION CAP IMPOSED ON THE STATE
24 PRISON AND THE COUNTY JAILS WERE NOT ABLE TO SEND PRISONERS TO
25 THE STATE PRISON. WOULD THAT HAVE ANY IMPACT ON YOUR DRUG AND

1 ALCOHOL DEPARTMENT?

2 **A.** YES, IT WOULD. BECAUSE THEN YOU WOULD HAVE A SITUATION
3 WHERE ACTIVELY USING DRUG ADDICTS WHO ARE ARRESTED STAY ON THE
4 STREET BASICALLY OR THEY END UP IN A COUNTY JAIL SITUATION.
5 THEN WE GET, YOU KNOW, DIVERSION FROM OUR OWN COUNTY SYSTEM.
6 BUT IF WE DON'T HAVE RESOURCES, THEN THEY AREN'T IN TREATMENT.

7 **Q.** THANK YOU.

8 **A.** YOU ARE WELCOME.

9 **THE COURT:** ANYTHING FROM STATE DEFENDANTS?

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

11 **THE COURT:** OKAY. CROSS-EXAMINATION.

12 **CROSS EXAMINATION**

13 **BY MR. SANGSTER:**

14 **Q.** ED SANGSTER FOR THE PLAINTIFFS.

15 MR. GARNER, I WANT TO FOCUS ON THE 70 PERCENT FIGURE.

16 **MR. SANGSTER:** AND JUST FOR THE COURTS' INFORMATION,
17 I'M GOING TO CROSS EXAMINE HIM ON ONE ISSUE THAT WAS NOT COVERED
18 IN DIRECT, BUT IS PART OF THE DECLARATION THAT WAS SUBMITTED.

19 **JUDGE HENDERSON:** OKAY.

20 **BY MR. SANGSTER:**

21 **Q.** YOU TALKED ABOUT 70 PERCENT OF THE PEOPLE COMING OUT OF
22 PRISON HAVING DRUG AND ALCOHOL PROBLEMS, AND YOUR ESTIMATES WERE
23 BASED ON THAT 70 PERCENT FIGURE, CORRECT?

24 **A.** YES.

25 **Q.** THESE ARE THE MONETARY ESTIMATES OF HOW MUCH IT WOULD COST

1 THE COUNTY?

2 **A.** YES.

3 **Q.** DO YOU KNOW WHAT PERCENTAGE OF INMATES COMING OUT OF THE
4 PRISON CURRENTLY USE YOUR AGENCY'S SERVICES?

5 **A.** CURRENTLY COMING OUT? I DON'T KNOW.

6 **Q.** WELL, DO YOU HAVE -- DO YOU KNOW WHAT PERCENTAGE OF THE
7 PEOPLE COMING OUT OF THE PRISONS AT THIS POINT ARE USING YOUR
8 AGENCY'S SERVICES?

9 **JUDGE KARLTON:** HE JUST SAID NO.

10 **MR. SANGSTER:** HE SAID HE DIDN'T KNOW THE NUMBER, SO
11 I'M ASKING.

12 **A.** NO.

13 **JUDGE HENDERSON:** YOUR FIRST QUESTION WAS WHAT
14 PERCENTAGE COMING OUT. THE SECOND ONE WAS WHAT?

15 **MR. SANGSTER:** I INTENDED TO ASK AS A FIRST QUESTION
16 WHAT NUMBER, AND I GUESS I DIDN'T AND ASKED TWO QUESTIONS THE
17 SAME. SO I APOLOGIZE.

18 **BY MR. SANGSTER:**

19 **Q.** YOUR COST ESTIMATE IS BASED ON CERTAIN ASSUMPTIONS ABOUT THE
20 TIMING OF THE RELEASE?

21 **A.** YES AND NO. THE COST IS BASED ON THE ACTUAL COST OF
22 TREATING A CRIMINAL JUSTICE POPULATION IN THE COUNTY. IF IT'S
23 TIED TO THE STATE RELEASE, THEN YOU ARE RIGHT, I DON'T KNOW HOW
24 MANY AT ANY GIVEN TIME. SO IN THAT SENSE THE ANSWER IS NO. I
25 WOULDN'T KNOW.

1 Q. DO YOU KNOW WHETHER THE LENGTH OF TIME SERVED IN STATE
2 PRISONS EFFECTS THE NEED FOR SERVICES BY YOUR AGENCY WHEN THE
3 PEOPLE ARE RELEASED?

4 A. NO, I DON'T KNOW.

5 Q. IS IT TRUE THAT THE COSTS THAT YOUR AGENCY WILL INCUR AS A
6 RESULT OF TREATING PAROLEES WILL BE INCURRED AT SOME POINT
7 ANYWAY REGARDLESS OF WHEN THEY ARE RELEASED?

8 A. I DON'T KNOW THAT. I'M ASSUMING A CERTAIN NUMBER WOULD END
9 UP IN YOUR SYSTEM OVER TIME ANY WAY, YES.

10 Q. DO YOU HAVE ANY REASON TO BELIEVE THE PERCENTAGE, WHATEVER
11 IT IS, WOULD BE DIFFERENT IF THIS COURT REDUCED THE PRISONERS
12 SENTENCES BY THREE MONTHS?

13 A. I DON'T KNOW.

14 Q. YOU TALKED IN YOUR DECLARATION ABOUT CERTAIN FINANCIAL
15 IMPACTS TO THE COUNTY, AND I WANT TO ASK YOU A LITTLE BIT MORE
16 ABOUT THE REIMBURSEMENTS.

17 YOU SAID YOU GOT \$6 MILLION TO \$8 MILLION FROM THE
18 STATE. HOW MUCH DO YOU GET FROM THE FEDERAL GOVERNMENT?

19 A. THE COUNTY IS ABOUT 20 MILLION AND IF THE STATE IS SIX TO
20 EIGHT -- I'D HAVE TO LOOK AT THE NUMBERS, YOU UNDERSTAND THAT'S
21 AN OPINION -- SO THE REST IS A COMBINATION OF FEDERAL AND THEN
22 FEES AND INSURANCE.

23 Q. AND DOES THE COUNTY GET ANY REIMBURSEMENTS FROM THE STATE
24 FOR PROVIDING SERVICES TO PAROLEES?

25 A. YES. THERE IS STATE PROGRAM UNDER STATE PAROLE IN THE BAY

1 AREA. IT'S CALLED THE BAY AREA SERVICES NETWORK, WHERE WE HAVE
2 A CONTRACT WITH STATE PAROLE, ROUGHLY \$1 MILLION. THEY SEND US
3 THE CLIENTS WHO ARE ON PAROLE AND WE PROVIDE THE TREATMENT WITH
4 THOSE FUNDS.

5 **Q.** SO WHAT PERCENTAGE OF THE MONEY THAT YOU SPEND TREATING
6 PAROLEES NOW GETS REIMBURSED BY THE STATE?

7 **A.** ALL I'M SURE OF -- ALL I KNOW ABOUT THAT AMOUNT OF ROUGHLY
8 \$1 MILLION THAT'S INVOLVED IN THE CONTRACT WITH PAROLE.

9 WHAT I DO NOT KNOW IS HOW MANY PEOPLE ON PAROLE JUST
10 COME INTO THE SYSTEM.

11 **JUDGE KARLTON:** SETTING ASIDE THOSE FOLKS WHO WANDER
12 IN, CAN YOU TELL US WHAT PERCENTAGE OF THE COST OF TREATING
13 THOSE PERSONS IN THIS BAY AREA SYSTEM IS PAID FOR BY THE STATE?

14 **THE WITNESS:** ALL OF THE BASIC CLIENTS ARE STATE
15 FUNDED. THEY'RE A STATE PAROLE CONTRACT.

16 **JUDGE KARLTON:** SO 100 PERCENT.

17 **THE WITNESS:** YES.

18 **BY MR. SANGSTER:**

19 **Q.** WHEN YOU WERE PROVIDING THE COURT WITH AN ESTIMATE OF THE
20 FINANCIAL IMPACT ON THE COUNTY, WERE YOU TAKING INTO ACCOUNT THE
21 FACT THAT THE COUNTY CURRENTLY GETS REIMBURSED FOR SERVICES
22 PROVIDED TO PAROLEES?

23 **A.** YES. I LOOKED AT THE TOTAL COST. IT WASN'T A REVENUE
24 ISSUE. IT'S WHAT IS THE COST OF PROVIDING TREATMENT IN SANTA
25 CLARA COUNTY. AND WE DIVIDED IT BY THE NUMBER OF TREATMENT

1 EPISODES AND THEN WE GET A COST PER TREATMENT EPISODE. THAT'S
2 HOW I ARRIVED AT IT.

3 **Q.** I'M STILL TRYING TO DRILL DOWN A LITTLE BIT AND FIGURE OUT,
4 THAT'S THE TOTAL COST. SO THAT -- BUT THE COUNTY GETS
5 REIMBURSED A PORTION OF THAT TOTAL COST?

6 **JUDGE KARLTON:** THE COUNTY GETS 100 PERCENT OF THE
7 PEOPLE ON THE STATE CONTRACT.

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

9 **JUDGE KARLTON:** AND AS TO OTHER PEOPLE THAT YOU MAY
10 BE TREATING, YOU DON'T KNOW WHO THEY ARE, YOU DON'T KNOW HOW
11 MANY, IF ANY.

12 **THE WITNESS:** I THINK WE HAVE TWO DIFFERENT ISSUES.
13 ONE IS THE COST ISSUE, WHICH I EXPLAINED HOW WE
14 ARRIVED AT THAT. WHO PAYS FOR IT? IN THIS CASE UNDER BASIN
15 IT'S 100 PERCENT STATE FUNDING THROUGH STATE PAROLE.

16 **BY MR. SANGSTER:**

17 **Q.** ALL RIGHT. SO THE STATE PAYS FOR THE PAROLEES THAT YOU
18 TREAT?

19 **A.** UNDER THAT CONTRACT, YES.

20 **MR. SANGSTER:** NO FURTHER QUESTIONS.

21 **THE COURT:** ANYTHING FROM CCPOA?

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

23 **THE COURT:** REDIRECT?

24 **MS. FUENTES:** NO, YOUR HONOR. I HAVE NO REDIRECT.

25 **JUDGE HENDERSON:** OKAY. THANK YOU VERY MUCH,

1 MR. GARNER. YOU ARE EXCUSED.

2 (WITNESS EXCUSED.)

3 **JUDGE KARLTON:** THAT'S IT.

4 **JUDGE HENDERSON:** IS THAT IT?

5 AGAIN, REMEMBER TO GET US THOSE NEW ESTIMATES BY
6 WEDNESDAY AND WE WILL RESUME THIS TRIAL NEXT THURSDAY AT 9:15.
7 COURT IS ADJOURNED.

8 (WHEREUPON AT 3:42 P.M. FURTHER PROCEEDINGS
9 IN THE ABOVE-ENTITLED CAUSE WAS ADJOURNED
10 UNTIL THURSDAY, DECEMBER 18, 2008 AT 9:15
11 A.M.)

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I N D E XDEFENDANT INTERVENOR WITNESSESPAGEVOL.JERRY DYER

DIRECT EXAMINATION BY MS. BARLOW	2300	12
CROSS-EXAMINATION BY MR. SPECTER	2348	12
REDIRECT EXAMINATION BY MS. BARLOW	2369	12

RODRIC PACHECO

DIRECT EXAMINATION BY MR. MITCHELL	2372	12
CROSS-EXAMINATION BY MR. SANGSTER	2395	12

BONNIE DUMANIS

DIRECT EXAMINATION BY MR. MITCHELL	2408	12
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NANCY PENA

DIRECT EXAMINATION BY MS. FUENTES	2424	12
CROSS-EXAMINATION BY MS. MORRIS	2437	12
REDIRECT EXAMINATION BY MS. FUENTES	2455	12
RECROSS-EXAMINATION BY MS. MORRIS	2456	12

TODD SPITZER

DIRECT EXAMINATION BY MS. WANG	2457	12
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ROBERT GARNER

DIRECT EXAMINATION BY MS. FUENTES	2485	12
CROSS-EXAMINATION BY MR. SANGSTER	2497	12

