

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

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

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

TRANSCRIPT OF PROCEEDINGS

SAN FRANCISCO, CALIFORNIA
THURSDAY, DECEMBER 18, 2008

(APPEARANCES ON FOLLOWING PAGES)

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1 **THURSDAY, DECEMBER 18, 2008**

9:22 O'CLOCK A.M.

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

5 **JUDGE HENDERSON:** OKAY. GOOD MORNING. ARE WE READY
6 TO GO?

7 **MR. SANGSTER:** YES, YOUR HONOR. ED SANGSTER FOR THE
8 PLAINTIFFS.

9 IF I MAY ADDRESS THE COURT BRIEFLY REGARDING THE
10 WITNESS SCHEDULE?

11 **JUDGE HENDERSON:** CERTAINLY.

12 **MR. SANGSTER:** THERE ARE TWO WITNESSES ON THE COURT'S
13 LIST THAT IT RECEIVED AS TO WHOM THERE HAVE NOW BEEN
14 STIPULATIONS REACHED CONCERNING THEIR TESTIMONY. THE
15 STIPULATIONS HAVE BEEN AGREED ON, BUT THERE WAS NOT ENOUGH TIME
16 TO FILE THEM, SO THOSE WILL BE FILED LATER TODAY OR TONIGHT BUT
17 THE WITNESSES ARE MICHAEL JAMES AND DUANE BAY.

18 **JUDGE HENDERSON:** OKAY.

19 **JUDGE REINHARDT:** EXCUSE ME. ONE MINUTE. WHAT ARE
20 THE NAMES AGAIN?

21 **MR. SANGSTER:** MICHAEL JAMES AND DUANE BAY.

22 **JUDGE HENDERSON:** B-A-Y.

23 **MR. SANGSTER:** B-A-Y.

24 **JUDGE HENDERSON:** GREAT. THANK YOU.

25 I WAS JUST ASKED. THIS IS TODAY'S LIST, AND JUST

1 GIVE US A BEST ESTIMATE, WHEN DO YOU THINK WE WILL FINISH?

2 **MR. SANGSTER:** THIS CASE?

3 **JUDGE HENDERSON:** YES.

4 **MR. SANGSTER:** TOMORROW BEFORE NOON.

5 **JUDGE HENDERSON:** OKAY.

6 **MR. SANGSTER:** YOUR HONOR, A LOT OF PEOPLE SPENT A
7 LOT OF TIME OVER THE LAST 48 HOURS REACHING STIPULATIONS ON
8 TESTIMONY, AND THE COURT'S RECORD HAS, I THINK, PROBABLY SIX OR
9 SEVEN WITNESSES RESOLVED. SO I THINK EVERYBODY MADE AN EFFORT
10 TO GET THIS THING --

11 **JUDGE HENDERSON:** YOU OBVIOUSLY DID.

12 **MR. SANGSTER:** MY ESTIMATE IS NOON TOMORROW.

13 **JUDGE HENDERSON:** OKAY. MUCH APPRECIATED. WE WON'T
14 KNOW WHAT TO DO WITH OUR TIME.

15 **JUDGE KARLTON:** I'LL FIGURE IT OUT.

16 **JUDGE REINHARDT:** WE CAN READ ALL THE THINGS THAT
17 HAVE BEEN SUBMITTED.

18 **MR. SANGSTER:** I GUESS THE OTHER ISSUE THAT DID COME
19 UP, WHEN IT BECAME APPARENT THAT THE SCHEDULE WAS GOING TO BE
20 ABBREVIATED IS THAT COUNSEL DID NOT WANT TO BE FACED WITH A
21 REQUEST FOR CLOSING ARGUMENTS TOMORROW.

22 **JUDGE HENDERSON:** OH, NO.

23 **MR. SANGSTER:** THAT'S FINE.

24 **JUDGE HENDERSON:** WE'LL GIVE YOU A DATE FOR CLOSING
25 ARGUMENT.

1 **JUDGE REINHARDT:** WE MIGHT BE WILLING TO DISCUSS IT
2 WITH YOU.

3 **MR. SANGSTER:** CURRENTLY, WE THINK WE HAVE THREE
4 WITNESSES ON -- THE DEFENSE HAS THREE WITNESSES -- OR TWO
5 WITNESSES, THE PLAINTIFFS HAVE A REBUTTAL WITNESS, FOR TOMORROW.
6 SO EVEN IF SOMEBODY FROM TODAY SLOPS OVER, I DON'T SEE ANY
7 CHANCE WE ARE NOT GOING TO FINISH TOMORROW.

8 **JUDGE HENDERSON:** THANK YOU. YOU MAY BEGIN. CALL
9 YOUR WITNESS WHEN YOU ARE READY.

10 **MR. LEWIS:** GOOD MORNING, YOUR HONORS. KYLE LEWIS ON
11 BEHALF OF THE STATE DEFENDANTS. DEFENDANTS NOW CALL GALE
12 BATAILLE.

13 **GALE BATAILLE**

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

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

18 **THE WITNESS:** MY NAME IS GALE BATAILLE, G-A-L-E, LAST
19 NAME B-A-T-A-I-L-L-E.

20 **MR. LEWIS:** GOOD MORNING, MS. BATAILLE.

21 FOR THE COURT'S KNOWLEDGE MS. BATAILLE'S EXPERT
22 REPORTS WERE FILED AND MARKED AS TRIAL EXHIBIT 1025 AND 1026,
23 AND HER QUALIFICATIONS ARE SET FORTH IN HER CURRICULUM VITAE
24 WHICH IS EXHIBIT A TO 1025.

25 ///

DIRECT EXAMINATION BY MR. LEWIS

1
2 **BY MR. LEWIS**

3 **Q** MS. BATAILLE, WHAT IS YOUR CURRENT POSITION?

4 **A** CURRENTLY, I'M A CONSULTANT WITH SEVERAL STATEWIDE
5 ORGANIZATIONS, THE CALIFORNIA MENTAL HEALTH DIRECTORS
6 ASSOCIATION AND THE CALIFORNIA INSTITUTE FOR MENTAL HEALTH.

7 **Q** ARE YOU ALSO A MEMBER OF A JUDICIAL COUNCIL COMMITTEE?

8 **A** YES. I SERVE ON THE CALIFORNIA JUDICIAL COUNCIL'S CRIMINAL
9 JUSTICE AND MENTAL HEALTH TASK FORCE, WHICH IS CHARGED WITH
10 COMING UP WITH SOME BETTER SOLUTIONS TO THE CRIMINALIZATION OF
11 MENTALLY ILL FOLKS IN THIS STATE.

12 **Q** AND IN THE COURSE OF THAT COMMITTEE AND THOSE OTHER
13 CONSULTANCIES YOU WORK ON, WHAT ARE YOUR DUTIES GENERALLY?

14 **A** IN TERMS OF THE JUDICIAL COUNCIL COMMITTEE, I ACTUALLY SERVE
15 ON TWO TASK FORCES WITHIN THE COMMITTEE, ONE OF THEM ON
16 CO-OCCURRING DISORDERS, AND THE OTHER ON REENTRY OR EARLY
17 POST-ADJUDICATION SERVICES.

18 WITH THE CALIFORNIA MENTAL HEALTH DIRECTORS
19 ASSOCIATION, MY PRIMARY ROLE WITH THEM IS AS CONSULTANT ON
20 CRIMINAL JUSTICE POLICY ISSUES.

21 **Q** AND PRIOR TO YOUR WORK WITH THOSE ORGANIZATIONS, DID YOU
22 WORK FOR ANY MENTAL HEALTH DEPARTMENT IN THE STATE OF
23 CALIFORNIA?

24 **A** I WORKED FOR THREE MENTAL HEALTH DEPARTMENTS AND ONE PRIVATE
25 NONPROFIT AGENCY. I SERVED AS DEPUTY DIRECTOR FOR ALCOHOL, DRUG

1 ABUSE AND MENTAL HEALTH SERVICES FOR NINE YEARS IN CONTRA COSTA
2 COUNTY. I SERVED AS MENTAL HEALTH DIRECTOR FOR SOLANO COUNTY,
3 AND I SERVED AS MENTAL HEALTH DIRECTOR IN SAN MATEO COUNTY.
4 EARLY IN MY EXPERIENCE I RAN A SMALL RESIDENTIAL TREATMENT
5 FACILITY IN ALAMEDA COUNTY.

6 **Q** WHAT IS YOUR EDUCATIONAL BACKGROUND?

7 **A** I HAVE A BA WITH HONORS IN PSYCHOLOGY FROM OBERLAND SCHOOL,
8 AND I HAVE A MASTER'S DEGREE IN SOCIAL WORK FROM SAN FRANCISCO
9 STATE UNIVERSITY.

10 **Q** YOU WERE RETAINED AS AN EXPERT FOR DEFENDANTS IN THIS CASE
11 REGARDING THE POTENTIAL EFFECTS OF A CALIFORNIA PRISONER RELEASE
12 ORDER ON COUNTY-BASED COMMUNITY MENTAL HEALTH SYSTEMS AND
13 MENTALLY ILL PERSONS THAT IT SERVES, CORRECT?

14 **A** YES, I HAVE -- WAS.

15 **Q** AND WHAT IS YOUR OPINION REGARDING THE POTENTIAL IMPACT OF A
16 PRISONER RELEASE ORDER ON CALIFORNIA'S COUNTY-BASED MENTAL
17 HEALTH SYSTEMS AND THE PERSONS IT SERVICES?

18 **A** MY OPINION IS THAT A -- PARTICULARLY ANY KIND OF ACCELERATED
19 RELEASE ORDER WOULD HAVE A DETRIMENTAL IMPACT, NOT ONLY ON THE
20 INDIVIDUALS RELEASED, BUT ON THE COUNTY, AND, I WOULD ASSUME,
21 STATE PAROLE OUTPATIENT SYSTEMS UNLESS THERE IS SUBSTANTIAL
22 AVAILABILITY OF INCREASED FUNDING AND INCREASED SERVICES, AS
23 WELL AS, REALLY, THE CAPACITY TO PLAN AND FULLY EXECUTE THOSE
24 SERVICES.

25 I CAN SAY MORE, BUT CALIFORNIA'S MENTAL HEALTH SYSTEM

1 AT THIS POINT IS REALLY IN A CRISIS IN TERMS OF ITS CAPACITY TO
2 SERVE THE INDIVIDUALS WITH SERIOUS MENTAL ILLNESS THAT ARE
3 ALREADY IN THE MENTAL HEALTH SYSTEMS OR SEEKING SERVICES, AND
4 THAT INCLUDES CHILDREN AND YOUTH AS WELL AS ADULTS AND OLDER
5 ADULTS.

6 **Q** AND WITHOUT THE ADDITIONAL RESOURCES OR PLANNING THAT YOU
7 DESCRIBE, ARE YOU CONCERNED THAT THERE WILL BE ADVERSE
8 CONSEQUENCES FOR EITHER THE RELEASED PRISONERS WITH MENTAL
9 ILLNESSES OR MEMBERS OF THE PUBLIC WHO HAVE MENTAL ILLNESS?

10 **A** YES, I AM CONCERNED ABOUT THAT, THE IMPACT ON RELEASED
11 PRISONERS. I THINK WE'VE LEARNED SOME LESSONS IN THE LAST,
12 HOPEFULLY, 30 YEARS.

13 WHEN WE LOOK AT WHO CONSTITUTES THE MAJORITY OF THE
14 HOMELESS POPULATION IN THIS STATE AND NATIONALLY, AT LEAST A
15 THIRD OF THEM HAVE SERIOUS MENTAL ILLNESS, AND USUALLY THEY HAVE
16 CO-OCCURRING SUBSTANCE ABUSE DISORDERS. AND I'VE SEEN
17 STATISTICS THAT 25 TO A THIRD PERCENT EASILY HAVE HAD EXPERIENCE
18 IN AND OUT OF THE JUSTICE SYSTEM. SO MANY OF THOSE FOLKS WHO --
19 ARE ALREADY PEOPLE THAT HAVE CYCLED THROUGH THE CRIMINAL JUSTICE
20 SYSTEM.

21 IN TERMS OF THE -- LET ME SEE IF I GET THE SECOND
22 PART OF THE QUESTION. IN TERMS OF MENTAL HEALTH SYSTEMS AND THE
23 FOLKS WHO ACCESS THEM IN CALIFORNIA, WE ALREADY HAVE A SITUATION
24 WHERE THERE ARE VARIABLE RESOURCES AROUND THIS STATE, BUT IN
25 MANY SYSTEMS, THERE IS NOT THE CAPACITY TO SERVE IN A TIMELY

1 MANNER PEOPLE WITH VERY SERIOUS MENTAL ILLNESSES WHO NOW SEEK
2 SERVICES. AND SOMETIMES THERE ARE WAITING LISTS. MANY PEOPLE
3 SIMPLY ARE NOT ABLE TO BE SERVED IN THE PUBLIC SYSTEM AS THEY --
4 IF THEY ARE ASSESSED AS NOT HAVING THE HIGHEST LEVEL NEED.
5 OTHERS WHO EVEN HAVE HIGH LEVEL NEEDS MAY NEED TO WAIT FOR, YOU
6 KNOW, SEVERAL MONTHS TO GET AN APPOINTMENT WITH A PSYCHOLOGIST
7 OR PSYCHIATRIST. SO THERE'S REALLY A CAPACITY ISSUE CURRENTLY
8 IN THE MENTAL HEALTH SYSTEM.

9 **Q** IN YOUR EXPERT REPORT, YOU ASSUME A PRISONER RELEASE ORDER
10 ON ROUGHLY THE LEVEL OF 15,000 OFFENDERS?

11 **A** YES.

12 **Q** ARE YOU AWARE THE PLAINTIFFS HAVE NOW ASKED FOR A PRISONER
13 RELEASE ORDER THAT COULD SEEK UP TO 52,000 EARLY OFFENDERS BEING
14 RELEASED OVER A 24-MONTH PERIOD?

15 **A** YES, I AM.

16 **Q** WITHOUT ADDITIONAL PLANNING AND RESOURCES YOU MENTIONED
17 EARLIER IN YOUR OPINION, WOULD A PRISONER RELEASE ORDER OF THE
18 50,000 MAGNITUDE STILL RESULT IN THE ADVERSE CONSEQUENCES YOU
19 DESCRIBED?

20 **A** IN MY OPINION, I DESCRIBED WHAT I FELT WERE SIGNIFICANT
21 ADVERSE CONSEQUENCES FOR A LOWER LEVEL RELEASE. THEREFORE, IF
22 THERE IS A 50,000-PLUS RELEASE OF PRISONERS, I WOULD EXPECT THAT
23 THE CONSEQUENCES AND THE CONCERNS WOULD BE GREATER.

24 **Q** IN FORMING YOUR OPINIONS, YOU ASSUME THAT APPROXIMATELY
25 20 PERCENT OF A PRISONER RELEASE ORDER WOULD BE COLEMAN CLASS

1 MEMBERS PENCILING OUT TO ABOUT 10,000 OFFENDERS, CORRECT?

2 **A** YES, I DID.

3 **Q** ARE THERE ANY OTHER ANTICIPATED CHARACTERISTICS THAT MAY BE
4 PRESENT IN THE MENTALLY ILL OFFENDER POPULATION THAT CONCERN YOU
5 IN TERMS OF THEIR FACTORS AND THEIR BACKGROUND OR THEIR HISTORY?

6 **A** THE MENTALLY ILL OFFENDER POPULATION IN -- AND THIS IS
7 REALLY VERY COMMON KNOWLEDGE THAT'S BEEN DOCUMENTED IN RESEARCH,
8 BUT IS ALSO DOCUMENTED BY FOLKS WHO WORK WITH THIS POPULATION,
9 HAS A EXTRAORDINARILY HIGH RATE OF SUBSTANCE ABUSE.

10 THE STATE DIRECTOR OF MENTAL HEALTH RECENTLY IN A
11 STATE JUDICIAL COUNCIL MEETING SAID HE THOUGHT IT WAS
12 90 PERCENT. I WOULD SAY THE MOST CONSERVATIVE RESEARCH SHOWS
13 SOMEWHERE IN THE NEIGHBORHOOD OF 70 TO 75 PERCENT.

14 WHEN YOU COMBINE SERIOUS MENTAL ILLNESS AND SUBSTANCE
15 ABUSE, YOU HAVE -- FIRST OF ALL, IT -- SUBSTANCE ABUSE TENDS TO
16 BE A HUGE FACTOR IN ADDITIONAL PSYCHIATRIC CRISES AND WILL CAUSE
17 DECOMPENSATION IN THE MENTAL HEALTH POPULATION. IN ADDITION,
18 SUBSTANCE ABUSE IS CLEARLY, AND I THINK THIS IS COMMON
19 KNOWLEDGE, IS CLEARLY A HUGE FACTOR IN CRIMES THAT ARE
20 COMMITTED.

21 **Q** DOES A CO-OCCURRING SUBSTANCE ABUSE OR USE DISORDER CAUSE A
22 MENTALLY ILL PERSON TO REQUIRE MORE SERVICES OR CARE?

23 **A** THAT IS PROBABLY THE MOST CHALLENGING POPULATION THAT WE
24 SERVE IN PUBLIC MENTAL HEALTH, AND, FRANKLY, WE ARE REALLY JUST
25 BEGINNING TO TOUCH EFFECTIVELY SERVING THAT POPULATION. WHAT WE

1 DO KNOW -- AND THIS IS THROUGH THE INITIAL SUBSTANCE ABUSE AND
2 MENTAL HEALTH SERVICES ADMINISTRATION, AND MANY OTHER RESEARCH
3 STUDIES IS, IS THAT SIMPLY SETTING UP A SYSTEM FOR TREATING
4 SUBSTANCE ABUSE AND HAVING ANOTHER SYSTEM FOR TREATING MENTAL
5 ILLNESS AND EXPECTING THOSE INDIVIDUALS TO GO BACK AND FORTH
6 BETWEEN THOSE SYSTEMS SEEKING CARE DOESN'T WORK WELL AT ALL.
7 MANY OF THEM JUST SIMPLY DO NOT GET CARE. SO WE NEED TO
8 INTEGRATE, PARTICULARLY FOR THE MOST SERIOUSLY MENTAL ILL FOLKS,
9 WHICH, WITHIN THE CALIFORNIA PRISON SYSTEM, IS THE EOP
10 POPULATION, YOU NEED TO REALLY PROVIDE SERVICES THAT ARE
11 INTEGRATED TO BE EFFECTIVE.

12 **Q** IN YOUR EXPERIENCE, DO PERSONS EXITING THE CRIMINAL JUSTICE
13 SYSTEM EITHER IN JAIL OR PRISON, DO THEY SEEK SERVICES FROM
14 PUBLIC MENTAL HEALTH ORGANIZATIONS?

15 **MR. GALVAN:** OBJECTION. NO FOUNDATION.

16 **JUDGE HENDERSON:** LAY A FOUNDATION, COUNSEL.

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

18 **BY MR. LEWIS**

19 **Q** IN YOUR 27 YEARS AS WORKING IN VARIOUS LEVELS OF COUNTY
20 ORGANIZATIONS, DID YOU EVER HAVE A CHANCE TO STUDY OR OBSERVE
21 THE NUMBER OF PERSONS EXITING THE CRIMINAL JUSTICE SYSTEM THAT
22 MIGHT BE USING YOUR VARIOUS COUNTY SERVICES?

23 **A** I HAVE NEVER DONE A FORMAL STUDY, BUT IT IS CERTAINLY WITHIN
24 MY EXPERIENCE THAT INDIVIDUALS WHO ARE ON STATE PAROLE DO SEEK
25 SERVICES PERIODICALLY IN THE PUBLIC MENTAL HEALTH SYSTEM.

1 ACTUALLY, MANY OF THEM, WE WILL ONLY FIND OUT LATER, ACTUALLY
2 ARE ON PAROLE, SO WE DON'T NECESSARILY KNOW WHEN THEY COME IN
3 THE DOOR BECAUSE THEY SOMETIMES WOULD PREFER TO USE THE PUBLIC
4 MENTAL HEALTH SYSTEM THAN PAROLE OUTPATIENT. IT DEPENDS ON THE
5 INDIVIDUAL.

6 **Q** DO YOU HAVE AN OPINION REGARDING, I GUESS, THE AMOUNT OF
7 SUPERVISION OR TREATMENT SERVICES THAT SHOULD BE MADE AVAILABLE
8 TO THE MOST HIGHLY NEEDING CRIMINAL MENTALLY ILL OFFENDERS
9 COMING OUT, SUCH AS THE EOP OR HIGH LEVELS OF CARE YOU
10 DESCRIBED?

11 **A** YES, I DO. THE EOP POPULATION -- AND THEN THERE IS SOME
12 MORE SEVERELY DISTURBED POPULATIONS THAT REALLY REQUIRE
13 INTENSIVE INPATIENT CARE. BUT THE EOP POPULATION IN GENERAL
14 NEEDS STRUCTURED CARE AND NEEDS CARE THAT DOESN'T DEPEND ON THEM
15 VOLUNTARILY REMEMBERING AND KEEPING APPOINTMENTS AND VOLUNTARILY
16 GOING OUT AND FINDING THEIR OWN HOUSING. THEY REALLY NEED WHAT
17 WE TEND TO CALL IN MENTAL HEALTH INTENSIVE WRAPAROUND SERVICES.
18 ACTUALLY, THAT'S BEEN RECOGNIZED IN THE WORK THAT WAS DONE IN
19 CALIFORNIA, REALLY FOLLOWING UP ON -- EXCUSE ME -- THE AB 900
20 PRISON REFORM LEGISLATION.

21 THERE HAVE BEEN SEVERAL BILLS THAT HAVE BEEN
22 INTRODUCED, AND VETOED, I THINK BECAUSE OF FINANCIAL ISSUES, BUT
23 WERE INTRODUCED BY SENATOR STEINBERG THAT REALLY FUNDED THOSE
24 KINDS OF INTENSIVE WRAPAROUND SERVICES, AND THEY ARE -- THEY
25 PROBABLY COST ON AN AVERAGE PER INDIVIDUAL \$15 TO \$30,000 A YEAR

1 AND REALLY NEED 24-HOUR AVAILABILITY OF CARE.

2 **Q** ARE YOU FAMILIAR WITH CDCR'S MENTAL HEALTH PAROLEE
3 OUTPATIENT CLINICS?

4 **A** YES, I WOULD NOT SAY I HAVE, YOU KNOW -- I HAVEN'T GONE IN
5 AND OUT OF THOSE CLINICS A LOT, BUT I AM FAMILIAR WITH THE
6 SYSTEM.

7 **Q** BASED ON YOUR EXPERIENCE, ARE THE PAROLEE OUTPATIENT CLINICS
8 ABLE TO MEET THE NEEDS OF AN ADDITIONAL 10,000 PERSONS THAT MAY
9 BE RELEASED AS A RESULT OF THIS PRISONER RELEASE ORDER REQUIRING
10 MENTAL HEALTHCARE?

11 **A** NO. WHAT I CAN COMMENT ON AT THIS POINT IS THAT VERY MUCH
12 WITHIN MY EXPERIENCE, AND PARTICULARLY WHEN I WAS DIRECTOR IN
13 SOLANO COUNTY AND IN SAN MATEO COUNTY IN THE LAST 18 YEARS, IT
14 WAS NOT AT ALL UNCOMMON FOR PAROLE OUTPATIENT CLINICS TO ATTEMPT
15 TO REFER INDIVIDUALS WHO NEEDED MORE INTENSIVE CARE TO OUR
16 SYSTEM.

17 IT WAS ALSO NOT UNCOMMON FOR THEM TO SAY TO A
18 PAROLEE, AS BY SELF-REPORT THAT WE HEARD FROM THE PAROLEE, GO ON
19 OVER TO COUNTY MENTAL HEALTH AND SEE IF YOU CAN GET IN THE DOOR.
20 IT WAS COMMONLY KNOWN AND HAPPENS.

21 **Q** DOES THIS LACK OF ACCESS BY PAROLEES TO PAROLEE OUTPATIENT
22 CARE CAUSE YOU CONCERN IN TERMS OF THE EFFECTS IT MIGHT HAVE ON
23 COUNTY HEALTH SYSTEMS?

24 **A** YES, IT DOES. AND LET ME GIVE A LITTLE BIT MORE SPECIFICS.

25 THE ADULT OUTPATIENT PAROLE SYSTEM HAS DONE VARIOUS

1 REPORTS. THE ONE THAT I'VE MOST RECENTLY SEEN WAS, I BELIEVE,
2 MARCH OF 2008, AND THAT REPORT DISCUSSES BOTH RATES OF
3 RECIDIVISM FOR THE COLEMAN CLASS OF MENTALLY ILL PRISONERS AND
4 PAROLEES, AND IT ALSO LAYS OUT STAFFING RATIOS THAT ARE
5 CURRENTLY IN THOSE CLINICS. AND HAVING WORKED IN COUNTY MENTAL
6 HEALTH SYSTEMS FOR, AS I SAID, 28 YEARS, I'M VERY FAMILIAR WITH
7 WHAT ARE GENERALLY ACCEPTED CASELOAD OF STAFFING, AND I, QUITE
8 FRANKLY, WAS A BIT SURPRISED AT THE KINDS OF RATIOS THAT
9 CURRENTLY EXIST.

10 FOR EXAMPLE, I BELIEVE THAT THERE IS -- FOR EVERY 570
11 PAROLEES WHO ARE ALREADY CLASSIFIED AS MENTALLY ILL, THERE'S ONE
12 PSYCHIATRIST. SO IT'S A ONE TO ABOUT A 570 RATIO CASELOAD.
13 SIMILAR KIND OF SIZE FOR PSYCHOLOGISTS. AND A ONE TO, I THINK,
14 170, -75 FOR SOCIAL WORKERS WHO WOULD HELP TO MANAGE THE CASES.
15 THAT IS DRAMATICALLY HIGHER THAN ANY CASELOAD THAT CAN
16 EFFECTIVELY WORK WITH FOLKS, IN MY EXPERIENCE, IN THE PUBLIC
17 MENTAL HEALTH SYSTEM.

18 ONE OF THE THINGS THAT REPORT DOCUMENTS IS THAT THERE
19 IS AN INCREASE IN RECIDIVISM RATE IF THERE IS NOT IMMEDIATE
20 CONTACT WITH TREATMENT AND INTENSIVE FOLLOW-UP. SO -- THERE'S
21 BEEN A UCLA RESEARCH STUDY ON THE PAROLE OUTPATIENT CONTINUUM
22 THAT BASICALLY DOCUMENTS THAT AS THE FREQUENCY OF CONTACT AND
23 THE IMMEDIACY OF CONTACT GOES UP, THE RECIDIVISM RATE DROPS, AND
24 THE REVERSE IS TRUE.

25 Q AND DO COUNTY MENTAL HEALTH-BASED SYSTEMS HAVE THE CAPACITY

1 TO MEET AN ADDITIONAL INFLUX OF MENTALLY ILL OFFENDERS THAT
2 MIGHT NOT BE ABLE TO GET CARE AT THE POC'S?

3 **A** I WOULD SAY THAT THAT IS ABSOLUTELY NOT WITHIN THE CAPACITY
4 OF COUNTY MENTAL HEALTH SYSTEMS CURRENTLY. I'VE ALREADY STATED
5 THAT COUNTY MENTAL HEALTH SYSTEMS ARE STRUGGLING WITH BEING ABLE
6 TO MEET THE CAPACITY OF THE MOST SERIOUSLY MENTALLY ILL
7 POPULATION CURRENTLY, AND THAT IS NOT -- LET ME JUST ADD THAT'S
8 NOT JUST A MATTER OF HAVING ENOUGH MONEY TO DO IT, BUT LITERALLY
9 WHETHER THERE ARE ENOUGH TRAINED PROFESSIONALS OUT THERE TO
10 BRING IN -- EVEN IF WE HAD THE MONEY, THERE ARE NOT ENOUGH
11 PSYCHIATRISTS IN THE STATE, AND THAT'S ONE OF THE MOST CRITICAL
12 SHORTAGES FOR NURSES IN THE MENTAL HEALTH SYSTEM. THERE ARE
13 SIGNIFICANT VACANCY RATES.

14 I'M FAIRLY FAMILIAR WITH THAT BECAUSE I'VE ALSO DONE
15 WORK ON WHAT WE CALL THE WORKFORCE CAPACITY CRISIS IN
16 CALIFORNIA.

17 **Q** IN ADDITION TO NOT HAVING STAFFING, ARE THERE ALSO FUNDING
18 PROBLEMS FOR LOCAL COUNTY MENTAL HEALTH SYSTEMS?

19 **A** YES. I'M NOT GOING TO -- UNLESS YOU WANT ME TO, I WON'T GO
20 INTO ALL THE FUNDING STREAMS THAT FUND THE PUBLIC MENTAL HEALTH
21 SYSTEM, BUT JUST TO SAY THAT ONE OF THE KEY STREAMS OF FUNDING
22 IS BASED ON CALIFORNIA'S SALES TAX AND VEHICLE LICENSE FEES, AND
23 WE ALL KNOW WHAT'S GOING ON IN THE ECONOMY RIGHT NOW. THAT'S
24 TAKEN A NOSEDIVE AND, FRANKLY, HAS NOT GROWN OVER THE LAST
25 DECADE AND A HALF SINCE THAT'S BEEN IN PLACE TO KEEP UP WITH

1 WHAT THE ACTUAL COST OF DOING BUSINESS OVER THAT TIME IS.

2 **Q** IN ONE OF YOUR EXPERT REPORTS YOU HIGHLIGHT THE IMPORTANCE
3 OF ADEQUATE PLANNING TO HAVE MENTAL HEALTH SERVICES IN PLACE
4 PRIOR TO A RELEASE OF COLEMAN CLASS MEMBERS. WHAT WOULD SUCH
5 PLANNING ENTAIL?

6 **A** I DID CITE THAT, AND, IN MY OPINION, DOING ADEQUATE PLANNING
7 MEANS ASSESSING -- AND I THINK THERE'S SOME DATA TO HELP WITH
8 THIS, BUT ASSESSING WHERE THE ANTICIPATED RELEASES WILL BE
9 GROUPED, I GUESS, IF YOU WANT TO SAY THAT, SO THAT, FOR EXAMPLE,
10 WE KNOW THAT L.A., RIVERSIDE, SAN BERNADINO AND SAN DIEGO
11 COUNTY, IF YOU TAKE THOSE FOUR COUNTIES TOGETHER, THEY WOULD
12 HAVE OVER 50 PERCENT OF THE RELEASED PAROLEES IN THE STATE.
13 CURRENTLY DUE, AND ONE CAN ANTICIPATE THAT ANY ADDITIONAL,
14 RELEASE WOULD HAVE A SIMILAR KIND OF PERCENTAGE IMPACT.

15 AND SO WE REALLY NEED TO LOOK AT THOSE LARGER
16 COUNTIES AND WHAT IT WOULD TAKE FOR THEM TO HAVE CAPACITY TO
17 WORK WITH A PAROLE OUTPATIENT SYSTEM AND PROVIDE SERVICES THAT
18 MAY NOT BE FEASIBLE WITHIN THE CURRENT PAROLE OUTPATIENT SYSTEM.
19 SO THAT'S ONE PART OF THE PLANNING. IT ALSO SIMPLY TAKES TIME
20 TO, BASED ON YOUR ASSESSMENT OF THE NEEDS, TO -- IT TAKES TIME
21 TO DETERMINE WHAT PROGRAMS NEED TO COME UP AND TO PUT THEM IN
22 PLACE. AND I THINK THAT IF I'VE HAD A FAULT AS A MENTAL HEALTH
23 DIRECTOR IN MY CAREER IT'S BECAUSE I HAVE ALWAYS BEEN OVERLY
24 OPTIMISTIC ABOUT HOW QUICKLY WE CAN BRING PROGRAMS UP AND
25 OPERATIONAL.

1 BUT I BELIEVE IT WOULD BE OPTIMISTIC, IN MY USUALLY
2 OPTIMISTIC FRAME, TO HAVE A PLAN AND PROGRAMS UP AND OPERATING
3 ANY MORE QUICKLY, AND THIS IS ASSUMING THE FINANCING IS THERE
4 AND GUARANTEED, BUT I THINK IT WOULD BE OPTIMISTIC IF WE SAID IT
5 WOULD TAKE A YEAR TO 18 MONTHS, AND, FRANKLY, I HAVE A GRAVE
6 CONCERN THAT EVEN WITH THE BEST PLANS AND EVEN WITH FINANCING,
7 WE WOULD NOT BE ABLE TO FILL THE STAFFING NEEDS THAT ARE
8 REQUIRED. THE STATE PRISON SYSTEM HAS STRUGGLED WITH THAT. THE
9 COUNTY MENTAL HEALTH SYSTEMS IN CALIFORNIA ABSOLUTELY STRUGGLE
10 WITH THAT.

11 **Q** YOU MENTION CALIFORNIA'S CURRENT BUDGET IMPASSE AND CRISIS.
12 ARE YOU AWARE OF ANY POTENTIAL REDUCTIONS TO MENTAL HEALTH
13 SERVICES OR FUNDINGS THAT ARE BEING CONSIDERED?

14 **A** I AM AWARE THAT THERE ARE VARIOUS DISCUSSIONS AFOOT IN THE
15 LEGISLATURE TO TRY TO TAKE SOME OF THE DESIGNATED MENTAL HEALTH
16 FUNDING THAT DOES EXIST THROUGH FUNDING THAT CAME THROUGH
17 PROP 63. I THINK THAT, YEAH, THERE ARE DISCUSSIONS GOING ON.

18 **Q** IN YOUR EXPERIENCE, DO MENTALLY ILL PERSONS SOMETIMES BECOME
19 HOMELESS?

20 **A** I THINK -- ABSOLUTELY. I THINK WE KNOW THAT AT LEAST A
21 THIRD OF THE MENTALLY ILL -- OF THE HOMELESS POPULATION HAS
22 MENTAL ILLNESS, AND MANY, MANY POLICY AND RESEARCH STUDIES
23 REALLY TIE THAT TO THE PROCESS OF DEINSTITUTIONALIZING, THE
24 CLOSING OF STATE HOSPITALS, AND THE FAILURE IN CALIFORNIA AND
25 NATIONALLY TO PUT SERVICES IN PLACE, PARTICULARLY HOUSING, AND

1 TREATMENT SERVICES THAT WOULD KEEP THOSE FOLKS OFF THE STREET.

2 **Q** HOW LONG DOES IT TAKE TO SET UP THOSE KINDS OF SERVICES, IN
3 YOUR EXPERIENCE?

4 **A** WELL, I MEAN, ONE OF THE ISSUES WITH TREATMENT SERVICES, I
5 THINK I'VE ADDRESSED A COUPLE OF TIMES, YOU HAVE TO HAVE THE
6 STAFF TO PROVIDE THE TREATMENT. AND CURRENTLY, PARTICULARLY
7 WITH PSYCHIATRY, NURSING, AND SOCIAL WORK, THERE SIMPLY ARE NOT
8 ENOUGH STAFF BEING PRODUCED IN CALIFORNIA, AND IT'S NOT BEEN
9 FEASIBLE TO RECRUIT VERY MANY FOLKS FROM OUT OF THE STATE
10 BECAUSE OF THE COST OF LIVING. THAT'S ONE AREA.

11 IN ADDITION, QUITE FRANKLY, THE PUBLIC MENTAL HEALTH
12 SYSTEM HAS NOT HAD ITS PRIMARY FOCUS -- REALLY, I THINK WE HAVE
13 BEEN LOOKING AT THAT MORE IN THE LAST FEW YEARS, BUT I DON'T
14 BELIEVE THAT ALL OF THE STAFF THAT EXIST IN THE SYSTEM RIGHT NOW
15 ARE NECESSARILY TRAINED IN PROVIDING THE MOST EFFECTIVE
16 EVIDENCE-BASED PRACTICES FOR A POPULATION THAT HAS CRIMINAL
17 JUSTICE EXPERIENCE. SO THAT'S AN ISSUE.

18 AND I JUST LOST THE SECOND PART OF YOUR QUESTION.
19 I'M SORRY.

20 **Q** YOU ARE RIGHT. I DID ASK IT EARLIER. THANK YOU.

21 COULD A PRISONER RELEASE ORDER THAT RELEASES SOME
22 MENTALLY ILL OFFENDERS CAUSE MEMBERS OF THE GENERAL PUBLIC TO
23 LOSE THEIR ACCESS TO MENTAL HEALTHCARE?

24 **A** I BELIEVE IT COULD HAVE A VERY SIGNIFICANT EFFECT ON THE
25 ACCESS THAT THE GENERAL PUBLIC HAS TO THE ALREADY UNDERFUNDED

1 MENTAL HEALTH SYSTEM, AND THAT IS BECAUSE IN A COMMUNITY THE
2 PUBLIC MENTAL HEALTH SYSTEM HAS AN ABSOLUTE OBLIGATION TO
3 RESPOND TO PEOPLE WITH SERIOUS MENTAL ILLNESS, INCLUDING
4 CHILDREN, BUT ALSO TO BE RESPONSIVE WHEN THERE IS A -- WHEN AN
5 INDIVIDUAL POSES A DANGER TO HIM OR HERSELF OR OTHERS, AND SO
6 THE PUBLIC MENTAL HEALTH SYSTEM REALLY ACTS AS A LOCAL SAFETY
7 NET FOR THAT KIND OF RISK MANAGEMENT IN A COUNTY.

8 AND I THINK IT WOULD BE ABSOLUTELY PREDICTABLE AND
9 EXPECTED THAT IF THERE WERE, YOU KNOW, AN INFLUX OF FOLKS WHO
10 NEEDED CARE AND WERE DEEMED TO POSE A HIGHER RISK OF ANY KIND OF
11 DANGER TO SELF OR OTHERS, THE PUBLIC MENTAL HEALTH SYSTEM WOULD
12 BE UNDER TREMENDOUS PRESSURE FROM THEIR GOVERNING BODY, WHICH IS
13 THE BOARD OF SUPERVISORS, TO PRIORITIZE THOSE FOLKS. THAT MEANS
14 OTHER FOLKS DON'T GET SERVICES.

15 **Q** DO YOU HAVE AN OPINION REGARDING THE NEED TO PLAN AND
16 PROVIDE FOR RESOURCES FOR THE SUPERVISION AND TREATMENT,
17 REHABILITATION FOR THESE MENTALLY ILL OFFENDERS AND WHAT WOULD
18 HAPPEN IF IT ISN'T PROVIDED?

19 **JUDGE KARLTON:** THERE ARE TWO QUESTIONS. TAKE THEM
20 ONE AT A TIME, COUNSEL.

21 **MR. LEWIS:** THANK YOU, YOUR HONOR. I REALIZE THAT.

22 **BY MR. LEWIS**

23 **Q** IF THE PLANNING AND RESOURCES THAT YOU'RE DISCUSSING
24 REGARDING SUPERVISION AND TREATMENT REHABILITATION NEEDS OF BOTH
25 THE PUBLIC AND MENTALLY ILL OFFENDERS AREN'T PROVIDED, WHAT ARE

1 YOU AFRAID ABOUT? WHAT'S GOING TO HAPPEN?

2 **A** I'M CONCERNED, I GUESS, FROM A VARIETY OF PERSPECTIVES. ONE
3 IS I THINK IT WILL CAUSE HARM TO THE INDIVIDUALS THAT ARE
4 RELEASED INTO THE COMMUNITY. YOU KNOW, THEY ARE PERPETRATORS.
5 THAT'S WHY THEY ARE IN THE PRISON SYSTEM. BUT THEY ALSO ARE
6 OFTEN VICTIMS. AND I BELIEVE THAT UNTREATED, OR INADEQUATELY
7 TREATED, THOSE INDIVIDUALS WILL, IN ALL LIKELIHOOD -- FOR SURE
8 THEY WILL BE ON THE STREETS MORE. I THINK THERE IS A RISK OF
9 SUICIDE AND DEATH, BUT IN ADDITION TO THAT, MY EXPERIENCE IS
10 THAT LOCAL POLICE JURISDICTIONS AND THE SHERIFF'S DEPARTMENT AND
11 COUNTIES END UP HAVING TO PUT THOSE PEOPLE IN LOCAL JAILS FOR A
12 VARIETY OF OFFENSES.

13 AND RIGHT NOW WE HAVE A SITUATION IN CALIFORNIA WHERE
14 JAILS ARE -- MOST JAILS ARE DRAMATICALLY OVERCROWDED AND QUITE
15 FRANKLY TREATMENT OF MENTALLY ILL INDIVIDUALS IN JAIL IS NOT
16 ADEQUATE AND HAS NOT BEEN DEEMED ADEQUATE IN MANY, MANY
17 JURISDICTIONS. SO I THINK IT BACKS UP THE LOCAL JAIL SYSTEM.
18 AND IF THERE IS ANY KIND OF CAP OR REDUCTION IN THE ABILITY OF
19 JAILS TO MOVE PEOPLE INTO THE STATE PRISON SYSTEM, THEN YOU'VE
20 GOT -- WHAT YOU'VE DONE IS ESSENTIALLY TRANSFERRED A SIGNIFICANT
21 PROBLEM TO THE LOCAL LEVEL, AND THE LOCAL LEVEL DOES NOT HAVE
22 RESOURCES OR CAPACITY TO RESPOND TO THAT. I KNOW THAT -- I
23 WON'T CITE COUNTIES, BUT I KNOW VERY SPECIFICALLY OF COUNTY
24 JAILS WHERE THEY ARE FAR IN EXCESS OF THEIR CAPACITY. SO THAT
25 WAS PART ONE.

1 IN TERMS OF THE GENERAL PUBLIC AND -- I THINK THAT
2 WAS ANOTHER PART OF THE QUESTION. YOU KNOW, THERE IS CONCERN --
3 I HAVE TWO KINDS OF CONCERNS. ASIDE FROM IT PUSHING FOLKS WHO
4 NEED CARE TO A POINT WHERE THEY CAN'T GET CARE IN THE GENERAL
5 PUBLIC, THERE IS ALSO, AND I DON'T THINK IT'S QUANTIFIABLE
6 EASILY, BUT THERE IS SOME INCREASED RISK -- AND I'VE JUST LOOKED
7 AT SOME RECENT STATISTICS FROM THE BUREAU OF JUSTICE STATISTICS
8 DIVISION WHERE THERE IS -- THERE IS SOME DOCUMENTATION THAT
9 THERE IS ACTUALLY INCREASED RISK OF VIOLENT RECIDIVISM.

10 NOW I HAVE BEEN AN ADVOCATE ALL MY LIFE, OR ALL MY
11 PROFESSIONAL CAREER, FOR BEING ABLE TO PLACE INDIVIDUALS IN THE
12 COMMUNITY WHO HAVE MENTAL ILLNESS, AND THE RESPONSIBILITY OF
13 COMMUNITY TO TREAT AND CARE FOR THOSE INDIVIDUALS, AND I HAVE
14 CERTAINLY ADVOCATED THAT THE GENERAL MENTALLY ILL POPULATION IS
15 NO MORE RISK OF VIOLENCE IN YOUR COMMUNITY THAN ANYONE ELSE IN
16 THE GENERAL POPULATION.

17 SO I WANT TO BE REALLY CLEAR THAT I THINK, WITH
18 ADEQUATE TREATMENT AND WITH ADEQUATE SUPERVISION, INDIVIDUALS
19 CAN BE PLACED IN THE COMMUNITY AND CAN BE CARED FOR IN A WAY
20 THAT DOESN'T DRAMATICALLY RAISE COMMUNITY RISK. WITHOUT
21 ADEQUATE TREATMENT, PARTICULARLY SUBSTANCE ABUSE TREATMENT,
22 COMBINED WITH PSYCHIATRIC TREATMENT, THERE IS SOME INCREASED
23 RISK.

24 AND PART OF MY CONCERN IS THAT WE'VE HAD A VERY
25 DIFFICULT TIME IN CALIFORNIA REALLY GETTING COMMUNITIES TO

1 ACCEPT PSYCHIATRIC TREATMENT IN THE COMMUNITY. YOU KNOW, I CAN
2 TELL YOU MANY STORIES, AND I WON'T, BUT PERSONAL EXPERIENCE
3 WHERE I'VE HAD -- IN ONE SITUATION WHERE AN ENTIRE CITY COUNCIL
4 WAS THREATENED WITH RECALL OVER AN EFFORT TO PUT A HOMELESS/
5 MENTALLY ILL PROGRAM IN THE COMMUNITY. WHEN YOU ADD THAT THE
6 INDIVIDUAL HAS HAD SOME CRIMINAL JUSTICE HISTORY, IT'S
7 DRAMATICALLY MORE DIFFICULT TO SITE THOSE PROGRAMS WHEN YOU'VE
8 GOT A COMMUNITY THAT'S NOT WILLING TO ACCEPT WHAT I THINK IS
9 REALLY A COMMUNITY RESPONSIBILITY, AND YOU DON'T HAVE ADEQUATE
10 PLANS AND SERVICES IN PLACE, I THINK THERE IS INCREASED RISK.

11 IF FOLKS DON'T GET TREATMENT, THERE'S AN INCREASED
12 RISK OF RECIDIVISM, AND THERE IS SOME INCREASED RISK OF
13 RECIDIVISM THAT IS HARMFUL BASED ON HARMFUL ACTS.

14 **MR. LEWIS:** THANK YOU, MS. BATAILLE. NO FURTHER
15 QUESTIONS, YOUR HONORS.

16 **JUDGE HENDERSON:** INTERVENORS?

17 **MS. FUENTES:** NO QUESTIONS, YOUR HONOR.

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

19 **MR. GALVAN:** THANK YOU, YOUR HONORS. ERNEST GALVAN
20 FOR THE PLAINTIFFS.

21 **CROSS-EXAMINATION BY MR. GALVAN**

22 **BY MR. GALVAN**

23 **Q** GOOD MORNING, MS. BATAILLE.

24 **A** GOOD MORNING.

25 **Q** THE PRINCIPAL BASIS FOR YOUR OPINIONS IS YOUR EXPERIENCE AS

1 A MENTAL HEALTH DIRECTOR AND AS A PROFESSIONAL FOR 28 YEARS IN
2 THE FIELD; IS THAT RIGHT?

3 **A** WELL, ACTUALLY, IT'S MORE LIKE -- I HATE TO ADMIT, IT'S MORE
4 LIKE 35 TO 37 YEARS. I HAVE BEEN IN COUNTY MENTAL HEALTH AS
5 DIRECTOR OR DEPUTY DIRECTOR FOR 28 YEARS.

6 **Q** MOST RECENTLY IN SAN MATEO WHERE YOU RETIRED AS MENTAL
7 HEALTH DIRECTOR IN JANUARY 2008?

8 **A** YES.

9 **Q** SAN MATEO HAD A GOOD MENTAL HEALTH PROGRAM?

10 **A** I THINK IT'S RECOGNIZED AS ONE OF THE BETTER ONES IN THE
11 STATE, AND IN THE COUNTRY, ACTUALLY.

12 **Q** YOU HAD A RANGE OF SERVICES TAILORED TO YOUR RANGE OF
13 CLIENTS?

14 **A** YES, WE DID.

15 **Q** SO YOU HAD ONE LEVEL OF SERVICE CALLED THE INTENSIVE LEVEL
16 OF SERVICE?

17 **A** THAT WOULD BE A NONTECHNICAL NAME FOR IT, YES.

18 **Q** WHAT'S THE TECHNICAL NAME?

19 **A** WELL, ONE TECHNICAL NAME THAT WE'RE USING NOW IN CALIFORNIA
20 IS CALLED FULL-SERVICE PARTNERSHIPS.

21 **Q** COULD YOU DESCRIBE FOR THE COURT BRIEFLY WHAT THAT LEVEL OF
22 SERVICE ENTAILED?

23 **A** YES. IT IS -- IT IS A SERVICE WHERE WE REALLY TAILOR THE
24 TREATMENT SERVICES TO THE INDIVIDUAL NEEDS OF THE PARTICIPANT OR
25 THE CLIENT. THE STAFFING RATIO IS GENERALLY ONE-TO-TEN OR

1 ONE-TO-15 AT THE MOST. YOU MAKE SURE THAT THERE IS CRISIS
2 RESPONSE CAPABILITY. WE DON'T WAIT FOR INDIVIDUALS TO COME INTO
3 A CLINIC. YOU GO OUT AND MEET AND WORK WITH THEM WHEREVER THEY
4 ARE.

5 SUPPORTED EMPLOYMENT SERVICES IS CRITICAL. HOUSING
6 SERVICES, AND IT'S NOT JUST GETTING SOMEBODY AN APARTMENT, BUT
7 REALLY DOING WHATEVER IT TAKES TO WORK WITH THEM ON KEEPING
8 THEIR LIVING SITUATION IS VERY CRITICAL. AND THEN, CLEARLY,
9 TREATMENT SERVICES. SO ALL OF THOSE THINGS ARE PART OF WHAT ONE
10 DOES.

11 **Q** THEN YOU ALSO HAD AN OUTPATIENT LEVEL OF SERVICE?

12 **A** YES, WE DID.

13 **Q** COULD YOU DESCRIBE THAT FOR THE COURT, PLEASE?

14 **A** OUTPATIENT CARE BASICALLY INCLUDED CASE MANAGEMENT SERVICES,
15 PSYCHIATRIC SERVICES, NURSING SERVICES AND THERAPEUTIC SERVICES.
16 AND, AGAIN, YOU WOULD TAILOR THE MIX OF THOSE SERVICES DEPENDING
17 ON THE NEED OF THE PERSON. I WOULD SAY THAT PROBABLY, AND I'M
18 ESTIMATING HERE, BUT I THINK PROBABLY 95 PERCENT OF THE ADULT
19 OUTPATIENT TREATMENT SYSTEM CLIENTS REQUIRE PSYCHIATRIC
20 MEDICATIONS AND NEED MONITORING FOR THAT.

21 THE INTENSITY OF THERAPEUTIC SERVICES REALLY DEPENDS.
22 AND SOME OF THOSE ARE INDIVIDUALS, SOME OF THOSE ARE GROUPS.
23 THAT REALLY DEPENDS ON THE PARTICULAR NEEDS OF THE INDIVIDUAL.

24 I WOULD SAY, IN GENERAL, THERE HAS NEVER BEEN
25 SUFFICIENT STAFFING TO PROVIDE THE INTENSITY OF THE THERAPEUTIC

1 AND THE CASE MANAGEMENT SERVICES THAT I THINK FOLKS WOULD SAY
2 WAS APPROPRIATE. WE'VE ALWAYS BEEN LOW ON THAT. THAT'S IN ONE
3 OF THE BEST SYSTEMS, IN ONE OF THE BEST STAFF SYSTEMS.

4 **Q** THEN YOU ALSO HAD AN LPS CONSERVATORSHIP LEVEL OF CARE?

5 **A** LPS CONSERVATORSHIP IS A LEGAL STATUS, AND THE CARE WOULD
6 DEPEND ON WHAT THE INDIVIDUAL CONSERVATEE NEEDED. SO SOME OF
7 THOSE INDIVIDUAL CONSERVATEES ARE ACTUALLY PLACED IN 24-HOUR
8 FACILITIES, SUBACUTE SKILLED NURSING KINDS OF FACILITIES. SOME
9 ARE IN THE COMMUNITY, AND YOU CLEARLY HAVE TO PROVIDE CASE
10 MANAGEMENT AND SOMEWHAT MORE INTENSIVE SERVICES FOR THAT GROUP,
11 AND, CLEARLY, THE HOUSING OF -- THE HOUSING SERVICES FOR THOSE
12 FOLKS IS VERY IMPORTANT.

13 **Q** THEN YOU HAD THE IMD LEVEL, WHICH I BELIEVE STANDS FOR
14 INSTITUTIONS FOR MENTALLY DISABLED, SUBACUTE?

15 **A** THAT'S SUBACUTE SKILLED NURSING, IMD. I KIND OF GROUPED
16 THEM TOGETHER FOR YOU.

17 **Q** YOU HAD SOME CONTRACTS WITH PRIVATE PROVIDERS FOR THE BEDS
18 FOR THOSE IMD'S?

19 **A** YES. ALL OF THE IMD BEDS THAT SAN MATEO COUNTY USED ARE
20 PRIVATELY CONTRACTED.

21 **Q** YOU HAVE A FACILITY CALLED CORDILLERAS UNDER CONTRACT,
22 60-BEDS, SOMEWHERE IN THERE?

23 **A** CORDILLERAS.

24 **Q** SOME OF THOSE BEDS ARE LOCKED; IS THAT RIGHT?

25 **A** YES. THERE'S A COMBINATION OF LOCKED BEDS AND SOME

1 RESIDENTIAL BOARD AND CARE BEDS IN THE FACILITY.

2 **Q** WHEN YOU WERE THERE, IS IT CORRECT TO SAY THE SAN MATEO
3 MENTAL HEALTH SYSTEM SERVED ABOUT 10,000 CLIENTS IN A GIVEN
4 YEAR?

5 **A** SOMEWHAT MORE THAN THAT. TEN TO 11,000.

6 **Q** TEN TO 11,000?

7 **A** MM-HMM.

8 **Q** TO BREAK DOWN THE LEVELS OF CARE, IS IT CORRECT TO SAY ABOUT
9 25 PERCENT WERE THE INTENSIVE LEVEL?

10 **A** YOU KNOW, WHEN YOU TALK ABOUT INTENSIVE LEVEL, IF YOU ARE
11 SAYING 25 PERCENT THAT HAD SOME ACUTE INPATIENT CARE, I WOULD
12 NOT SAY 25 PERCENT AT ANY POINT IN TIME RECEIVED THE INTENSIVE
13 LEVEL.

14 THE FULL SERVICE PARTNERSHIP LEVEL THAT WE TALKED
15 ABOUT, WE HAD, AT THE TIME I LEFT, JUST SLIGHTLY OVER A HUNDRED
16 SLOTS --

17 **Q** OKAY.

18 **A** -- FOR 10,000-PLUS CLIENTS --

19 **Q** WHEN YOU WERE --

20 **A** -- IN THE ADULT SYSTEM.

21 **Q** WHEN YOU WERE PREPARING YOUR BUDGET FOR SAN MATEO COUNTY AND
22 YOU HAD TO LAY OUT FOR THE BOARD OF SUPERVISORS HOW MANY PEOPLE
23 YOU SERVED AT EACH LEVEL OF CARE, ABOUT 25 PERCENT WERE IN THE
24 INTENSIVE LEVEL; IS THAT RIGHT?

25 **A** I'M TRYING TO REMEMBER THE STATISTIC, AND I DON'T KNOW WHAT

1 YOU ARE REFERRING TO. THAT WOULD SEEM CORRECT. I DON'T HAVE
2 THAT STATISTIC IN MY HEAD OFF THE TOP --

3 **MR. GALVAN:** COULD WE, MR. JONES, PUT UP THE SAN
4 MATEO BUDGET DOCUMENT?

5 **JUDGE REINHARDT:** "IT WOULD SEEM CORRECT," ISN'T THAT
6 GOOD ENOUGH?

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

8 **BY MR. GALVAN**

9 **Q** TWENTY-FIVE PERCENT WOULD SEEM CORRECT?

10 **A** TWENTY-FIVE PERCENT WOULD SEEM CORRECT IF YOU THINK ABOUT
11 WHAT CONSTITUTES THAT 25 PERCENT. I'VE JUST SAID OF THAT
12 25 PERCENT, THE MOST INTENSIVE LEVEL, WITH THE LOW STAFFING
13 RATIO, THE FULL-SERVICE PARTNERSHIPS ARE -- THE LAST I COUNTED,
14 AND IT'S BEEN A YEAR, THERE WERE ONLY ABOUT A HUNDRED OF THOSE
15 FOR ADULTS.

16 ALSO REMEMBER THAT THE EOP LEVEL OF CARE IN THE
17 STATE, AT LEAST IN TERMS OF THINKING ABOUT --

18 **MR. GALVAN:** MOVE TO STRIKE AS NON-RESPONSIVE, YOUR
19 HONOR.

20 **JUDGE REINHARDT:** PUT UP THE CHART. I'M SORRY. SHE
21 SAID -- YOU ASKED HER WHAT SHE REPORTED TO THE BOARD OF
22 SUPERVISORS. YOU SAID, WASN'T IT 25 PERCENT? SHE SAID IT SEEMS
23 CORRECT. NOW IF YOU WANT TO PROVE IT TO HER, GO AHEAD.

24 (DOCUMENT DISPLAYED.)

25

1 **BY MR. GALVAN**

2 **Q** COULD WE FOCUS ON THE TOP, TOP ROW THERE?

3 DO YOU REMEMBER THESE CHARTS FROM WHEN YOU WERE THE
4 HEAD OF THE --

5 **A** YES, I DO. I DO.

6 **Q** SO IS IT FAIR TO SAY THAT ABOUT 2,400 YOU REPORTED TO THE
7 BOARD AS AT THE INTENSIVE LEVEL OF SERVICE IN FISCAL YEAR
8 '05/'06?

9 **A** THAT'S CORRECT.

10 **Q** AND THEN ABOUT 75 PERCENT OF YOUR CLIENTS WERE AT THE
11 OUTPATIENT LEVEL; IS THAT CORRECT?

12 **A** YES, BUT LET ME CLARIFY.

13 OUTPATIENT COULD BE ONE CONTACT WITH AN EMERGENCY OR
14 HOT LINE. THE 25 PERCENT WOULD GET SOMEBODY IN THE 25 PERCENT
15 LEVEL MAYBE THREE DAYS OF HOSPITALIZATION, AND MOST OF THE TIME
16 THEY'RE REALLY GETTING OUTPATIENT SERVICES. SO IT'S VERY
17 DIFFICULT TO QUANTIFY AT THIS HIGH LEVEL.

18 IT IS NOT CORRECT TO ASSUME THAT IN SAN MATEO,
19 25 PERCENT OF EVERYONE IN THAT CURRENT SYSTEM COULD GET A REALLY
20 INTENSIVE LEVEL OF CARE. THAT'S ANYBODY WHO DURING THE COURSE
21 OF THE YEAR TOUCHED A 24-HOUR FACILITY.

22 **Q** OKAY. AND THAT'S ABOUT 25 PERCENT OF YOUR 10,000, 11,000?

23 **A** TOUCHED A 24-HOUR FACILITY OR RECEIVED FULL SERVICE
24 PARTNERSHIP, YES, THAT'S CORRECT.

25 **Q** SO USING ROUND NUMBERS, ABOUT 2,500 PEOPLE EXPERIENCED SOME

1 SERVICES AT THE INTENSIVE LEVEL?

2 **A** YES.

3 **Q** OUT OF YOUR 10,000, ABOUT 7,500 PEOPLE EXPERIENCED SOME
4 SERVICES AT THE OUTPATIENT LEVEL?

5 **A** THAT SOUNDS CORRECT, AND OF THOSE MANY OF THOSE ARE CHILDREN
6 AND YOUTH.

7 **Q** AND A FEW HUNDRED RECEIVED SOME SERVICES AT THE LPS LEVEL OR
8 IMD LEVEL?

9 **A** YES, THAT NUMBER IS FAIRLY CONSISTENT, AND THAT IS NOT A
10 DIFFERENT LEVEL. THAT IS A DIFFERENT LEGAL STATUS. THOSE
11 INDIVIDUALS MIGHT BE RECEIVING OUTPATIENT CARE. THEY MIGHT ALSO
12 BE RECEIVING INPATIENT CARE. THAT'S JUST HOW MANY FOLKS IN A
13 YEAR WERE ON AN LPS CONSERVATORSHIP.

14 **Q** OKAY. WE'RE DONE WITH THIS CHART.

15 IN REACHING YOUR OPINIONS FOR THIS TRIAL, YOU DIDN'T
16 TOUR ANY OF THE STATE PRISONS, DID YOU?

17 **A** NO, I DID NOT TOUR PRISONS FOR THIS, NO.

18 **Q** AND YOU HAVEN'T BEEN IN ANY STATE PRISONS WITHIN THE LAST
19 FEW YEARS, HAVE YOU?

20 **A** NOT WITHIN THE LAST COUPLE OF YEARS, NO.

21 **Q** IN FACT, YOU'VE ONLY BEEN TO ONE STATE PRISON, SAN QUENTIN?

22 **A** ACTUALLY, I KNOW YOU ASKED ME THAT IN MY DEPOSITION, AND,
23 ACTUALLY, I WASN'T THINKING AT THAT TIME, BUT I'VE ALSO BEEN IN
24 VACAVILLE BECAUSE I WAS DIRECTOR OF MENTAL HEALTH IN SOLANO
25 COUNTY.

1 Q AND YOU DON'T HOLD YOURSELF OUT AS AN EXPERT ON ANYTHING
2 ABOUT THE INTERNAL OPERATION OF THE PRISONS, DO YOU?

3 A NO. AND THAT ISN'T WHAT I WAS RETAINED FOR.

4 Q YOU ARE NOT PROVIDING THE COURT WITH ANY OPINIONS AT ALL
5 ABOUT MENTAL HEALTHCARE IN THE PRISONS; IS THAT RIGHT?

6 A THAT'S NOT MY INTENTION, NO.

7 Q I'D LIKE TO READ YOU A SHORT STATEMENT AND ASK YOU IF YOU
8 AGREE WITH IT.

9 "SOME PEOPLE MAY ARGUE THAT THE BASIC
10 BUILDING BLOCKS OF AN EFFECTIVE MENTAL HEALTH
11 SYSTEM ARE LACKING IN MANY COMMUNITIES, AND,
12 THEREFORE, EFFORTS TO REDUCE THE
13 OVERREPRESENTATION OF PEOPLE WITH MENTAL ILLNESS
14 IN THE CRIMINAL JUSTICE SYSTEM ARE FUTILE. THIS
15 ARGUMENT IS NOT PERSUASIVE. EVEN THEN, MOST
16 UNDERFUNDED MENTAL HEALTH SYSTEMS CAN WORK TO
17 IMPROVE SERVICES TO INDIVIDUALS WITH THE
18 GREATEST NEED, INCLUDING THE GROUP OF PEOPLE
19 WITH SERIOUS AND PERSISTENT MENTAL DISORDERS WHO
20 HAVE FREQUENT INTERACTION WITH THE CRIMINAL
21 JUSTICE SYSTEM. SUCH EFFORTS REQUIRE CLOSE
22 COLLABORATION BETWEEN THE MENTAL HEALTH AND
23 CRIMINAL JUSTICE SYSTEMS."

24 DO YOU AGREE WITH THAT STATEMENT?

25 A IF THE SUMMATION OF THE STATEMENT IS THAT LOCAL SYSTEMS,

1 EVEN THOUGH THEY ARE UNDERRESOURCED AND UNDERFUNDED, COULD
2 IMPROVE SERVICES TO FOLKS INVOLVED IN THE CRIMINAL JUSTICE
3 SYSTEM THROUGH COLLABORATION, ABSOLUTELY. THAT'S WHAT MANY,
4 MANY CALIFORNIA SYSTEMS ARE TRYING TO DO, AND THAT'S ACTUALLY
5 WHAT WE ARE TRYING TO HELP PROVIDE INPUT ON THROUGH THE STATE
6 JUDICIAL COUNCIL. MENTAL HEALTH COURTS, COLLABORATIONS WITH
7 PROBATION DEPARTMENTS, ALL OF WHICH WE WERE ABLE TO DO IN SAN
8 MATEO COUNTY, AND WITH LOCAL POLICE DEPARTMENTS, ABSOLUTELY
9 IMPROVE SERVICES. THEY DON'T ABSOLUTELY, THOUGH, ADDRESS A LACK
10 OF CAPACITY TO PROVIDE SERVICES TO EVERYONE WHO NEEDS THEM,
11 INCLUDING THE MOST SERIOUSLY MENTALLY ILL.

12 **Q** YOU TESTIFIED ABOUT HOW COUNTY MENTAL HEALTH PRIORITIZES
13 SERVICES AND HOW, IF THERE'S A PRISONER RELEASE ORDER, THERE'S
14 THE DANGER THEY WOULD PRIORITIZE SERVICES TO THE RELEASED
15 MENTALLY ILL PRISONERS AT THE EXPENSE OF THE GENERAL PUBLIC?

16 **A** YES, I DID.

17 **Q** AND YOU KNOW THAT 10,000 PEOPLE PER MONTH ARE RELEASED RIGHT
18 NOW FROM CALIFORNIA PRISONS TO THE COMMUNITIES?

19 **A** YES, I DO.

20 **Q** AND YOU KNOW THAT USING THE 20 PERCENT ESTIMATE, ABOUT 2,000
21 OF THEM ARE PERSONS WITH MENTAL ILLNESS MEMBERS OF THE COLEMAN
22 CLASS?

23 **A** THAT ARE NEWLY RELEASED EACH MONTH.

24 **Q** THAT ARE NEWLY RELEASED EACH MONTH.

25 **A** BECAUSE THE TOTAL PAROLE OUTPATIENT SYSTEM MONTHLY AVERAGE

1 IS MORE LIKE 22,5-, 23,000 OF MENTALLY ILL, SO YOU ADD -- SO
2 IT'S 2,000 A MONTH NEW WITHIN THAT SYSTEM.

3 **Q** YES. YOU ARE AWARE THAT 2,000 A MONTH NEW COME INTO YOUR
4 COMMUNITIES?

5 **A** YES.

6 **Q** FROM THE PRISON SYSTEM?

7 **A** YES.

8 **Q** DO THE MENTAL HEALTH DIRECTORS PRIORITIZE THEM FOR SERVICE
9 NOW?

10 **A** CURRENTLY, IN CALIFORNIA THERE'S SOME VARIABILITY, BUT,
11 TRADITIONALLY, IN CALIFORNIA, IT'S BASICALLY OPERATED AS A
12 PARALLEL SYSTEM. SO THAT, IN GENERAL, PAROLEES RECEIVE THEIR
13 CARE, AND HAVE RECEIVED THEIR CARE, FROM THE PAROLE OUTPATIENT
14 SYSTEM.

15 THE PROBLEM, I THINK, THAT CDCR, AND IS BECOMING MORE
16 RECOGNIZED, IS THE PAROLE OUTPATIENT SYSTEM DOES NOT PROVIDE THE
17 FULL RANGE OF INTENSIVE SERVICES THAT ARE NEEDED FOR THE HIGHEST
18 RISK PAROLEES. THAT'S WHY CDCR IS ATTEMPTING TO DEVELOP
19 SERVICES VIA COUNTIES AND CONTRACT AGENCIES TO PROVIDE THAT FULL
20 SERVICE PARTNERSHIP, THAT INTENSIVE LEVEL OF CARE.

21 **JUDGE KARLTON:** I'M NOT SURE YOU'VE ANSWERED THE
22 QUESTION. THE QUESTION WAS ABOUT 10,000 PEOPLE ARE BEING
23 RELEASED OF WHICH ABOUT 20-PLUS PERCENT ARE COLEMAN CLASS
24 MEMBERS. DOES THE COMMUNITY TODAY PRIORITIZE IN FAVOR OF THOSE
25 PEOPLE AS AGAINST POPULATION IN GENERAL?

1 **THE WITNESS:** THANK YOU, YOUR HONOR. THE ANSWER IS
2 GENERALLY, NO, NOT THE PUBLIC MENTAL HEALTH SYSTEM.

3 **BY MR. GALVAN**

4 **Q** AND YOU ARE AWARE THAT OTHER STATES, INCLUDING TEXAS AND
5 PENNSYLVANIA, HAVE USED POPULATION CAPS TO REDUCE THEIR PRISON
6 POPULATIONS, AREN'T YOU?

7 **A** I JUST MISSED -- SAY THAT AGAIN, A LITTLE MORE SLOWLY.

8 **Q** YOU ARE AWARE THAT OTHER STATES, INCLUDING TEXAS AND
9 PENNSYLVANIA, HAVE USED POPULATION CAPS TO REDUCE THEIR PRISON
10 POPULATION, AREN'T YOU?

11 **A** I -- NOT SPECIFICALLY AWARE OF WHAT PENNSYLVANIA DID. I DO
12 KNOW THAT OTHER STATES HAVE USED POPULATION CAPS, YES.

13 **Q** IN YOUR STUDY FOR PREPARING FOR YOUR TESTIMONY TODAY, YOU
14 DIDN'T FIND ANY EVIDENCE, DID YOU, THAT PENNSYLVANIA, TEXAS, OR
15 ANY OTHER STATE STOPPED SERVING CHILDREN IN ITS COMMUNITY MENTAL
16 HEALTH SYSTEM BECAUSE OF THE POPULATION REDUCTIONS?

17 **A** I'M HAVING TROUBLE WITH THAT QUESTION. I DID NOT DELVE
18 INTO, NOR HAVE I SEEN -- I HAVE NOT SEEN THE PENNSYLVANIA
19 RESEARCH. PERHAPS I SHOULD HAVE. BUT I HAVEN'T -- I'M REALLY
20 GROUNDING MY TESTIMONY ON WHAT I KNOW IS CURRENTLY AVAILABLE IN
21 CALIFORNIA'S PUBLIC MENTAL HEALTH SYSTEM, AND THE CAPACITY
22 AROUND THAT, AND THE UNDERCAPACITY TO SERVE ADEQUATELY, AS
23 EVIDENCED BY RECIDIVISM RATES IN THE PAROLE OUTPATIENT SYSTEM.

24 **Q** AS YOU SIT HERE TODAY, YOU HAVE NO EVIDENCE THAT ANY OTHER
25 STATE THAT HAS REDUCED ITS PRISON POPULATION THROUGH A CAP HAS

1 HAD TO STOP SERVING MEMBERS OF THE GENERAL PUBLIC IN ITS
2 COMMUNITY MENTAL HEALTH SYSTEM, DO YOU?

3 **MR. LEWIS:** OBJECTION. LACK OF FOUNDATION.

4 **JUDGE HENDERSON:** ASK IF SHE HAS ANY SUCH EVIDENCE.

5 **JUDGE KARLTON:** JUST ASK WHETHER SHE'S AWARE. EITHER
6 SHE IS OR SHE ISN'T.

7 **THE WITNESS:** I AM NOT AWARE OF SPECIFIC EVIDENCE,
8 ALTHOUGH TEXAS HAS A SYSTEM THAT I HOPE CALIFORNIA DOES NOT WANT
9 TO EMULATE.

10 **MR. GALVAN:** MOVE TO STRIKE THE LATTER PART AS
11 NON-RESPONSIVE.

12 **JUDGE HENDERSON:** OVERRULED.

13 **BY MR. GALVAN**

14 **Q** YOUR ASSUMPTIONS ABOUT THE IMPACT OF A RELEASE INCLUDED THE
15 GENERAL 20 PERCENT ASSUMPTION OF CLASS MEMBERSHIP, MENTAL
16 ILLNESS AMONG ANY GIVEN COHORT OF CALIFORNIA PRISONERS, RIGHT?

17 **A** YES.

18 **Q** AND YOU FURTHER NOTED THAT ABOUT 15 PERCENT OF THAT SMALLER
19 NUMBER, 15 PERCENT OF THE 20 PERCENT, WOULD BE AT THE ENHANCED
20 OUTPATIENT LEVEL OF CARE?

21 **A** YES.

22 **Q** ABOUT 85 PERCENT WOULD BE AT 3CMS, OR CCCMS, LEVEL OF CARE?

23 **A** YES. AS SOMEONE IS CLASSIFIED IN THE PRISON, THAT'S WHAT
24 CARRIES THROUGH WHEN THEY'RE PLACED IN OUTPATIENT PAROLE STATUS.
25 ALTHOUGH, I WOULD SAY AT LEAST DR. STEWART QUESTIONED WHETHER

1 THAT WAS ENTIRELY ACCURATE WITHIN THE PRISON BECAUSE HE TALKED
2 ABOUT THERE BEING FOLKS IN THE PRISON WHO WERE UNDERCLASSIFIED.

3 **Q** REGARDLESS OF DR. STEWART, YOU USED THOSE NUMBERS IN
4 REACHING YOUR OPINIONS, CORRECT?

5 **A** I DID. I DID.

6 **Q** AND YOU'VE GONE OVER THE -- YOUR AWARENESS THAT WE'RE
7 SEEKING A REDUCTION OF 52,000 PRISONERS OVER TWO YEARS, THAT'S
8 RIGHT?

9 **A** YES.

10 **Q** SO APPLYING THOSE PERCENTAGES, 20 PERCENT TO 52,000, YOU GET
11 ABOUT 10,400, RIGHT?

12 **A** YES. THAT'S APPROXIMATELY WHAT I WOULD ASSUME.

13 **Q** OKAY. STRETCHING IT OVER TWO YEARS, 5,200 PER YEAR, RIGHT?

14 **A** YES.

15 **Q** OKAY.

16 **A** YEAH, I WOULD ASSUME THAT. YEAH, I WOULD.

17 **Q** YOU ARE AWARE THAT, ACCORDING TO THE STATE DEPARTMENT OF
18 MENTAL HEALTH'S CLIENT AND SERVICE INFORMATION SYSTEM, THE
19 COUNTY MENTAL HEALTH SYSTEM SERVED OVER 658,000 PERSONS IN
20 FISCAL '05, '06?

21 **A** YES, I AM. THAT'S ANY CONTACT. THAT COULD BE A SINGLE
22 CONTACT TO A 24-HOUR LINE.

23 **Q** BUT IT'S ALSO YOUR OPINION THAT USING THAT BIG STATEWIDE
24 AGGREGATE DATA IS NOT AS HELPFUL AS IT COULD BE TO THE COURT; IS
25 THAT RIGHT?

1 **A** YES, IT IS MY OPINION.

2 **Q** IT'S BETTER TO FOCUS ON THE COUNTY BY COUNTY IMPACT, RIGHT?

3 **A** I THINK YOU NEED TO LOOK AT BOTH, BUT I THINK THAT IN TERMS
4 OF WHERE SERVICES ARE GROUNDED IS COUNTY BY COUNTY, AND THERE
5 ARE AREAS OF THE STATE THAT ARE PARTICULARLY STRUGGLING WITH
6 RESOURCES, INCLUDING THE ABILITY TO ATTRACT STAFF. THOSE HAPPEN
7 TO BE IN THE AREAS THAT SOME OF THE PRISONS ARE IN CALIFORNIA.

8 **Q** YOUR DIRECT EXPERIENCE IS THREE COUNTIES, CONTRA COSTA,
9 SOLANO, AND SAN MATEO, RIGHT?

10 **A** AND ALAMEDA.

11 **Q** AND ALAMEDA?

12 **A** YES.

13 **Q** AND MOST RECENTLY SAN MATEO?

14 **A** YES.

15 **Q** SO LET'S LOOK AT THE IMPACT ON SAN MATEO. SO YOU ARE AWARE
16 THAT WHEN THOSE PRISONERS COME OUT EVERY MONTH, 10,000 OR SO,
17 ONE PERCENT OF THEM GO TO SAN MATEO; IS THAT RIGHT?

18 **A** YES. YES.

19 **Q** ONE PERCENT IS A GOOD EASY NUMBER TO WORK WITH.

20 SO USING OUR 5,200 PER YEAR THAT A POPULATION
21 REDUCTION WOULD CAUSE TO EITHER GO TO SAN MATEO A LITTLE EARLIER
22 OR BE DIVERTED AND STAY IN SAN MATEO, ONE PERCENT IS 520 PER
23 YEAR; IS THAT RIGHT?

24 **A** MM-HMM.

25 **Q** OKAY. AND THEN DIVIDING THAT BY -- I'M SORRY, 520 OVER THE

1 TWO YEARS. I EXAGGERATED.

2 **A** OVER THE TWO YEARS, BUT ARE YOU ASSUMING THAT THAT'S A
3 CONSTANT NUMBER, BECAUSE, YOU KNOW, I THINK THERE WILL BE
4 POPULATION BULGES THAT COME AND GO.

5 **Q** FOR --

6 **A** BECAUSE IT DEPENDS ON HOW PEOPLE MOVE OFF OF PAROLE AS WELL,
7 CORRECT?

8 **JUDGE KARLTON:** WE KNOW THAT 10,000 A MONTH ARE BEING
9 RELEASED, AND COUNSEL IS SUGGESTING TO YOU THAT WE USE THE SAME
10 SYSTEM. THERE'S NO REASON TO THINK IT WON'T BE.

11 **BY MR. GALVAN**

12 **Q** I'M GOING TO USE THE SAME WAY OF ESTIMATING IMPACT.

13 **JUDGE KARLTON:** JUST A MINUTE. IS THAT A REASONABLE
14 ASSUMPTION?

15 **THE WITNESS:** I THINK THAT'S REASONABLE WITH THE
16 PROVISIO THAT, YOU KNOW, THAT -- I DON'T KNOW THE POPULATION CAN
17 BE ASSUMED TO BE STEADY, SO YOU HAVE CAPACITY ISSUES AT TIME TO
18 TIME. THAT'S ALL.

19 **JUDGE KARLTON:** I KNOW YOU CAN'T KNOW THAT. I'M JUST
20 SAYING AS A REASONABLE ASSUMPTION. I'M TRYING TO UNDERSTAND
21 WHAT IT IS YOU'RE SAYING, MA'AM.

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

23 **JUDGE KARLTON:** AS A REASONABLE ASSUMPTION, IT IS NOT
24 UNREASONABLE AND, INDEED, MOST LIKELY THAT ANY INCREASE CAUSED
25 BY ORDER OF THIS COURT WOULD FOLLOW THE PATTERN THAT HAS EXISTED

1 UP UNTIL NOW?

2 **THE WITNESS:** I THINK THAT'S A REASONABLE ASSUMPTION,
3 YOUR HONOR.

4 **BY MR. GALVAN**

5 **Q** SO GOING BACK TO THE 520 NEW PAROLEES OF ANY KIND, MENTALLY
6 ILL, NOT MENTALLY ILL, JUST THE WHOLE GROUP, OVER TWO YEARS --
7 I'M GOING TO CUT THAT BY A YEAR, 260, WHICH IS HALF -- EACH YEAR
8 SAN MATEO WOULD GET 260 NEW PAROLEES OF ANY KIND; IS THAT RIGHT?
9 IN ADDITION TO WHAT THEY NORMALLY GET; IS THAT RIGHT?

10 **A** YES. FOLLOWING THAT LOGIC, YES.

11 **Q** DIVIDING 260 BY 12 MONTHS, WE GET A RATE OF 22 PER MONTH
12 EXTRA PAROLEES IN SAN MATEO, RIGHT?

13 **A** OKAY. I'M NOT QUITE FOLLOWING YOUR LOGIC, BECAUSE I THINK
14 YOU -- THAT'S ASSUMING THAT 22 GO OFF EVERY MONTH.

15 **Q** NO. I WOULD LIKE -- WHAT I WOULD LIKE TO DO -- I WANT TO
16 USE YOUR METHODOLOGY. YOUR METHODOLOGY IN YOUR REPORTS, AND
17 TELL ME IF I'M WRONG, WAS TO EXAMINE THE IMPACT OF PEOPLE
18 ARRIVING, AND PUTTING ASIDE FOR THE SAKE OF SIMPLICITY AND
19 EVERYONE UNDERSTANDS, THE IMPACT OF PEOPLE LEAVING PAROLE,
20 CORRECT?

21 **A** WHAT I THINK YOU NEED TO LOOK AT IS AN ESTIMATE OF HOW MANY
22 ADDITIONAL OVER ANY POINT IN TIME WOULD BE ON THE PAROLE SYSTEM,
23 AND I'M JUST TRYING TO FOLLOW THE LOGIC TRAIN WITH YOU. SO IF
24 YOU'RE INCREASING THE NUMBER OF FOLKS ON PAROLE OVER A ONE-YEAR
25 PERIOD, THEN I WOULD THINK YOU DON'T JUST ASSUME THAT THERE'S

1 ONLY 22 ON ANY SINGLE MONTH. I THINK YOU HAVE A CUMULATIVE
2 EFFECT YOU'RE INCREASING THE TOTAL NUMBER OF PEOPLE.

3 **JUDGE KARLTON:** BUT A CERTAIN NUMBER ARE GOING OFF
4 AND ALL KINDS OF THINGS ARE GOING ON?

5 **THE WITNESS:** YEAH, YEAH, YEAH.

6 WHY DON'T YOU CONTINUE WITH YOUR LOGIC, AND I'LL -- I
7 THINK I KNOW WHERE YOU ARE DRIVING, WHICH -- I WON'T MAKE THE
8 ASSUMPTION. I'LL LET YOU LEAD ME TO THE ASSUMPTION, SIR.

9 **BY MR. GALVAN**

10 **Q** SO WHEN SAN MATEO GETS ITS 260 EXTRA PAROLEES PER YEAR, IT
11 IS REASONABLE TO PROJECT THAT THOSE WILL DIVIDE UP BY THE MONTHS
12 INTO 22 PER MONTH, CORRECT?

13 **A** I'M GOING TO HAVE TO SAY I WILL FOLLOW YOUR LOGIC. I DON'T
14 NECESSARILY AGREE THAT'S THE EXACT NUMBER.

15 **Q** IS 260 DIVIDED BY 12 ROUGHLY 22?

16 **A** I UNDERSTAND THAT. BUT I DON'T BELIEVE --

17 **JUDGE HENDERSON:** HOW ABOUT MEDIAN NUMBER OVER THE
18 YEAR OR SOMETHING THAT?

19 **THE WITNESS:** THAT'S WHAT I'M TRYING TO GET AT, YOUR
20 HONOR.

21 **MR. GALVAN:** ESTABLISHING THAT IT'S THE MEDIAN NUMBER
22 OVER THE YEAR IS GOING TO BE 22 PER MONTH OF ALL PAROLEES OF ANY
23 DIAGNOSIS, AND THEN APPLYING THE ONE-FIFTH PROPORTION,
24 20 PERCENT PROPORTION, OF COLEMAN CLASS MEMBERS, THEN IT'S FAIR
25 TO SAY THAT SAN MATEO COULD EXPECT AN EXTRA FOUR TO FIVE COLEMAN

1 CLASS MEMBERS PER MONTH AS A RESULT OF A 52,000 OVER A TWO-YEAR
2 POPULATION REDUCTION, CORRECT?

3 **A** I AM NOT COMFORTABLE WITH FOLLOWING THAT TRAIN OF LOGIC WITH
4 YOU, AND I WILL TELL YOU WHY. BECAUSE I DON'T BELIEVE THAT
5 PEOPLE NEED ONE MONTH OF CARE. I THINK YOU'RE INCREASING -- IF
6 YOU SAID TO ME OVER THE COURSE OF A YEAR, THERE ARE 260
7 ADDITIONAL COLEMAN CLASS MEMBERS ON TOP OF THE EXISTING GROUP OF
8 OUTPATIENT PAROLEES, AND OF THAT 260, 20 PERCENT OF THEM ARE
9 LIKELY TO NEED COLEMAN LEVEL CARE --

10 **MR. GALVAN:** OBJECTION. NON-RESPONSIVE AND
11 MISCHARACTERIZES THE EVIDENCE. THE 260 ARE THE TOTAL NUMBER OF
12 PAROLEES. I'LL MOVE ON FROM THIS AREA.

13 **BY MR. GALVAN**

14 **Q** WHEN YOU WERE WORKING IN YOUR SECOND REPORT ON THIS MATTER,
15 YOU REACHED OUT TO YOUR COLLEAGUES IN THE CALIFORNIA MENTAL
16 HEALTH DIRECTORS ASSOCIATION FOR HELP; IS THAT RIGHT?

17 **A** I REACHED OUT FOR TWO SPECIFIC --

18 **Q** I'M SORRY. IT'S A YES OR NO QUESTION, MA'AM. YOU REACHED
19 OUT FOR HELP?

20 **A** AFTER MY -- AFTER MY EXPERT OPINION, YES, I HAD A
21 CONVERSATION WITH THEM, BUT IT WAS AFTER THE EXPERT OPINION WAS
22 RENDERED.

23 **Q** TO BE MORE PRECISE, AFTER YOUR FIRST EXPERT OPINION, AFTER
24 HAVING WRITTEN YOUR SECOND REBUTTAL REPORT, YOU REACHED OUT TO
25 HELP FOR THEM; IS THAT RIGHT?

1 **A** SPECIFICALLY ASKING FOR --

2 **Q** YES OR NO. JUST YES OR NO, MA'AM.

3 **A** I CAN ONLY GIVE YOU A YES, BUT, AND IT IS A YES, BUT.

4 **Q** YOU ARE PRESENTLY A CONSULTANT TO THE CALIFORNIA MENTAL
5 HEALTH DIRECTORS ASSOCIATION?

6 **A** YES, I AM.

7 **Q** AND YOU HELPED THEM WRITE THEIR POSITION PAPERS ON
8 CORRECTION REFORM; IS THAT RIGHT?

9 **A** YES, I DID.

10 **Q** YOU HELPED WRITE THEIR POSITION PAPER ON THE LEGISLATIVE
11 ANALYST'S OFFICE PROPOSAL TO REALIGN 70,000 PAROLEES TO COUNTY
12 PROBATION; IS THAT RIGHT?

13 **A** YES, I DID.

14 **Q** AND YOU HAVE -- YOU TAKE SOME OF THE CREDIT FOR DEFEATING
15 THAT PROPOSAL, RIGHT?

16 **A** I TAKE NO CREDIT.

17 **Q** OKAY. AND THE CALIFORNIA MENTAL HEALTH DIRECTORS
18 ASSOCIATION --

19 **JUDGE KARLTON:** HOW ABOUT RESPONSIBILITY?

20 **THE WITNESS:** I WAS ONE OF A GROUP OF PROBABLY 25 OR
21 30 INDIVIDUALS WHO WERE WORKING WITH A CSAC COMMITTEE, AND THAT
22 POSITION WAS CSAC'S POSITION, SO I WAS ONE VOICE IN THAT.
23 THAT'S WHY I DIDN'T TAKE CREDIT. I AGREED WITH THE POSITION, I
24 WILL SAY THAT, AND THE CONCERN WAS --

25 **JUDGE KARLTON:** NOBODY ASKED YOU, MA'AM.

1 **BY MR. GALVAN**

2 **Q** THE MENTAL HEALTH DIRECTORS ASSOCIATION IS A REGISTERED
3 LOBBYING ASSOCIATION; IS THAT RIGHT?

4 **A** YES, IT IS.

5 **Q** WHEN YOU WERE ASKING FOR HELP, YOU SPECIFICALLY ASKED FOR
6 HELP FROM THREE PEOPLE, CORRECT? DON KINGDON IS ONE OF THEM?

7 **A** YES.

8 **Q** HE'S THE ASSISTANT DIRECTOR OF THE ASSOCIATION?

9 **A** YES.

10 **Q** AND NANCY PENA, P-E-N-A, IS ANOTHER?

11 **A** PENA? SHE IS A MENTAL HEALTH DIRECTOR IN CALIFORNIA.

12 **Q** YOU ASKED FOR HER HELP?

13 **A** I ASKED TO DISCUSS AN ISSUE ON VALDIVIA WITH THEM.

14 **Q** AND PATRICIA RYAN, THE EXECUTIVE DIRECTOR, YOU ASKED HER FOR
15 HELP?

16 **A** I ASKED TO HAVE A CONVERSATION.

17 **MR. GALVAN:** COULD WE LOOK AT BAT 551, MR. JONES,
18 WHICH IS GOING TO BE MARKED AS PA 43?

19 (DOCUMENT DISPLAYED.)

20 **BY MR. GALVAN**

21 **Q** YOU ASKED HER FOR HELP IN AN E-MAIL ON OR ABOUT AUGUST 21ST;
22 IS THAT RIGHT?

23 **A** I DON'T REMEMBER THE DATE, BUT THAT COULD EASILY BE CORRECT.

24 **Q** IF WE COULD ZOOM IN ON THE MIDDLE PORTION, ORIGINAL MESSAGE,
25 UNDER "THANKS, PAT"? DOWN TO THE VERY BOTTOM THERE.

1 DO YOU RECALL SENDING A MESSAGE WITH THAT SUBJECT
2 LINE, "REALLY WOULD LIKE BRIEF TIME TO TALK RE: COLEMAN ISSUES"?

3 **A** YES, I DO.

4 **Q** YOUR QUESTION TO THEM, AND I'LL JUST READ IT INTO THE RECORD
5 WAS:

6 "HI, PAT AND DON. AS I GET DEEPER INTO
7 ASSERTIONS RELATED TO THE COLEMAN SUIT, I
8 ANTICIPATE INCREASED PRESSURES AND QUESTIONS
9 ABOUT THE ROLE AND RESPONSIBILITY OF COUNTY
10 PUBLIC MENTAL HEALTH SYSTEMS TO SERVE PAROLEES.
11 I HAVE TO DO RESPONSES TO SEVERAL PLAINTIFFS'
12 EXPERT WITNESS REPORTS BY THE END OF WEDNESDAY
13 AUGUST 27 AND WOULD LIKE A CHANCE TO DISCUSS
14 SOME OF THESE ISSUES WITH YOU, ESPECIALLY OUR
15 POSITION THAT COUNTY MENTAL HEALTH IS NOT
16 RESPONSIBLE FOR TREATMENT OF INDIVIDUALS WHO ARE
17 ON ACTIVE PAROLE STATUS, ASIDE FROM THE
18 PROHIBITION UNDER MHSA. I THINK I WILL BE
19 CHALLENGED ON THIS AND WILL NEED TO IDENTIFY
20 CODE CITATIONS, HISTORY, ET CETERA, AND THIS IS
21 IN LIGHT OF CONTINUED, ALTHOUGH PERHAPS
22 WEAKENING, ASSERTIONS FROM CDCR ABOUT OUR
23 RESPONSIBILITY TO TREAT ALL OF OUR RESIDENTS."
24 WHEN YOU WERE ASKING FOR HELP WITH "OUR POSITION,"
25 WERE YOU ASKING FOR THAT HELP -- WAS "OUR POSITION" THE MENTAL

1 HEALTH DIRECTOR'S ASSOCIATION OR YOUR POSITION AS CDCR'S EXPERT
2 IN THIS CASE?

3 **A** I WAS ATTEMPTING TO GET CLARIFICATION AS TO THE
4 HISTORICAL -- WHEN I SAID THERE HAVE BEEN HISTORICALLY TWO
5 PARALLEL SYSTEMS, THE ADULT OUTPATIENT PAROLE SYSTEM AND THE
6 PUBLIC MENTAL HEALTH SYSTEM, WHAT I WAS ATTEMPTING TO GET WAS
7 CLARIFICATION ABOUT THE CONSISTENCY ACROSS CALIFORNIA, FRANKLY,
8 THAT PUBLIC MENTAL HEALTH SYSTEMS GENERALLY HAVE NOT ACCEPTED
9 ACTIVE PAROLEES INTO THE PUBLIC MENTAL HEALTH SYSTEM, OTHER THAN
10 FOR CRISIS PSYCHIATRIC EMERGENCY CARE, AND SO THAT'S THE, QUOTE,
11 POSITION I WAS REFERRING TO.

12 **Q** AND --

13 **A** THAT'S REALLY HISTORICAL PRACTICE.

14 **Q** YOU WERE ASKING THEM FOR SOME CODE CITATIONS. DID YOU FIND
15 ANY CODE CITATIONS?

16 **A** THERE ARE -- NO, IT'S REALLY PRACTICE AND NOT CODE
17 CITATIONS.

18 **Q** SO AS YOU SIT HERE TODAY, YOU STILL DON'T KNOW OF ANY
19 AUTHORITY IN THE LAW FOR COUNTY MENTAL HEALTH DIRECTORS TO DENY
20 SERVICE TO PAROLEES, DO YOU?

21 **A** TO MY KNOWLEDGE, THERE IS NOT LEGAL AUTHORITY. THERE IS
22 HISTORICAL PRECEDENT AND PRACTICE.

23 **JUDGE KARLTON:** THERE'S ALSO HISTORICAL -- NEVER
24 MIND. GO AHEAD.

25

1 **BY MR. GALVAN**

2 **Q** AND YOU ARE AWARE, AREN'T YOU, THAT THERE HAS BEEN TESTIMONY
3 IN THIS TRIAL THAT PAROLEES, THOUSANDS OF THEM, ARE RETURNED TO
4 PRISON EACH YEAR BECAUSE THEY CAN'T GET ACCESS TO MENTAL HEALTH
5 SERVICES IN THE COMMUNITY?

6 **A** I HAVE NOT HEARD THE TESTIMONY FOR THE TRIAL, BUT I WOULD
7 NOT BE SURPRISED AT THAT BEING TESTIMONY.

8 **Q** SO YOU WOULDN'T BE SURPRISED IF IT WERE TRUE THAT THOUSANDS
9 OF PAROLEES ARE RETURNED TO PRISON EACH YEAR BECAUSE THEY CANNOT
10 ACCESS CARE IN THE COMMUNITY?

11 **A** MY UNDERSTANDING IS THAT THERE IS CERTAINLY A FACTOR IN
12 RETURNING THAT HAS TO DO WITH LACK OF ACCESS TO TREATMENT, BOTH
13 SUBSTANCE ABUSE AND MENTAL HEALTH TREATMENT. MENTAL HEALTH --
14 AND I WOULD REMIND YOU THERE ARE MANY PEOPLE IN CALIFORNIA THAT
15 ARE SERIOUSLY MENTALLY ILL THAT DO NOT HAVE ACCESS TO ADEQUATE
16 TREATMENT, INCLUDING PEOPLE INVOLVED IN THE CRIMINAL JUSTICE
17 SYSTEM.

18 **Q** AND YOU'VE SAID IN YOUR REPORTS THAT UNDER THE REALIGNMENT
19 STATUTE, YOUR COUNTY MENTAL HEALTH OBLIGATION IS TO PROVIDE
20 SERVICES TO THE EXTENT RESOURCES ARE AVAILABLE, CORRECT?

21 **A** YES, I DID. I DID.

22 **Q** AND RESOURCES ARE LIMITED, CORRECT?

23 **A** RESOURCES ARE PROBABLY ABOUT 50 PERCENT OF WHAT THE NEED IS.

24 **Q** OKAY. WHEN RESOURCES ARE LIMITED YOU EMPLOY TRIAGE TO
25 DECIDE WHERE TO USE YOUR RESOURCES, RIGHT?

1 **A** YES, THAT IS WHAT SYSTEMS DO.

2 **Q** AND ONE ELEMENT OF YOUR TRIAGE SYSTEM IS TO ASK WHETHER THE
3 PATIENT HAS OTHER RESOURCES TO GET CARE, CORRECT?

4 **A** YES.

5 **Q** FOR EXAMPLE, IF A PATIENT HAS PRIVATE INSURANCE, YOU MIGHT
6 NOT SERVE THEM DIRECTLY, BUT HELP LINK THEM UP WITH THEIR
7 INSURANCE; IS THAT RIGHT?

8 **A** YES, ABSOLUTELY.

9 **Q** AND WHEN A PAROLEE COMES IN FOR SERVICE AND PARTICIPATES IN
10 YOUR -- IN COUNTY MENTAL HEALTH TRIAGE, ONE OF THE DECISIONS
11 MADE IS THAT THAT PERSON HAS ANOTHER RESOURCE FOR SERVICE,
12 CORRECT?

13 **A** YES, YES.

14 **Q** AND THAT RESOURCE FOR SERVICE IS THE PAROLE OUTPATIENT
15 CLINIC, CORRECT?

16 **A** RIGHT. AS I SAID, PRACTICE HAS BEEN THAT GENERALLY PEOPLE
17 WHO ARE ON PAROLE ARE -- GO TO THE PAROLE OUTPATIENT SYSTEM.
18 THEY DON'T GENERALLY COME, WITH SOME EXCEPTIONS, TO THE PUBLIC
19 MENTAL HEALTH SYSTEM WHILE THEY WERE ON PAROLE.

20 **Q** IF A PAROLEE COMES TO THE MENTAL HEALTH SYSTEM OR COMMUNITY
21 MENTAL HEALTH SYSTEM, AND THEY NEED SOMETHING BEYOND POC CARE,
22 THEY NEED SOME KIND CRISIS CARE, YOU STILL HAVE TO TRIAGE THEM,
23 RIGHT?

24 **A** IF AN INDIVIDUAL REQUIRES PSYCHIATRIC EMERGENCY SERVICES,
25 YES, YOU HAVE TO TRIAGE ANYONE WHO COMES IN.

1 Q AND IF AFTER THE PSYCHIATRIC EMERGENCY SERVICES, THEY NEED
2 CONTINUED HIGH LEVEL SERVICES, DOES COUNTY MENTAL HEALTH
3 CONTINUE TO SERVE THEM?

4 A I WOULD ANSWER THAT THE PRACTICE HAS TYPICALLY BEEN THAT,
5 NO, AND LET ME CLARIFY ONE PIECE. THE -- CURRENTLY, IN
6 CALIFORNIA, THE MOST INTENSIVE LEVEL OF CARE, WHICH IS THE
7 FULL-SERVICE PARTNERSHIPS, ARE FUNDED THROUGH THE MENTAL HEALTH
8 SERVICES ACT, AND THAT SPECIFICALLY PRECLUDES PAROLEES, SO THAT
9 THERE REALLY ISN'T CAPACITY IN TERMS OF THE FUNDING THAT IS
10 AVAILABLE FOR THOSE MOST INTENSIVE SERVICES TO SERVE PAROLEES.

11 Q SO, THEREFORE, A MENTAL HEALTH DIRECTOR WHO FELT HE HAD TO
12 PRIORITIZE RELEASED PRISONERS WOULD NOT HAVE THE OPTION OF
13 PRIORITIZING THEM FOR SERVICES FUNDED BY THE MENTAL HEALTH
14 SERVICES ACT, CORRECT?

15 A NOT, NO.

16 Q HE WOULD HAVE TO CONTINUE SERVING THE GENERAL PUBLIC,
17 CORRECT?

18 A YES, YES, OF WHOM THERE ARE MORE THAN -- MORE PEOPLE THAN
19 SERVICES ARE AVAILABLE.

20 Q AND ISN'T IT CORRECT, TO YOUR KNOWLEDGE, THAT THE MENTAL
21 HEALTH SERVICES ACT FUNDING CONSTITUTES ABOUT 1.5 BILLION OUT OF
22 OVER \$5 BILLION IN THE COMMUNITY MENTAL HEALTH BUDGET?

23 A THAT SOUNDS CORRECT, YES.

24 Q ISN'T IT YOUR UNDERSTANDING THAT ABOUT 3.8 BILLION COMES
25 FROM THE REALIGNMENT FUNDS; ISN'T THAT CORRECT?

1 **A** NO. IT'S A COMBINATION OF REALIGNMENT AND MEDICAID. ABOUT
2 HALF OF THAT IS ACTUALLY MEDICAID. FEDERAL MEDICAID, FEDERAL
3 MEDICAID DOLLARS. REALIGNMENT PULLS THE MEDICAID MATCH IN.

4 **Q** YOU WROTE IN YOUR REPORTS ABOUT THE BRONZAN-MCCORQUODALE
5 ACT, IS THAT --

6 **A** YES, SIR.

7 **Q** AND THE BRONZAN-MCCORQUODALE ACT IS THE REALIGNMENT ACT,
8 CORRECT?

9 **A** YES. THOSE ARE THE AUTHORS OF THE LEGISLATION.

10 **Q** YOU ARE AWARE OF THAT ONE SECTION OF THE REALIGNMENT ACT
11 SAYS THAT FOR PURPOSES OF ORGANIZING OUTREACH AND TREATMENT
12 OPTIONS, TO THE EXTENT RESOURCES ARE AVAILABLE, THE TARGET
13 POPULATION INCLUDES, BUT IS NOT LIMITED TO, PERSONS ARRESTED OR
14 CONVICTED OF CRIMES; AREN'T YOU?

15 **A** THAT IS ALWAYS PART OF THE TARGET POPULATION. IT HAS NOT
16 TYPICALLY BEEN INTERPRETED TO MEAN PAROLEES, BECAUSE THERE ARE
17 RESOURCES FOR PAROLEES.

18 **Q** WHAT ARE THOSE RESOURCES FOR PAROLEES, TO YOUR KNOWLEDGE?

19 **A** I'M SORRY. SAY THAT AGAIN.

20 **Q** WHEN YOU SAY THERE ARE RESOURCES FOR PAROLEES, WHAT
21 RESOURCES FOR PAROLEES DID YOU, AS A COUNTY MENTAL HEALTH
22 DIRECTOR, EXPECT THEM TO ACCESS WHEN THEY HAD A NEED FOR CARE
23 BEYOND WHAT THE PAROLE OUTPATIENT CLINIC COULD PROVIDE?

24 **A** COUNTY MENTAL HEALTH SYSTEMS DID NOT IN GENERAL PROVIDE
25 INTENSIVE SERVICES TO PAROLEES. I KEEP SAYING THAT. BUT I'M

1 NOT SAYING IT'S A GOOD THING. I'M SAYING WHAT HAS BEEN THE
2 CASE.

3 **Q** THE QUESTION WAS SLIGHTLY DIFFERENT. THE QUESTION IS WHEN
4 YOU WERE A COUNTY MENTAL HEALTH DIRECTOR --

5 **A** MM-HMM.

6 **Q** YOU TESTIFIED A MOMENT AGO THAT PAROLEES -- YOU DIDN'T
7 CONSIDER THEM TO BE WITHIN THAT STATUTE I READ YOU BECAUSE THEY
8 HAD ACCESS TO OTHER SERVICES, RIGHT? YOU JUST TESTIFIED TO
9 THAT, CORRECT?

10 **A** I WOULD -- WHAT I WOULD TESTIFY TO, IS THAT THE
11 UNDERSTANDING?

12 **JUDGE KARLTON:** NO, MA'AM, THAT'S NOT THE QUESTION.

13 **THE WITNESS:** ALL RIGHT. LET ME TRY TO HEAR THE
14 QUESTION BETTER. CAN YOU REPEAT THE QUESTION, PLEASE?

15 **BY MR. GALVAN**

16 **Q** YOU TESTIFIED THAT YOU DID NOT CONSIDER PAROLEES TO BE
17 WITHIN THE DEFINITION FROM THE ACT THAT I READ YOU BECAUSE THEY
18 HAD ACCESS TO OTHER SERVICES? YES OR NO?

19 **A** YES.

20 **Q** OKAY. WHAT WAS YOUR UNDERSTANDING AS TO WHAT -- WHEN YOU
21 WERE A MENTAL HEALTH DIRECTOR, TO WHAT THEIR ACCESS TO SERVICES
22 ACTUALLY WAS IF THEY HAD A NEED FOR CARE GREATER THAN WHAT THE
23 PAROLE OUTPATIENT CLINIC COULD PROVIDE?

24 **A** MY UNDERSTANDING, AS A MENTAL HEALTH DIRECTOR, WAS THAT WAS
25 SPECIFICALLY THE STATE OF CALIFORNIA'S RESPONSIBILITY, TO

1 PROVIDE WHATEVER SERVICES WERE NECESSARY TO INDIVIDUALS WHO WERE
2 ON STATE PAROLE, AND THAT IT WAS NOT A RESPONSIBILITY OF THE
3 PUBLICLY FUNDED MENTAL HEALTH SYSTEM.

4 **JUDGE KARLTON:** MA'AM, THE QUESTION WAS NOT WHOSE
5 RESPONSIBILITY IT WAS, NOR ANY OF THE OTHER THINGS YOU JUST
6 MENTIONED. DID YOU HAVE A UNDERSTANDING THAT THERE WERE OTHER
7 MENTAL HEALTH FACILITIES AVAILABLE TO PAROLEES WHO NEEDED MORE
8 THAN POC? YES OR NO.

9 **THE WITNESS:** YES.

10 **JUDGE KARLTON:** AND WHAT WERE THEY?

11 **THE WITNESS:** THEY WERE POC AND ANY STATE DEPARTMENT
12 OF MENTAL HEALTH FACILITIES, SUCH AS SUBACUTE CARE OR -- THAT
13 WAS BASICALLY IT. AND PERHAPS CONTRACTED SERVICES THROUGH THE
14 STATE DEPARTMENT OF CORRECTIONS.

15 **BY MR. GALVAN**

16 **Q** DID YOU TAKE ANY STEPS WHEN YOU WERE A MENTAL HEALTH
17 DIRECTOR TO CONFIRM THAT, YOUR UNDERSTANDING THAT THOSE PATIENTS
18 COULD GET INTO THE DEPARTMENT OF MENTAL HEALTH HOSPITALS WAS
19 ACTUALLY TRUE?

20 **A** NO. WE STRUGGLED TO GET JAIL -- JAIL INMATES INTO STATE
21 MENTAL HEALTH FACILITIES.

22 **Q** AS TO PEOPLE ON PAROLE, DID YOU TAKE ANY STEPS TO CONFIRM
23 WHETHER IT WAS ACTUALLY TRUE THAT THEY HAD ACCESS TO OTHER
24 SERVICES DIRECT THROUGH THE DEPARTMENT OF MENTAL HEALTH? YES OR
25 NO?

1 **A** THAT WAS NOT MY FOCUS, NO.

2 **Q** AND -- READING FROM YOUR OPINION, I MEAN YOUR FIRST REPORT,
3 YOU WROTE THAT YOUR OPINION IS THAT THE RECEIVER'S CONSOLIDATED
4 HEALTHCARE -- HEALTH FACILITIES, HEALTHCARE FACILITIES,
5 CONSOLIDATED HEALTHCARE FACILITIES ARE A, QUOTE, MORE REASONABLE
6 AND CONSIDERED ALTERNATIVE TO THE IMPACT OF OVERCROWDING THAN A
7 POTENTIAL PRISONER RELEASE. IS THAT STILL YOUR OPINION TODAY?

8 **A** I -- IF THAT WERE CARRIED FORWARD, I DO BELIEVE IT WOULD
9 PROVIDE BETTER CARE WITHIN THE PRISON, BUT YOU STIPULATED TO ME
10 THAT'S NOT MY AREA OF EXPERT OPINION.

11 **Q** I'M SORRY. SO YOU DON'T HAVE ANY OPINION TODAY AS TO
12 WHETHER THE CONSOLIDATED FACILITIES --

13 **A** I HAVE AN OPINION. I HAVE AN OPINION.

14 **Q** IT'S WHAT I READ, ISN'T IT?

15 **A** YES.

16 **Q** OKAY. AND YOU ASSUMED THAT THE CONSOLIDATED HEALTHCARE
17 FACILITIES WOULD BE BUILT IN A COUPLE OF YEARS, CORRECT?

18 **A** I BELIEVE IT WAS PROJECTED TO TAKE, I THINK, THREE TO FIVE
19 YEARS.

20 **Q** YOUR SENSE WHEN YOU WROTE YOUR REPORTS IS THAT THE STATE IS
21 QUITE COMMITTED TO BUILDING THE HEALTHCARE FACILITIES, CORRECT?

22 **A** AT THE TIME I WROTE THE INITIAL OPINION, I BELIEVE THAT
23 THERE WAS SOME LEVEL OF COMMITMENT ON THE PART OF THE STATE.

24 **Q** WHEN YOU WROTE THE ORIGINAL OPINION, YOUR SENSE WAS THAT THE
25 STATE IS MOVING RAPIDLY TOWARDS BUILDING THE CONSOLIDATED

1 HEALTHCARE FACILITIES, CORRECT?

2 **A** MY UNDERSTANDING WAS THAT THERE WERE ACTIVE DISCUSSIONS
3 GOING ON. I DON'T MAKE ASSUMPTIONS ABOUT HOW RAPIDLY THE STATE
4 MOVES OR DOESN'T MOVE.

5 **Q** CAN WE -- I WILL JUST READ YOU FROM YOUR DEPOSITION RATHER
6 THAN PUTTING IT UP.

7 "QUESTION: DID YOU MAKE ANY ASSUMPTION
8 ABOUT WHEN THESE 5,000 BEDS WOULD BE OPEN?

9 "ANSWER: I BELIEVE, BUT I CANNOT RECOLLECT
10 EXACTLY, THAT THERE WERE SOME PROJECTIONS WITHIN
11 THE NEXT COUPLE OF YEARS THEY WERE TRYING TO GET
12 THEM DEVELOPED."

13 FURTHER DOWN:

14 "MY SENSE IS THAT THEY ARE COMMITTED TO
15 GETTING THIS DONE, BUT BEYOND THAT, I KNOW IT'S
16 TOUGH TO DO IN-FILL, AND IT'S TOUGH TO DO
17 CONSTRUCTION. MY SENSE IS THAT THE STATE IS
18 MOVING RAPIDLY FOR THE STATE."

19 **A** THAT'S WHAT I SAID, YES.

20 **Q** IF YOU LEARNED NOW THAT THE STATE IS NOW SAYING THAT THEY
21 WILL NOT BUILD THE CONSOLIDATED HEALTHCARE FACILITIES, WOULD YOU
22 WANT TO KNOW WHAT THE STATE HAS PROPOSED INSTEAD FOR THE COLEMAN
23 CLASS?

24 **A** I WOULD BE INTERESTED.

25 **Q** OKAY. AND YOU TESTIFIED YOU CURRENTLY REPRESENT THE HEALTH

1 DIRECTORS ASSOCIATION ON A NUMBER OF COMMITTEES, CORRECT?

2 **A** I THINK I CITED SEVERAL COMMITTEES, YES.

3 **Q** DID YOU LEARN IN YOUR WORK FOR THE HEALTH DIRECTORS
4 ASSOCIATION THAT THE STATE IS NOW FIGHTING THE 5,000 BEDS FOR
5 THE COLEMAN CLASS?

6 **A** I AM AWARE THAT THAT HAS HAPPENED, YES.

7 **Q** AND SINCE YOU ARE INTERESTED, DID YOU FIND OUT WHAT
8 REASONABLE ALTERNATIVES THE STATE IS PROPOSING IN LIEU OF THE
9 RECEIVER'S BEDS?

10 **A** IN THE LAST SEVERAL MONTHS I HAVE NOT PURSUED THAT QUESTION.

11 **Q** DID YOUR ATTORNEYS PROVIDE YOU WITH ANY INFORMATION ON THAT
12 QUESTION?

13 **A** NOT THAT I RECALL SPECIFICALLY. I BELIEVE THAT THEY ARE
14 REALLY MAKING EFFORTS TO DO MORE IN-FILL AND ALSO TO USE AN
15 EXISTING STATE MENTAL HOSPITAL FACILITY.

16 **Q** I'M SORRY. WHICH EXISTING STATE MENTAL HOSPITAL FACILITY IS
17 THAT?

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

19 **Q** WHICH EXISTING STATE MENTAL HOSPITAL FACILITY?

20 **A** I DIDN'T SAY, BUT IF YOU WERE ASKING ME THE QUESTION, I CAN
21 SAY WHAT I'M AWARE OF AS A POSSIBILITY.

22 **JUDGE KARLTON:** ANYTHING IS POSSIBLE. ACTUALLY, WE
23 HAD SOMEBODY WHO SAID ANYTHING IS NOT POSSIBLE. BUT --

24 **BY MR. GALVAN**

25 **Q** WOULD YOU CHANGE YOUR OPINION NOW ABOUT REASONABLE

1 ALTERNATIVES NOW THAT YOU KNOW THE CONSOLIDATED HEALTHCARE
2 FACILITIES ARE NOT GOING FORWARD?

3 **A** MY BELIEF IS THAT THERE IS CAPACITY IN THE STATE IN
4 POTENTIALLY THE STATE MENTAL HOSPITAL SYSTEM THAT MIGHT BE USED
5 FOR THAT. I'M NOT CLAIMING THAT IS MY AREA OF EXPERTISE. I AM
6 AWARE OF THE CAPACITY.

7 **Q** YOU WOULD NOT DRAW THE CONCLUSION, WOULD YOU, THAT
8 INDIVIDUALS WITH MENTAL ILLNESS MAY BE BETTER OFF IN PRISON THAN
9 IN THE COMMUNITY?

10 **A** I WOULD DRAW THE CONCLUSION THAT IT REALLY DEPENDS ON WHERE
11 IN THE COMMUNITY. IF ONE IS HOMELESS AND IS SERIOUSLY PSYCHOTIC
12 AND USING DRUGS, I DON'T THINK THAT'S A GOOD SITUATION IN THE
13 COMMUNITY. IF ONE IS IN THE PRISON, I'M CERTAINLY NOT GOING TO
14 BE AN ADVOCATE FOR EXISTING CONDITIONS IN THE PRISON, BUT AT
15 LEAST ONE HAS HOPEFULLY A BED AND IS RECEIVING MEDICATIONS AND
16 IS UNDER SOME SUPERVISION.

17 **JUDGE KARLTON:** IF THAT ISN'T TRUE, IF THAT ISN'T
18 TRUE, WHAT IS YOUR ANSWER?

19 **THE WITNESS:** MY ANSWER IS THAT BOTH ARE REALLY
20 TERRIBLE SITUATIONS.

21 **BY MR. GALVAN**

22 **Q** HYPOTHETICALLY, IF YOU ASSUME THAT THE -- THAT THIS COURT
23 HAS DECIDED THAT THERE MUST BE A POPULATION REDUCTION --
24 HYPOTHETICALLY?

25 **A** YES.

1 Q AND THAT THE COURT IS GOING TO ORDER A CAP HYPOTHETICALLY,
2 POPULATION CAP? AND PLEASE FURTHER ASSUME THAT NO ADDITIONAL
3 RESOURCES ARE PROVIDED TO COMMUNITIES FOR MENTAL HEALTHCARE, AND
4 ASSUME THAT ONE OF THE METHODS THAT THE STATE, YOUR CLIENT,
5 CHOOSES TO USE --

6 JUDGE KARLTON: NOT HER CLIENT. I SEE. BECAUSE
7 SHE'S BEEN CALLED BY THE STATE. ALL RIGHT.

8 BY MR. GALVAN

9 Q ASSUME ONE OF THE METHODS THE STATE CHOOSES TO USE IS PAROLE
10 A CERTAIN PERCENTAGE OF THE POPULATION SEVERAL MONTHS EARLIER
11 THAN THEY WOULD OTHERWISE BE PAROLED, IS IT YOUR OPINION THAT
12 UNDER THOSE CONDITIONS, THE MENTALLY ILL SHOULD BE EXCLUDED FROM
13 THAT POPULATION REDUCTION PLAN?

14 A MY POSITION HAS BEEN AND CONTINUES TO BE THAT IT IS
15 CRITICALLY IMPORTANT THAT WE PLAN FOR AND PROVIDE THE
16 APPROPRIATE -- IT MAY NOT BE WHAT WE ALL WANT IN THE WORLD, BUT
17 SOME LEVEL OF APPROPRIATE CARE FOR MENTALLY ILL PEOPLE THAT ARE
18 COMING OUT OF THE CORRECTIONAL SYSTEM. I THINK WE HAVE A
19 RESPONSIBILITY. AND I THINK THAT THERE HAVE BEEN DEMONSTRATED
20 OVER AT LEAST 30 YEARS WHAT THE CONSEQUENCES ARE OF NOT TREATING
21 THESE FOLKS IN THE COMMUNITY.

22 Q SO UNDER THE ASSUMPTION I STATED THEN, IT IS YOUR OPINION
23 THAT THE MENTALLY ILL SHOULD BE INCLUDED IN SUCH A POPULATION
24 REDUCTION PLAN?

25 A I DIDN'T STATE AN OPINION ONE WAY OR THE OTHER ON THAT.

1 **Q** DO YOU HAVE AN OPINION ONE WAY OR ANOTHER ON THAT?

2 **A** I CAN -- YOU ARE GOING TO FIND THIS SOMEWHAT NON-RESPONSIVE.
3 I THINK WE HAVE A RESPONSIBILITY, AND I THINK THE STATE HAS A
4 RESPONSIBILITY, TO PLAN FOR THOSE INDIVIDUALS THAT WE KNOW NEED
5 SUPERVISION AND A LEVEL OF CARE IN THE COMMUNITY. OTHERWISE, WE
6 ARE SETTING THEM UP FOR SERIOUS CONSEQUENCES AND WE ARE SETTING
7 COMMUNITIES UP FOR THAT.

8 **JUDGE REINHARDT:** DO YOU KNOW WHETHER THE STATE IS
9 NOW FULFILLING THAT RESPONSIBILITY FOR THE PAROLEES IT IS
10 RELEASING?

11 **THE WITNESS:** I DON'T BELIEVE THAT IT'S ADEQUATE, NO.

12 **JUDGE REINHARDT:** SO WHENEVER THE PAROLEES ARE
13 RELEASED INTO THE COMMUNITY, THERE ARE THE PROBLEMS YOU HAVE
14 DESCRIBED?

15 **THE WITNESS:** YES, I HAVE, YES. SO IF YOU ADD MORE
16 INDIVIDUALS INTO THE COMMUNITY --

17 **JUDGE REINHARDT:** NO, I DIDN'T ASK YOU THAT QUESTION.

18 **THE WITNESS:** OKAY. SORRY.

19 **JUDGE REINHARDT:** WE COULD GET INTO A LONG DISCUSSION
20 ABOUT WHETHER THREE OR FOUR MONTHS CHANGES THE PROBLEM, AND WE
21 ARE NOT GOING TO DO THAT, AT LEAST NOT FROM ME, MAYBE FROM ONE
22 OF COUNSEL. BUT I JUST WANTED TO ASK YOU WHETHER IT'S YOUR
23 POSITION THAT THE STATE IS NOW FAILING TO PROVIDE WHAT'S
24 NECESSARY TO THE PAROLEES THEY RELEASE INTO THE COMMUNITY.

25 **THE WITNESS:** IT IS MY POSITION THAT THE STATE IS

1 NOW -- IS NOT PROVIDING APPROPRIATE SERVICES, AND I THINK THE
2 STATE WOULD PROBABLY AGREE WITH ME, IN THE COMMUNITY.

3 **JUDGE KARLTON:** AND, IN ANY EVENT, UNDER THE FEDERAL
4 STATUTES, IT PROBABLY WOULD VIOLATE FEDERAL LAW TO DISCRIMINATE
5 AGAINST THE MENTALLY ILL IN THEIR RELEASE POLICY, WOULDN'T IT?
6 YOU MAY NOT KNOW THAT.

7 **THE WITNESS:** I WOULD UNDERSTAND THAT WOULD BE THE
8 CASE, YES, SIR.

9 **JUDGE KARLTON:** IT'S AN IMPOSSIBLE SITUATION.

10 **BY MR. GALVAN**

11 **Q** IT'S YOUR OPINION A CAP WOULD HURT LOCAL COMMUNITIES BECAUSE
12 THEY WOULD HAVE TO SERVE OFFENDERS THAT WOULD HAVE OTHERWISE
13 BEEN SENT TO STATE PRISON, CORRECT?

14 **A** WHAT I HAVE SAID IS THERE IS NOT ADEQUATE CAPACITY AT THIS
15 POINT, AND THAT IF ONE INCREASES THE DEMAND, PARTICULARLY FOR
16 VULNERABLE PEOPLE, YOU HAVE EVEN LESS CAPACITY. SO WE HAVE A
17 CONUNDRUM. WE HAVE A PROBLEM THAT WE NEED TO ADDRESS.

18 **JUDGE REINHARDT:** DO YOU HAVE ANY IDEA HOW TO ADDRESS
19 THE PROBLEM IF THE STATE IS NOT GOING TO SPEND ANY MORE MONEY?

20 **THE WITNESS:** I DON'T HAVE ANY GREAT ANSWERS. I
21 BELIEVE THAT THERE IS A NEED TO TAKE A LOOK AT THE SYSTEMS AS
22 THEY NOW EXIST AND THAT THERE MAY BE SOME WAYS -- THINKING ABOUT
23 THE REPORT FROM THE -- THE EXPERT OPINION THAT CAME OUT WHEN THE
24 AB 900 LEGISLATION WAS PASSED, THERE ARE SOME RECOMMENDATIONS
25 WITHIN THAT THAT HAVE TO DO WITH ASSESSING FOLKS WITH LOWER

1 LEVEL NEEDS AND FOLKS WITH HIGHER LEVEL NEEDS AND REALLY TYING
2 THE RESOURCES TO THOSE.

3 I DON'T THINK THERE IS AN EASY ANSWER HERE. I MEAN,
4 IF YOU ASK ME AS SOMEONE WHO HAS DEDICATED THEIR LIFE TO HAVING
5 MORE ADEQUATE SERVICES FOR PEOPLE WITH SERIOUS MENTAL ILLNESS,
6 WE NEED ADDRESS THAT FOR PAROLEES. WE NEED ADDRESS IT FOR
7 PEOPLE THAT COULD BECOME INVOLVED IN THE CRIMINAL JUSTICE
8 SYSTEM. BUT I DON'T THINK THERE ARE ANY EASY ANSWERS. I THINK
9 RESOURCES ARE PART OF IT. REALLY HAVING SOME PERIOD OF TIME TO
10 ENGAGE IN VERY FOCUSED PLANNING, MAYBE.

11 **JUDGE REINHARDT:** YOU DON'T THINK THE STATE HAS HAD A
12 REASONABLE PERIOD OF TIME TO DO THAT WITH ALL OF THE REPORTS
13 THAT HAVE BEEN ISSUED BY EXPERTS, BY THE DEUKMEJIAN COMMISSION?
14 I DON'T KNOW HOW MANY ORDERS HAVE BEEN ISSUED BY MY TWO
15 COLLEAGUES HERE. AND THE STATE?

16 **JUDGE KARLTON:** AND HERE WE ARE.

17 **JUDGE REINHARDT:** YEAH, HERE WE ARE. WHAT IS A
18 REASONABLE PERIOD OF TIME? FROM WHEN TO WHEN? HASN'T THE STATE
19 ALREADY HAD A REASONABLE PERIOD OF TIME?

20 **THE WITNESS:** I BELIEVE, FROM WHAT I HAVE SEEN FROM
21 THE STATE, AT LEAST IN THE LAST COUPLE OF YEARS THAT THERE
22 ARE -- HAVE BEEN -- THERE HAS BEEN MORE PLANNING THAT IS MORE
23 EFFECTIVE THAN I'VE SEEN IN -- PRIOR TO THAT, AND I THINK
24 THERE ACTUALLY -- THERE ARE SOME PLANS AFOOT, INCLUDING
25 NEGOTIATING, FRANKLY, WITH COUNTIES TO PROVIDE SOME MORE

1 INTENSIVE SERVICES.

2 **JUDGE KARLTON:** AND THE TRUTH IS, AS I -- MAYBE YOU
3 DON'T KNOW -- THAT ALMOST EVERYTHING THAT'S BEEN DONE IN THE
4 MENTAL HEALTH FIELD FOR PRISONERS IS THE RESULT OF ORDERS FROM
5 THE COURT. YOU ARE AWARE OF THAT?

6 **THE WITNESS:** I AM AWARE OF THAT, YES.

7 **JUDGE KARLTON:** AND THE MOST LIKELY WAY OF GETTING
8 THE STATE TO DO ANYTHING, WHICH MAY NOT BE POSSIBLE AT ALL, IS
9 FOR THE COURT TO PUT THE STATE ON THE CROSS.

10 **MR. LEWIS:** RESPECTFULLY, YOUR HONOR, I MUST OBJECT
11 TO THAT AS BEYOND THE WITNESS'S --

12 **JUDGE KARLTON:** YOUR OBJECTION IS WELL NOTED.

13 **MR. LEWIS:** THANK YOU.

14 **JUDGE KARLTON:** I'M ASKING YOU. IS THERE ANY HOPE OF
15 THE STATE DOING ANYTHING IF THIS COURT DOESN'T REQUIRE THE STATE
16 TO DO SOMETHING?

17 **THE WITNESS:** MY BELIEF IS THAT THE STATE IS IN THE
18 PROCESS NOW AND IS MAKING PROPOSALS NOW TO DO SOMETHING, BECAUSE
19 I THINK THAT THERE HAS BEEN A CUMULATIVE EFFECT OF THESE YEARS
20 THAT YOU ALL HAVE BEEN STRUGGLING WITH THIS ISSUE AS THE COURT.

21 **JUDGE REINHARDT:** ARE ANY OF THE PROPOSALS OF WHICH
22 YOU ARE AWARE, DO ANY OF THEM INVOLVE THE STATE EXPENDING MORE
23 MONEY?

24 **THE WITNESS:** ONLY ONE, YOUR HONOR, AND THAT IS THAT
25 THERE IS MONEY THAT WAS IDENTIFIED WITHIN AB 900 FOR INTENSIVE

1 SERVICES TO THE EOP POPULATION, AND I AM AWARE THAT THE STATE
2 HAS ACTUALLY IDENTIFIED SOME ADDITIONAL RESOURCES TO GO OUT AND
3 DO SOME CONTRACTS WITH COUNTIES OR PRIVATE NONPROFIT AGENCIES TO
4 PROVIDE THOSE SERVICES. SO THAT -- I MEAN, I THINK THAT IS THE
5 GOOD NEWS IN THIS, IS THAT THEY ALREADY ARE DOING THAT, AND I
6 THINK WITH A LITTLE BIT MORE TIME, THEY WOULD BE ABLE, NOT TO
7 PUT EVERYTHING THAT'S NEEDED WITHIN THE EXISTING DOLLARS, BUT TO
8 PUT SOME REALLY CORE MISSING SERVICES IN. YES.

9 **JUDGE REINHARDT:** HAVE YOU RECEIVED ANY OF THOSE
10 FUNDS YET?

11 **JUDGE KARLTON:** SHE'S NO LONGER DIRECTOR.

12 **THE WITNESS:** WHEN I WAS IN SAN MATEO UP UNTIL A YEAR
13 AGO, WE HAD BEGUN THE DISCUSSION OF THAT, AND I DO UNDERSTAND
14 THAT THERE ARE SEVERAL COUNTIES THAT ARE VERY CLOSE TO SIGNING
15 CONTRACTS.

16 **MR. GALVAN:** NO FURTHER QUESTIONS, YOUR HONORS.

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

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

19 **JUDGE HENDERSON:** REDIRECT?

20 **MR. LEWIS:** NO, YOUR HONOR.

21 **JUDGE HENDERSON:** THANK YOU VERY MUCH FOR APPEARING
22 AND TESTIFYING. YOU ARE EXCUSED. AND WE'LL TAKE A 15-MINUTE
23 RECESS.

24 (RECESS TAKEN.)

25 **THE CLERK:** COURT IS BACK IN SESSION.

1 **JUDGE HENDERSON:** ALL RIGHT. YOU MAY CALL YOUR NEXT
2 WITNESS.

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

4 PLAINTIFFS' WITNESS, DR. JAMES AUSTIN, IS RESUMING
5 THE STAND. CONTINUED CROSS EXAMINATION.

6 **THE COURT:** I REMIND YOU YOU ARE STILL UNDER OATH,
7 SIR.

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

9 **JAMES AUSTIN,**
10 CALLED AS A WITNESS FOR THE PLAINTIFF HEREIN, HAVING BEEN
11 PREVIOUSLY SWORN, RESUMED THE STAND AND TESTIFIED FURTHER AS
12 FOLLOWS:

13 **CROSS-EXAMINATION RESUMED**

14 **BY MS. BARLOW:**

15 **Q.** GOOD MORNING, DR. AUSTIN.

16 **A.** GOOD MORNING.

17 **Q.** I JUST WANT TO COVER A COUPLE OF QUICK QUESTIONS WITH
18 RESPECT TO SOME OF YOUR PROPOSALS.

19 NOW YOU INDICATED THAT DIVERSION COULD EQUAL UP TO A
20 YEAR LESS OF TIME SERVED FOR SOME OF THE DIVERTERS OR OFFENDERS
21 THAT YOU ARE PROPOSING, CORRECT?

22 **A.** I'M SORRY. I DIDN'T HEAR THE FIRST PART OF YOUR QUESTION.

23 **MS. EVENSON:** COULD YOU SPEAK LOUDER, PLEASE?

24 **MS. BARLOW:** I'M SORRY. I THOUGHT I WAS SPEAKING
25 QUITE LOUDLY, BUT I WILL SPEAK LOUDER.

1 **BY MS. BARLOW:**

2 **Q.** YOU INDICATED THAT DIVERSION COULD EQUAL UP TO A YEAR OF
3 TIME LESS SERVED'S BY THOSE OFFENDERS THAT GET DIVERTED UNDER
4 YOUR PROPOSAL, CORRECT?

5 **A.** NO, I DON'T THINK I'M SAYING THAT.

6 **Q.** IN YOUR AUGUST 15, '08 REPORT, PARAGRAPHS 59 AND 60 --

7 **A.** IS THAT THE DIVERSION OF THE SHORT-TERM SENTENCE PEOPLE?

8 **Q.** THIS IS THE DIVERSION, SIR, THAT YOU ARE REFERRING TO, I
9 BELIEVE.

10 **A.** WELL, I THINK THERE ARE TWO DIVERSION RECOMMENDATIONS; ONE
11 IS DIVERSION OF THE TECHNICAL PAROLE VIOLATORS.

12 **Q.** THAT IS NOT THE ONE I'M TALKING ABOUT, SIR.

13 **A.** THE OTHER ONE IS PEOPLE THAT ARE SENTENCED 24 MONTHS OR
14 LESS. THAT'S THEIR SENTENCE FOR CERTAIN CRIMES.

15 SO, YES, THEY ARE BASICALLY SERVING, IT LOOKS LIKE,
16 ABOUT AN AVERAGE OF ABOUT SEVEN MONTHS IN THE CDCR.

17 **Q.** BUT YOU COULD DIVERT SOMEBODY FOR UP TO A YEAR UNDER YOUR
18 PROPOSAL, CORRECT?

19 **A.** THEY COULD AVOID AS MUCH OF A YEAR OF INCARCERATION.

20 **Q.** THANK YOU.

21 AND YOU HAVE INDICATED THAT THAT PARTICULAR
22 METHODOLOGY, THE DIVERSION ONE, WOULD ULTIMATELY REDUCE AN
23 APPROXIMATELY \$12,500 -- 12,500 POPULATION REDUCTION?

24 **A.** APPROXIMATELY, UNDER THOSE CIRCUMSTANCES THAT ARE DISCUSSED
25 IN THE PRIOR MODEL, YES.

1 Q. AND I THINK I HEARD YOU CORRECTLY LAST TIME INDICATE THAT
2 YOU REALLY CAN'T GET TO THE REDUCTION OF 52,000 PRISONERS UNLESS
3 YOU REACH INTO, FOR EARLY RELEASE, THE SECOND STRIKERS AND MAYBE
4 EVEN SOME LIFERS, CORRECT?

5 A. THE 50,000 CAN BE ACHIEVED. I WOULD SAY YOU DON'T HAVE TO
6 GO TO THE LIFERS TO GET THE 50,000 -- THE 50,000 POPULATION
7 REDUCTION.

8 BUT THE PEOPLE THAT ARE SPECIFIED IN THE MODEL, YOU
9 WOULD HAVE TO GO BEYOND THAT GROUP AND THAT WOULD INCLUDE SECOND
10 STRIKERS.

11 Q. OKAY. SO IF THERE IS A CAP IMPOSED ON THE STATE PRISON
12 SYSTEM SEPARATE AND APART FROM ANY RELEASE OR DIVERSION ORDER,
13 WE'D HAVE TO BE ABLE TO TAKE SECOND STRIKERS OUT IN ORDER TO
14 REACH THAT CAP, THE CAP THAT'S PROPOSED BY PLAINTIFFS, CORRECT?

15 A. THE WAY I WOULD PHRASE IT IS THAT THE SECOND STRIKERS ARE
16 COMING OUT NOW, SO THERE IS NO CHANGE IN THE NUMBER OF SECOND
17 STRIKERS BEING RELEASED TO THE COMMUNITY.

18 THE ONLY THING THAT WOULD CHANGE FOR SECOND STRIKERS,
19 WOULD BE THEY WOULD SERVE A SMALLER PROPORTION OF THEIR
20 SENTENCE, BECAUSE THEY ARE MANDATED NOW TO SERVE 80 PERCENT OF
21 THEIR SENTENCES.

22 Q. LET'S TALK ABOUT YOUR REDUCTION IN LENGTH OF SENTENCE.

23 JUDGE KARLTON: CAN I INTERRUPT FOR A MOMENT?

24 ARE YOU, THEREFORE, TELLING US THAT FOR US TO BE
25 SUCCESSFUL, WE HAVE TO IN SOME WAY VOID A PORTION OF

1 CALIFORNIA'S SENTENCING LAW?

2 **THE WITNESS:** TO REACH THE NUMBER OF 50,000, YES.
3 YOU WOULD HAVE TO MODIFY THE SENTENCING LAW.

4 **JUDGE REINHARDT:** YOU WOULD HAVE TO RELEASE THEM
5 EARLIER THAN THEY ARE NOW BEING RELEASED? ARE THEY NOW BEING
6 HELD FOR THE FULL -- IS IT 15 YEARS FOR THE SECOND STRIKER?

7 **THE WITNESS:** EIGHT. THEY ARE ACTUALLY DOING MORE
8 THAN THE 80 PERCENT. SO PART OF THE RECOMMENDATIONS WOULD TAKE
9 CARE OF THAT PROBLEM. THEY ARE DOING MORE THAN 80 PERCENT. THE
10 50 PERCENT ARE DOING MORE THAN THE 50 PERCENT. SO THE
11 RECOMMENDATIONS DEAL WITH THAT ISSUE AND YOU WOULD GO UNDER THAT
12 --

13 **JUDGE REINHARDT:** YOU SAID DOING MORE THAN THE
14 80 PERCENT OR LESS -- WAIT. THE STATUTE SAYS 15 YEARS, CORRECT?

15 **JUDGE KARLTON:** IT SAYS 80 PERCENT.

16 **JUDGE REINHARDT:** THE STATUTE SAYS 80 PERCENT OF 15
17 YEARS?

18 **THE WITNESS:** YES, YOUR HONOR, BECAUSE SECOND
19 STRIKERS HAVE TO DO 80 PERCENT OF THE SENTENCE THAT'S IMPOSED.

20 **JUDGE KARLTON:** 15 YEARS OR MORE.

21 **JUDGE REINHARDT:** ALL RIGHT. LET'S SAY THE MINIMUM
22 IS 15 YEARS, RIGHT?

23 **THE WITNESS:** NO.

24 **JUDGE REINHARDT:** NO, OKAY.

25 **THE WITNESS:** SECOND STRIKERS DO NOT HAVE A 15 YEAR.

1 THEY ARE MORE IN THE FIVE TO EIGHT YEAR RANGE IN GENERAL.

2 **JUDGE REINHARDT:** AND IS IT IN THAT STATUTE, THE
3 SECOND STRIKE STATUTE, THAT SAYS THEY GET 80 PERCENT OR IS THERE
4 A SEPARATE STATUTE THAT SAYS 80 PERCENT?

5 **THE WITNESS:** YOUR HONOR, I'M NOT FAMILIAR WITH THE
6 EXACT, BUT IT'S IN THE STATUTE THAT REQUIRES THEM TO DO 80 --
7 THE SECOND STRIKERS BASICALLY FOR THE SENTENCE THAT IS IMPOSED,
8 THEY DOUBLE THE SENTENCE AND THEN THEY HAVE TO DO 80 PERCENT OF
9 THAT SENTENCE THAT'S IMPOSED, LESS THE JAIL CREDITS THAT THEY
10 RECEIVE FROM THE COURT.

11 **JUDGE REINHARDT:** DO THEY GET ANY PRISONS CREDITS?

12 **THE WITNESS:** I'M SORRY, YOUR HONOR?

13 **JUDGE REINHARDT:** DO THEY GET ANY PRISON CREDITS?

14 OKAY. I WILL FIND OUT SOME OTHER WAY.

15 **THE WITNESS:** THAT'S OKAY. I DIDN'T HEAR THE
16 QUESTION. I WILL ANSWER IT.

17 **JUDGE REINHARDT:** YOU ARE NOT THE ONE TO ASK THE
18 QUESTION, I DON'T THINK. IT'S A QUESTION OF WHAT THE STATUTES
19 ARE. I CAN FIND OUT THE ANSWER TO THAT. OKAY.

20 HOW MUCH WOULD THE REDUCTION BE BELOW THE 80 PERCENT?

21 **THE WITNESS:** I WOULD -- BASICALLY THE REDUCTION
22 WOULD GO SOMEWHERE IN THE NEIGHBORHOOD FROM 80 PERCENT SERVED TO
23 SOMETHING LIKE 65 TO 70 PERCENT SERVED.

24 SO IT WOULD -- IT WOULD NOT GO DOWN TO THE 50 PERCENT
25 LEVEL, BUT YOU WOULD BE IN THAT RANGE OF SERVING 65 TO

1 70 PERCENT OF THE SENTENCE IMPOSED RATHER THAN THE 80 PERCENT.

2 AND YOU WOULD ALSO -- IF I JUST MIGHT ADD. THE OTHER
3 PART IS -- IS THAT BECAUSE OF THE ANOMALIES OF THE WORK
4 INCENTIVE PROGRAMS, PEOPLE DON'T GET THE FULL BENEFIT OF THAT.
5 IT'S KIND OF COMPLICATED, BUT THE RECOMMENDATION WOULD DEAL WITH
6 THAT, ALSO.

7 SO THAT, THAT'S WHAT THE -- BUT THE OVERALL EFFECT
8 WERE TO TAKE THAT 80 PERCENT DOWN TO SOMEWHERE IN THE RANGE OF
9 65 TO 70 PERCENT OF SENTENCE IMPOSED.

10 **JUDGE REINHARDT:** AND DOES THAT ANSWER THE -- WHEN
11 YOU SAY THAT'S WHAT YOU WOULD HAVE TO DO, IS THAT THE ONLY WAY
12 YOU CAN END UP WITH A A CAP OR ARE THERE OTHER ALTERNATIVES
13 RELATING TO TAKING PEOPLE IN TO THE PRISON?

14 **THE WITNESS:** THERE ARE OTHER ALTERNATIVES. YOU
15 KNOW, BASICALLY THE WAY I WOULD APPROACH IT IS THE STATE OR THE
16 COURT WOULD DECIDE WHAT IS THE APPROPRIATE POPULATION SIZE AND
17 ONCE -- ONCE WE KNOW WHAT THAT IS, THEN WE CAN LOOK AT THE
18 VARIOUS WAYS OF ACHIEVING THAT EITHER THROUGH THE DIVERSION OR
19 CHANGING THE LENGTH OF STAY.

20 SO THERE'S A LOT OF THINGS THAT ARE ON THE TABLE THAT
21 COULD BE LOOKED AT THAT COULD GET YOU TO THE 50,000.

22 AND WHEN I SAY THE SECOND STRIKERS, IT IS
23 CONCEIVABLE, I GUESS, THAT COULD YOU AVOID THE SECOND STRIKERS,
24 BUT YOU WOULD HAVE TO DO SOME THINGS DIFFERENTLY. IT ALL
25 DEPENDS ON WHAT THE NUMBER IS THAT THE COURT COMES UP WITH.

1 **JUDGE REINHARDT:** YOU WERE GIVEN THE NUMBER, I THINK,
2 FROM COUNSEL. TAKING THAT NUMBER, ARE YOU SAYING THERE ARE
3 OTHER WAYS TO ACHIEVE THAT NUMBER, OTHER THAN BY INCLUDING THE
4 SECOND STRIKERS?

5 **THE WITNESS:** THERE ARE OTHER WAYS, BUT I WOULD -- I
6 WOULD --

7 **JUDGE REINHARDT:** THEY ARE NOT YOUR RECOMMENDATION?

8 **THE WITNESS:** NO, BECAUSE --

9 **JUDGE REINHARDT:** YOU DON'T HAVE TO GIVE ME AN
10 EXPLANATION. I'M SAYING, THERE ARE OTHER WAYS OF REACHING THE
11 CAP WITHOUT RELEASING THE SECOND STRIKERS.

12 **THE WITNESS:** THERE ARE OTHER WAYS.

13 **JUDGE REINHARDT:** THEY ARE NOT THE WAYS THAT YOU
14 WOULD RECOMMEND.

15 **THE WITNESS:** THAT'S CORRECT, SIR.

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

17 **BY MS. BARLOW:**

18 **Q.** ALL RIGHT. SPECIFIC, DR. AUSTIN, OF THE REDUCTION IN LENGTH
19 OF SENTENCE THAT YOU RECOMMEND. INITIALLY IN YOUR TESTIMONY
20 LAST TIME YOU DESCRIBED THIS OPTION AS A RECOMMENDATION THAT,
21 QUOTE:

22 "THE STATE INCREASE THE NUMBER OF CREDITS
23 THAT PRISONERS CAN EARN FOR PARTICIPATION IN
24 PROGRAMS OR BEING IN COMPLIANCE WITH A CASE
25 MANAGEMENT PLAN."

1 THEN LATER IN YOUR TESTIMONY YOU SAID THERE WAS
2 ACTUALLY NO NEED TO ADD PROGRAMMING FOR THIS FORM -- REFORM TO
3 BE IMPLEMENTED, CORRECT?

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

5 **Q.** SO YOU ARE NOT ACTUALLY RECOMMENDING INCREASED CREDITS FOR
6 ACHIEVING PROGRAMMING. YOU ARE JUST RECOMMENDING REDUCTION IN
7 SENTENCE PERIOD, CORRECT?

8 **A.** NO. AGAIN, THE -- THERE IS NO CHANGE IN THE SENTENCE. I
9 DON'T WANT TO BE PICKY, BUT THE SENTENCES ARE STAYING THE SAME.

10 **Q.** YOU ARE RECOMMENDING THAT THEY BE RELEASED SOONER THAN THEY
11 OTHERWISE WOULD BE? THEIR SENTENCES BE SHORTENED, YES? THEIR
12 LENGTH OF STAY BE SHORTENED?

13 **A.** THE LENGTH OF STAY WOULD BE REDUCED, AND IT COULD BE REDUCED
14 BY REWARDING PRISONERS FOR EITHER PARTICIPATION IN PROGRAMS, AS
15 IS BEING RECOMMENDED BY THE GOVERNOR NOW, AND/OR BEING COMPLIANT
16 WITH A CASE MANAGEMENT PLAN.

17 IT'S IMPORTANT THAT I STATE THAT THERE ARE
18 SIGNIFICANT NUMBERS OF PRISONERS THAT ARE LOW RISK IN THE
19 CALIFORNIA PRISON SYSTEM WHO DON'T REQUIRE TO COMPLETE A
20 PROGRAM, BUT WHAT THEY ARE REQUIRED TO DO IS COMPLY WITH RULES
21 AND REGULATIONS. THEY WOULD ALSO BE REWARDED FOR THAT KIND OF
22 BEHAVIOR.

23 **Q.** NOW, SIR, YOU ESTIMATE THAT THE REDUCTION OF POPULATION BY
24 DIVERSION OF 12,500, AND THERE WOULD BE ADDITIONAL ARRESTS AT
25 THE RATE OF 26 PERCENT FOR THAT GROUP.

1 AND THEN YOU ALSO INDICATED THAT THE -- FOR THE GROUP
2 THAT YOU WOULD SHORTEN THEIR LENGTH OF STAY, THAT THERE WOULD
3 ALSO BE REOFFENSE AND REARREST RIGHTS FOR THAT GROUP.

4 AND YOU HAVE INDICATED IN YOUR REPORT THAT EACH OF
5 THOSE IS LESS THAN ONE PERCENT ARREST RATE.

6 BUT WOULDN'T IT BE FAIR TO SAY THAT WE SHOULD
7 AGGREGATE ALL OF THE ARRESTS FOR EACH OF THE FOUR GROUPS OF
8 PEOPLE YOU ARE RECOMMENDING TO COME UP WITH WHAT THE ARREST RATE
9 IS AND NOT SINGLE THEM OUT BY PROPOSED ALTERNATIVE?

10 **A.** YEAH. WHEN THE FINAL PROPOSAL IS DEVELOPED, YOU COULD DO A
11 CALCULATION THAT PUTS IT ALL TOGETHER.

12 WHAT'S IMPORTANT, AGAIN, TO UNDERSTAND THOUGH. LET'S
13 SAY THE STATE DECLINES TO DO THE DIVERSION OF THE SHORT-TERM
14 PRISONERS. THEN THEY BECOME ELIGIBLE FOR THE CREDIT TIME
15 BECAUSE THEY ARE NOT BEING DIVERTED. THEY ARE COMING INTO THE
16 PRISON SYSTEM. SO YOU PICK UP A LOT OF GAINS.

17 AND I DON'T WANT TO BE COMPLICATED, BUT WHEN YOU GET
18 THE VARIOUS -- THESE RECOMMENDATIONS GOING, THEY ALL NEED TO BE
19 PUT TOGETHER, BUNDLED TOGETHER, SO YOU CAN SEE WHAT WE CALL THE
20 INTERACTIVE EFFECTS. YOU CAN'T PUT THEM SEPARATELY,
21 SIDE-BY-SIDE. THE WHOLE THING HAS TO BE PACKAGED, AND THEN
22 ESTIMATED, AND THEN YOU CAN COME UP WITH WHAT YOU THINK ARE THE
23 CALCULATIONS OF AVERTED, ARRESTS AND THINGS LIKE THAT.

24 **Q.** AND YOU HAVEN'T DONE THAT IN YOUR REPORT, HAVE YOU?

25 **A.** I HAVE NOT DONE THAT, NO.

1 Q. ALL RIGHT. LET'S TALK FOR A MOMENT ABOUT THE PROPOSAL TO
2 REDUCE THE LENGTH OF PAROLE FOR COMPLIANT PAROLEES.

3 ISN'T IT TRUE, SIR, THAT YOU HAVE OPINED THAT THAT
4 PROPOSAL WOULD HAVE A NEGLIGIBLE EFFECT ON THE PRISON
5 POPULATION?

6 A. I DON'T KNOW IF I OPINED THAT --

7 Q. WELL, IT'S IN PARAGRAPH 52 OF YOUR NOVEMBER 9, 2007 REPORT.
8 YOU SAY -- YOU ARE SPEAKING OF THE PROPOSAL TO END PAROLE FOR
9 CERTAIN PAROLEES WHO COMPLETE 13 MONTHS OF SUCCESSFUL PROPOSAL.

10 "AS I STATED IN THAT PRIOR DECLARATION, THAT
11 PLAN WILL HAVE A NEGLIGIBLE EFFECT ON THE PRISON
12 POPULATION."

13 A. YEAH. I DON'T THINK IT WOULD HAVE ANY IMPACT ON INCREASE.
14 IT WOULD PROBABLY LOWER THE PRISON POPULATION BASED ON THE
15 EXPERIENCE IN OTHER COURTS. I JUST WANTED TO MAKE THAT CLEAR.

16 Q. YOU WENT ON TO SAY, SIR.

17 "EVEN IF THEY WERE READMITTED TO TECHNICAL
18 VIOLATIONS, THEIR SHORT PERIOD OF IMPRISONMENT,
19 THREE MONTHS OR LESS, WOULD HAVE VIRTUALLY NO
20 EFFECT ON THE CURRENT 170,000 PRISON
21 POPULATION."

22 CORRECT?

23 A. IT WOULD NOT AGGRAVATE IT, NO.

24 Q. NOW, YOU ALSO INDICATED IN BOTH YOUR REPORT AND IN YOUR
25 TESTIMONY THAT, QUOTE:

1 "WE GET A LOWER REVOCATION RATE BECAUSE WE
2 HAVE CREATED AN INCENTIVE FOR THE PAROLEES TO
3 CONFORM AND BEHAVE."

4 DON'T YOU REALLY JUST GET A LOWER REVOCATION RATE
5 BECAUSE THEY ARE NOT ON PAROLE, SO THEY CAN'T BE REVOKED?

6 **A.** WELL, THAT STATEMENT IS, AGAIN, BASED ON THE RESEARCH WE
7 HAVE BEEN DOING IN NEVADA. WE HAVE BEEN VERY SUCCESSFUL IN THAT
8 STATE WHERE WE INSTITUTED THIS POLICY AND REVOCATION RATES
9 DROPPED. THE THREE-YEAR RECIDIVISM RATES DIDN'T CHANGE.

10 **Q.** DIDN'T CHANGE?

11 **A.** THEY DID NOT CHANGE. WE DID FOLLOW-UP ANALYSIS OF THAT.
12 THE PAROLE OFFICIALS THINK IT'S GREAT. IT PROVIDES AN
13 INCENTIVE, LIKE ANYONE ELSE, TO CONFORM. SO IT SEEMS TO WORK
14 PRETTY WELL.

15 **Q.** NOW, I JUST WANT TO MAKE SURE I HAVE THE NUMBERS CORRECT,
16 BECAUSE WE KEEP HEARING THAT SOMETHING LIKE TWO-THIRDS OF THE
17 PEOPLE BEING RETURNED TO PRISON ARE ON TECHNICAL VIOLATIONS,
18 BUT, IN FACT, IT'S 21 PERCENT, RIGHT?

19 **A.** I DON'T RECALL THE 21 PERCENT. I BELIEVE THERE IS
20 130-SOME-THOUSAND ADMISSIONS, AND THERE IS ABOUT SOME 65,000 TO
21 70,000 TECHNICAL VIOLATORS COMING IN EACH YEAR.

22 **Q.** YOUR EARLIER TESTIMONY, SIR, INDICATED THAT OF THE
23 APPROXIMATELY 69,000 REVOCATIONS OF PAROLE, 14,500 WERE PURELY
24 TECHNICAL. THAT'S 21 PERCENT, RIGHT?

25 **A.** WELL, THOSE ARE -- BUT THE 14,000 IS FOR PURELY, PURELY

1 TECHNICAL --

2 **Q.** THAT'S WHAT I ASKED. PURELY TECHNICAL, 21 PERCENT, RIGHT?

3 **A.** NO. I JUST WANT TO, IF I MAY. THE 67,000 ARE CALLED
4 TECHNICAL PAROLE VIOLATORS BY THE STATE OF CALIFORNIA. THEY ARE
5 COMING IN BECAUSE THEIR PAROLE STATUS HAS BEEN REVOKED.

6 **Q.** BUT OF THAT NUMBER ONLY 21 PERCENT ARE PURELY TECHNICAL.
7 THE OTHERS HAVE COMMITTED A NEW CRIME OR BEEN RETURNED FOR A NEW
8 CRIME, CORRECT?

9 **A.** NO THAT'S NOT CORRECT. YOU CAN SAY THEY HAVE BEEN ARRESTED,
10 BUT --

11 **Q.** I'M JUST TELLING YOU WHAT YOU SAID BEFORE, SIR. ARE YOU
12 SAYING IT DIFFERENT NOW?

13 **A.** I'M SAYING -- I'M TELLING YOU WHAT I'M SAYING NOW, YES,
14 WHICH IS THEY HAVE BEEN ARRESTED. I'M NOT SAYING THEY HAVE
15 COMMITTED CRIMES.

16 **Q.** YOU INDICATE IN YOUR REPORT THAT THE DIVERSION OF TECHNICAL
17 PAROLE VIOLATORS THAT YOU RECOMMEND WOULD REDUCE THE POPULATION
18 BY, QUOTE, AT LEAST 6500 OR AS MUCH AS 9500 AT ANY GIVEN TIME.

19 HOWEVER, IN TESTIMONY BEFORE THIS COURT YOU SAID IT
20 WAS 10 TO 15,000 INMATES. WHICH IS CORRECT?

21 **A.** CAN YOU POINT TO THE...

22 **Q.** CERTAINLY. YOUR REPORT IS PARAGRAPH 55 OF YOUR AUGUST 15TH
23 REPORT.

24 **A.** WHAT PARAGRAPH IS IT?

25 **Q.** 55.

1 **A.** OH. THAT'S THE CDCR EXPERT PANEL ESTIMATE.

2 **Q.** WELL?

3 **A.** THAT'S THE ESTIMATE THAT WAS PRODUCED BY OUR EXPERTS, CDCR.

4 **Q.** AND YOU DISAGREE WITH THAT?

5 **A.** NO. JUST THAT THAT NUMBER WAS BASED ON DIFFERENT NUMBERS
6 THAT WE HAD GOTTEN FROM THE DEPARTMENT OF CORRECTIONS.

7 AS PART OF MY WORK IN THIS TRIAL, WE GOT UPDATED
8 NUMBERS FROM THE DEPARTMENT. THEY RAN NEW RUNS FOR ME, SO...

9 **Q.** ACTUALLY, SIR, WHERE IS THAT DATA? I HAVEN'T SEEN THAT DATA
10 IN ANY REPORT YOU HAVE ISSUED; THIS HIGHER NUMBER, THE 10 TO
11 15,000.

12 **A.** WHERE ARE YOU SHOWING THE 10,000 TO 15,000.

13 **Q.** YOU TESTIFIED TO THAT, SIR, LAST TIME. I CAN QUOTE YOUR
14 TESTIMONY, IF YOU WOULD LIKE. THIS IS ON PAGE 126 OF THE COURT
15 REPORTER'S TRANSCRIPT OF PROCEEDINGS FROM DECEMBER THE 4TH. AND
16 THIS WAS IN RESPONSE TO A QUESTION FROM THE COURT ABOUT WHETHER
17 THE REDUCTION HE PROPOSED WAS MODERATE OR NOT.

18 "THE WITNESS: WELL, FOR CITIES. IT'S A LOT
19 EASIER TO REDUCE THAT POPULATION THAN IF I GO TO
20 RHODE ISLAND, WHICH I THINK HAS AN INCARCERATION
21 RATE OF 185 PER 100,000.

22 "SO THAT'S MY POINT. I GUESS, YES, IT'S
23 SIGNIFICANT. IT'S LARGE.

24 "IF YOU ARE ASKING AND WHEN I SAY MODERATE,
25 THE NUMBER ONE THING THAT WILL WORK HERE -- I

1 MEAN, THE TECHNICAL VIOLATION THING TO ME IS,
2 THAT BUYS YOU, DEPENDING ON HOW YOU DO IT,
3 10,000 TO 15,000 INMATES RIGHT THERE."

4 **A.** CAN I SEE IT?

5 **Q.** I JUST READ RIGHT OUT OF THE TRANSCRIPT, SIR. THAT'S WHAT
6 YOU TESTIFIED PREVIOUSLY. I THINK THE RECORD SPEAKS FOR ITSELF.

7 I'M JUST ASKING YOU --

8 **JUDGE HENDERSON:** WE DON'T HAVE A QUESTION. WHY
9 DON'T YOU -- LET'S SEE THE QUESTION AND THE ANSWER.

10 **MS. BARLOW:** I'M SORRY, YOUR HONOR.

11 **JUDGE HENDERSON:** YOU READ HIS ANSWER. THE QUESTION
12 THAT PROMPTED IT MIGHT BE HELPFUL.

13 **MS. BARLOW:** IT WAS ACTUALLY A COUPLE OF QUESTIONS,
14 THE FIRST ONE WAS FROM JUDGE KARLTON.

15 **"QUESTION:**EXCUSE ME, DOCTOR. WHATEVER THE
16 REASON, THERE IS A VERY LARGE NUMBER OF PEOPLE
17 IN THE CALIFORNIA SYSTEM. AND THE QUESTION IS
18 WHETHER A REDUCTION OF SOME 52,000 OVER A COUPLE
19 OF YEARS OR WHATEVER IS, I'M SORRY, A MODERATE
20 LOWERING OF THE PRISON POPULATION."

21 **"THE WITNESS:** WELL, STATISTICALLY IT'S
22 ABOUT A 30 PERCENT OR SO DECLINE. SO THAT'S
23 SUBSTANTIAL, THAT'S LARGE.

24 "FOR EXAMPLE, I'M WORKING IN THE STATE OF
25 LOUISIANA, WHICH HAS THE HIGHEST INCARCERATION

1 RATE IN THE WORLD.

2 "JUDGE HENDERSON: I THOUGHT D.C. DID, BUT
3 THAT'S ALL RIGHT.

4 "THE WITNESS: WELL, FOR CITIES," ET CETERA.

5 SO THAT'S THE ENTIRE CONTEXT OF THE QUESTION. THE
6 POINT WAS THAT THE WITNESS TESTIFIED 10,000 TO 15,000 WOULD BE
7 REDUCED.

8 JUDGE REINHARDT: WHAT WAS THE QUESTION THAT ELICITED
9 THAT RESPONSE?

10 MS. BARLOW: HIS REPORT INDICATES IT'S 6500 TO 9500.
11 I'M TRYING TO FIND OUT WHAT THE REAL NUMBER IS, SIR.

12 JUDGE REINHARDT: I STILL DON'T UNDERSTAND WHAT THE
13 QUESTION WAS.

14 THE WITNESS: JUST FOR THE RECORD, THE 6500 TO 9500
15 IS FROM THE EXPERT PANEL REPORT. I WAS PART OF THE PANEL, BUT
16 THAT'S NOT MY REPORT.

17 I MEAN, I SUPPORT THAT NUMBER. I THINK WE ARE
18 TALKING SOMETHING IN THAT RANGE, BUT YOU KNOW THE DEVIL IS IN
19 THE DETAILS.

20 JUDGE KARLTON: IN ANY EVENT, THERE IS NO REASON TO
21 -- WELL, I MEAN IF THIS COURT -- NEVER MIND. GO AHEAD.

22 MS. BARLOW: I'M JUST TRYING TO SEE HOW WE GET TO THE
23 NUMBERS, YOUR HONOR.

24 JUDGE KARLTON: THAT MAY BE UP TO THE STATE OF
25 CALIFORNIA.

1 **MS. BARLOW:** IT MAY.

2 **BY MS. BARLOW:**

3 **Q.** NOW, LET'S JUST TALK MAINLY ABOUT IMPACTS ON LOCAL JAIL
4 CROWDING OF THE PROPOSALS YOU HAVE MADE.

5 IT'S TRUE, IS IT NOT, SIR, THAT ONE OF THE THINGS
6 THAT DROVE ADMISSIONS UP OF TECHNICAL PAROLE VIOLATORS TO THE
7 STATE PRISONS IN THE 80'S WAS A DECISION BY THE BOARD OF PRISON
8 TERMS TO ACCOMMODATE LOCAL COUNTY OFFICIALS BY ADMITTING PAROLE
9 VIOLATORS WHO OTHERWISE WOULD HAVE REMAINED IN THE LOCAL JAIL
10 PENDING REVOCATION HEARING, AND THIS WAS DONE TO REDUCE THE JAIL
11 POPULATION AND JAIL OVERCROWDING?

12 **A.** YES, THAT WAS PART OF THE REASON.

13 **Q.** NOW, IT'S ALSO TRUE, ISN'T IT, SIR, THAT UNDER YOUR
14 PROPOSALS THE RESULT WOULD BE THAT MORE PEOPLE WILL BE HELD IN
15 THE JAILS?

16 **A.** NO, IT WOULD NOT.

17 **Q.** ALL RIGHT. I WOULD LIKE TO REFER TO THE WITNESS'S
18 DEPOSITION VOLUME 2, PAGE 425, LINES -- IT'S PAGE 425. THE
19 QUESTION BEGINS AT LINE 11.

20 **"QUESTION:** SO YOU DON'T BELIEVE THERE WOULD
21 BE A NEED FOR A CAP ON THE STATE PRISON
22 POPULATION?"

23 AND THEN MISS EVENSON INTERJECTED AN OBJECTION,
24 MISCHARACTERIZES THE TESTIMONY.

25 **"THE DEPONENT:** THE CAP IS REALLY THE

1 ARTIFACT OF THE ADMISSION AND RELEASE STRING.
2 SO I THINK YOU SAID IF THEY PUT A CAP, THERE
3 WOULD BE A BACKUP IN THE COUNTY JAIL SYSTEM
4 BECAUSE OF THAT CAP, RIGHT? AND THAT WOULD NOT
5 HAPPEN. THERE IS NO NEED FOR THAT
6 MATHEMATICALLY. THE SAME NUMBER OF PEOPLE GO IN
7 AND THE SAME NUMBER OF PEOPLE GO OUT. ACTUALLY,
8 IF WE DIVERT PEOPLE, THERE WOULD BE MORE PEOPLE
9 BEING HELD IN THE COUNTY."

10 **A.** THERE WOULD BE MORE PEOPLE UNDER SUPERVISION.

11 **MS. EVENSON:** OBJECTION. THAT ISN'T WHAT HE JUST
12 SAID. CAN YOU JUST FINISH HIS SENTENCE THAT YOU WERE READING
13 FOR THE RECORD?

14 **BY MS. BARLOW:**

15 **Q.** (READING)

16 "BUT THERE WOULD BE NO CHANGE. THERE WOULD
17 BE NO NEED TO BACK UP PEOPLE IN THE COUNTY JAILS
18 BECAUSE OF THE PRISON POPULATION CAP."
19 THAT'S WHAT YOU TESTIFIED, RIGHT?

20 **A.** RIGHT.

21 **Q.** BUT THERE WOULD BE MORE PEOPLE HELD IN THE JAILS UNDER YOUR
22 DIVERSION PROPOSAL? THAT'S WHAT YOU JUST --

23 **A.** WHEN I SAY HELD, THEY ARE IN THE SUPERVISION OF THE COUNTY.
24 I DIDN'T SAY HELD IN THE JAILS. HELD IN THE COUNTY. THAT'S
25 WHAT I MEANT BY THAT.

1 Q. OKAY. WELL, YOU SAID JAILS, SIR. SO NOW YOU ARE SAYING YOU
2 MEAN -- MEANT SOMETHING ELSE?

3 MS. EVENSON: OBJECTION. ARGUMENTATIVE.
4 MISCHARACTERIZES THE TESTIMONY.

5 JUDGE HENDERSON: SUSTAINED.

6 BY MS. BARLOW:

7 Q. NOW, IF WE HAVE A CAP ON THE STATE PRISON POPULATION AT
8 APPROXIMATELY 103,000, WHICH IS WHAT THE PLAINTIFFS HAVE
9 REQUESTED OF THIS COURT, AND WE HAVE JAILS ALL OVER THE STATE
10 RELEASING PEOPLE EARLY BECAUSE OF LACK OF CAPACITY, RIGHT? YOU
11 ARE AWARE OF THAT?

12 A. I'M AWARE OF A REPORT THAT SAYS THEY ARE RELEASING PEOPLE
13 EARLY, YES.

14 Q. OKAY. SO IF YOU ASSUME, SIR, THAT 32 OUT OF THE 58 COUNTIES
15 ARE OPERATING UNDER EITHER CSA, CAPACITY CAPS OR COURT IMPOSED
16 CAPS?

17 A. OKAY.

18 Q. AND WE HAVE 103,000 POPULATION CAP AT THE STATE PRISON
19 LEVEL --

20 A. YES.

21 Q. -- IT'S YOUR BELIEF THAT NONE OF THOSE PEOPLE ARE GOING TO
22 BE SITTING IN COUNTY JAIL MORE THAN THEY ARE TODAY?

23 A. THAT'S CORRECT.

24 JUDGE REINHARDT: WHAT IS THE REASON FOR THAT?

25 THE WITNESS: UMM, AGAIN, WHAT WE ARE DOING IS WE ARE

1 -- ALL WE ARE DOING IS CHANGING THE PERIOD OF TIME THAT THEY ARE
2 IN THE STATE PRISON SYSTEM. SO IT'S NOT CHANGING THE NUMBER OF
3 PEOPLE THAT ARE GOING INTO THE SYSTEM OR THE NUMBER OF PEOPLE
4 GOING OUT OF THE PRISON SYSTEM.

5 SO THE JAILS NOW EXPERIENCE THOSE PEOPLE COMING OUT
6 OF THE PRISON SYSTEM WHO GET VIOLATED AND THEN THEY GO INTO THE
7 PRISON SYSTEM. SO THAT FLOW IS NOT CHANGED AT ALL. IT'S LIKE
8 -- THE WAY I TRIED TO DESCRIBE IT, IT'S LIKE YOU HAVE A RIVER.
9 YOU HAVE A DAMN. THE DAMN ARE THE LENGTH OF STAY. CALIFORNIA
10 HAS A HIGH DAMN NOW.

11 WATER SPILLS OVER THAT DAMN NOW. THAT'S THE PEOPLE
12 GOING INTO THE JAILS.

13 WE TAKE THAT DAMN DOWN A LITTLE BIT. WHEN YOU TAKE
14 IT DOWN, THERE IS THIS SURGE OF WATER, BUT THEN AT SOME POINT IT
15 EQUALIZES AGAIN AND THE FLOW IS EXACTLY WHAT IT IS CURRENTLY.

16 SO IT'S NOT GOING TO CHANGE THE NUMBER OF PEOPLE. IT
17 HAPPENS OVER, LIKE, A YEAR TO TWO YEARS. EVERYTHING IS THEN
18 BROUGHT BACK TO WHERE IT IS RIGHT NOW IN TERMS OF THE FLOW OF
19 PEOPLE.

20 THE EXPERIENCE OF THE PRISONER IS CHANGED, BUT THE
21 FLOW OF PEOPLE HAS NOT CHANGED. SO THAT MEANS THE BOOKINGS AND
22 REARREST RATES ARE EXACTLY WHAT THEY ARE TODAY.

23 **JUDGE KARLTON:** THE FACT OF THE MATTER IS AT LEAST
24 DURING THE YEAR OR TWO THERE IS A SIGNIFICANT IMPACT ON JAIL
25 POPULATION.

1 **THE WITNESS:** IT'S NOT -- YOUR HONOR, THE TABLE THAT
2 I SHOWED SAID THERE IS THIS SURGE. AND I TALK ABOUT THAT SURGE
3 AND I CALCULATE THE INCREASE IN BOOKINGS INTO THE JAIL, AND IT'S
4 LESS THAN ONE PERCENT OR ABOUT ONE PERCENT, SOMETHING LIKE THAT.
5 SO THAT'S THE AMOUNT.

6 AND I DO A LOT OF WORK WITH JAILS AND --

7 **JUDGE REINHARDT:** BUT YOU ALSO SAID, AS I UNDERSTOOD
8 IT, THAT IT WOULD GO BACK TO WHERE IT WAS. IF THE PRISON
9 POPULATION IS REDUCED, WOULDN'T IT GO TO A LOWER RATE AFTER THE
10 POPULATION WAS REDUCED?

11 IN OTHER WORDS, YOU WOULDN'T HAVE THE SAME NUMBER OF
12 PEOPLE COMING OUT, THAT YOU GET OF A POPULATION, SAY, 103,000 AS
13 YOU WOULD HAVE COMING OUT IF THE POPULATION WERE 160,000 OR
14 170,000.

15 **THE WITNESS:** YOUR HONOR, THE WAY IT WORKS, YOU HAVE
16 THE BASIC EQUATION. I'M TRYING TO EXPLAIN THIS.

17 SAY, YOU HAVE, I DON'T KNOW, A HUNDRED -- LET'S SAY,
18 YOU HAVE 50,000 PEOPLE COMING IN TO A PRISON SYSTEM A YEAR AND
19 THEY SPEND THREE YEARS. THAT MEANS 50,000 TIMES THREE IS A
20 PRISON POPULATION OF 150,000.

21 IF YOU CUT IT TO TWO YEARS, SAME NUMBER OF PEOPLE
22 GOING IN, 50,000, TWO YEARS, YOU NOW HAVE A PRISON POPULATION OF
23 100,000. SAME NUMBER OF PEOPLE GOING OUT. SAME PEOPLE GETTING
24 ARRESTED. SAME PEOPLE GOING TO THE JAILS.

25 ALL YOU HAVE CHANGED IS THE POOL THAT THEY ARE IN.

1 THEY ARE SERVING TWO YEARS INSTEAD OF THREE YEARS. SO THE BASIC
2 MATH IS ADMISSIONS TIMES LENGTH OF STAY PRODUCES A PRISON
3 POPULATION.

4 SO YOU CAN HAVE, WE WILL TALK ABOUT SOME STATES
5 PROBABLY LATER ON. ILLINOIS, FOR EXAMPLE, HAS A LENGTH OF STAY
6 OF 1.2 YEARS. MICHIGAN HAS A LENGTH OF STAY OF FOUR YEARS.
7 THEY HAVE DIFFERENT NUMBERS OF PEOPLE COMING IN. THEY PRODUCE
8 ABOUT THE SAME POPULATION, BUT VERY DIFFERENT PHILOSOPHY,
9 PURPOSE ABOUT WHO COMES IN AND HOW LONG THEY STAY.

10 BUT YOU ARE NOT CHANGING THE -- IT'S VERY IMPORTANT
11 PEOPLE UNDERSTAND YOU ARE NOT CHANGING THE NUMBER OF PEOPLE THAT
12 ARE COMING OUT OF THE PRISON SYSTEM.

13 NOW, THERE WOULD BE A CHANGE IN MY POLICY OF THAT ON
14 A DIVERSION OF THE TECHNICAL VIOLATORS. THEY WOULD NOT BE GOING
15 IN AND OUT FOR TWO OR THREE MONTHS. THAT'S DONE PURPOSELY TO
16 UNCLOG THE RECEPTION CENTERS. SO THOSE PEOPLE -- IF YOU GET
17 THOSE PEOPLE NOT GOING BACK INTO PRISON FOR TWO TO THREE MONTHS,
18 THEN THE TOTAL RELEASES OUT OF THE PRISON SYSTEM WOULD DROP BY
19 ABOUT 30,000. THAT WOULD BE A GREAT THING BECAUSE NOW YOU HAVE
20 GOT A RECEPTION CENTER PROCESS THAT WOULD WORK PROPERLY.

21 **JUDGE REINHARDT:** WELL, SO THE ANSWER IS YES. YOU
22 WOULD HAVE FEWER PEOPLE COMING OUT MONTHLY, ANNUALLY --

23 **THE WITNESS:** YES.

24 **JUDGE REINHARDT:** -- IF YOUR PROGRAM WERE ADOPTED.

25 **THE WITNESS:** THAT'S CORRECT, YOU WOULD BECAUSE OF

1 THE TECHNICALS.

2 AND THAT'S THE ONLY THING THAT'S UNIQUE ABOUT
3 CALIFORNIA IS THIS TECHNICAL, THAT FLOW THING. IF YOU LOOK AT
4 THE NEW COURT COMMITMENTS AND THE PEOPLE THAT COME TO THE COURTS
5 AND GET CONVICTED FOR A NEW CRIME AS A PAROLE VIOLATOR, THAT
6 FLOW LOOKS PRETTY GOOD. THAT LOOKS PRETTY TYPICAL OF A STATE
7 THAT I WORK WITH. BUT IT'S THAT TECHNICAL THING THAT'S CAUSING
8 THIS HUGE FLOW OF PEOPLE OUT.

9 BUT ON THE LENGTH OF STAY ISSUE, AGAIN, NO EFFECT ON
10 THE NUMBER OF PEOPLE BEING RELEASED OR EXPERIENCING PRISON NOW.
11 SAME NUMBERS GO IN. SAME NUMBERS COME OUT. SAME NUMBERS WOULD
12 GET ARRESTED AND BOOKED INTO THE JAILS. IT HAS NO IMPACT ON THE
13 JAILS AT ALL. THE COURT'S -- YOU KNOW, IT'S INCONSEQUENTIAL.

14 **JUDGE REINHARDT:** THANK YOU.

15 **BY MS. BARLOW:**

16 **Q.** SO YOU ARE SAYING, SIR, THAT EVEN THOUGH YOUR PROPOSAL IS TO
17 DIVERT 12,500 CRIMINALS ON THE FRONT END FROM COMING INTO STATE
18 PRISON --

19 **A.** WAS THAT NEW COURT COMMITMENTS YOU ARE TALKING ABOUT? SHORT
20 SENTENCES?

21 **Q.** YES.

22 AND YOU ARE ALSO PROPOSING TO DIVERT, SAY, 14,000,
23 10,000 TECHNICAL PAROLE VIOLATORS FROM COMING BACK INTO CUSTODY
24 IN -- AT THE PRISON SYSTEM AT LEAST, THEY ARE JUST GOING TO BE
25 IN THE WIND? THEY ARE NOT GOING TO BE IN THE COUNTY JAILS? YOU

1 ARE NOT GOING TO DIVERT THEM TO ANY KIND OF COUNTY JAIL CUSTODY
2 PROGRAM?

3 **A.** THE TECHNICAL PAROLE VIOLATORS NOW GO IN AND SPEND ABOUT 30
4 DAYS IN THE COUNTY JAIL WAITING FOR THEIR HEARINGS TO BE TAKEN
5 CARE OF.

6 IF WE DIVERT THEM THROUGH THE PROCESS, AGAIN, WHICH
7 THE STATE OF CALIFORNIA IS NOW BEGINNING TO IMPLEMENT, WHICH IS
8 A VIOLATION MATRIX, THEY WOULD PROBABLY SPEND LESS TIME IN THE
9 COUNTY JAILS. THEY WOULDN'T BE SPENDING THAT FULL 30 DAYS.
10 SOME MIGHT NOT EVEN GO GOT COUNTY JAILS.

11 SO THE COUNTIES WOULD GET RELIEF ON THAT. AND,
12 AGAIN, WE ARE DIVERTING PEOPLE THAT THE DEPARTMENT WOULD SAY WE
13 CAN HANDLE. WE CAN HANDLE THEM IN DIFFERENT WAYS.

14 AND SO THAT'S AN EXAMPLE WHERE THE BOOKINGS INTO THE
15 JAIL WOULD BE REDUCED --

16 **Q.** THAT'S FINE --

17 **A.** -- FOR THE -- FOR THE PEOPLE.

18 **Q.** THAT'S NOT WHAT THE DEPARTMENT IS SAYING THOUGH, SIR. THEY
19 ARE NOT SAYING THEY CAN HANDLE THOSE PEOPLE.

20 **A.** I'M NOT AWARE OF THOSE STATEMENTS.

21 **Q.** ALL RIGHT. LET'S TALK A MINUTE ABOUT THE -- YOUR
22 CALCULATIONS THAT LESS THAN ONE PERCENT IMPACT.

23 YOU CORRECTED YOUR ARREST FIGURES FOR LOS ANGELES
24 COUNTY -- I'M JUST USING THAT ONE BECAUSE THAT'S WHAT I HAVE, I
25 THINK -- TO 390,829 ARRESTS, CORRECT?

1 **A.** YES.

2 **Q.** YOU CUT IT IN HALF, RIGHT?

3 **A.** YES.

4 **Q.** NOW, I JUST DID SOME SIMPLE MATH HERE. AND I'M NOT -- DON'T
5 PROFESS TO BE A MATHEMATICIAN. I KNOW YOU'RE A STATISTICIAN AND
6 MATHEMATICIAN AND ALL THOSE THINGS, SO PLEASE CORRECT ME IF I'M
7 WRONG.

8 FOUR MONTHS WORTH OF THAT, ONE QUARTER OF A YEAR OF
9 THOSE ARRESTS IS 97,707; DOES THAT SOUND RIGHT TO YOU?

10 **A.** I DON'T KNOW. I DON'T KNOW WHAT YOU ARE REFERRING TO.

11 **Q.** YOU HAD AN ANNUAL NUMBER OF ARRESTS FOR LOS ANGELES COUNTY
12 OF 390,829 IN YOUR CHARTS. AND THAT'S THE STARTING POINT OF HOW
13 YOU CALCULATED YOUR LESS THAN ONE PERCENT, RIGHT?

14 **A.** CORRECT.

15 **Q.** SO NOW I'M ASKING IF WE TAKE ONE QUARTER OF A YEAR, THE FOUR
16 MONTHS THAT YOU ARE TALKING ABOUT DOING THIS DOUBLING -- DOUBLE
17 RELEASES, RIGHT? IF WE TAKE FOUR MONTHS OF THAT WHOLE ARREST
18 DATA, WE GET 97,707 ARRESTS, RIGHT?

19 **A.** NO. I DON'T KNOW WHAT YOU ARE DOING THERE.

20 **JUDGE REINHARDT:** ONE PROBLEM IS THAT FOUR MONTHS IS
21 NOT A QUARTER OF A YEAR.

22 **JUDGE HENDERSON:** IT'S A THIRD OF A YEAR.

23 **MS. BARLOW:** I'M SORRY. A THIRD OF A YEAR.

24 **BY MS. BARLOW:**

25 **Q.** THEN IT'S MORE THAN THAT, RIGHT? IT'S 130,000?

1 **A.** A THIRD OF 390 IS WHATEVER IT IS.

2 **Q.** 130,000, RIGHT, GIVE OR TAKE? IS THAT FAIR?

3 **A.** I DON'T KNOW IF -- IT'S A THIRD. WHATEVER THE THIRD IS, IS
4 WHAT IT IS.

5 **Q.** NOW, I JUST WANT TO ASK YOU, IF WE TOOK OUT THE JUVENILE
6 ARRESTS THAT YOU SAID YOU INCLUDED IN THAT FIGURE AND THE
7 MISDEMEANOR ARRESTS, BECAUSE ALL THESE PEOPLE ARE GOING TO BE
8 FELONY ARRESTS, RIGHT?

9 **A.** NO.

10 **Q.** NO?

11 **A.** NO.

12 **Q.** IF THEY ARE ON PAROLE AND THEY GET ARRESTED, IT'S A FELONY?

13 **A.** NO. YOU CAN BE ARRESTED FOR A MISDEMEANOR.

14 **Q.** I WANT YOU TO ASSUME THEY ARE ALL FELONIES.

15 **A.** I DON'T WANT TO ASSUME THAT. WHY WOULD I ASSUME THAT?

16 **Q.** IF YOU ARREST SOMEBODY ON PAROLE FOR A PAROLE VIOLATION,
17 IT'S A FELONY; ARE YOU AWARE OF THAT?

18 **A.** I'M NOT AWARE OF THE WAY YOU ARE -- NO. IF I'M ARRESTED FOR
19 TRESPASSING --

20 **Q.** AND YOU ARE ON PAROLE, YES.

21 **A.** IS THE TRESPASSING A FELONY?

22 **Q.** IF YOU ARE ON PAROLE AND YOU GET ARRESTED FOR A VIOLATION OF
23 PAROLE, THAT'S A FELONY.

24 **A.** THAT'S A FELONY. BUT YOU HAVE TO UNDERSTAND WHAT WE ARE
25 LOOKING AT -- YOU ARE TRYING TO GET RID OF ALL THE MISDEMEANOR

1 ARRESTS, WHICH IS THE BULK OF THE ARRESTS, BOTH OF PAROLEES AND
2 ITS CITIZENS IN GENERAL.

3 **Q.** DON'T YOU AGREE, SIR --

4 **A.** AND THAT --

5 **Q.** -- THAT WE SHOULD BE --

6 **A.** IT DOESN'T --

7 **Q.** -- RECONSIDERING THE SERIOUS CRIMES?

8 **JUDGE KARLTON:** MA'AM, MA'AM, MA'AM. LET THE WITNESS
9 ANSWER AND THEN YOU CAN ASK ANY QUESTION YOU LIKE.

10 **A.** IF YOU LOOK AT THE ATTORNEY GENERAL'S REPORT, THERE IS NOT A
11 CATEGORY THAT SAYS "PAROLEE ARRESTED, FELONY." THAT'S NOT A
12 CATEGORY THEY USE. THEY USE THINGS LIKE BURGLARY, ROBBERY,
13 THINGS LIKE THAT.

14 **BY MS. BARLOW:**

15 **Q.** THAT'S WHAT I'M TRYING TO GET A SENSE OF, SIR. HOW MANY
16 FELONIES -- YOU THINK THE MISDEMEANORS AREN'T IMPORTANT, SO
17 LET'S TALK ABOUT FELONIES.

18 HOW MANY OF THESE PEOPLE ARE GOING TO COMMIT
19 FELONIES?

20 **A.** WELL, THE DATA THAT THE DEPARTMENT PROVIDED TO ME DOES NOT
21 GIVE A -- I TAKE THAT BACK. THERE IS A CODE THERE, THAT I GUESS
22 ONE COULD TRY AND DETERMINE ACCORDING TO CALIFORNIA LAW IS THAT
23 A FELONY LEVEL ARREST OR NOT, BUT I HAVE NOT CALCULATED THAT.

24 **Q.** SO YOU DON'T KNOW HOW MANY OF THESE FOLKS WOULD, IN FACT, BE
25 ARRESTED FOR FELONIES?

1 **A.** I DON'T KNOW THAT NUMBER, NO.

2 **Q.** NOW, LET'S TALK ABOUT THE CAREER CRIMINAL VERSUS THE
3 NON-CAREER CRIMINAL.

4 **A.** OKAY.

5 **Q.** YOUR TESTIMONY LAST TIME WAS IT COULD BE UP TO 20 PERCENT?
6 10 TO 20 PERCENT OF THE CRIMINALS THAT WE HAVE ARE, QUOTE,
7 CAREER CRIMINALS, RIGHT?

8 **A.** TECHNICALLY THAT'S -- WHAT I SAID WAS THAT BASED ON THE RAND
9 STUDIES OF CALIFORNIA, THEY ESTIMATED SOMEWHERE IN THE
10 NEIGHBORHOOD OF 15 TO 20 PERCENT OF THE PERSONS BEING SENTENCED
11 TO CALIFORNIA PRISONS BACK IN THE 1970'S WERE PEOPLE THAT
12 COMMITTED LARGE NUMBERS -- THEY SELF-REPORTED LARGE AMOUNTS OF
13 CRIMES AND THEY CALLED THEM THE CAREER CRIMINALS.

14 **Q.** OKAY. IN RESPONSE TO A QUESTION FROM MISS JOHNSON AT YOUR
15 PRIOR TESTIMONY --

16 **JUDGE REINHARDT:** WHICH PRIOR TESTIMONY?

17 **MS. BARLOW:** ON DECEMBER THE 4TH.

18 **BY MS. BARLOW:**

19 **Q.** JUST ONE SECOND, LET ME FIND THE PAGE. I BELIEVE IT'S PAGE
20 227, STARTING AT LINE 16.

21 **"QUESTION:** LET'S TALK A MOMENT ABOUT HIGH
22 RISK OFFENDERS. YOU SAID ONLY 10 PERCENT OF
23 OFFENDERS ARE HIGH RISK. DO YOU REMEMBER THAT?

24 **A.** YES.

25 **Q.** (READING)

1 **"ANSWER:** IN THAT NEIGHBORHOOD; 10, 10, 15.

2 IT DEPENDS ON THE STATE. TEN MAYBE AS MANY AS
3 20."

4 **Q.** SO 10 TO 20 PERCENT?

5 **JUDGE HENDERSON:** IS HIGH RISK THE SAME AS CAREER
6 CRIMINAL?

7 **JUDGE KARLTON:** I THOUGHT THEY ARE THE SAME.
8 DID YOU UNDERSTAND HIGH RISK TO EQUATE WITH CAREER
9 CRIMINAL? MAYBE THEY DO. I DON'T KNOW.

10 **THE WITNESS:** WELL, THE HIGH RISK WOULD REFER TO
11 PEOPLE IF THEY ARE RELEASED FROM PRISON ARE VERY LIKELY TO
12 RECIDIVATE. THE CAREER CRIMINAL IS --

13 **JUDGE KARLTON:** THEY ARE GETTING RELEASED.

14 **THE WITNESS:** WELL, THERE ARE CAREER CRIMINALS THAT
15 AREN'T EVEN BEING CAUGHT. AND SO, YEAH.

16 WELL, I WILL LET HER. GO HEAD.

17 **BY MS. BARLOW:**

18 **Q.** WOULD YOU AGREE THAT THE CAREER CRIMINALS ARE THE HIGHEST
19 RISK? CAN WE AGREE TO THAT?

20 **A.** YES.

21 **JUDGE HENDERSON:** BUT CAN WE HAVE A RULE THAT IF YOU
22 ARE GOING TO IMPEACH, USE THE SAME TERMINOLOGY. IT MAY BE
23 DIFFERENT, "HIGH RISK" AND "CRIMINAL."

24 SO IF YOU ARE GOING TO ASK A QUESTION --

25 **MS. BARLOW:** I WILL CERTAINLY TRY, YOUR HONOR.

1 **JUDGE HENDERSON:** -- IMPEACH WITH THE SAME LANGUAGE.

2 **MS. BARLOW:** I WASN'T AWARE THAT THE WITNESS WAS
3 GOING TO MAKE A DISTINCTION ABOUT THAT.

4 **JUDGE KARLTON:** AND I'M NOT AWARE OF WHAT WE ARE
5 TALKING ABOUT.

6 I HAD UNDERSTOOD, BUT I MAY BE WRONG, THAT YOU WERE
7 NOT ADVOCATING THE RELEASE OF PERSONS FOUND TO BE CAREER
8 CRIMINALS WITHIN THE MEANING OF THE CALIFORNIA STATUTE. IS THAT
9 RIGHT OR WRONG, SIR?

10 **THE WITNESS:** I WAS TALKING ABOUT HIGH RISK PEOPLE,
11 PEOPLE THAT ARE LIKELY TO RECIDIVATE.

12 **JUDGE KARLTON:** I UNDERSTAND. BUT THIS IS ALL
13 LEADING TO A GREAT DEAL OF CONFUSION. ANSWER MY QUESTION, IF
14 YOU CAN.

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

16 **JUDGE KARLTON:** ARE YOU ADVOCATING AS PART OF YOUR
17 PROGRAM THE RELEASE OF CAREER CRIMINALS?

18 **THE WITNESS:** NO. I WOULD NOT ADVOCATE THE RELEASE
19 OF A CAREER CRIMINAL.

20 **JUDGE KARLTON:** WHERE ARE YOU GOING, MA'AM?

21 **BY MS. BARLOW:**

22 **Q.** DO YOU KNOW HOW MANY CRIMES HAVE BEEN COMMITTED BY EACH OF
23 THE INDIVIDUALS THAT ARE SENTENCED TO STATE PRISON ON AVERAGE
24 PRIOR TO THEIR BEING SENTENCED TO STATE PRISON?

25 **A.** WELL, THERE'S -- HOW MANY HAVE BEEN COMMITTED? IS THAT WHAT

1 YOU ARE ASKING?

2 **Q.** UH-HUH.

3 **A.** I WOULD SAY THE CORRECT ANSWER, NO ONE KNOWS. AGAIN, IF YOU
4 BASE IT ON THE RESEARCH OF THE RAND CORPORATION, THE VAST
5 MAJORITY OF PEOPLE THAT COME TO PRISON COMMIT VERY FEW CRIMES
6 BEFORE COMING TO PRISON, AND A SMALL NUMBER HAVE COMMITTED A LOT
7 OF CRIMES.

8 BUT THAT STUDY HAS BEEN REVIEWED WITH SOME SKEPTICISM
9 BY A NUMBER OF SCHOLARS, BUT THAT'S BASICALLY WHAT THAT RESEARCH
10 SHOWS; THAT MOST PRISONERS COMMIT VERY FEW CRIMES PER YEAR.

11 **Q.** LET'S TALK ABOUT SOME SPECIFIC CRIMES. THE RAND STUDY, YOU
12 AGREE, INDICATED THAT IN CALIFORNIA THE -- THOSE WHO COMMIT
13 ROBBERY HAVE AN ANNUAL OFFENSE RATE OF 50, RIGHT? FIFTY
14 ROBBERIES. BURGLARY HAS AN ANNUAL OFFENSE RATE OF 102.

15 **A.** AGAIN, LET ME RESTATE -- YOU ARE TAKING THE AVERAGE, OKAY.
16 AND THE NATIONAL ACADEMY OF SCIENCES DID A REANALYSIS OF THAT
17 DATA.

18 AND RAND CORPORATION AGREES WITH THIS ANALYSIS; THAT
19 MOST OF THE PRISONERS ARE DOING -- THE PRISONERS SAID THEY HAD
20 COMMITTED NO CRIMES, ONE OR TWO OR THREE CRIMES.

21 THEN THEY HAD THESE PEOPLE OUT THERE SAYING THEY WERE
22 COMMITTING HUNDREDS OF CRIMES A YEAR BASED ON SELF-REPORT
23 SURVEYS TO INTERVIEWS AT THE RECEPTION CENTERS.

24 THAT'S HOW THIS WAS DONE. IT'S SELF-REPORT BY
25 PRISONERS TO RESEARCHERS. AND THEY GET THIS INCREDIBLY SKEWED

1 REACTION OR RESULT, WHICH IS THAT FIVE OR TEN PERCENT SAY THEY
2 ARE COMMITTING RUNS HUNDREDS OF CRIMES A YEAR, BUT THE VAST
3 MAJORITY IS SAYING THEY ARE DOING NONE, ONE, TWO OR THREE.

4 SO WHEN YOU GIVE THAT 50, YOU KNOW, THAT'S A
5 STATISTICAL THING YOU ARE DOING, WHICH IS SUGGESTING THEY ARE
6 ALL DOING 50 TO 100 CRIMES. NO, IT'S JUST THE OPPOSITE. THE
7 VAST MAJORITY ARE INVOLVED ONLY IN EPISODIC CRIMES.

8 THE RAND CORPORATION CONCLUDED THAT YOU COULD LOWER
9 PRISON POPULATIONS ACROSS THE COUNTRY BY JUST FOCUSING ON THOSE
10 HIGH END CAREER CRIMINALS. AND THAT WAS THEIR ORIGINAL
11 PROPOSAL.

12 THEY THEN IN A SUBSEQUENT STUDY FOUND THEY COULDN'T
13 DO THAT BECAUSE THE PEOPLE THEY THOUGHT THAT WERE COMMITTING 50
14 TO 100, 200 CRIMES PER YEAR, IN FACT, WHEN RELEASED DID NOT.
15 AND THEY RECANTED THEIR FINDINGS AND SAID THE CAREER CRIMINAL
16 CANNOT BE PREDICTED BASED ON THEIR RESEARCH METHODS.

17 **JUDGE KARLTON:** SIR, WE HAVE HEARD FROM TWO LAW
18 ENFORCEMENT FOLKS NUMBERS LIKE 12 CRIMES ARE COMMITTED BEFORE
19 ANYBODY IS ARRESTED. IS THERE, AS FAR AS YOU KNOW, ANY RESEARCH
20 THAT SUPPORTS THAT ASSERTION?

21 **THE WITNESS:** NO.

22 **JUDGE KARLTON:** OKAY.

23 **THE WITNESS:** OKAY.

24 **MS. BARLOW:** COULD WE PUT UP --

25 **JUDGE REINHARDT:** ARE ALL THOSE FIGURES, THE HIGH

1 ONES AND THE LOW ONES, BASED ON WHAT THE PEOPLE ON THEIR WAY TO
2 PRISON SAY THEY DID?

3 **THE WITNESS:** THEY ARE BASED EXCLUSIVELY ON AN
4 INTERVIEW THAT LITERALLY WAS DONE WITH RAND AND DEJULIO DID.
5 THEY INTERVIEWED PRISONERS COMING TO THE RECEPTION CENTERS AND
6 THEY ASKED THEM IN THE LAST 18 MONTHS HOW MANY OF THESE
7 FOLLOWING CRIMES DID YOU COMMIT.

8 **JUDGE REINHARDT:** AND THEN YOU SAY WHEN THEY WERE
9 RELEASED, THEY DIDN'T COMMIT CRIMES, AT LEAST THAT WE KNOW
10 ABOUT. WHAT ABOUT THE TWO, TWO TO THREE? THE ONES WHO SAID, I
11 ONLY COMMITTED ONE OR TWO CRIMES. IS THERE ANY DATA AS TO WHAT
12 THEY DID WHEN THEY GOT OUT?

13 I MEAN, IS THERE ANY REASON TO BELIEVE THEIR
14 STATEMENTS ARE ANY MORE RELIABLE THAN THE ONES WHO SAID I
15 COMMITTED 50 CRIMES?

16 **THE WITNESS:** THEY DID NOT FIND THAT THERE WAS A
17 CORRELATION BETWEEN WHAT THEY THOUGHT WERE HIGH AND LOW BASED ON
18 THE SELF-REPORT DATA.

19 **JUDGE REINHARDT:** IN OTHER WORDS, ALL OF THIS IS
20 PRETTY WORTHLESS.

21 **THE WITNESS:** SOME HAVE REACHED THAT CONCLUSION, YOUR
22 HONOR.

23 **JUDGE KARLTON:** DO YOU HAVE AN OPINION AS TO WHETHER
24 IT IS OF ANY USE AT ALL?

25 **THE WITNESS:** MY OPINION IS IT'S NOT. AND IT'S ALSO

1 THE OPINION OF OTHER SCHOLARS WHO HAVE DONE REANALYSIS OF THE
2 DATA.

3 **MS. BARLOW:** IF WE COULD PUT UP THE EXHIBIT? THIS
4 IS --

5 **MS. EVENSON:** IS THIS AN EXHIBIT, COUNSEL?

6 **MS. BARLOW:** IT IS AN EXHIBIT, YES.

7 **MS. EVENSON:** WHAT EXHIBIT IS IT?

8 **MS. BARLOW:** IT IS -- LET'S SEE. IT'S DI-6 -- SHOOT.
9 I DON'T SEEM TO HAVE THE REFERENCE RIGHT HERE.

10 **MS. EVENSON:** WHAT IS THE NAME OF THE DOCUMENT?

11 **MS. BARLOW:** THIS IS FROM "MAKING CONFINEMENT
12 DECISIONS."

13 **A.** IS THAT FROM MR. ZEDLEWSKI?

14 **BY MS. BARLOW:**

15 **Q.** ED ZEDLEWSKI, NATIONAL INSTITUTE OF JUSTICE. YOU ARE
16 FAMILIAR WITH THAT, RIGHT?

17 **A.** VERY FAMILIAR WITH IT.

18 **MS. BARLOW:** IF YOU COULD PUT TABLE 1 UP ON THE
19 SCREEN?

20 **JUDGE KARLTON:** WELL, THERE SEEMS TO BE SOME DOUBT AS
21 TO WHETHER IT'S --

22 **MS. BARLOW:** IT IS AN EXHIBIT, YOUR HONOR. IT HASN'T
23 BEEN ADMITTED YET, BUT IT IS --

24 **JUDGE KARLTON:** WELL, NOTHING HAS BEEN ADMITTED. WE
25 STILL HAVE TO GO THROUGH THAT YET. COUNSEL WANTS TO KNOW WHAT

1 THE EXHIBIT NUMBER IS.

2 **MS. BARLOW:** IT'S UP ON THE SCREEN, AND I WILL GIVE
3 HER THE NUMBER, YOUR HONOR. SORRY. THE COPY I HAVE DOESN'T
4 HAVE IT ON.

5 **MR. SPECTER:** WITHOUT THE EXHIBIT NUMBER, THEN WE
6 CAN'T...

7 **MS. BARLOW:** IF YOU GIVE ME A MOMENT, THEN I WILL GET
8 IT FROM THE LIST.

9 **JUDGE KARLTON:** IF YOU FOLKS AGREE THAT IT IS AN
10 EXHIBIT --

11 **MS. EVENSON:** I DON'T KNOW IF IT IS AN EXHIBIT OR
12 WHETHER IT'S BEEN OBJECTED TO.

13 **JUDGE REINHARDT:** IT DOESN'T MATTER IF IT'S BEEN
14 OBJECTED TO. EVERYTHING HAS BEEN OBJECTED TO.

15 **JUDGE HENDERSON:** CAN YOU SHOW HER THE ONE YOU ARE
16 LOOKING AT?

17 **MS. BARLOW:** YES. IT'S DI-653. MY APOLOGIES FOR NOT
18 HAVING THAT IMMEDIATELY AVAILABLE.

19 **MS. EVENSON:** YOU HAVEN'T PROVIDED IT.

20 **MS. BARLOW:** I HAVE PROVIDED IT. YOU HAVE BEEN
21 PROVIDED WITH DISKS AND PDFS OF ALL OF THESE DOCUMENTS.

22 WE ARE JUST GOING TO LOOK AT THIS ONE TABLE THAT YOU
23 WILL SEE ON YOUR SCREEN.

24 IF WE COULD PUT UP TABLE 1, PLEASE?

25 (DOCUMENT DISPLAYED)

1 **BY MS. BARLOW:**

2 **Q.** SO THIS IS A TABLE SHOWING INMATE ANNUAL OFFENSE RATES.

3 THIS IS FROM THE RAND CORPORATION, RIGHT?

4 **A.** YES.

5 **Q.** AND IF WE LOOK AT THE COLUMN FOR CALIFORNIA, IT INDICATES

6 INMATE ANNUAL OFFENSE RATES FOR ROBBERY WERE 50. THAT'S 50

7 AVERAGE --

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

9 **Q.** -- CORRECT?

10 AND FOR BURGLARY 102?

11 **A.** THAT IS CORRECT.

12 **Q.** ASSAULT, EIGHT. MISCELLANEOUS VEHICLE THEFT, 30.

13 MISCELLANEOUS THEFT 222. FORGERY --

14 **JUDGE REINHARDT:** THIS IS PER PRISON, IS THAT RIGHT?

15 **MS. BARLOW:** YES, YOUR HONOR, ON AVERAGE.

16 **JUDGE REINHARDT:** PEOPLE ARE PRETTY BUSY.

17 **BY MS. BARLOW:**

18 **Q.** DRUG DEALS IS A PRETTY HIGH NUMBER.

19 BUT ISN'T IT TRUE, SIR, THAT SOME STUDIES IN TAKING

20 OUT DRUG DEALS STILL COME UP WITH AN AVERAGE 12 TO 15 ATTORNEY

21 CRIMES PER ARRESTEE ON AVERAGE?

22 **A.** USING THESE NUMBERS?

23 **Q.** USING VARIOUS STUDIES, WISCONSIN, WASHINGTON D.C., THE RAND

24 STUDY, CALIFORNIA, TEXAS, MICHIGAN.

25 **A.** CAN I ADD SOMETHING HERE?

1 Q. IS IT TRUE OR ISN'T IT, SIR?

2 A. WELL, THESE NUMBERS ARE WHAT YOU ARE BASING IT ON. THE
3 ACTUAL -- WHEN YOU LOOKED AT REPORTED CRIMES TO ARRESTS, IT'S
4 NOT AT THAT LEVEL AT ALL. IT VARIES. IT CAN BE AS HIGH AS
5 EIGHT-TO-ONE, TWO-TO-ONE, REPORTED CRIMES TO ARREST.

6 I WAS JUST GOING TO ADD THAT THERE IS AN INTERESTING
7 STUDY BY PROFESSOR ZIMMERING AT THE UNIVERSITY OF CALIFORNIA.
8 HE TOOK THESE NUMBERS AND -- BASICALLY WHAT HE DID IS HE TOOK
9 THESE NUMBERS OF CRIMES BEING COMMITTED PER YEAR AND HE APPLIED
10 IT TO THE INCREASE IN THE PRISON POPULATION. AND HE SAID IF YOU
11 USE THESE NUMBERS AND APPLY IT, THE COUNTRY WOULD HAVE RUN OUT
12 OF CRIME IN THE MID 1980'S, WHICH JUST KIND OF POINTED OUT THAT
13 THESE NUMBERS ARE FICTITIOUS. THEY DON'T MAKE ANY SENSE.

14 Q. WELL, SIR, YOU TESTIFIED LAST TIME THAT EVEN IN YOUR OWN
15 ILLINOIS STUDY, YOU REPORT THE NUMBER OF CRIMES FOR HIGH RISK
16 INMATES IN EXCESS OF 250 PER YEAR?

17 A. I TESTIFIED THAT?

18 Q. YES, SIR, YOU DID.

19 A. COULD YOU READ THAT TO ME?

20 Q. IT'S FROM YOUR *CRIME AND DELINQUENCY REPORT*. DO YOU NOT
21 RECALL THAT?

22 A. OKAY. WHAT PAGE?

23 Q. THIS IS EXHIBIT 785, DI-785.

24 JUDGE REINHARDT: IS THE EXHIBIT HIS STUDY?

25 MS. BARLOW: YES, SIR.

1 **JUDGE REINHARDT:** THANK YOU.

2 **JUDGE KARLTON:** AND WHAT PAGE DO YOU WANT TO REFER
3 HIM TO?

4 **MS. BARLOW:** OF THE PUBLICATION, IT'S PAGE 454. AND
5 THAT BEARS BATES STAMP AT THE BOTTOM 03658.

6 **BY MS. BARLOW:**

7 **Q.** NOW, YOU SAY IN HERE, DO YOU NOT, SIR:

8 "A MINORITY OF OFFENDERS ARE HIGH RISK
9 INMATES WHO SHOULD BE INCARCERATED BEYOND THEIR
10 CURRENT SENTENCE LENGTHS BECAUSE THEY ARE VERY
11 LIKELY TO COMMIT LARGE NUMBERS OF CRIMES UPON
12 RELEASE, IN EXCESS OF 250 PER YEAR."

13 RIGHT?

14 **A.** NO. I'M SUMMARIZING GREENWOOD AND ABRAMSON, WHICH IS THE
15 RAND STUDY.

16 **Q.** SO YOU DON'T AGREE WITH THAT?

17 **A.** PARDON?

18 **Q.** YOU DON'T AGREE WITH THAT?

19 **A.** NO. I'M JUST -- THAT'S THE LITERATURE REVIEW, PART OF THE
20 STUDY, AND I'M CITING WHAT THEY -- WHAT THEY SAID. THAT'S WHY
21 IT'S -- THEY ARE REFERENCED. IT IS THE RAND STUDY.

22 **Q.** WELL, DO YOU KNOW, SIR, WHAT IS THE AVERAGE AMOUNT OF CRIME
23 THAT EACH PERSON IN PRISON HAS COMMITTED OR WOULD COMMIT IN A
24 YEAR?

25 **A.** WELL, AGAIN, I DON'T THINK CRIMINOLOGISTS HAVE A -- YOU

1 KNOW, BESIDES FOLLOWING THEM AND OBSERVING THAT, I DON'T THINK
2 ANYONE HAS A GOOD HANDLE ON IT.

3 BUT THE NUMBERS THAT GREENWOOD AND ABRAMSON CAME UP
4 WITH HAS BEEN SHOWN TO BE EXCESSIVE. THE NATIONAL ACADEMY OF
5 SCIENCES DID A REANALYSIS AND SAID THEY WERE EXCESSIVE.

6 THEY DON'T MAKE SENSE GIVEN THE AMOUNT OF
7 INCARCERATION THAT'S INCREASED. IF THESE WERE THE ACTUAL
8 NUMBERS THAT PRISONERS WERE COMMITTING, AGAIN, WE WOULD HAVE RUN
9 OUT OF CRIME.

10 SO THAT HASN'T HAPPENED, SO SOMETHING, OBVIOUSLY, IS
11 VERY WRONG WITH THESE ESTIMATES. AND IT'S NOT IS SOME --

12 **Q.** ALL RIGHT. IS --

13 **A.** IF I MIGHT.

14 IT'S LIMITED TO THESE HIGH END OFFENDERS THAT WERE
15 SAYING THAT THEY WERE COMMITTING HUNDREDS OF CRIMES A YEAR.
16 THAT'S THE PROBLEM EVERYONE THINKS WITH THE DATA.

17 **Q.** SIR. I'M -- I'M NOT SURE YOU ARE AWARE BECAUSE YOU,
18 OBVIOUSLY, YOU WEREN'T HERE, BUT THERE HAS BEEN TESTIMONY IN
19 THIS CASE THAT AT LEAST IN ONE JURISDICTION AS MUCH AS 25
20 PERCENT OF FELONY ARRESTS IN A SINGLE YEAR WERE OF PEOPLE ON
21 PAROLE.

22 DOES THAT HAVE ANY IMPACT ON YOUR CONCLUSIONS THAT
23 YOU ARE GOING TO HAVE LESS THAN A ONE PERCENT IMPACT ON ARRESTS
24 IF YOU EARLY RELEASE?

25 **A.** I'D HAVE TO SEE, YOU KNOW, THE DATA AND THE ANALYSIS TO

1 COMMENT ON IT.

2 **Q.** I WOULD LIKE TO MOVE ON TO COST SAVINGS, BECAUSE YOU HAVE
3 INDICATED THAT WE ARE GOING TO SAVE BILLIONS OF DOLLARS A YEAR
4 IF WE DO THE PROGRAM YOU RECOMMEND.

5 **A.** I ESTIMATED YOU WOULD SAVE APPROXIMATELY \$1 BILLION A YEAR.

6 **Q.** A BILLION DOLLARS A YEAR, RIGHT?

7 **A.** AND THAT WAS ALSO THE ESTIMATE OF THE EXPERT PANEL.

8 **Q.** NOW, I THINK THE STATE IS NOW PROJECTING IS IT, WHAT,
9 \$45 BILLION DEFICIT NEXT YEAR?

10 YOU TESTIFIED THAT DOING WHAT YOU RECOMMEND ACTUALLY
11 GENERATES MONEY. IT DOESN'T GENERATE MONEY. IT JUST STOPS YOU
12 FROM SPENDING MONEY YOU DON'T ALREADY HAVE, RIGHT?

13 **A.** IT WOULD DEPEND ON HOW THE STATE CHOOSES TO USE THOSE
14 AVERTED COSTS.

15 **Q.** WELL, IF WE HAVE GOT A \$45 BILLION DEFICIT, WE SAVE A
16 BILLION, WE JUST HAVE A \$44 BILLION DEFICIT, RIGHT?

17 **MS. EVENSON:** OBJECTION. BEYOND THE SCOPE AND
18 ARGUMENTATIVE.

19 **MS. BARLOW:** HE DID TALK ABOUT SAVINGS.

20 **JUDGE REINHARDT:** IT'S A BILLION DOLLARS ONE WAY OR
21 THE OTHER. WHAT'S THE DIFFERENCE?

22 **BY MS. BARLOW:**

23 **Q.** OKAY. THAT BILLION DOLLAR SAVINGS DOESN'T TAKE INTO ACCOUNT
24 AT ALL ANY OF THE COSTS OF THE CRIMES THAT GET COMMITTED DURING
25 AN EARLY RELEASE OR ON DIVERSION OR AFTER RELEASE FROM PAROLE

1 EARLY; ANY OF THOSE, RIGHT?

2 **A.** IT DOES TAKE THAT INTO ACCOUNT.

3 **Q.** IT DOES?

4 **A.** YES.

5 **Q.** AND HOW DID YOU CALCULATE THAT? I DIDN'T SEE THAT IN YOUR
6 REPORT.

7 **A.** WELL, THOSE COSTS -- THOSE COSTS OF VICTIMIZATION ARE
8 OCCURRING NOW. SO THE CALIFORNIA DATA THAT I'M USING IS LOOKING
9 AT PEOPLE THAT ARE BEING RELEASED NOW BY THE DEPARTMENT AND IT
10 REFLECTS ON PEOPLE BEING ARRESTED AND WHAT THOSE COSTS ARE BEING
11 ARRESTED, ET CETERA.

12 IF YOU ADOPT MY POLICIES, THOSE SAME COSTS OCCUR,
13 JUST THAT THE TIMING OF EVERYTHING IS CHANGING SLIGHTLY.

14 SO THERE IS NO DIFFERENCE IN THE NUMBER OF PEOPLE
15 BEING ARRESTED. THERE IS NO DIFFERENCE IN THE VICTIMIZATION
16 GOING ON.

17 I THINK THE LAST TIME I TALKED, YOUR HONOR, I MIGHT
18 GET VICTIMIZED INSTEAD OF YOU, BUT, YOU KNOW, IT'S STILL GOING
19 TO BE THAT ONE VICTIMIZATION.

20 SO IT'S A ZERO SUM GAME BECAUSE WE ARE JUST MODESTLY
21 MOVING AROUND, YOU KNOW, THE PERIOD OF INCARCERATION.

22 **Q.** WELL, DIDN'T YOU INDICATE IN YOUR STUDY FROM ILLINOIS THAT
23 IF YOU ACCELERATE THE RATE OF RELEASE, THAT YOU ACCELERATE OR
24 INCREASE THE HARM TO THE COMMUNITY?

25 **A.** WELL, THE REPORT -- THERE WERE TWO REPORTS I DID IN

1 ILLINOIS, BUT THE FIRST ONE WAS TRYING TO GET AT THAT ISSUE
2 BECAUSE THAT WAS A CONCERN, OBVIOUSLY.

3 IF WE START -- AND THAT WAS THE CONCERN OF GOVERNOR
4 THOMPSON AND HIS STAFF. THEY DID WHAT IS CALLED FORCED RELEASE
5 AT THAT TIME. WAS THEIR HARM TO PUBLIC SAFETY AND --

6 **Q.** WELL, SIR --

7 **JUDGE HENDERSON:** LET HIM FINISH HIS ANSWER.

8 **A.** MY CONCLUSION, FINAL ANALYSIS IS, NO, THERE WAS NO HARM TO
9 PUBLIC SAFETY; THAT THE PROGRAM WAS COST EFFECTIVE.

10 BASED ON THAT, THE LEGISLATURE CHANGED THE SENTENCING
11 LAWS. ABOUT SIX YEARS LATER THEY DOUBLED THE AMOUNT OF TIME
12 SERVED.

13 I DID ANOTHER STUDY, SAME RESULTS. AND THEN RECENTLY
14 THEY HAVE ADDED MORE GOOD TIME.

15 AND SO ILLINOIS IS PROBABLY A GOOD EXAMPLE TO LOOK
16 AT, JUST LIKE CALIFORNIA. BOTH STATES WENT FROM INDETERMINATE
17 TO DETERMINATE. ILLINOIS OVER A PERIOD OF YEARS ADJUSTED ITS
18 SENTENCING LAWS TO REDUCE THE PERIOD OF STAY. NET RESULT TODAY
19 IS THEIR CRIME RATE IS THE SAME AS CALIFORNIA'S. BOTH OF THEM
20 HAVE COME DOWN, BUT ILLINOIS HAS AN INCARCERATION RATE ABOUT
21 ONE-THIRD THAT OF CALIFORNIA. SO WHAT ILLINOIS HAS DONE HAS
22 WORKED PRETTY WELL FOR THEM.

23 **BY MS. BARLOW:**

24 **Q.** SIR, YOU SAID IN YOUR REPORT AND I QUOTE:

25 "ASSUMING THAT RELEASED INMATES HAVE A

1 CERTAIN PROBABILITY OF COMMITTING NEW CRIME,
2 ACCELERATING THE NUMBER OF RELEASES INCREASED
3 THE AMOUNT OF CRIME BEYOND THE LEVELS ONE WOULD
4 HAVE EXPERIENCED HAD EARLY RELEASE NOT EXISTED."
5 ARE YOU TELLING US RIGHT NOW YOU THAT DIDN'T REALLY
6 MEAN THAT OR THAT'S NOT WHAT IT REALLY SAYS?

7 **MS. EVENSON:** COUNSEL, WHERE ARE YOU READING FROM,
8 PLEASE?

9 **MS. BARLOW:** THIS IS PAGE 408 OF HIS ILLINOIS STUDY
10 BATES STAMPED 3612.

11 **JUDGE HENDERSON:** THE QUESTION IS, ARE YOU SAYING YOU
12 DIDN'T REALLY MEAN THAT OR SOMETHING ELSE?

13 **MS. BARLOW:** HE HAS JUST TOLD YOU THAT THAT'S NOT
14 WHAT REALLY HAPPENED. YEAH. THAT'S THE QUESTION.

15 **JUDGE HENDERSON:** DO YOU HAVE THE QUESTION IN MIND?

16 **BY MS. BARLOW:**

17 **Q.** DID I QUOTE YOU ACCURATELY, SIR?

18 **A.** YES, YOU DID.

19 **MS. EVENSON:** CAN HE PLEASE FINISH?

20 **MS. BARLOW:** YOU CAN DO THAT ON REDIRECT, COUNSEL.

21 **MS. EVENSON:** YOU ARE QUOTING HIM OUT OF CONTEXT.

22 **MS. BARLOW:** I READ THE ENTIRE SENTENCE.

23 **MS. EVENSON:** COULD YOU READ THE CONTEXT OF IT,
24 PLEASE?

25 **MS. BARLOW:** I THINK YOU CAN DO THAT.

1 **JUDGE KARLTON:** MA'AM, MA'AM. YOU DON'T ARGUE WITH
2 COUNSEL. COUNSEL HAS OBJECTED. WHAT IS THE OBJECTION?

3 **MS. EVENSON:** THE OBJECTION IS THAT IT IS INCOMPLETE.
4 AND TO COMPLETE THE QUESTION, THE ENTIRE PASSAGE NEEDS TO BE
5 READ INTO THE RECORD.

6 **JUDGE HENDERSON:** READ THE ENTIRE PASSAGE FOR
7 COMPLETENESS.

8 **MS. BARLOW:** WELL, AND I DON'T KNOW IF SHE MEANS THE
9 ENTIRE PARAGRAPH OR THE ENTIRE PAGE.

10 **JUDGE HENDERSON:** TELL US WHAT YOU MEAN.

11 **MS. EVENSON:** THE FOLLOWING SENTENCE.

12 **THE COURT:** WHO YOU READ THAT, PLEASE?

13 **MS. BARLOW:** IT'S ALREADY TESTIFIED TO.

14 **BY MS. BARLOW:**

15 **Q.** (READING)

16 "USING THIS METHOD IT WAS ESTIMATED THAT
17 LESS THAN ONE PERCENT, 4500 ARRESTS, OF ALL
18 SIMILARLY RECORDED ARRESTS FOR ALL OF ILLINOIS
19 WERE ATTRIBUTED TO EARLY RELEASE FROM 1980 TO
20 1983."

21 HE HAS ALREADY SAID THAT. I'M NOT TRYING TO CHANGE
22 THAT.

23 **JUDGE KARLTON:** THANK YOU, MA'AM.

24 **MS. BARLOW:** YOU ARE WELCOME.

25

1 **BY MS. BARLOW:**

2 **Q.** MOVING ON TO THE NEXT PAGE OF YOUR REPORTS FROM YOUR
3 ILLINOIS STUDY. THIS IS PAGE 409, BATES 3613.

4 **MS. BARLOW:** IF WE COULD PUT THE LAST TWO PARAGRAPHS
5 ON THAT PAGE UP, PLEASE?

6 (DOCUMENT DISPLAYED)

7 **BY MS. BARLOW:**

8 **Q.** AND I WOULD JUST LIKE TO READ THIS TO YOU, IF I COULD, SIR.

9 "HOWEVER IN THE EYES OF POLICE, PROSECUTORS,
10 JUDGES AND THE PUBLIC, EARLY RELEASE WAS
11 ANYTHING BUT A SUCCESS. POLICE AND PROSECUTORS
12 WORKED TO IMPROVE CONVICTION RATES AND JUDGES
13 FOLLOWED THE NEWLY ENACTED LAWS THAT REQUIRE
14 LONGER SENTENCES. MOREOVER, A CONFUSED AND
15 OFTEN ANGRY PUBLIC FINDS IT DIFFICULT TO
16 UNDERSTAND WHY THOUSANDS OF INMATES ARE BEING
17 DISCHARGED EARLY WHILE CITIZENS CONTINUE TO BE
18 VICTIMIZED AT INTOLERABLE LEVELS AND THEY TAKE
19 ALSO COMFORT IN KNOWING THAT THESE PRISONERS
20 WOULD HAVE BEEN RELEASED WITHIN A FEW MONTHS IN
21 THE EARLY RELEASE PROGRAM.

22 "WHEN VIEWED AS A LONG TERM SOLUTION TO
23 PRISON CROWDING, EARLY RELEASE IS A POOR
24 SUBSTITUTE FOR A MORE PERMANENT, RATIONAL AND
25 COST EFFECTIVE SENTENCING POLICY. IT PROVIDES

1 AN EXCESSIVE AMOUNT OF DISCRETION FOR
2 CORRECTIONAL ADMINISTRATORS, VIOLATES PRINCIPLES
3 OF EQUITY AND CERTAINTY IN SENTENCING AS ASSUMED
4 BY THE COURT, AND INCREASES THE ALREADY LOW
5 REGARD HELD FOR THE CRIMINAL JUSTICE SYSTEM BY
6 THE PUBLIC."

7 DO YOU STILL AGREE WITH THAT, SIR?

8 **A.** YES. AND I JUST WANT TO ADD --

9 **Q.** I DON'T HAVE A QUESTION PENDING NOW. YOU HAVE ANSWERED MY
10 QUESTION. THANK YOU.

11 **MS. EVENSON:** OBJECTION.

12 **JUDGE HENDERSON:** IT CAN BE REVIEWED. YOU CAN GET TO
13 IT ON REDIRECT, COUNSEL.

14 **MS. EVENSON:** YES.

15 **JUDGE KARLTON:** IF YOU FEEL COMPELLED. THERE IS
16 NOTHING WRONG. GO AHEAD.

17 **BY MS. BARLOW:**

18 **Q.** SO YOU AGREE THAT EARLY RELEASE --

19 **JUDGE KARLTON:** MA'AM, HE AGREES WITH THE ENTIRE
20 SENTENCE.

21 **JUDGE REINHARDT:** HE AGREES IT'S A BETTER SOLUTION
22 THAN EARLY RELEASE, WHICH IS TO CHANGE OUR CRIMINAL LAWS OR OUR
23 SENTENCING LAWS, OR YOU CAN BUILD PRISONS OR DO ALL KINDS OF
24 THINGS.

25 BUT GIVEN THE PRESENT CIRCUMSTANCES, WHAT'S THE BEST

1 SOLUTION?

2 **MS. BARLOW:** WELL, I APPRECIATE THAT, YOUR HONOR,
3 BUT --

4 **JUDGE KARLTON:** YOU DON'T APPRECIATE IT. PLEASE GO
5 FORWARD.

6 **MS. BARLOW:** I DO. I'M TRYING TO.

7 **BY MS. BARLOW:**

8 **Q.** BUT YOU AGREE, SIR, THAT EARLY RELEASE IS ONLY A SHORT-TERM
9 REMEDY FOR OVERCROWDING, RIGHT?

10 **A.** I'M SORRY?

11 **Q.** EARLY RELEASE IS ONLY A SHORT-TERM REMEDY FOR OVERCROWDING,
12 RIGHT?

13 **A.** YES. IT'S NOT A POLICY THAT I ENDORSE.

14 **Q.** AND, IN FACT, YOU CHARACTERIZED IT IN THIS STUDY AS AN
15 EMERGENCY ONLY OPTION, CORRECT?

16 **A.** YEAH. IN THE CIRCUMSTANCE, THE DIRECTOR OF CORRECTIONS, HE
17 NOTED TWO YEARS BEFORE THEY HAD A VERY BLOODY PRISON RIOT WHERE
18 THEY LOST STAFF. STAFF WERE KILLED AND HE SAID HE DID NOT WANT
19 TO TOLERATE A CROWDED PRISON SYSTEM BECAUSE IT WAS DANGEROUS AND
20 THEY HAD JUST GONE THROUGH A PRISON RIOT. AND HE --

21 **Q.** AND DID YOU -- I'M SORRY. I DIDN'T MEAN TO INTERRUPT. I
22 THOUGHT YOU WERE FINISHED. I APOLOGIZE. GO AHEAD AND FINISH.

23 **A.** HE THOUGHT, YOU KNOW, THE BEST WAY WOULD BE FOR THE
24 LEGISLATURE TO CORRECT IT; BUT IF THEY DON'T CORRECT IT, HE HAD
25 NO CHOICE BUT TO USE WHAT POWERS HE HAD TO KEEP THE PRISON

1 SYSTEM SAFE. AND THAT'S WHY HE DID IT.

2 **Q.** ALL RIGHT. WOULD YOU AGREE WITH ME, SIR, THAT ASSESSING THE
3 COSTS OF EARLY RELEASE MUST GO BEYOND SIMPLY CALCULATING THE
4 RECIDIVISM RATE FOR THE RELEASEES?

5 **A.** YES.

6 **Q.** WE HAVE TO CONSIDER THE HARM TO THE COMMUNITY, THE LOSS AND
7 DAMAGE CAUSED BY EARLY RELEASE CRIME AND SO ON, CORRECT?

8 **A.** YES.

9 **Q.** NOW, IN YOUR STUDY ON PAGE 478 YOU SAID:

10 "AS THE EARLY RELEASE WINDOW EXPANDS, SO
11 DOES THE AMOUNT OF CRIME ATTRIBUTABLE TO THE
12 EARLY RELEASE PROGRAM."

13 AND YOU GO ON TO TALK ABOUT MEDIAN DAYS.

14 "IN 1980 ONLY ONE-TENTH OF THE FELONY
15 ARRESTS WERE ATTRIBUTED TO EARLY RELEASE
16 COMPARED TO FIVE-TENTHS OF ONE PERCENT IN 1982."

17 SO IT'S TRUE THAT AS THE MORE PEOPLE YOU EARLY
18 RELEASE, THE HIGHER THE RATES GO, RIGHT?

19 **MS. EVENSON:** OBJECTION. YOU ARE MISREAD THE QUOTE
20 THAT YOU WERE READING, COUNSEL.

21 **MS. BARLOW:** I'M SORRY. I DON'T THINK I DID.

22 **MS. EVENSON:** YOU SAID ONE-TENTH OF FELONY ARRESTS.
23 YOU MEANT ONE-TENTH OF ONE PERCENT.

24 **MS. BARLOW:** I APOLOGIZE.
25

1 **BY MS. BARLOW:**

2 **Q.** ONLY ONE-TENTH OF ONE PERCENT OF THE FELONY ARRESTS WERE
3 ATTRIBUTABLE TO EARLY RELEASE COMPARED TO FIVE-TENTHS OF ONE
4 PERCENT IN 1982.

5 SO IT'S MAGNIFIED FIVE FOLD AS YOU INCREASE THE EARLY
6 RELEASE, CORRECT?

7 **A.** TECHNICALLY WHAT'S GOING ON, THIS IS THE INCREASE DURING THE
8 TIME THAT YOU CHANGED THE POLICY. AND ONCE THE EFFECT OF THE
9 POLICY HAVE TAKEN AHOLD, THEN THIS INCREASE DOES OCCUR.

10 BUT, YES, I'M SAYING IT'S LESS THAN ONE PERCENT OF
11 THE ARRESTS. IN ILLINOIS COULD BE ATTRIBUTED AND AS YOU
12 INCREASE, YOU KNOW, THE AMOUNT OF TIME THAT PEOPLE ARE BEING --
13 HAVING THEIR TIME REDUCED, YOU HAVE AN INCREASE.

14 **JUDGE KARLTON:** AND, SIR, IF WE WERE TO ORDER THE
15 COUNTY -- THE STATE TO RELEASE 150,000 OR 145,000 OR SOME NUMBER
16 LIKE THAT, IT'S STILL LESS THAN ONE PERCENT IN YOUR VIEW?

17 **THE WITNESS:** RELEASE IN THEIR VIEW --

18 **JUDGE KARLTON:** THEY ARE TALKING ABOUT A HUNDRED
19 AND --

20 **MR. SPECTER:** FIFTY, YOUR HONOR.

21 **MS. BARLOW:** 52,000.

22 **JUDGE KARLTON:** 52,000.

23 **THE WITNESS:** I HAVEN'T DONE THAT CALCULATION, YOUR
24 HONOR. BUT BASED ON ALL THE WORK THAT I HAVE DONE ELSEWHERE, IT
25 WOULD REPRESENT A VERY SMALL FRACTION, SOMEWHERE IN THE

1 ONE PERCENT RANGE PROBABLY.

2 YOU KNOW, AGAIN, A LOT DEPENDS ON HOW YOU DO IT. AND
3 YOU COULD JUST DO IT ON A RANDOM BASIS WITHOUT RISK ASSESSMENT,
4 WITHOUT KIND OF PROPERLY PREPARING THE SYSTEM FOR THIS. YOU
5 COULD HAVE SOME ADVERSE AFFECTS, BUT I'M CONFIDENT THAT YOU
6 COULD DO IT AND NOT HAVE ANY IMPACT, NEGATIVE IMPACT ON CRIME
7 RATES OR PUBLIC SAFETY. THAT'S MY OPINION.

8 **JUDGE REINHARDT:** AND YOU ARE ALSO SAYING THERE ARE
9 BETTER WAYS TO DO THIS.

10 **THE WITNESS:** YES. I MEAN, THE --

11 **JUDGE REINHARDT:** THAT WOULD REQUIRE THE STATE TO
12 PASS LEGISLATION.

13 **THE WITNESS:** IN MY OPINION, YES. THERE NEEDS TO BE
14 SOME CHANGES IN THE SENTENCING LAWS, BUT THERE WOULD ALSO HAVE
15 TO BE SOME CHANGES IN WHICH THE CDCR OPERATES AND PREPARES
16 PRISONERS FOR RELEASE AND THE PAROLE DIVISION DOES ITS WORK.

17 THERE'S A NUMBER OF ADMINISTRATIVE CHANGES. AND,
18 AGAIN, THESE ARE PRETTY WELL DETAILED IN THE EXPERT PANEL
19 REPORT.

20 **JUDGE REINHARDT:** THE STATE HAS BEEN ADVISED HOW IT
21 COULD AVOID A PRISON RELEASE ORDER BY THE EXPERTS IT APPOINTED?

22 **THE WITNESS:** I'M SORRY, YOUR HONOR?

23 **JUDGE REINHARDT:** THE STATE HAS BEEN ADVISED HOW IT
24 COULD AVOID A PRISONER RELEASE ORDER BY THE EXPERTS IT HAS
25 APPOINTED?

1 **THE WITNESS:** HOW IT COULD AVOID? I DON'T --

2 **JUDGE REINHARDT:** WHAT IT COULD DO TO SOLVE THE
3 PROBLEM WITHOUT A PRISONER RELEASE ORDER?

4 **THE WITNESS:** WELL, THE EXPERT PANEL -- THE EXPERT
5 PANEL --

6 **JUDGE REINHARDT:** HAS ADVISED THE STATE.

7 **THE WITNESS:** THAT IT DID NEED TO CHANGE SENTENCING
8 LAWS.

9 **JUDGE KARLTON:** RIGHT. AND JUDGE REINHARDT SAID, THE
10 EXPERT PANEL HAS ADVISED THE STATE AS TO WHAT IT OUGHT TO DO.

11 **THE WITNESS:** YES.

12 **JUDGE KARLTON:** AND IF THE STATE HAD ADOPTED ALL OF
13 THOSE RECOMMENDATIONS, WE WOULDN'T BE HERE TODAY.

14 **THE WITNESS:** ABSOLUTELY.

15 **JUDGE REINHARDT:** AND THE STATE HAS CHOSEN NOT TO DO
16 THAT, TO ADOPT THOSE RECOMMENDATIONS.

17 **THE WITNESS:** THAT'S AN INTERESTING POINT, YOUR
18 HONOR, BECAUSE --

19 **JUDGE REINHARDT:** WELL IT DOESN'T, DOES IT?

20 **THE WITNESS:** IT WAS THEN SECRETARY TILTON, WHO -- I
21 HAVE A COPY OF HIS LETTER, WHO THEN ENDORSED ALL THE
22 RECOMMENDATIONS.

23 THE ONLY QUESTION HE HAD WAS THE ESTIMATES THAT WERE
24 BEING PROVIDED, AND THEY HAD ME COME IN AND GO OVER THE
25 ESTIMATES AND REAFFIRM THEM.

1 BUT I HAVE IN MY POSSESSION A LETTER FROM SECRETARY
2 TILTON ENDORSING ALL THE RECOMMENDATIONS OF THE EXPERT PANEL.

3 **JUDGE KARLTON:** AND THE STATE HASN'T DONE IT?

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

5 **BY MS. BARLOW:**

6 **Q.** THANK YOU. IF I COULD GET BACK TO THESE RATES HERE, JUST A
7 COUPLE MORE QUESTIONS.

8 YOU INDICATE IN YOUR REPORT THAT:

9 "THE NUMBER OF ARRESTS GENERATED BY EARLY
10 RELEASE WAS HIGHEST IN 1982 AT A PERIOD DURING
11 WHICH BOTH THE RELEASE RATE AND LENGTH OF THE
12 WINDOW WERE GREATEST."

13 SO THE MORE YOU RELEASE AND THE LONGER A PERIOD OF
14 TIME THEY GET LET OUT EARLY, THE HIGHER THE CRIME RATE OR ARREST
15 RATE GOES, RIGHT? THE ARREST RATE, RIGHT? I DON'T WANT TO
16 CONFUSE YOU BECAUSE WE KNOW THAT THERE IS MORE CRIME THAN
17 ARRESTS.

18 **A.** DURING THAT IMPLEMENTATION PERIOD?

19 **Q.** RIGHT. SO AND ILLINOIS, JUST TO MAKE SURE WE PUT THIS ALL
20 THIS IN CONTEXT, RELEASED 21,000 PRISONERS OVER THREE YEARS,
21 RIGHT?

22 **A.** IN THAT TIME PERIOD. IT'S DONE A LOT MORE SINCE THEN
23 OBVIOUSLY.

24 **Q.** WE ARE TALKING ABOUT WHAT'S HERE IN YOUR REPORT.

25 AND YOU DID AN ANALYSIS THAT INDICATED THAT THOSE

1 4,000-PLUS ARRESTS RESULTED IN 30,610 CRIMES FROM -- DURING THE
2 EARLY RELEASE PERIOD, CORRECT?

3 **A.** NO. WHAT I'M DOING THERE, I'M ESTIMATING USING A PROCEDURE
4 THAT WAS SUGGESTED BY PROFESSOR BLOOMSTEIN, WHO WAS AN ADVISOR
5 TO THE PROJECT.

6 SO WHAT I'M DOING, I'M TAKING AN APPROACH THAT PEOPLE
7 SUGGESTED TO ME TO TRY AND ESTIMATE THE AMOUNT OF CRIMES.

8 **Q.** THAT'S WHAT I THOUGHT I SAID, BUT --

9 **JUDGE KARLTON:** NO, YOU DIDN'T.

10 **A.** YOU ARE KIND OF SAYING THESE CRIMES DID OCCUR. WE HAVE NO
11 IDEA IF THESE CRIMES DID OCCUR.

12 AND I WAS JUST GOING TO ADD, IN MY 1993 REPORT WE
13 ACTUALLY WENT IN TO THESE ARRESTS AND AUDITED THEM AND FOUND
14 THAT THE CRIMES WERE NOT OCCURRING IN A LARGE NUMBER OF THEM.

15 SO THE METHODOLOGY TO DETERMINE HOW MUCH CRIME THEY
16 WERE COMMITTING WAS FLAWED. WE DID THE BEST WE COULD, BUT IT'S
17 NOT ANYWHERE CLOSE TO WHERE YOU COULD SAY THAT THIS NUMBER OF
18 ARRESTS ARE PRODUCING THIS AMOUNT OF CRIMINAL ACTIVITY.

19 **BY MS. BARLOW:**

20 **Q.** YOU DID ESTIMATE, THOUGH, BASED ON YOUR ANALYSIS AT THE TIME
21 THAT THOSE 4,511 EARLY RELEASEES GENERATED 30,610 CRIMES, HALF
22 OF WHICH WERE NOT REPORTED TO THE POLICE, RIGHT?

23 **A.** I DID NOT SAY THEY GENERATED. I SAID BASED ON THIS
24 ESTIMATION PROCEDURE.

25 **Q.** ALL RIGHT. IT SAYS:

1 "THIS ESTIMATED TECHNIQUE PRODUCED A TOTAL
2 OF 30,610 CRIMES OF WHICH" --

3 **JUDGE KARLTON:** MA'AM, HE HAS ALREADY SAID HE USED
4 SOMEBODY ELSE'S METHOD AND ATTEMPTED TO DETERMINE THE NUMBER OF
5 CRIMES THAT WOULD BE PERMITTED. HE CAME TO THAT NUMBER. THREE
6 YEARS LATER HE DID A STUDY THAT DIDN'T OCCUR.

7 WHAT MORE DO YOU WANT? I KNOW YOU DON'T LIKE HIS
8 ANSWER. THAT'S HIS ANSWER.

9 **BY MS. BARLOW:**

10 **Q.** WELL, WHEN YOU DID THIS ESTIMATION, YOU DID NOT ADD ANY --
11 MAKE ANY ADJUSTMENTS FOR THE POSSIBILITY THAT THERE WERE
12 MULTIPLE OFFENDERS INVOLVED, RIGHT? AND THAT WOULD HAVE
13 INCREASED THE AMOUNT OF CRIME YOU PROJECTED, CORRECT?

14 **A.** I THINK ON PAGE 495 I TALKED ABOUT, QUOTE.

15 "IF WE HAD USED THE ESTIMATE OF BLOOMSTEIN
16 PICONE" -- WHICH IS WHAT I'M REFERRING TO --
17 "FOR MULTIPLE OFFENDERS THE AMOUNT OF CRIME
18 ATTRIBUTABLE TO EARLY RELEASE WOULD HAVE
19 DOUBLED" --

20 **Q.** DOUBLED, RIGHT?

21 **A.** SO I DID TAKE IT INTO ACCOUNT.

22 **Q.** NOW, YOU ALSO -- WHEN YOU DID YOUR CALCULATION OF COST
23 SAVINGS AS A RESULT OF THE ILLINOIS RELEASE -- EARLY RELEASE
24 PROGRAM, YOU ESTIMATED THAT THE SAVINGS WAS \$1,400 PER INMATE?

25 **MS. EVENSON:** COUNSEL, WHERE ARE YOU READING FROM?

1 **A.** I THINK ON PAGE 496, FIRST PARAGRAPH, IT SAYS SAVINGS WAS
2 APPROXIMATELY \$1,505 PER RELEASED EARLY INMATE.

3 **BY MS. BARLOW:**

4 **Q.** WOULD YOU TAKE A LOOK AT THE -- I'M SORRY. WHICH PAGE WAS
5 THAT, SIR?

6 **A.** PARDON?

7 **Q.** WHICH PAGE IS IT?

8 **A.** IT'S ON PAGE 496 OF THE REPORT. IT'S THE FIRST PARAGRAPH
9 SUMMARY ASSAULT, THE LAST STATEMENT.

10 **Q.** BUT THE TABLE ABOVE THAT ACTUALLY HAS THE OTHER NUMBER,
11 RIGHT, ON THAT PAGE?

12 **A.** YES, I SEE THAT. THEY ARE PROBABLY, YOU KNOW -- IT'S ABOUT
13 THE SAME; 1,480, 1,505.

14 **Q.** IT'S AROUND \$1,500 PER, RIGHT?

15 AND IN REACHING THAT CONCLUSION YOU TRIED TO
16 CALCULATE THE -- SOME ECONOMIC COSTS ASSOCIATED WITH THE CRIMES
17 THAT WOULD BE OR WERE COMMITTED, CORRECT?

18 **A.** YES.

19 **Q.** ALL RIGHT. AND YOU FIGURED WHAT THAT COST WOULD BE AND THEN
20 YOU SUBTRACTED THE AMOUNT OF INSURANCE PROCEEDS THAT PEOPLE WERE
21 ABLE TO RECOVER TO COVER THEFTS AND DAMAGE AND SO ON, RIGHT?

22 **A.** I DON'T KNOW IF IT WAS IN THIS STUDY OR THE SUBSEQUENT ONE.

23 **Q.** IT'S ON PAGE 493.

24 **A.** 493?

25 **Q.** UH-HUH.

1 **A.** OKAY. SO, YEAH. WHAT WE ARE DOING HERE IS WE ARE TAKING
2 DATA FROM -- THIS IS IMPORTANT, FROM THE NATIONAL CRIME SURVEY.

3 SO THIS IS WHAT'S CALLED IN OUR LANGUAGE AN
4 ECOLOGICAL FALLACY, WHERE YOU TAKE INFORMATION FROM SOMETHING
5 ELSE AND YOU APPLY IT TO PEOPLE THAT MAY OR MAY NOT BE IN THAT
6 OTHER DATA SET.

7 SO WE ARE TAKING THAT VICTIM LOSSES FROM NCSS AND
8 APPLYING IT TO -- TO THESE CRIMES BASED ON WHAT'S IN THE
9 NATIONAL CRIME SURVEY VICTIM LOSSES.

10 **Q.** RIGHT. BUT WHAT I'M ASKING YOU, SIR, IS --

11 **A.** AND THAT CRIME SURVEY -- YEAH, THEY ESTIMATE THAT 36 PERCENT
12 OF ALL THOSE LOSSES ARE RECOVERED BY THE VICTIM.

13 **Q.** AND THAT INCLUDED COVERAGE BY -- FOR MEDICAL CLAIMS AND
14 INSURANCE COVERAGE, RIGHT?

15 **A.** RIGHT.

16 **Q.** SO, BUT THAT WAS A LOSS TO SOMEBODY. IT MAY NOT HAVE BEEN
17 JUST A LOSS TO THE VICTIM, IF AN INSURANCE COMPANY, FOR EXAMPLE,
18 HAD TO PAY, RIGHT?

19 **A.** YES. THE INSURANCE COMPANY WOULD HAVE REIMBURSED THEM.

20 **Q.** NOW, YOU TESTIFIED PREVIOUSLY THAT CALIFORNIA HAD ONE OF THE
21 LOWER RECIDIVISM RATES IN THE '60S AND THE '70S, AND THAT IS
22 PART OF WHY WE HAD SUCH A LOW PRISON POPULATION AT THE TIME?

23 **A.** NO, THAT'S NOT WHY YOU HAD A LOW PRISON POPULATION AT THE
24 TIME, BUT YOU DID HAVE A LOW RECIDIVISM RATE.

25 **Q.** NOW, YOU ARE AWARE, THOUGH, THAT INDEX CRIME DOUBLED IN

1 CALIFORNIA? THE RATE OF INDEX CRIMES COMMITTED IN CALIFORNIA
2 DOUBLED FROM 1965 TO 1975?

3 **A.** I WILL TAKE IT AT YOUR WORD. I KNOW IT INCREASED
4 DRAMATICALLY.

5 **Q.** AND THAT INCREASE IS PART OF WHAT FUELED LAWS ABOUT
6 DETERMINATE SENTENCING, AND USE A GUN GO TO JAIL, AND SECOND AND
7 THIRD STRIKES AND SO ON, RIGHT?

8 **MS. EVENSON:** OBJECTION. CALLS FOR INSPECTION.

9 **JUDGE HENDERSON:** SUSTAINED.

10 **BY MS. BARLOW:**

11 **Q.** AFTER THOSE LAWS WERE PASSED, THE CRIME -- VIOLENT CRIME
12 RATES WENT DOWN, RIGHT? THOSE INDEX CRIMES?

13 **A.** THE CRIME RATES STARTED. THEY PEAKED IN CALIFORNIA AND
14 ELSEWHERE ABOUT 1980. AND THEN IN 1994, 1995 THEY STARTED TO
15 DECLINE.

16 **Q.** NOW, ARE YOU FAMILIAR WITH THE -- WITH STEVEN LEAVITT?
17 STEVEN LEAVITT?

18 **A.** STEVEN LEAVITT? I THINK --

19 **Q.** UNIVERSITY OF CHICAGO?

20 **A.** YEAH. HE'S THE ONE THAT TALKED ABOUT THE RELATIONSHIP
21 BETWEEN ABORTION AND CRIME?

22 **Q.** WELL, THAT'S NOT WHAT I'M ASKING ABOUT.

23 **A.** WELL --

24 **JUDGE HENDERSON:** ARE YOU FAMILIAR WITH HIM, IS THE
25 QUESTION.

1 **BY MS. BARLOW:**

2 **Q.** ARE YOU FAMILIAR WITH HIM?

3 **A.** I'M FAMILIAR WITH HIM.

4 **Q.** NOW, LEAVITT FOUND THAT SLOWING THE PRISON POPULATION BY 13
5 TO 19 PERCENT CAUSED AN INCREASE IN VIOLENT CRIME OF EIGHT --
6 APPROXIMATELY 8 PERCENT AND IN PROPERTY CRIMES OF APPROXIMATELY
7 6 PERCENT.

8 DO YOU DISAGREE WITH THAT?

9 **A.** YES.

10 **Q.** LET'S TALK ABOUT A POPULATION CAP HERE. IS IT TRUE, SIR,
11 THAT YOU WOULD NOT RECOMMEND THAT THE COURT SET A CAP
12 ARTIFICIALLY WITHOUT CHANGING ADMISSION AND RELEASE PRACTICES?

13 **A.** WELL, I WOULD -- YEAH, I WOULD -- YOU WOULD HAVE TO CHANGE
14 -- YES, THE SENTENCING RELEASE PRACTICES, YEAH. THE SAME THINGS
15 I HAVE RECOMMENDED, THOSE ARE THE THINGS THAT YOU WANTED TO --

16 **JUDGE KARLTON:** THE QUESTION IS MORE PROFOUND. IF WE
17 DON'T ORDER THOSE THINGS, SHOULD WE HAVE A PRISON RELEASE ORDER?

18 **JUDGE REINHARDT:** I DIDN'T UNDERSTAND --

19 **JUDGE KARLTON:** OR WE CAN'T --

20 **THE WITNESS:** YOU WOULD HAVE CHAOS, CHAOS AT THAT
21 POINT.

22 **JUDGE REINHARDT:** DO YOU BELIEVE THAT'S UP TO THE
23 COURT OR TO THE STATE IF --

24 **BY MS. BARLOW:**

25 **Q.** I BELIEVE YOU INDICATED --

1 **JUDGE REINHARDT:** (CONTINUING) -- THERE IS A CAP?
2 WHO IS -- I MEAN, I DON'T KNOW WHETHER YOU ARE CAPABLE OF
3 ANSWERING THIS QUESTION, BUT IF THERE IS A PRISONER RELEASE
4 ORDER, WHETHER THAT SHOULD BE LEFT UP TO THE STATE TO CREATE THE
5 CHAOS OR THE COURT HAS TO TELL THE STATE HOW TO DO IT?

6 I THINK THAT'S REALLY A QUESTION FOR US, BUT IF YOU
7 HAVE GOT AN OPINION ON IT, YOU CAN CERTAINLY EXPRESS IT.

8 **A.** MY OPINION IN CALIFORNIA, COMPARED TO OTHER STATES I WORK
9 IN, IS I THINK THE COURT HAS TO ORDER IT AND WOULD THEN FORCE --
10 THAT WOULD FORCE THE STATE, YOU KNOW, TO MAKE THE CHANGES IT
11 NEEDS TO CHANGE TO AVOID THE CHAOS.

12 **Q.** DO YOU RECALL TESTIFYING, SIR, THAT WITHOUT A CHANGE IN
13 POLICIES AND PRACTICES, A POPULATION CAP WOULD CREATE A BIG
14 PROBLEM?

15 **JUDGE KARLTON:** HE JUST SAID CHAOS.

16 **BY MS. BARLOW:**

17 **Q.** CAP, POPULATION CAP. I'M SORRY.

18 **A.** IT WOULD BE A CHAOTIC SITUATION.

19 **Q.** AND YOU WOULD NOT WANT TO HAVE THE COURT ISSUE AN ORDER THAT
20 WOULD RESULT IN A SUDDEN DROP IN THE POPULATION OR LARGE
21 RELEASE, CORRECT?

22 **A.** WELL, WOULD NOT RECOMMEND THAT. AGAIN, I'M HOPING. I WOULD
23 ASSUME THAT A REASONABLE PLAN WOULD BE DEVELOPED THAT WOULD MEET
24 THAT CAP REQUIREMENT.

25 I THINK THAT'S VERY DOABLE. THAT'S BEEN DONE IN

1 OTHER PLACES AND COULD BE DONE HERE.

2 **Q.** WELL, YOU THINK -- YOU AGREE, SIR, THAT IT TAKES SOME TIME
3 TO PUT TOGETHER A REASONABLE PLAN, CORRECT?

4 **A.** IT WOULD NOT TAKE LONG IN CALIFORNIA TO DO THIS, NO.

5 **Q.** NOW, DO YOU AGREE THAT IF THE COURT WERE TO ESTABLISH SOME
6 KIND OF LIMITATION ON THE PRISON POPULATION EITHER BY A CAP OR
7 SOME OTHER MEANS, THAT THERE SHOULD BE PERIODIC MONITORING OF
8 THAT AND SEE HOW IT'S AFFECTING NOT ONLY THE POPULATION, BUT THE
9 CRIME RATES AND THE PROVISION OF MEDICARE AND MENTAL HEALTH CARE
10 IN THE PRISONS?

11 **A.** YES, I WOULD AGREE WITH YOU.

12 **JUDGE REINHARDT:** YOU MEAN, YOU WANT THE COURT TO
13 RETAIN JURISDICTION --

14 **MS. BARLOW:** I THINK THAT'S WHAT HE WANTS, SIR.

15 **BY MS. BARLOW:**

16 **Q.** NOW, YOU WOULD YOU HAVE TO SEE THE SPECIFICS OF ANY PROPOSED
17 ORDER TO DETERMINE WHETHER IT WOULD OR WOULDN'T NEGATIVELY
18 IMPACT PUBLIC SAFETY, CORRECT?

19 **A.** I'M SORRY. I JUST WANT TO MAKE SURE I UNDERSTOOD THE
20 QUESTION.

21 **Q.** YOU WOULD HAVE TO LOOK AT THE SPECIFICS OF AN ORDER TO
22 DETERMINE IF IT WOULD OR WOULD NOT HAVE A NEGATIVE SAFETY
23 IMPACT?

24 **A.** WELL, THE WAY I WOULD SEE IT HAPPENING, THE COURT MIGHT
25 ORDER, THIS IS THE CAP AND WOULD GIVE THE STATE, YOU KNOW, 30 TO

1 60 DAYS TO COME BACK WITH THE PLAN THAT WILL MEET THAT CAP.
2 THAT'S PROBABLY ENOUGH TIME NECESSARY TO DEVELOP THE PLAN --

3 **JUDGE REINHARDT:** THE QUESTION IS, WOULD YOU THEN
4 WANT TO HAVE THE COURT MONITOR THAT PLAN TO SEE HOW IT'S
5 WORKING? WOULD YOU LIKE TO HELP US BY MONITORING IT AND BEING
6 AN EXPERT THAT THE COURT RETAINS TO SEE THAT THE PLAN IS BEING
7 IMPLEMENTED PROPERLY BY THE STATE, IS THE WAY I UNDERSTAND THE
8 QUESTION.

9 **MS. BARLOW:** THAT'S NOT WHAT I'M ASKING ACTUALLY,
10 BUT, CERTAINLY, THE COURT IS FREE TO ASK THAT QUESTION IF IT
11 WISHES TO.

12 **JUDGE REINHARDT:** I THOUGHT THAT WAS PRETTY CLOSE.
13 YOU ASKED HIM IF HE WOULD REVIEW THE PLAN PERIODICALLY TO SEE IF
14 IT WAS WORKING.

15 **BY MS. BARLOW:**

16 **Q.** YOU INDICATED IN YOUR DEPOSITION THAT YOU WOULD HAVE TO SEE
17 THE SPECIFICS OF AN ORDER BEFORE YOU COULD SAY ONE WAY OR THE
18 OTHER THAT IT WOULD HAVE A NEGATIVE IMPACT ON PUBLIC SAFETY; DO
19 YOU REMEMBER THAT?

20 **A.** WELL, I DON'T KNOW IF I SAID THAT OR NOT, BUT WHAT I'M
21 SAYING IS THAT IF THE COURT ORDERS A POPULATION LIMIT, THEN THE
22 NEXT PLAN IS, OKAY, HOW DO WE ACHIEVE THAT AND HOW DO WE ACHIEVE
23 THAT SAFELY AND IN A REASONABLE MANNER? AND THAT'S WHEN THE
24 PLAN IS PUT TOGETHER.

25 THEN THE PLAN, I ASSUME, WOULD GO BACK TO THE COURT

1 FOR ITS REVIEW AND YOU WOULD PUT IN PLACE PROPER CONTROLS TO
2 MAKE SURE THAT THAT PLAN IS BEING IMPLEMENTED OR NEEDS TO BE
3 MODIFIED TO MAKE SURE THAT THINGS ARE GOING AS INTENDED.

4 SO THAT'S A WAY IT -- THAT'S USUALLY THE WAY I WORK.
5 YOU KNOW, I'M USUALLY -- I'M NOT WORKING IN THIS KIND OF A
6 SITUATION. USUALLY THE STATE HAS -- WE NEED TO LOWER OUR
7 POPULATION OR WE NEED TO DO THIS, SHOW US HOW TO DO IT. I COME
8 UP WITH A PLAN. THEY LOOK AT THEIR LAWS AND POLICIES, THEY MAKE
9 ADJUSTMENTS AND THEN WE GO FORWARD WITH A PARTNERSHIP. THAT'S
10 HOW IT WORKS BEST.

11 Q. SO YOU WOULD NEED TO HAVE THE SPECIFICS BEFORE YOU COULD
12 DEFINITELY OPINE ABOUT EFFECTS ON PUBLIC SAFETY?

13 A. YES.

14 Q. NOW, IF YOU REMEMBER WHEN I DEPOSED YOU THE SECOND TIME, I
15 DIDN'T -- I WASN'T THERE FOR THE FIRST ONE.

16 A. I DO REMEMBER YOU.

17 Q. YES, I'M SURE YOU DO.

18 AND I ASKED YOU TO MAKE SOME ASSUMPTIONS: THAT THERE
19 WAS A POPULATION CAP IMPOSED BY THE COURT OF 103,000, AND THAT
20 THE COUNTY JAILS WERE ESSENTIALLY FULL, AND TO TELL ME THEN
21 UNDER THOSE CIRCUMSTANCES DO YOU THINK THIS WOULD BE AN IMPACT
22 TO PUBLIC SAFETY. AND YOU DIDN'T WANT TO ANSWER MY QUESTION
23 THEN. YOU TOLD ME THAT WAS A SILLY ASSUMPTION TO MAKE.

24 I'M ASKING YOU NOW, IF THERE IS A CAP IMPOSED BY THE
25 COURT OF 103,000, THE COUNTY JAILS ARE FULL AND RELEASING PEOPLE

1 ALREADY EARLY BECAUSE THEY DON'T HAVE CAPACITY, IT'S STILL YOUR
2 OPINION THAT THERE IS GOING TO BE NO NEGATIVE IMPACT ON PUBLIC
3 SAFETY?

4 **A.** IF THEY ADOPT MY RECOMMENDATIONS. IF THEY DON'T ADOPT THE
5 RECOMMENDATIONS, THEN THERE WOULD BE A PROBLEM.

6 **MS. BARLOW:** I HAVE NOTHING FURTHER.

7 **THE COURT:** LET'S TAKE OUR ONE HOUR LUNCH RECESS.
8 COURT IS ADJOURNED.

9 (WHEREUPON AT 12:26 P.M. PROCEEDINGS
10 WERE ADJOURNED FOR NOON RECESS.)

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

12 **JUSTICE REINHARDT:** WE HAVE CROSS AND DIRECT --

13 **JUDGE HENDERSON:** EXCUSE ME. WE JUST HAD DEFENDANT
14 INTERVENOR CROSS.

15 **MS. EVENSON:** THE STATE DID THEIR CROSS-EXAMINATION
16 WHEN HE WAS LAST HERE.

17 **THE COURT:**

18 **JUDGE HENDERSON:** OKAY. THAT'S RIGHT. REDIRECT THEN.

19 **MS. EVENSON:** REBEKAH EVENSON FOR PLAINTIFFS.

20 **REDIRECT EXAMINATION BY MS. EVENSON**

21 **BY MS. EVENSON**

22 **Q** GOOD AFTERNOON, DR. AUSTIN.

23 **A** GOOD AFTERNOON.

24 **JUDGE KARLTON:** I LIKE WHAT HE SAID. HE DIDN'T SAY
25 "GOOD AFTERNOON"; HE SAID "AFTERNOON."

1 **BY MS. EVENSON**

2 **Q** DR. AUSTIN, WHEN YOU TESTIFIED JUST NOW, YOU MENTIONED THAT
3 YOU DON'T ENDORSE EARLY RELEASE. WHEN YOU'RE TALKING ABOUT
4 EARLY RELEASE, ARE YOU REFERRING TO GOOD TIME CREDITS?

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

6 **JUSTICE REINHARDT:** WHEN YOU SAY YOU DON'T ENDORSE
7 IT, I THOUGHT YOU MEANT THAT WAS NOT YOUR FIRST CHOICE, AS
8 COMPARED TO NO CHANGE IN THE PRISONS.

9 **THE WITNESS:** CORRECT. I SAY EARLY RELEASE IS --

10 **JUSTICE REINHARDT:** YOU ENDORSE IT.

11 **THE WITNESS:** IT'S SORT OF LIKE CRISIS MANAGEMENT
12 APPROACH TO SOLVING A PROBLEM. GOOD TIME CREDITS SHOULD NOT BE
13 EQUATED TO EARLY RELEASE. IT'S NORMAL IN MOST STATES' SYSTEMS
14 THAT YOU HAVE GOOD TIME CREDITS. THAT'S PART OF THE LAW, PART
15 OF THE PROCESS THEY USE TO REGULATE THE PRISONER POPULATION.

16 **BY MS. EVENSON**

17 **Q** IN YOUR EXPERT REPORTS, YOU CALCULATED AN ESTIMATE OF THE
18 IMPACTS OF A PRISON POPULATION REDUCTION BASED ON DATA THAT YOU
19 RECEIVED FROM CDCR. IS THE DATA YOU RECEIVED RELIABLE TO
20 SUPPORT THE CONCLUSIONS THAT WERE IN YOUR REPORT?

21 **A** YES, IT IS.

22 **Q** IN ANALYZING THE DATA, DR. AUSTIN, YOU ASSUMED THAT
23 PRISONERS WHOSE LENGTH OF STAY WAS SHORTENED WOULD HAVE THE SAME
24 RECIDIVISM RATE -- WOULD HAVE THE SAME RECIDIVISM RATE AS
25 CURRENT PAROLEES, AND, UNDER THAT SCENARIO, THERE WOULD BE LESS

1 THAN ONE PERCENT INCREASE IN ARRESTS, RIGHT?

2 **A** YES.

3 **Q** AND YOU DID THE CALCULATION ON -- YOU REDID THE CALCULATION
4 ON THE STAND USING THE CORRECTED FIGURE 8 FROM YOUR REPORT, AND
5 STILL FOUND INCREASE IS IN THE RANGE OF .3 -- 3/10THS OF ONE
6 PERCENT, RIGHT?

7 **A** CORRECT.

8 **Q** THE MODEL SHOWING 3/10THS OF ONE PERCENT INCREASE, THAT
9 ASSUMES THAT THE RECIDIVISM RATES FOR THE RELEASEES, OR THE
10 GROUP OF WHOSE LENGTH OF STAY IS SHORTENED, IS THE SAME AS THE
11 RECIDIVISM RATE AS THE CURRENT RELEASEES, RIGHT?

12 **A** THAT'S CORRECT.

13 **Q** BUT IF THE GROUP WHO WAS SUBJECTED TO THE SHORTENED LENGTH
14 OF STAY, THE NEW GROUP OF -- OR THE SHORTENED LENGTH OF STAY
15 GROUP, IF THAT GROUP DIDN'T INCLUDE HIGH-RISK PRISONERS, WHAT
16 WOULD THAT DO TO YOUR MODEL?

17 **A** IT WOULD REDUCE THE RECIDIVISM RATE, AND, THEREFORE, REDUCE
18 THE ESTIMATED NUMBER OF ARRESTS THAT WOULD OCCUR DUE TO THE
19 POLICY ONCE IT WAS BEING IMPLEMENTED.

20 SO, BASICALLY, IF YOU HAVE ANY KIND OF SCREENING
21 GOING ON THERE, YOU PULL OUT THE HIGH RISK PEOPLE. THEY WOULD
22 NOT BE BENEFITING FROM THE REDUCTIONS, AND, THEREFORE, MY
23 ESTIMATE WOULD ACTUALLY BE LOWER THAN WHAT IT IS RIGHT NOW?

24 **JUSTICE REINHARDT:** LOWER FROM THE .3?

25 **THE WITNESS:** YES.

1 **BY MS. EVENSON**

2 **Q** WHEN YOU WERE HERE LAST, JUDGE KARLTON ASKED YOU A QUESTION
3 ABOUT WHETHER YOUR PROPOSED POPULATION REDUCTION METHODS WOULD
4 IMPACT RECEPTION CENTERS ONLY, OR WHETHER IT WOULD ALSO HAVE A
5 BROADER IMPACT ON THE OTHER CDCR PRISONS. DO YOU HAVE A
6 RESPONSE TO THAT QUESTION?

7 **MS. BARLOW:** ASKED AND ANSWERED.

8 **MS. EVENSON:** LET ME JUST REPHRASE.

9 **BY MS. EVENSON**

10 **Q** AT THE TIME YOU SAID YOU WOULD HAVE TO GIVE IT FURTHER
11 THOUGHT. DO YOU HAVE A RESPONSE TO THAT QUESTION?

12 **A** YES. YES, AND, BASICALLY, I THINK YOU ASKED, YOUR HONOR,
13 THE EXTENT THAT THIS WOULD EFFECT THE 3CMS AND THE EOP
14 POPULATIONS, CURRENTLY THERE ARE ABOUT 33-, 34,000 IN THOSE TWO
15 CATEGORIES.

16 I LOOKED AT THE CHARACTERISTICS SINCE MY LAST
17 TESTIMONY OF THE 3CMS AND EOP -- THE BIG GROUP IS 3CMS GROUP --
18 TO SEE IF THEIR RISK CHARACTERISTICS ON RECIDIVISM RATE LOOK
19 DIFFERENT THAN OTHER INMATES. THEY DO NOT. THEY ARE MATERIALLY
20 THE SAME.

21 SO BASED ON THAT ASSUMPTION, PLUS TAKING INTO ACCOUNT
22 THAT APPROXIMATELY TEN PERCENT OF THAT POPULATION IS IN THE
23 AD-SEG UNITS AND, THEREFORE, PROBABLY WOULD NOT BENEFIT FROM A
24 REDUCTION IN LENGTH OF STAY, I'M ESTIMATING THAT THE POPULATION
25 OF ABOUT 33,000 WOULD DROP DOWN TO 26,500, SOMETHING LIKE THAT.

1 SO THERE WOULD BE A REDUCTION IN THOSE POPULATIONS, PRETTY MUCH
2 COMMENSURATE TO THE REDUCTION IN NON-3CMS/EOP POPULATIONS, WITH
3 SOME CAVEATS FOR AD-SEG POPULATIONS.

4 THE OTHER POINT I WOULD MAKE IS THE DIVERSION OF
5 TECHNICAL VIOLATORS AND THE DIVERSION OF SHORT SENTENCES, THAT
6 THAT WILL GREATLY BENEFIT THE RECEPTION CENTERS. SO THAT WOULD
7 CLEAR UP THAT CLOGGING THERE. THE LENGTH OF STAY ON THE GOOD
8 TIME CREDITS WOULD AFFECT THE OUTSIDE FACILITIES. ONCE THE
9 INMATES GO THROUGH RECEPTION AND ARE RESIDING, THEY WOULD
10 BENEFIT THERE. SO THE POPULATIONS WOULD BE DROPPING AT BOTH THE
11 RECEPTION CENTERS AND AT THE NON-RECEPTION CENTER FACILITIES.

12 **Q** AND WOULD THE REDUCTION IN THE POPULATION IMPACT THE WAIT
13 LIST FOR EOP AND 3CMS BEDS?

14 **A** IT APPARENTLY WOULD, BECAUSE I UNDERSTAND THE CAPACITY NOW
15 IS ABOUT 28,500, ROUGHLY. SO WITH THE POPULATION REDUCTION OF
16 6- TO 7,000, IT WOULD DROP DOWN 26,000, SO YOU WOULD HAVE EXCESS
17 BED CAPACITY FOR THE 3CMS. IT WOULD BE LIKE 90, 91 PERCENT
18 CROWDED.

19 SO MY ASSUMPTION THEN IS THAT THE WAITING LIST WHICH
20 WE NOW HAVE WOULD EVAPORATE AT SOME POINT.

21 **MS. EVENSON:** THANK YOU, DR. AUSTIN.

22 **THE COURT:** ANYTHING FURTHER? OKAY. THANK YOU FOR
23 REAPPEARING, DR. AUSTIN. YOU'RE EXCUSED. CALL YOUR NEXT
24 WITNESS.

25 **MS. BARLOW:** GOOD AFTERNOON, YOUR HONORS. THE LAW

1 ENFORCEMENT INTERVENORS CALL CHIEF ALEXANDER YIM TO THE STAND.

2 **ALEXANDER R. YIM,**

3 HAVING BEEN CALLED AS A WITNESS BY THE DEFENDANT INTERVENORS

4 WAS FIRST DULY SWORN AND EXAMINED AS FOLLOWS:

5 **THE CLERK:** STATE YOUR FULL NAME AND SPELL YOUR LAST
6 NAME.

7 **THE WITNESS:** ALEXANDER R. YIM. A-L-E-X-A-N-D-E-R.
8 R. LAST NAME Y-I-M.

9 **DIRECT EXAMINATION BY MS. BARLOW**

10 **MS. BARLOW:** THANK YOU, CHIEF YIM.

11 **BY MS. BARLOW**

12 **Q** COULD YOU STATE YOUR JOB TITLE, PLEASE, AND BY WHOM YOU ARE
13 EMPLOYED?

14 **A** DIVISION CHIEF WORKING FOR L.A. COUNTY SHERIFF'S DEPARTMENT.

15 **Q** WHICH DIVISION ARE YOU CHIEF OF?

16 **A** CORRECTIONAL SERVICES DIVISION.

17 **Q** DOES LIEUTENANT STEPHEN SMITH WORK FOR YOU?

18 **A** HE ACTUALLY WORKS FOR -- THERE'S TWO DIVISIONS WITHIN THE
19 CUSTODY ENVIRONMENT FOR L.A. COUNTY SHERIFF'S DEPARTMENT.

20 LIEUTENANT SMITH WORKS FOR BOTH DIVISIONS.

21 **MS. BARLOW:** FOR THE COURT'S BENEFIT THE CHIEF'S
22 EDUCATION, BACKGROUND AND EXPERIENCE ARE DETAILED IN PARAGRAPHS
23 ONE THROUGH SEVEN OF HIS DECLARATION.

24 **BY MS. BARLOW**

25 **Q** COULD YOU JUST FOR THE COURT DESCRIBE BRIEFLY YOUR EDUCATION

1 BACKGROUND AND EXPERIENCE?

2 **A** TWENTY-SIX YEAR VETERAN OF THE SHERIFF'S DEPARTMENT, HAVE A
3 BACHELOR OF SCIENCE DEGREE ISSUED BY CAL STATE UNIVERSITY LONG
4 BEACH.

5 **Q** AND YOU HAVE BEEN IN VARIOUS CAPACITIES WITH THE LOS ANGELES
6 SHERIFF'S DEPARTMENT?

7 **A** THAT'S CORRECT. PROBABLY 22 YEARS OF THAT AS PATROL,
8 DETECTIVE DIVISION. SHORTER TIME, OBVIOUSLY, FOR THE CUSTODY
9 ENVIRONMENT.

10 **Q** AND WHEN WERE YOU PROMOTED TO CHIEF OF YOUR DIVISION?

11 **A** APRIL OF 2008.

12 **Q** ARE YOU OPERATING THE LOS ANGELES COUNTY JAILS UNDER A
13 COURT-ORDERED CAP PRESENTLY?

14 **A** PARDON ME? I'M SORRY.

15 **Q** ARE THE LOS ANGELES COUNTY JAILS OPERATING UNDER A
16 COURT-ORDERED CAP?

17 **A** YES.

18 **Q** YOU TAKE VARIOUS STEPS TO ENSURE THAT YOU CAN MANAGE YOUR
19 POPULATION, CORRECT?

20 **A** YES.

21 **Q** NOW, SOME OF THOSE PROGRAMS HAVE BEEN DESCRIBED AS EARLY
22 OUTS OR EARLY RELEASE, AND OTHERS YOU HAVE A CBAC PROGRAM? YOU
23 ALSO HAVE PROGRAMS THAT ALLOW FOR PROGRAMMING OR REFERRAL,
24 CORRECT?

25 **A** THAT'S CORRECT.

1 Q ALL RIGHT. SO WE'LL TRY TO GET INTO SOME OF THOSE.

2 FIRST OF ALL, WHEN YOU FIRST BEGAN AS CHIEF, ABOUT
3 HOW MUCH TIME WERE SENTENCED INMATES SPENDING IN CUSTODY?

4 A WELL, IN APRIL OF 2008, THEY WERE DOING AT LEAST 70 PERCENT,
5 THE MALES, AND FOR FEMALES AT LEAST TEN PERCENT.

6 Q BUT YOU'RE AWARE THAT THERE WAS A PERIOD OF TIME WHEN MALES
7 WERE ONLY DOING ABOUT TEN PERCENT, CORRECT?

8 A THAT'S CORRECT. THAT'S WHEN I ARRIVED IN DIVISION AS
9 COMMANDER IN 2004.

10 Q IT'S MY UNDERSTANDING THAT WOMEN CURRENTLY SERVE ABOUT TEN
11 PERCENT OF THEIR SENTENCES; IS THAT RIGHT?

12 A AT LEAST TEN PERCENT, YES.

13 Q NOW, SINCE 1993, HOW MANY INMATES HAVE BEEN RELEASED EARLY
14 FOR LACK OF CAPACITY IN THE LOS ANGELES COUNTY JAILS?

15 A I THINK THE FIGURE WAS 770,000.

16 Q AND CAN YOU GIVE ME OR ADVISE THE COURT WHAT PERCENTAGE OF
17 THE PRISONERS CURRENTLY IN YOUR JAIL POPULATION ARE SERVING OUT
18 LOCAL SENTENCES VERSUS PRETRIAL DETAINEES?

19 A USUALLY AVERAGE AROUND 10 TO 12 PERCENT.

20 Q SO 10 TO 12 PERCENT ARE SERVING OUT SENTENCES?

21 A THAT'S CORRECT.

22 Q AND, THEREFORE, THE REMAINDER ARE PRETRIAL DETAINEES?

23 A THAT'S CORRECT.

24 Q ARE THERE DIFFERENCES, TO YOUR UNDERSTANDING, BETWEEN THE
25 POPULATIONS THAT YOU HOUSE IN YOUR JAIL AND THE STATE PRISON

1 POPULATION AS A WHOLE?

2 **A** I BELIEVE THEY ARE YOUNGER. THEY SERVE A SHORTER PERIOD OF
3 TIME. I THINK THE AVERAGE LENGTH OF STAY IS AROUND 42 DAYS.
4 AND, GENERALLY SPEAKING, THEY ARE IN -- INTO THE COUNTY JAIL
5 MORE THAN ONCE BEFORE THEY GO TO STATE PRISON.

6 **Q** LET'S TALK ABOUT YOUR ALTERNATIVES TO CUSTODY PROGRAMS THAT
7 YOU EMPLOY TO MAINTAIN YOUR JAIL CAPS. THE CBAC PROGRAM IS
8 COMMUNITY-BASED ALTERNATIVES TO CUSTODY?

9 **A** THAT'S CORRECT.

10 **Q** OR COMMITMENT, RATHER, RIGHT?

11 **A** THAT'S CORRECT.

12 **Q** YOU MENTION THAT IN YOUR REPORT. DO YOU CONSIDER THAT AN
13 EARLY-RELEASE PROGRAM?

14 **A** NO, I DON'T CONSIDER THAT EARLY RELEASE. I CONSIDER THAT AN
15 ALTERNATIVE TO DOING YOUR TIME IN A JAIL BED.

16 **Q** OKAY. THAT'S ABOUT A -- FIVE PERCENT OF YOUR POPULATION ARE
17 IN THAT PROGRAM, THE CBAC PROGRAM?

18 **A** LET'S SEE. TODAY? AS OF YESTERDAY IT WAS ABOUT A THOUSAND
19 OUT OF THE 18,600 INMATES.

20 **Q** OKAY. NOW, YOU REFER TO A SPECIFIC INCIDENT INVOLVING A
21 CBAC COMMITTEE, I GUESS WE WOULD CALL THEM, WHERE THEY WERE OUT
22 ON THAT ALTERNATIVE PROGRAM. WAS THAT SOME SORT OF MONITORING
23 PROGRAM; DO YOU RECALL?

24 **A** I CAN'T REMEMBER WHAT COMMUNITY-BASED ALTERNATIVE CUSTODY
25 PROGRAM HE WAS ON, BUT I BELIEVE IT WAS WORK RELEASE.

1 Q AND THAT INMATE COMMITTED MURDER WHILE HE WAS ON WORK
2 RELEASE?

3 A THAT'S CORRECT.

4 Q OTHERWISE YOU AREN'T REALLY AWARE OF ANY NEGATIVE IMPACTS
5 FROM THAT PARTICULAR PROGRAM, THE CBAC PROGRAM?

6 A YES.

7 Q OKAY. I'M SORRY. I DIDN'T PHRASE THAT VERY WELL, DID I?

8 JUDGE REINHARDT: THAT WAS A PERFECT QUESTION. YOU
9 AREN'T AWARE? HE SAID, YES, I'M NOT AWARE.

10 BY MS. BARLOW

11 Q OKAY. LET'S TALK ABOUT OTHER THAN THE CBAC PROGRAM. FIRST
12 I WANT YOU TO DESCRIBE A LITTLE BIT THE KIND OF PROGRAMMING YOU
13 HAVE TO DO FOR YOUR LOS ANGELES COUNTY JAIL INMATES.

14 WHAT KIND OF PROGRAMMING DO YOU DO IN THE LOS ANGELES
15 COUNTY?

16 A WE HAVE EDUCATIONAL PROGRAMS. WE HAVE POSITIVE DECISION
17 MAKING, MORAL RECOGNITION, DRUG AND ALCOHOL PROGRAMMING,
18 DOMESTIC VIOLENCE PROGRAMMING AND PROGRAMMING FOR VETERANS TO
19 NAME A FEW. THERE'S OTHERS.

20 Q AND THE PURPOSE OF THOSE PROGRAMS?

21 A I BELIEVE TO REHABILITATE THE INMATES WHILE THEY ARE IN
22 CUSTODY.

23 Q OKAY. NOW, IS IT EASIER -- OR -- STRIKE THAT.

24 ARE YOU ABLE TO PROGRAM ALL THE PRETRIAL FOLKS, OR
25 CAN YOU ONLY DO PROGRAMMING EFFECTIVELY WITH THE SENTENCED

1 POPULATION?

2 **A** I BELIEVE THERE'S A SMALL PROPORTION OF PEOPLE THAT ARE
3 PRESENTENCE THAT ARE INVOLVED IN SOME OF OUR PROGRAMS, BUT IT'S
4 REALLY TARGETED AT THE SENTENCED POPULATION.

5 **Q** OKAY. NOW, WHEN YOU BECAME CHIEF IN APRIL OF THIS YEAR,
6 WERE YOU AWARE THAT THERE HAD BEEN SOME DATA ANALYSIS DONE THAT
7 SHOWED SOME RATHER NEGATIVE IMPACTS FROM THE EARLY RELEASE AS IT
8 WAS PREVIOUSLY CONSTITUTED AT THE LOS ANGELES COUNTY SHERIFF
9 DEPARTMENT?

10 **A** I WAS AWARE OF AN L.A. TIMES ARTICLE, BUT THE ACTUAL NUTS
11 AND BOLTS OF THAT ARTICLE, NO, I WAS NOT.

12 **Q** OKAY. SO YOU WEREN'T AWARE THAT THE DEPARTMENT HAD ACTUALLY
13 DONE AN ANALYSIS OF THAT DATA, CORRECT?

14 **A** I WAS AWARE THAT L.A. TIMES REQUESTED INFORMATION FROM THE
15 SHERIFF'S DEPARTMENT.

16 **Q** NOW, SINCE YOUR DEPOSITION WAS TAKEN IN AUGUST, DID YOU
17 BECOME AWARE OF THE DATA ANALYSIS THAT WAS DONE BY YOUR
18 SHERIFF'S DEPARTMENT?

19 **A** YES.

20 **Q** AND CAN YOU DESCRIBE TO YOUR UNDERSTANDING WHAT THAT DATA
21 ANALYSIS INVOLVED?

22 **MR. HEATHER:** YOUR HONOR, OBJECTION ON PROBABLY FOUR
23 OF FIVE GROUNDS. LACK OF FOUNDATION. I THINK THE TESTIMONY
24 WOULD BE INCONSISTENT WITH THREE OF THE PRIOR RULINGS IN THIS
25 COURT, ONE OF WHICH I AM AWARE OF FROM THE RECORD AND TWO OF

1 WHICH I MAY HAVE --

2 **JUDGE HENDERSON:** YOU ONLY NEED TO WIN ON ONE, AND
3 LACK OF FOUNDATION WILL DO IT.

4 **MR. HEATHER:** THE LACK OF FOUNDATION IS --

5 **JUDGE HENDERSON:** NO. FINE. YOU PROBABLY OUGHT TO
6 STOP TALKING NOW.

7 **BY MS. BARLOW**

8 **Q** COULD YOU EXPLAIN, CHIEF YIM, WHAT YOU KNOW ABOUT THE WAY
9 DATA ANALYSIS WAS PREPARED AND HOW YOU KNOW IT?

10 **JUDGE KARLTON:** IT APPEARS, TO THIS JUDGE, AND I
11 DON'T WANT TO SPEAK FOR THE PANEL, THAT WHAT YOU'RE SEEKING TO
12 DO IS GET BEFORE THE COURT AN ANALYSIS THAT THE CHIEF HAD
13 NOTHING TO DO WITH BUT HE'S READ SINCE COMING ABOARD. AM I
14 RIGHT?

15 **MS. BARLOW:** YES, YOUR HONOR. AS PART OF HIS -- AS
16 PART OF THE SCOPE AND DUTIES OF BECOMING THE CHIEF.

17 **JUDGE KARLTON:** SO HE'S READ IT. WHAT DIFFERENCE
18 DOES IT MAKE? THE QUESTION IS WHETHER IT'S PROPERLY BEFORE US.
19 I BELIEVE HE READ IT. YOU DID READ IT?

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

21 **JUDGE KARLTON:** I BELIEVE YOU DID.

22 **THE WITNESS:** THANK YOU.

23 **JUDGE KARLTON:** SO WHAT?

24 **MS. BARLOW:** LIEUTENANT SMITH --

25 **JUDGE KARLTON:** YOU ARE GOING ON BEYOND THAT. GO

1 AHEAD.

2 **MS. BARLOW:** LIEUTENANT SMITH HAS ALREADY TESTIFIED
3 TO THE MANNER IN WHICH THE DATA WAS PREPARED AND ANALYZED, YOUR
4 HONOR.

5 **JUDGE KARLTON:** SO WHY ARE WE ASKING HIM?

6 **THE WITNESS:** I AM JUST TRYING TO LAY FOUNDATION FOR
7 HOW HE KNOWS ABOUT THE DATA. WE'VE ALREADY LAID FOUNDATION FOR
8 THE DATA ITSELF. I'M GOING TO HAVE HIM TESTIFY ABOUT WHAT THE
9 DATA SHOWED.

10 **JUDGE HENDERSON:** HOW DO YOU KNOW ABOUT THE DATA? GO
11 RIGHT TO IT. DO YOU KNOW ABOUT THE DATA?

12 **THE WITNESS:** YES. AFTER READING IT.

13 **JUDGE HENDERSON:** THAT'S YOUR COMPLETE KNOWLEDGE OF
14 IT?

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

16 **BY MS. BARLOW**

17 **Q** DID YOU REVIEW THE DATA WITH LIEUTENANT SMITH?

18 **A** THAT'S CORRECT.

19 **Q** DID YOU REVIEW THE UNDERLYING DATA?

20 **A** I'M SORRY?

21 **Q** DID YOU REVIEW THE --

22 **JUDGE KARLTON:** NO, WE ARE NOT GOING TO DO THIS. I'M
23 SORRY. EXCUSE ME.

24 **JUDGE HENDERSON:** GO ON. GO ON.

25 **JUDGE KARLTON:** SIR, ASKING QUESTIONS -- IF IT IS

1 BEFORE US, IT'S BEFORE US. HE'S GOT NOTHING MORE TO DO WITH IT.
2 YOU MAY PROCEED. I PROMISE YOU YOU CAN ARGUE TO YOUR HEART'S
3 CONTENT, IF WE EVER GET TO FINAL ARGUMENT, BUT HE SIMPLY SAID I
4 READ IT. THAT'S SO WHAT. HE'S READ IT. IF HE HAS DONE
5 SOMETHING IN RESPONSE TO IT, FINE, ASK HIM WHAT HE'S DONE.

6 **MS. BARLOW:** I WOULD LIKE TO LAY THE FOUNDATION FOR
7 WHAT WAS DONE, YOUR HONOR, AS A RESULT.

8 **JUDGE KARLTON:** MAY I RULE?

9 **JUDGE HENDERSON:** YES, PLEASE.

10 **JUDGE KARLTON:** GO ON TO THE NEXT QUESTION.

11 **MS. BARLOW:** THAT'S FINE.

12 **BY MS. BARLOW**

13 **Q** IN THE ANALYSIS OF CRIME STATISTICS, CAN YOU TELL ME WHAT
14 THE NUMBER OF EARLY RELEASEES WAS FOR THE PERIOD FROM 2002 TO
15 2006?

16 **JUDGE KARLTON:** ACCORDING TO THIS DOCUMENT.

17 **THE WITNESS:** APPROXIMATELY 148,000.

18 **BY MS. BARLOW**

19 **Q** OF THAT 148,000, LIEUTENANT SMITH PREVIOUSLY TESTIFIED THAT
20 A LITTLE OVER TEN PERCENT WERE REARRESTED WHILE ON EARLY
21 RELEASE. IT'S FOUNDATION.

22 **MR. HEATHER:** OBJECTION, YOUR HONOR. IT'S HEARSAY.
23 HE HAS NO PERSONAL KNOWLEDGE OF THESE FACTS. HE IS CALLED AS AN
24 EXPERT. AND NOT ONLY DID HE NOT DISCUSS THIS IN HIS DEPOSITION,
25 BUT HE MADE NO REFERENCE TO IT IN HIS TRIAL TRANSCRIPT -- IN HIS

1 TRIAL DECLARATION. AND, IN FACT, IN BOTH HIS DEPOSITION AND HIS
2 TRIAL DECLARATION -- AND CAN YOU PUT UP PAGE 48 OF HIS
3 DEPOSITION --

4 **MS. BARLOW:** YOUR HONOR, THIS IS INAPPROPRIATE IN AN
5 OBJECTION.

6 **MR. HEATHER:** HE STATES, YOUR HONOR, THAT HE IS AWARE
7 OF ONLY A SINGLE MURDER AND A SINGLE INCIDENT IN WHICH AN EARLY
8 RELEASEE HAS HAD A NEGATIVE IMPACT ON PUBLIC SAFETY, AND HE IS
9 AWARE OF NO STUDY, NO REPORT IN WHICH THERE ARE INSTANCES OF
10 OTHER EXAMPLES OF NEGATIVE IMPACT ON PUBLIC SAFETY, AND THIS IS
11 KIND OF RUDIMENTARY SANDBAGGING FOR HIM.

12 **JUDGE HENDERSON:** DON'T DO THAT, COUNSEL.

13 **MR. HEATHER:** FOR HIM TO COME IN HERE NOW --

14 **JUDGE HENDERSON:** DON'T DO THAT, COUNSEL.

15 **MR. HEATHER:** I APOLOGIZE.

16 **JUDGE KARLTON:** WE HAVE A LOT OF TROUBLE WITH LAWYERS
17 NOT LISTENING TO THE COURT.

18 **MR. HEATHER:** I APOLOGIZE.

19 **JUDGE KARLTON:** I'M AFRAID IT'S GETTING LATER, AND WE
20 ARE GETTING IRRITATED. NOTHING PERSONAL, COUNSEL.

21 **MR. HEATHER:** SORRY.

22 **JUDGE HENDERSON:** SIT DOWN. YOU MADE YOUR OBJECTION.
23 I'M SUSTAINING IT. BUT DO NOT MAKE TALKING OBJECTIONS ANYMORE.
24 RELEVANT, WHATEVER IT IS. LET'S NOT HAVE THESE SPEECHES.

25 THE OBJECTION IS SUSTAINED.

1 **MS. BARLOW:** MAY I ATTEMPT TO LAY FOUNDATION FOR
2 THE --

3 **JUDGE KARLTON:** THE OBJECTION WAS SUSTAINED.

4 **MS. BARLOW:** I UNDERSTAND THAT, YOUR HONOR. IT'S AN
5 OFFICIAL RECORD OF HIS DEPARTMENT, AND HE'S IN CHARGE OF THE
6 DEPARTMENT.

7 **JUDGE KARLTON:** I KNOW YOU HAVE TERRIBLE TROUBLE
8 HEARING. THE OBJECTION WAS SUSTAINED. GO ON.

9 **BY MS. BARLOW**

10 **Q** DO YOU KNOW HOW MANY PEOPLE ON EARLY RELEASE BETWEEN 2002
11 AND 2006 WERE ARRESTED FOR SERIOUS CRIMES, CHIEF YIM?

12 **MR. HEATHER:** SAME OBJECTION.

13 **JUDGE KARLTON:** THE OBJECTION IS SUSTAINED. I'M
14 SORRY. I JUST CAN'T STAND IT.

15 **MS. BARLOW:** YOUR HONORS, IF I WASN'T GIVEN AN
16 OPPORTUNITY TO RESPOND TO THE OBJECTIONS, HE IS AN EXPERT AND
17 ENTITLED TO RELY UPON THE DATA COMPILED BY HIS SUBORDINATES, AND
18 THE DOCUMENTS THAT ARE OFFICIAL RECORDS OF --

19 **JUDGE HENDERSON:** YOUR OBJECTION IS PRESERVED FOR
20 APPELLATE RECORD, COUNSEL. LET'S GO.

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

22 **BY MS. BARLOW**

23 **Q** CHIEF YIM, TO YOUR KNOWLEDGE, WERE STEPS TAKEN TO CHANGE THE
24 RELEASE POLICIES AS A RESULT OF THE DATA SHOWING THAT THERE WAS
25 HARM TO THE COMMUNITY AS A RESULT OF THOSE RELEASES?

1 **A** YES.

2 **Q** WHAT WERE THOSE STEPS?

3 **A** THE MALE POPULATION IS NOW DOING AT LEAST 70 PERCENT.
4 FEMALE POPULATION REMAINS AT TEN PERCENT. AND THERE WAS AN
5 ADDITIONAL CHECK IMPLEMENTED PRIOR TO RELEASING ANYBODY EARLY.

6 **Q** BUT EVEN THOSE STEPS DON'T ALWAYS STOP PEOPLE FROM
7 COMMITTING CRIMES WHILE THEY WERE ON EARLY RELEASE, CORRECT?

8 **A** THAT'S CORRECT.

9 **Q** NOW, YOU REFER TO THE MENTALLY ILL IN YOUR JAILS. DO YOU
10 HAVE A LARGE POPULATION OF MENTALLY ILL IN THE LOS ANGELES
11 COUNTY JAILS?

12 **A** THAT'S CORRECT.

13 **Q** AND COULD YOU -- I KNOW COUNSEL ASKED YOU AT YOUR DEPOSITION
14 WHETHER YOU THOUGHT THEY BELONGED IN JAIL.

15 **A** WELL, THE ACUTE AND THE SUB ACUTE PROBABLY WOULD BE A
16 BETTER -- SECURE, BUT NOT A JAIL ENVIRONMENT SO THAT THEY COULD
17 RECEIVE TREATMENT, MORE OUT OF CELL TIME, THINGS OF THAT NATURE.

18 **Q** DO YOU TRY TO PLACE THOSE PEOPLE IN PROGRAMS SO THEY ARE NOT
19 IN THE JAIL WHERE POSSIBLE?

20 **A** WELL, THE ACTUAL HANDLING OF THE MENTALLY ILL WITHIN L.A.
21 COUNTY JAIL IS HANDLED BY DEPARTMENT OF MENTAL HEALTH. I
22 BELIEVE THEY MAKE EVERY ATTEMPT TO DO THAT. I CAN'T REALLY
23 SPEAK FOR THEM.

24 **Q** OKAY. NOW, DO YOU BELIEVE THAT ALL MENTALLY ILL PEOPLE WHO
25 COMMIT CRIMES SHOULD NOT BE IN JAIL?

1 **A** WELL, IF SOMEBODY IS FUNCTIONING, TECHNICALLY MENTALLY ILL
2 BUT FUNCTIONING, AND TAKING THEIR MEDICATION, AND IS ABLE TO
3 FUNCTION, YOU KNOW, APPROPRIATELY, AND HAS COMMITTED A VIOLENT
4 CRIME, I THINK THEY BELONG IN JAIL.

5 **MS. BARLOW:** I HAVE NOTHING FURTHER, YOUR HONOR.

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

7 **MS. TILLMAN:** NOTHING, YOUR HONOR. THANK YOU.

8 **JUDGE HENDERSON:** CROSS.

9 **CROSS-EXAMINATION BY MR. HEATHER**

10 **BY MR. HEATHER**

11 **Q** GOOD AFTERNOON. MY NAME IS FRED HEATHER FROM K&L GATES ON
12 BEHALF OF PLAINTIFFS.

13 CHIEF, I AM GOING TO ASK YOU JUST A FEW QUESTIONS YOU
14 DISCUSSED ON DIRECT, I BELIEVE. I HAD SOME TROUBLE HEARING.

15 BUT THE DIFFERENCES OF THE POPULATION IN THE L.A.
16 COUNTY JAILS -- AND I DIDN'T HEAR YOU MENTION THAT ONE
17 DIFFERENCE, WHICH I THINK YOU TESTIFIED ABOUT BEFORE, IS THAT
18 THE L.A. COUNTY JAILS HAVE A FAIRLY HIGH PROPORTION OF GANG
19 MEMBERS AS COMPARED WITH THE POPULATION OF OTHER COUNTIES; IS
20 THAT CORRECT?

21 **A** I DON'T KNOW WHAT OTHER --

22 **MS. BARLOW:** I'M SORRY. THE POPULATION OF OTHER
23 COUNTIES?

24 **JUDGE KARLTON:** THAT'S WHAT HE SAYS.

25 **MS. BARLOW:** THE QUESTION WAS THE STATE VERSUS THE

1 COUNTIES.

2 **BY MR. HEATHER**

3 **Q** I'M ASKING YOU, IS IT YOUR OPINION, SIR, THAT THE GANG
4 POPULATION OF THE L.A. COUNTY JAILS IS A FACTOR THAT IS
5 DIFFERENT THAN THE POPULATION OF THAT OF OTHER COUNTIES?

6 **MS. BARLOW:** BEYOND THE SCOPE.

7 **THE WITNESS:** COULD YOU REPEAT THAT?

8 **MR. HEATHER:** LET ME REPHRASE IT.

9 **BY MR. HEATHER**

10 **Q** DO YOU RECALL STATING IN YOUR DECLARATION THE FOLLOWING
11 STATEMENT, AND I CAN PROVIDE A COPY OF MY READING IT TO YOU IF
12 MY READING IT DOES NOT REFRESH YOUR RECOLLECTION:

13 "ALTHOUGH THE OVERALL LOS ANGELES COUNTY
14 POPULATION JAIL IS LIKELY MORE VIOLENT THAN MANY
15 COUNTY JAILS DUE TO THE LARGE NUMBER OF GANG
16 MEMBERS."

17 DO YOU RECALL MAKING THAT STATEMENT?

18 **A** YES.

19 **Q** OKAY. SO THE POPULATION OF THE L.A. COUNTY JAILS IS MORE
20 VIOLENT THAN OTHER COUNTIES, IN PART BECAUSE L.A. COUNTY HAS A
21 HIGH POPULATION OF GANG MEMBERS WITHIN THE JAIL; IS THAT
22 CORRECT?

23 **A** YES.

24 **Q** OKAY. NOW, YOU DISCUSSED ON DIRECT THE FACT THAT THERE WERE
25 A NUMBER OF PROGRAMS THAT WERE ALTERNATIVES TO INCARCERATION OR

1 EARLY RELEASE PROGRAMS, AND I THINK THEY INCLUDED THERE'S BOOK
2 AND RELEASE PROCEDURES WHERE PEOPLE ARE NOT INCARCERATED AT ALL,
3 CORRECT?

4 **A** YES.

5 **Q** ELECTRONIC MONITORING? THE MEN DO AN AVERAGE OF 70 PERCENT,
6 THE WOMEN AN AVERAGE OF TEN PERCENT, AND THEY'RE RELEASED, THAT
7 PERCENTAGE BEFORE THEIR NORMAL RELEASE DATE. AND IT WAS YOUR
8 TESTIMONY IN YOUR DEPOSITION THAT IN YOUR DECLARATION THAT IT IS
9 YOUR VIEW THAT OTHER THAN THE ONE MURDER OF WHICH YOU WERE AWARE
10 WHEN YOU TESTIFIED, YOU DO NOT BELIEVE THAT THERE WERE ANY
11 NEGATIVE IMPACTS TO PUBLIC SAFETY FROM ANY OF THOSE EARLY
12 RELEASE PROGRAMS OR ALTERNATIVES TO INCARCERATION; IS THAT
13 CORRECT?

14 **MS. BARLOW:** OBJECTION. MISSTATES TESTIMONY OF THE
15 WITNESS, BOTH IN DEPOSITION AND IN THE REPORT.

16 **MR. HEATHER:** IS THAT CORRECT?

17 **JUDGE HENDERSON:** WAS THAT A CORRECT STATEMENT OR WAS
18 IT NOT?

19 **THE WITNESS:** YES.

20 **JUDGE KARLTON:** YES, IT WAS A CORRECT STATEMENT?

21 **THE WITNESS:** YES.

22 **BY MR. HEATHER**

23 **Q** AND I BELIEVE YOU ALSO TESTIFIED IN BOTH YOUR DEPOSITION AND
24 IN YOUR DECLARATION THAT THAT VIEW WAS A VIEW THAT WAS SHARED BY
25 SHERIFF LEE BACA AND THE OTHER SENIOR MEMBERS OF THE SHERIFF'S

1 DEPARTMENT; IS THAT CORRECT? LET ME REPHRASE THAT.

2 I BELIEVE YOU TESTIFIED THAT NO SENIOR MEMBER OF THE
3 SHERIFF'S DEPARTMENT OF LOS ANGELES COUNTY WAS OF THE VIEW THAT
4 THESE EARLY RELEASE PROGRAMS OR ALTERNATIVES TO INCARCERATION
5 SHOULD BE TERMINATED BECAUSE OF A NEGATIVE IMPACT ON PUBLIC
6 SAFETY; IS THAT WHAT YOU STATED UNDER OATH?

7 **MS. BARLOW:** INCORRECTLY STATES --

8 **JUDGE HENDERSON:** WAS IT WHAT YOU STATED? IT WAS OR
9 IT WASN'T.

10 **THE WITNESS:** I DON'T RECALL EXACTLY SAYING THAT.

11 **JUDGE HENDERSON:** THERE WE GO.

12 **MR. HEATHER:** AGAIN, I'LL READ IT TO YOU. I CAN
13 PROVIDE A COPY MOMENTARILY.

14 **JUDGE KARLTON:** WHAT ARE YOU READING FROM?

15 **BY MR. HEATHER**

16 **Q** FROM PARAGRAPH 21 OF YOUR TRIAL DECLARATION, CHIEF YIM,
17 DATED OCTOBER 30TH. YOU STATE -- AND I'LL READ THAT PARAGRAPH
18 IN IT IS ENTIRETY, IT'S ONLY THREE SENTENCES.

19 "THESE PROGRAMS," AND WE'RE TALKING ABOUT THE EARLY
20 RELEASE PROGRAMS.

21 **MS. BARLOW:** THAT'S INCORRECT.

22 **BY MR. HEATHER**

23 **Q** (READING)

24 "THESE PROGRAMS HAVE ASSISTED ME IN
25 MAINTAINING CAP COMPLIANCE. THERE IS ONE

1 INSTANCE WHERE AN INMATE WAS RELEASED TO A CBAC
2 PROGRAM AND COMMITTED A MURDER. IN THAT ONE
3 INSTANCE, THESE PROGRAMS HAVE CREATED HARM TO
4 PUBLIC SAFETY IN LOS ANGELES COUNTY. TO MY
5 KNOWLEDGE, NONE OF THE SENIOR PEOPLE CURRENTLY
6 IN THE SHERIFF'S DEPARTMENT RECOMMEND THAT ANY
7 OF THESE PROGRAMS BE TERMINATED BECAUSE OF A
8 PERCEIVED THREAT TO PUBLIC STATEMENT (SIC)."
9 DO YOU RECALL MAKING THAT STATEMENT UNDER OATH IN
10 YOUR DECLARATION?

11 **MS. BARLOW:** YOUR HONOR, HE'S MISCHARACTERIZING AND
12 LEAVING OUT AN IMPORTANT PART. HE'S TALKING THE FIVE PERCENT
13 ALTERNATIVE PROGRAMS, NOT THE RELEASE.

14 **JUDGE HENDERSON:** READ THE REST. TELL HIM WHAT ELSE
15 TO READ FOR COMPLETENESS.

16 **MS. BARLOW:** STARTING FROM PARAGRAPH 17.

17 **MR. HEATHER:** I'LL READ THE ENTIRE THING, YOUR HONOR.

18 "APPROXIMATELY FIVE PERCENT OF L.A. COUNTY
19 INMATES ARE GOVERNED BY ALTERNATIVE PROGRAMS
20 SUCH AS ELECTRONIC MONITORING, CONFINING PEOPLE
21 OUTSIDE THE JAIL FACILITIES WITH WHATEVER
22 RESTRICTIONS THE MONITORING PROGRAM HAS. THE
23 WORK RELEASE PROGRAM IS A FREE PROGRAM AND IT
24 DOES NOT COST THE INMATE OR THE COUNTY ANY
25 FUNDS.

1 "WE SUPPLY A FORCE OF 660 COUNTY INMATES WHO
2 ARE DEEMED LOW RISK TO 152 WORK SITES THROUGHOUT
3 THE COUNTY. THESE INMATES DO NOT RETURN TO JAIL
4 FACILITIES AFTER THE WORK DAY BECAUSE THEY ARE
5 IN A PROGRAM WHERE THEY ARE ALLOWED TO LIVE
6 OUTSIDE THE JAIL FACILITIES.

7 "IF YOU TALK TO THE RECIPIENTS OF THE FREE
8 LABOR, THEY WILL SAY THE PROGRAM IS WORKING
9 WELL. IF YOU LOOK AT THE NONCOMPLIANCE RATE,
10 THE INMATES THAT DO NOT SHOW UP, THERE MAY BE AN
11 ARGUMENT THAT THE PROGRAM IS NOT WORKING AS WELL
12 AS IT SHOULD BE.

13 "THE ELECTRONIC MONITORING PROGRAM ALLOWS
14 PEOPLE WHO BELONG IN JAIL, THE HIGH RISK SERIOUS
15 FELONS, TO HAVE A BED IN THE JAIL SYSTEM. IT
16 ALSO PROVIDES A MECHANISM FOR LOW RISK INMATES
17 WHO WERE DOING LITTLE TO NO JAIL TIME IN PRIOR
18 YEARS, SUCH AS 2004, TO PAY THEIR DEBT TO
19 SOCIETY BUT OUTSIDE THE JAIL SYSTEM. WEEKENDERS
20 SERVE THEIR JAIL SYSTEM -- SENTENCE ON WEEKENDS
21 IN OUR FACILITIES. THAT HELPS THE CAP SITUATION
22 BY NOT HAVING THEM TAKE UP BEDS DURING THE WEEK.
23 IF THERE ARE NO FREE BEDS WHEN THE WEEKEND
24 ARRIVES, THE WEEKENDERS CANNOT COME IN.

25 "DURING THE WEEK IT GIVES ME SOME DISCRETION

1 TO IMPOSE SOME JAIL PUNISHMENT, BUT IT GIVES ME
2 THE DISCRETION NOT TO HAVE THEM CAUSE A CAP
3 PROBLEM.

4 "STATION TRUSTEES ARE INMATE WORKERS
5 PROVIDED TO OUR 23 PATROL STATIONS. IT IS FREE
6 LABOR WITH THE INMATES BEING HOUSED AT THE
7 INDIVIDUAL PATROL STATIONS. STATION TRUSTEES
8 BEDS ARE NOT CONSIDERED JAIL BEDS FOR PURPOSES
9 OF CAP COMPLIANCE. THESE PROGRAMS HAVE ASSISTED
10 ME IN MAINTAINING CAP COMPLIANCE."
11 AND THEN THE COMPLETION OF THE PARAGRAPH THAT I READ
12 EARLIER.

13 **MS. BARLOW:** AND I WANT TO RENEW THE OBJECTION.
14 THAT'S NOT EARLY RELEASE.

15 **JUDGE HENDERSON:** OVERRULED. DO YOU STILL AGREE WITH
16 THAT STATEMENT?

17 **THE WITNESS:** YES. I DO.

18 **MS. BARLOW:** FINE.

19 **BY MR. HEATHER**

20 **Q** DO YOU STILL BELIEVE NONE OF THE SENIOR PEOPLE CURRENTLY IN
21 THE SHERIFF'S DEPARTMENT RECOMMEND THAT ANY OF THESE PROGRAMS BE
22 TERMINATED BECAUSE OF A PERCEIVED THREAT TO PUBLIC SAFETY?

23 **JUDGE KARLTON:** TO THE DEGREE THAT YOU KNOW.

24 **THE WITNESS:** WE DO THIS TO MAINTAIN OUR CAP. AS FAR
25 AS WHAT IT -- HOW IT AFFECTS THE COMMUNITIES, THAT IS NOT PART

1 OF THE DECISION MAKING. I HAVE NEVER BEEN ORDERED BY A SENIOR
2 MEMBER OF THE SHERIFF'S DEPARTMENT TO DISCONTINUE THESE PROGRAMS
3 BECAUSE WE ARE UNDER FEDERAL COURT DECREE TO KEEP OUR POPULATION
4 DOWN. THAT'S THE PURPOSE OF THOSE COMMUNITY BASED ALTERNATIVES
5 TO CUSTODY --

6 **BY MR. HEATHER**

7 **Q** SO ALL THOSE STATEMENTS WERE TRUE, TO THE BEST OF YOUR
8 KNOWLEDGE, AT THE TIME YOU MADE THEM?

9 **A** YES.

10 **Q** AND THEY ARE TRUE TODAY, TO THE BEST OF YOUR KNOWLEDGE?

11 **A** BEST OF MY KNOWLEDGE, YES.

12 **Q** THANK YOU, CHIEF.

13 BY THE WAY, IS LIEUTENANT SMITH WHAT YOU WOULD
14 CONSIDER A SENIOR OFFICER OF THE SHERIFF DEPARTMENT?

15 **A** MIDDLE MANAGEMENT.

16 **Q** OKAY. NOT A SENIOR OFFICERS?

17 **A** NO.

18 **Q** AND YOU ARE?

19 **A** YES, I GUESS THEY ARE. MAY I HAVE JUST A MOMENT, YOUR
20 HONOR?

21 **JUDGE REINHARDT:** YOU HAVE BEEN UNDER COURT DECREE,
22 FEDERAL COURT DECREE, SINCE 1970'S?

23 **THE WITNESS:** I BELIEVE IT WAS IN THE '80'S, YOUR
24 HONOR, AND THEN WE HAD A JUDGE PREGERSON IMPOSED AN ADDITIONAL
25 DEPOPULATION EFFORT BACK IN '06.

1 **MR. HEATHER:** I HAVE NO FURTHER QUESTIONS. THANK
2 YOU.

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

4 **MS. LEONARD:** NO, YOUR HONOR?

5 **JUDGE HENDERSON:** REDIRECT?

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

7 **REDIRECT EXAMINATION BY MS. BARLOW**

8 **BY MS. BARLOW**

9 **Q** CHIEF YIM, WHEN YOU WERE TALKING ABOUT THE FACT THAT YOU --
10 OTHER THAN THE ONE MURDER THAT YOU REFERRED TO, YOU WEREN'T
11 AWARE OF NEGATIVE IMPACTS FROM THE CBAC PROGRAM. YOU'RE REALLY
12 JUST TALKING ABOUT THOSE PROGRAMS, NOT THE EARLY RELEASE,
13 CORRECT?

14 **A** THAT'S CORRECT.

15 **Q** AND YOU MADE CHANGES IN THE WAY THAT TIME WAS SERVED BY
16 SENTENCED INMATES BECAUSE YOU BELIEVED THAT THE EARLY RELEASE
17 PROGRAM HAD CAUSED AN IMPACT TO PUBLIC SAFETY, CORRECT?

18 **A** THAT'S CORRECT.

19 **Q** AND THE TESTIMONY THAT YOU GAVE AT YOUR DEPOSITION THAT
20 SINCE NOW MALE PRISONERS DO 70 PERCENT OF THEIR TIME, YOU ARE
21 MORE COMFORTABLE WITH THAT PROGRAM THAN WHAT EXISTED PREVIOUSLY,
22 CORRECT?

23 **A** THAT'S CORRECT.

24 **Q** NOW, IN ALSO IN THE DEPOSITION YOU INDICATED TO COUNSEL THAT
25 THE MORE PEOPLE YOU RELEASE AND THE EARLIER YOU RELEASE THEM,

1 THE MORE RISK THERE IS TO THE PUBLIC, CORRECT?

2 **A** YES.

3 **Q** ALL RIGHT. AND DID YOU COME TO THAT OPINION FOR ANY
4 PARTICULAR REASON? I MEAN, WHAT IS IT THAT LEADS YOU TO BELIEVE
5 THAT?

6 **JUDGE KARLTON:** TWENTY-EIGHT YEARS AS BEING --

7 **THE WITNESS:** YEAH. AS A POLICE OFFICER, I THINK THE
8 ULTIMATE GOAL WOULD BE A HUNDRED PERCENT OF THEIR SENTENCE, AND
9 THE LIKELIHOOD OF THEM REOFFENDING, IT GOES UP THE LESS TIME
10 THEY SERVE.

11 **JUDGE REINHARDT:** IF THEY STAY IN JAIL PRISON LONGER
12 THAN THEIR SENTENCE, WE WOULD ALSO BE SAFER, RIGHT? IF WE COULD
13 KEEP EVERYBODY IN PRISON FOR LIFE, THE CRIME RATE WOULD GO DOWN?

14 **THE WITNESS:** I USED TO BELIEVE JUST LOCKING THEM UP
15 WAS THE SOLUTION, BUT I THINK OFFERING THEM PROGRAMS WHILE
16 THEY'RE IN CUSTODY AND WHEN THEY GET OUT IS A BETTER SOLUTION.

17 **JUDGE REINHARDT:** DO YOU KNOW WHETHER IN PRISON, IF
18 YOU LET THEM OUT THREE OR FOUR MONTHS EARLIER, THEY WOULD HAVE
19 LESS -- THEY WOULD HAVE NOT COMPLETED THE PROGRAMS THAT THEY'RE
20 SUPPOSED TO COMPLETE?

21 **THE WITNESS:** I DON'T UNDERSTAND YOUR QUESTION.

22 **JUDGE REINHARDT:** WELL, ARE YOU SAYING -- IS IT YOUR
23 TESTIMONY THAT IF THEY WERE LET OUT OF PRISON THREE OR FOUR
24 MONTHS EARLIER, THEY WOULD NOT HAVE COMPLETED THE PROGRAMS?

25 **THE WITNESS:** NO, I'M NOT SMART ENOUGH TO REACH THAT

1 CONCLUSION, YOUR HONOR.

2 **JUDGE KARLTON:** AND IF THE CONDITIONS IN THE PRISONS
3 NOW ARE SUCH THAT, IN FACT, PROGRAMMING FOR THE MAJORITY OF
4 PRISONERS DOESN'T REALLY EXIST, I MEAN IT'S THERE IN THEORY, BUT
5 NOBODY CAN DO ANYTHING, YOU WOULD REGARD THAT AS A THREAT TO
6 PUBLIC SAFETY?

7 **THE WITNESS:** IF YOU ARE GOING TO RELEASE THEM TO THE
8 STREET PRIOR TO THAT PROGRAMMING, YES.

9 **JUDGE REINHARDT:** BUT IF THEY ARE NOT GOING TO HAVE
10 THE PROGRAM WHEN THEY ARE THERE AT ALL, IT'S A THREAT TO RELEASE
11 THEM WITHOUT THE PROGRAMS?

12 **THE WITNESS:** RIGHT.

13 **JUDGE KARLTON:** AND THAT WOULD BE TRUE WHETHER YOU
14 RELEASED THEM EARLY OR RELEASED THEM LATE?

15 **THE WITNESS:** RIGHT.

16 **JUDGE REINHARDT:** AND IF YOU COULD GIVE PROGRAMS IN
17 THE PRISONS, IF YOU COULD GET MORE SPACE, YOU WOULD WANT TO DO
18 THAT?

19 **THE WITNESS:** YES, SIR. SHERIFF BACA HAS DONE IT
20 ALREADY SINCE '96.

21 **JUDGE REINHARDT:** I WAS SURPRISED ABOUT THE PROGRAMS
22 HE DESCRIBED, BECAUSE I KNOW IF YOU HAVE PRISONERS -- WELL,
23 DETAINEES, WHATEVER YOU CALL THEM, IN JAIL, YOU HAVE THEM
24 SLEEPING ON THE FLOOR BECAUSE THERE WASN'T ENOUGH SPACE.

25 **THE WITNESS:** NOT ANY LONGER.

1 **JUDGE REINHARDT:** NOT ANY LONGER?

2 **THE WITNESS:** NO, SIR.

3 **JUDGE REINHARDT:** BUT YOU DO HAVE SPACE FOR PROGRAMS?

4 **THE WITNESS:** YES, SIR, WE DO.

5 **JUDGE REINHARDT:** AND ONE OF THE WAYS YOU DO THAT IS
6 BY RELEASING PEOPLE FROM JAIL?

7 **THE WITNESS:** THAT LEADS TO THAT AVAILABILITY, YES,
8 BUT IT'S A MATTER OF WILL. SHERIFF BACA HAS TAKEN MONEY OUT OF
9 HIS BUDGET, PERSONNEL DEDICATED OUT OF HIS BUDGET, AND IT'S JUST
10 THE WILL TO CREATE THESE PROGRAMS.

11 **JUDGE KARLTON:** BUT YOU CAN'T DO IT AT ALL IF YOU
12 DON'T HAVE ANY SPACE?

13 **THE WITNESS:** IT'S VERY HARD, YOUR HONOR.

14 **JUDGE REINHARDT:** IF THE STATE DOESN'T HAVE THE WILL
15 TO DO THIS, IT'S NOT GOING TO GET DONE, RIGHT?

16 **THE WITNESS:** YOUR HONOR, I'M JUST A DEPUTY SHERIFF
17 FOR L.A. COUNTY.

18 **BY MS. BARLOW**

19 **Q** CHIEF, DO YOU BELIEVE THAT IF 52,000 PRISONERS WERE RELEASED
20 INTO THE COMMUNITIES, EITHER THROUGH DIVERSION OR SHORTENING OF
21 SENTENCES, OR BY REMOVING THEM FROM PAROLE AND LOWERING PRISON
22 POPULATION, THAT WILL HAVE A NEGATIVE IMPACT ON PUBLIC SAFETY IN
23 LOS ANGELES?

24 **MR. HEATHER:** OBJECTION. BEYOND THE SCOPE.

25 **JUDGE HENDERSON:** SUSTAINED.

1 **MS. BARLOW:** WELL, HE WAS ASKED ABOUT THE SAFETY OF
2 THE RELEASE PROGRAMS, YOUR HONOR.

3 **BY MS. BARLOW**

4 **Q** DO YOU BELIEVE THAT THAT RELEASE WOULD HAVE AN IMPACT ON
5 YOUR PROGRAMMING?

6 **JUDGE KARLTON:** MA'AM -- I'M SORRY. GO AHEAD.

7 **JUDGE HENDERSON:** GO ON.

8 **MR. HEATHER:** SAME OBJECTION.

9 **JUDGE HENDERSON:** I THINK WHAT HE WAS GOING TO SAY,
10 IT'S IMPROPER PROCEDURE FOR YOU TO RULE ON THE OBJECTION AND
11 MOVE FORWARD WITHOUT THE COURT'S PARTICIPATION.

12 **MS. BARLOW:** MY APOLOGIES. I DIDN'T MEAN TO DO THAT,
13 YOUR HONOR. I APOLOGIZE.

14 **JUDGE KARLTON:** THE OBJECTION NOW IS IT'S BEYOND
15 SCOPE OF REDIRECT.

16 **MS. BARLOW:** THIS IS REDIRECT. HE WAS ASKING ABOUT
17 THE CBAC PROGRAM.

18 **JUDGE KARLTON:** I MEAN RECROSS. EXCUSE ME. AND
19 NOBODY TALKED ABOUT RELEASES FROM PRISON EXCEPT TO THE EXTENT
20 THAT MY QUESTIONS IMPLIED THAT. THE OBJECTION IS SUSTAINED.

21 **MS. BARLOW:** WITH RESPECT, I SHOULD BE ABLE TO FOLLOW
22 UP ON THE COURTS' QUESTION AS WELL.

23 **JUDGE KARLTON:** OBJECTION IS SUSTAINED. YOU MAY
24 PROCEED.

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

1 **BY MS. BARLOW**

2 **Q** CHIEF YIM, THE PROGRAMMING THAT YOU DO PROVIDE, ARE YOU
3 GOING TO BE ABLE TO CONTINUE TO DO THAT IF YOU ARE HAVING TO
4 RELEASE MORE PEOPLE EARLY?

5 **A** I'M SORRY. YOU ARE SAYING?

6 **Q** THE PROGRAMMING THAT'S PROVIDED TO YOUR SENTENCED INMATES,
7 ARE YOU GOING TO BE ABLE TO CONTINUE TO DO THAT IF YOU HAVE TO
8 LET THEM GO AND HOLD MORE PRETRIAL DETAINEES?

9 **A** I THINK IT WOULD BE VERY DIFFICULT IF WE DIDN'T HAVE THE
10 ROOM.

11 **MS. BARLOW:** THANK YOU. I HAVE NOTHING FURTHER.

12 **JUDGE KARLTON:** IN THAT REGARD, CHIEF, I DON'T KNOW
13 WHAT TO MAKE OF IT, YOU'RE SAYING THAT THE AVERAGE PERSON WHO'S
14 IN YOUR JAIL IS SERVING 40 DAYS?

15 **THE WITNESS:** FORTY-TWO DAYS, YES, SIR.

16 **JUDGE KARLTON:** FORTY-TWO DAYS. AND BELIEVE THAT
17 EVEN THOUGH IT'S 42 DAYS, YOU ARE ABLE TO PROVIDE SOME BENEFITS
18 BY VIRTUE OF PROGRAMMING?

19 **THE WITNESS:** YOUR HONOR, ONE DAY OF PROGRAMMING IS
20 BETTER THAN NOTHING.

21 **JUDGE KARLTON:** OKAY. I THINK THAT ANSWERS THE
22 QUESTION.

23 **MR. HEATHER:** NOTHING FURTHER. THANK YOU.

24 **JUDGE HENDERSON:** ANY FURTHER CROSS?

25 **MR. HEATHER:** NO, YOUR HONOR.

1 **JUDGE HENDERSON:** THANK YOU, CHIEF.

2 **THE WITNESS:** HAVE A WONDERFUL CHRISTMAS.

3 **JUDGE HENDERSON:** YOU, TOO.

4 OKAY. YOU MAY CALL YOUR NEXT WITNESS.

5 **MS. BARLOW:** LAW ENFORCEMENT INTERVENORS CALL SHERIFF
6 SHERIFF ADAM CHRISTIANSON.

7 **ADAM CHRISTIANSON,**
8 HAVING BEEN CALLED AS A WITNESS BY THE DEFENDANT INTERVENORS
9 WAS FIRST DULY SWORN AND EXAMINED AS FOLLOWS:

10 **THE CLERK:** PLEASE STATE AND SPELL YOUR FULL NAME FOR
11 THE RECORD.

12 **THE WITNESS:** MY NAME IS SHERIFF ADAM
13 C-H-R-I-S-T-I-A-N-S-O-N.

14 **DIRECT EXAMINATION BY MS. BARLOW**

15 **BY MS. BARLOW**

16 **Q** THANK YOU, SHERIFF. YOU ARE SHERIFF OF WHAT COUNTY?

17 **A** STANISLAUS COUNTY.

18 **Q** HOW LONG HAVE YOU BEEN SHERIFF OF STANISLAUS COUNTY?

19 **A** SINCE JUNE OF 2006.

20 **MS. BARLOW:** FOR THE COURT'S REFERENCE, PARAGRAPHS
21 ONE THROUGH TWELVE OF THE DECLARATION OF THE WITNESS CONTAIN
22 DETAILED BACKGROUND AND EMPLOYMENT HISTORY.

23 **BY MS. BARLOW**

24 **Q** SHERIFF CHRISTIANSON -- I'M GOING TO ASK YOU PUT UP DI 619.

25 COULD YOU JUST -- WHILE HE'S PUTTING THAT UP, COULD YOU JUST

1 GIVE US A BRIEF SUMMARY OF YOUR BACKGROUND AND HISTORY?

2 **A** YES, MA'AM. I HAVE BEEN IN W ENFORCEMENT FOR 20 YEARS.
3 OVER THE COURSE OF THAT 20 YEARS, I HAVE WORKED BOTH AS POLICE
4 OFFICER AND DEPUTY SHERIFF. I'VE HELD SUPERVISORY AND COMMAND
5 LEVEL POSITIONS THROUGHOUT THE ORGANIZATION UP TO AND INCLUDING
6 THE RANK OF LIEUTENANT. I HAVE BEEN IN CHARGE OF MULTIPLE
7 SPECIALTY TEAMS. ALSO DID TIME IN HOMELAND SECURITY DOING
8 EMERGENCY RESPONSE PLANNING. AND IN 2005 WAS WHEN I ELECTED TO
9 RUN FOR SHERIFF.

10 **Q** OKAY. DO WE HAVE THE -- I'M STILL WAITING FOR THAT, SO I'LL
11 MOVE ON. WE'LL COME BACK TO IT.

12 NOW, ARE YOU, AS SHERIFF, ARE YOU INVOLVED IN ANY
13 PROFESSIONAL ORGANIZATIONS?

14 (DOCUMENT DISPLAYED.)

15 **JUDGE KARLTON:** IT'S UP NOW.

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

17 **BY MS. BARLOW**

18 **Q** THIS IS DEFENDANT'S -- DEFENDANT INTERVENOR'S EXHIBIT 619.
19 IS THIS YOUR CURRICULUM VITAE, SHERIFF CHRISTIANSON?

20 **A** YES, MA'AM.

21 **Q** THANK YOU.

22 ARE YOU ON -- AFFILIATED WITH ANY PROFESSIONAL
23 ASSOCIATIONS IN YOUR CAPACITY AS SHERIFF?

24 **A** I AM AFFILIATED WITH MULTIPLE PROFESSIONS, MOST
25 PREDOMINANTLY CALIFORNIA STATE SHERIFFS' ASSOCIATION.

1 Q ARE YOU ON THE BOARD OF DIRECTORS OF THE CALIFORNIA STATE
2 SHERIFFS' ASSOCIATION?

3 A YES, MA'AM.

4 Q NOW, THE ASSOCIATION DOESN'T -- PERFORMS A NUMBER OF
5 FUNCTIONS, I THINK WE'VE ALREADY HAD SOME TESTIMONY ABOUT THAT,
6 BUT DOES ONE OF THE THINGS THE ASSOCIATION DO IS COMPILE DATA
7 FROM SHERIFF'S DEPARTMENTS ALL OVER THE STATE?

8 A YES.

9 Q AND DO THEY COMPILE DATA REGARDING JAIL CAPACITIES AND CAP
10 ORDERS AND SO ON?

11 A YES, THEY DO.

12 Q AND SINCE YOU HAVE BEEN ON THE BOARD, ARE YOU FAMILIAR WITH
13 THE WAY THOSE ARE PREPARED?

14 A YES, I AM.

15 Q COULD YOU DESCRIBE FOR THE COURT HOW THOSE REPORTS ARE
16 PREPARED BY THE STATE SHERIFFS' ASSOCIATION?

17 A IN THIS PARTICULAR CASE, STAFF AT THE STATE SHERIFFS'
18 ASSOCIATION, LED BY THE EXECUTIVE DIRECTOR AND THE LEGISLATIVE
19 REPRESENTATIVES, ASKED THE 85 SHERIFFS TO COMPILE DATA SPECIFIC
20 TO EACH ONE OF THEIR AGENCIES. THAT DATA WAS FORWARDED TO THE
21 STATE SHERIFFS' ASSOCIATION OFFICES IN SACRAMENTO WHERE THE DATA
22 WAS COMPILED AND PUBLISHED BACK OUT TO THE SHERIFF.

23 Q ALL RIGHT. SO OTHER THAN DATA ERRORS THAT MAY HAVE COME
24 FROM WITHIN A DEPARTMENT, THEN WHAT THE REPORT SHOWS IS A
25 SUMMARY OF ALL THE DATA THAT WAS RECEIVED FROM THE SHERIFFS

1 AROUND THE STATE?

2 **A** THAT IS CORRECT. AND MOST OF THE DATA, ESPECIALLY WITH
3 REGARD TO JAIL BEDS AND THOSE TYPES OF THINGS IS STRAIGHT FROM
4 CSA. MOST OF IT WAS ACCURATE.

5 **Q** THE CSA IS CORRECTIONS STANDARDS AUTHORITY?

6 **A** YES, MA'AM.

7 **Q** IF WE COULD ASK THAT EXHIBIT DI 774 BE PUT UP?

8 (DOCUMENT DISPLAYED.)

9 **BY MS. BARLOW**

10 **Q** AND THIS COMPILATION YOU WERE TALKING ABOUT, DOES THAT
11 HAPPEN ON AN ANNUAL BASIS? THAT HAPPENS ON AN ANNUAL BASIS?

12 **A** IT DOES, YES.

13 **Q** THIS IS DI 774, IF YOU COULD --

14 **MR. SANGSTER:** YOUR HONOR, I'M GOING TO OBJECT. THIS
15 IS BEYOND THE SCOPE OF THE WITNESS'S DISCLOSED TESTIMONY. THE
16 COURT ORDERED A DECLARATION BE FILED, AND THIS WAS NOT PART OF
17 THE WITNESS'S DECLARATION.

18 **MS. BARLOW:** WITH RESPECT, WE WERE TOLD WE WOULD BE
19 ALLOWED LIVE TESTIMONY IN ADDITION TO THAT. I DON'T KNOW WHAT
20 WOULD BE THE POINT OF HAVING LIVE TESTIMONY IF THEY CAN ONLY SAY
21 WHAT'S IN THE DECLARATION.

22 **JUDGE HENDERSON:** GO ON. PROCEED.

23 **MS. BARLOW:** HE'S JUST AUTHENTICATING THE DOCUMENT.

24 **BY MS. BARLOW**

25 **Q** IF YOU COULD TAKE A LOOK AT THIS DOCUMENT, SIR, DOES THIS

1 APPEAR TO YOU TO BE THE 2007 COMPILATION OF CSSA DATA?

2 **A** YES, IT IS.

3 **Q** IN PARTICULAR, IF WE COULD REFER TO -- THIS IS PAGE 3025
4 THROUGH 3029, I BELIEVE. SO THIS DATA SHOWS COURT-ORDERED CAPS
5 AND CAPACITIES?

6 **A** IT DOES.

7 **Q** AND IT ALSO SHOWS EARLY RELEASES FROM JAILS, CORRECT?

8 **A** YES, MA'AM.

9 **Q** ALL RIGHT. THANK YOU.

10 NOW, IN YOUR JAIL -- HOW BIG IS YOUR JAIL, BY THE
11 WAY? STANISLAUS COUNTY JAIL, HOW BIG IS IT?

12 **A** I HAVE THREE FACILITIES IN STANISLAUS COUNTY. A PRIMARY
13 JAIL, A PUBLIC SAFETY CENTER, WHICH IS OUR NEWEST FACILITY, AND
14 AN HONOR FARM WHICH IS LOCATED IN THE WEST PART OF THE COUNTY.

15 **Q** AND YOU OPERATE UNDER JAIL CAP, DO YOU NOT?

16 **A** I DO.

17 **Q** WHAT DO YOU DO TO COMPLY WITH THAT JAIL CAP?

18 **A** UNDER THE COURT ORDER, STANISLAUS VERSUS RODRIGUEZ, I HAVE A
19 COURT ORDERED CAP OF 1,492. IN ORDER TO STAY UNDER THAT CAP,
20 THERE'S A NUMBER OF DIFFERENT JAIL ALTERNATIVES, PROGRAMS THAT
21 WE PARTICIPATE IN SO THAT WE CONTROL OUR DAILY INMATE
22 POPULATION.

23 **Q** AND WHAT KINDS OF PROGRAMS ARE THEY?

24 **A** I HAVE A HOST OF PROGRAMS THAT ARE ATTACHED TO VARIOUS
25 DISCIPLINES IN THE COMMUNITY, SUCH AS EDUCATION, FAITH-BASED

1 CHARITABLE, CIVIC, BUSINESS. PRIMARILY, IT FOCUSES ON
2 VOCATIONAL OPPORTUNITIES, EDUCATION, JOB TRAINING. AND THEY'RE
3 ALL -- THERE ARE ALSO SOME PROGRAMS THAT INVOLVE PARENTING
4 SKILLS, CHILD CARE, DRUG REHABILITATION, MENTAL HEALTH, OR
5 MENTALLY ILL OFFENDER SERVICES. AND, AGAIN, THOSE ARE ALL
6 PARTNERSHIPS WITH OTHER DISCIPLINES IN THE COUNTY.

7 **Q** NOW, DO YOU HAVE AN OPINION AS TO WHETHER THE PROGRAMS IN
8 YOUR JAIL CAN BE EXPANDED BEYOND WHAT YOU OFFER NOW?

9 **A** THEY COULD BE IF THERE WERE ADDITIONAL FUNDING OPPORTUNITIES
10 AVAILABLE SO THAT I COULD HIRE THE STAFF AND THE INFRASTRUCTURE
11 I NEED TO SUPPORT EXPANSION OF THOSE PROGRAMS.

12 **Q** DO YOU SEE ANY MONEY COMING TO YOU RIGHT NOW TO DO THAT?

13 **A** OH, NO. THE STATE HAS TAKEN MONEY AWAY FROM ME. AND RIGHT
14 NOW I'M LOOKING AT POTENTIALLY CUTTING SERVICES TO THE COMMUNITY
15 AND A REDUCTION IN FORCE BECAUSE OF OUR CURRENT BUDGET CRISIS.

16 **JUDGE REINHARDT:** I'M SORRY. I MISSED SOMETHING
17 HERE. YOU GAVE US FIGURES FOR THE NUMBER OF PEOPLE THAT HAVE TO
18 BE RELEASED DUE TO A CAP ON JAIL POPULATION?

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

20 **JUDGE REINHARDT:** NOW, THOSE PEOPLE ARE NOT GETTING
21 THE PROGRAMS YOU OFFER?

22 **THE WITNESS:** WHAT I TRY TO DO, YOUR HONOR, IS I TRY
23 TO TAKE THOSE PEOPLE THAT I'M FORCED TO EARLY RELEASE AND GET
24 THEM INTO PROGRAMS THAT ARE OUT-OF-CUSTODY PROGRAMS.

25 **JUDGE REINHARDT:** AND THE ONES WHO ARE IN JAIL DO OR

1 DO NOT GET THOSE PROGRAMS?

2 **THE WITNESS:** THEY DO, YOUR HONOR. I HAVE MULTIPLE
3 PROGRAMS THAT ARE AVAILABLE TO THOSE WHO ARE IN MY CUSTODY.

4 **JUDGE REINHARDT:** SO WHETHER THEY ARE IN OR OUT, THEY
5 GET THE PROGRAM?

6 **THE WITNESS:** WE OFFER THOSE SERVICES, YES, SIR.

7 **BY MS. BARLOW**

8 **Q** NOW, SHERIFF, DO YOU KNOW HOW MANY -- WHAT PERCENTAGE OF
9 YOUR BOOKINGS LAST YEAR WERE OF PAROLEES?

10 **A** I DO.

11 **Q** WHAT WAS THAT PERCENTAGE?

12 **A** IN 2007, I BELIEVE WE RELEASED -- OR WE SENT APPROXIMATELY
13 1,800 BACK TO CDCR.

14 **Q** DO YOU KNOW WHAT PERCENTAGE OF YOUR TOTAL BOOKINGS WERE
15 REPRESENTED BY PAROLEES?

16 **JUDGE KARLTON:** THAT'S WHAT HE SAID, I THOUGHT.

17 **MS. BARLOW:** HE SAID THERE WERE 1,800 SENT BACK. I
18 WAS ASKING FOR THE PERCENTAGE.

19 **THE WITNESS:** I DON'T KNOW WHAT PERCENTAGE OF MY
20 TOTAL BOOKINGS, NO, NOT WITHOUT LOOKING IT UP. I CAME HERE
21 TODAY WITH A LOT OF NUMBERS. SO I'LL TRY KEEP THEM STRAIGHT.

22 **BY MS. BARLOW**

23 **Q** IT'S OKAY.

24 NOW, THE PLAINTIFFS' PROPOSAL IS THAT THE COURT
25 DIVERT OR RELEASE 52,000 PRISONERS FROM STATE PRISON. AND THE

1 CDCR DATA TELLS ME THAT STANISLAUS COUNTY GETS .14 OF THOSE?

2 **A** CORRECT.

3 **Q** OKAY. SO DO YOU BELIEVE THAT THAT --

4 **JUDGE REINHARDT:** HOW MANY IS 1.4?

5 **MS. BARLOW:** IT WORKS OUT TO 728, YOUR HONOR.

6 **JUDGE REINHARDT:** SEVEN HUNDRED TWENTY-EIGHT, THAT'S
7 OVER TWO YEARS?

8 **MS. BARLOW:** YES, YOUR HONOR.

9 **JUDGE REINHARDT:** THANK YOU.

10 **BY MS. BARLOW**

11 **Q** DO YOU BELIEVE, SIR, THAT THE REINTRODUCTION OF THESE FOLKS
12 INTO YOUR COMMUNITY, 728 OF THEM OVER A TWO-YEAR PERIOD, OVER
13 AND ABOVE WHAT YOU HAVE NOW AND WHAT'S COMING OUT ON A REGULAR
14 BASIS, IS GOING TO HAVE AN IMPACT ON YOUR ABILITY TO PERFORM LAW
15 ENFORCEMENT SERVICES IN STANISLAUS COUNTY?

16 **A** YES, I DO.

17 **Q** COULD YOU DESCRIBE WHAT YOU BELIEVE THAT IMPACT WILL BE?

18 **A** WELL, I BELIEVE THERE'S CERTAINLY AN OPERATIONAL IMPACT FOR
19 ME. IF I HAVE TO SUDDENLY BECOME RESPONSIBLE FOR ADDITIONAL
20 PEOPLE WHO REQUIRE SOME TYPE OF REHABILITATIVE OR VOCATIONAL
21 SERVICES, CERTAINLY THERE'S AN IMPACT TO THE COMMUNITY BECAUSE
22 WE KNOW THAT A CERTAIN NUMBER ARE GOING TO REOFFEND, ALTHOUGH I
23 THINK THERE'S SOME DEBATE ABOUT EXACTLY WHAT THAT NUMBER IS.
24 BUT, CERTAINLY, BASED UPON OUR EXPERIENCE AND OUR NUMBERS AND
25 THE STAFFING LEVELS WE HAVE BASED UPON, YOU KNOW, THE OPERATION

1 AND THEN THE BOOKINGS AND THE INMATES WHO COME THROUGH THE
2 SYSTEM, WE KNOW THAT THERE'S GOING TO BE A CERTAIN PERCENTAGE
3 THAT ARE GOING TO COME BACK TO US.

4 **Q** NOW, DO YOU KNOW -- YOU SAID YOU SENT 1,800 PAROLEES BACK TO
5 PRISON LAST YEAR. DO YOU KNOW HOW MANY PAROLEES YOU HAD?

6 **A** WELL, I CAN TELL YOU WHAT I HAVE RIGHT NOW TODAY.

7 **Q** OKAY.

8 **A** AND WE CAN, YOU KNOW, FACTOR THAT OUT OR AVERAGE THAT OUT
9 OVER A TWO-YEAR PERIOD OF TIME. BUT RIGHT NOW, TODAY,
10 12 PERCENT OF MY INMATE POPULATION ARE PAROLEES. I THINK THAT
11 WORKS OUT TO BE 152 OUT OF 1270. THAT'S THE NUMBER OF PEOPLE I
12 HAVE IN CUSTODY TODAY.

13 **JUDGE KARLTON:** AND THOSE ARE PEOPLE YOU HAVE IN
14 CUSTODY BY VIRTUE OF HAVING BEEN VIOLATED FOR ONE REASON OR
15 ANOTHER?

16 **THE WITNESS:** CORRECT, YOUR HONOR, OR THEY'VE PICKED
17 UP A NEW OFFENSE.

18 **JUDGE KARLTON:** OKAY. CAN YOU TELL ME HOW MANY -- DO
19 YOU KNOW HOW MANY ARE NEW OFFENSES AND HOW MANY ARE TECHNICAL
20 VIOLATIONS?

21 **THE WITNESS:** OUT OF 152 WE DIDN'T BREAK THAT DAWN.

22 **JUDGE KARLTON:** FAIR ENOUGH.

23 **BY MS. BARLOW**

24 **Q** NOW, YOU SAID THERE WOULD BE AN IMPACT. ARE YOU ABLE TO
25 QUANTIFY THE IMPACT OF THE ADDITIONAL 728 PAROLEES THAT YOU

1 WOULD RECEIVE?

2 **A** WELL, IF YOU BREAK IT DOWN OVER THE TWO-YEAR TIME PERIOD,
3 THAT'S ABOUT 30 A MONTH BASED UPON THE, YOU KNOW, THE 70 PERCENT
4 RECIDIVISM RATE. POTENTIALLY, I'M GOING TO SEE 21 OF THE 30
5 COME BACK TO ME. IF WE SPREAD THAT OUT, IF YOU BREAK IT CLEAR
6 DOWN, I THINK IT ENDS UP BEING .5 PER DAY FOR THE TWO-YEAR
7 PERIOD OF TIME.

8 MOST OF THESE FOLKS DON'T STAY FOR ONE DAY, SO
9 THERE'S GOING TO BE AN IMPACT ON MY ABILITY TO HOUSE THEM. AND
10 IF YOU HAVE TO HOUSE THEM BECAUSE THEY ARE REPEAT OFFENDERS OR
11 THE OFFENSES THEY'VE COMMITTED ARE MORE SEVERE THAN MY LOWER
12 RISK INMATE POPULATION, I'M GOING TO HAVE TO ACCELERATE OR
13 POTENTIALLY INCREASE MY EARLY RELEASE NECESSITY SO THAT I'M NOT
14 IN VIOLATION OF THE COURT-ORDERED CAP.

15 **Q** OKAY. NOW, DO YOU KNOW WHAT PERCENTAGE OF FOLKS IN YOUR
16 JAILS TODAY ARE THERE FOR FELONY ARRESTS AS OPPOSED TO
17 MISDEMEANORS?

18 **A** I DO. AS OF TODAY, 90 PERCENT ARE FELONIES, AND THE REST
19 ARE BROKEN DOWN INTO MISDEMEANANTS AND THE PAROLEES I TOLD YOU
20 ABOUT, AND THERE'S ABOUT EIGHT PERCENT OF MY POPULATION TODAY
21 ARE MENTALLY ILL OFFENDERS.

22 **Q** IS THAT NORMAL, OR DO YOU -- I MEAN, IS IT -- EIGHT PERCENT
23 IS ABOUT YOUR NORMAL FOR MENTALLY ILL OFFENDERS?

24 **A** IT RUNS ANYWHERE FROM EIGHT PERCENT TO TEN PERCENT, BUT WE
25 KNOW THAT ABOUT 44 PERCENT RIGHT NOW ARE RECEIVING SOME TYPE OF

1 SERVICES THROUGH THE BEHAVIORAL HEALTH AND RECOVERY SERVICES,
2 OUR PARTNERSHIP WITH THE COUNTY, THE COURTS IN STANISLAUS
3 COUNTY, BECAUSE WE HAVE A MENTALLY ILL COURT PROGRAM WHERE WE
4 ARE ACTIVELY ENGAGED IN TRYING TO PROPERLY SUPERVISE, PROVIDE
5 SERVICES AND MEDICATE THESE FOLKS SO THAT I DON'T GET THEM BACK
6 THROUGH THE JAIL SYSTEM AGAIN.

7 **Q** NOW, I KNOW IN YOUR REPORT -- DECLARATION, YOU WERE
8 CONCERNED ABOUT AN AVERAGE DAILY POPULATION INCREASE?

9 **A** CORRECT.

10 **Q** AND THERE WAS SOME SUGGESTION THAT THAT MIGHT BE AS HIGH AS
11 100 TO 200 PER DAY?

12 **A** CORRECT.

13 **Q** HOW DO YOU -- HOW CAN YOU ASSESS WHAT THE IMPACT TO YOUR
14 DAILY POPULATION IS?

15 **A** WELL, I SAT DOWN WITH MY CORRECTION STAFF, THE DIVISION
16 CAPTAIN AND MY LIEUTENANTS, THE MANAGERS, AND WE TOOK
17 STATISTICAL DATA FOR THE LAST 3 YEARS BASED UPON THE NUMBER OF
18 BOOKINGS WE RECEIVED THAT INVOLVED PAROLEES OR STATE PRISON
19 INMATES WHO EITHER WERE BACK ON A TECHNICAL VIOLATION OR A NEW
20 OFFENSE, AND THEN WE TOOK THAT AND LOOKED AT THE DATA WHERE WE
21 SENT THEM BACK TO DVI.

22 SO IT WAS A STATISTICAL AVERAGE BASED ON THOSE THREE
23 YEARS WHERE WE THOUGHT THAT, BASED UPON -- AND I THINK WE WERE
24 USING THE NUMBER 40,000 -- IF THERE WERE 40,000 RELEASED, HOW
25 MANY POTENTIALLY WOULD WE SEE BACK IN STANISLAUS COUNTY. THAT'S

1 HOW WE CAME TO THOSE NUMBERS THAT WE REFERRED TO OR THAT WERE
2 REFERRED TO IN MY DECLARATION.

3 **Q** SO THOSE AVERAGE DAILY POPULATION INCREASES REPRESENT LESS
4 THAN TEN PERCENT OF WHAT'S PROPOSED TO BE RELEASED BACK INTO
5 YOUR COUNTY?

6 **A** YES.

7 **Q** OKAY. NOW, IF THERE IS A CAP IMPOSED BY THE COURT ON THE
8 PRISON POPULATION AND YOU ALREADY HAVE A CAP ON YOUR COUNTY JAIL
9 POPULATION, WHAT WILL YOU DO WITH THOSE PRISONERS WHO YOU WOULD
10 OTHERWISE SEND TO STATE PRISON THAT YOU CAN'T SEND?

11 **A** I WOULD SUSPECT I WOULD HAVE NO OTHER CHOICE BUT TO KEEP
12 THEM IN MY CUSTODY. AND, AGAIN, AS PREVIOUSLY MENTIONED, I
13 WOULD HAVE TO ACCELERATE OR CHANGE MY EARLY RELEASE CRITERIA SO
14 THAT, AGAIN, I DON'T BUMP UP AGAINST MY COURT-ORDERED CAP.

15 **Q** SO IS THAT PART OF HOW YOU ARRIVED AT THE POTENTIAL IMPACTS
16 BECAUSE OF A LONGER STAY?

17 **A** THAT, AND THE FACT THAT RIGHT NOW WE HAVE A JAIL
18 OVERCROWDING PROBLEM, AND I HAVE FACILITIES THAT WERE BUILT IN
19 THE '50'S THAT ARE FAILING, AND WE ARE IN THE PROCESS OF TRYING
20 TO EXPAND OUR FACILITIES.

21 WE JUST COMPLETED A NEEDS ASSESSMENT. WE ARE IN THE
22 PROGRAMMING PHASE RIGHT NOW WITH A FIRM CALLED KRAUT AND SEIDA
23 (PHONETIC). THEY CAME IN AND LOOKED AT EVERYTHING AND PROVIDED
24 US WITH A VERY CLEAR PICTURE OF THE NUMBER OF BEDS THAT I NEED
25 TO MEET CAPACITY OR DEMAND, IN ADDITION TO THE NUMBER OF STAFF

1 THAT I NEED TO ENSURE THAT THOSE FACILITIES ARE A SAFE AND
2 SECURE ENVIRONMENT FOR BOTH THE INMATES AND OUR STAFF.

3 SO RIGHT NOW, TODAY, THOSE -- THE TOTAL -- THE TOTAL
4 AMOUNT OF BEDS THAT I NEED IMMEDIATELY ARE 420 MEDIUM TO MAXIMUM
5 SECURITY BEDS, BUT THE WHOLE PROGRAM GOES UP -- BUMPS ME UP TO
6 2,200 BEDS TO MEET THE CURRENT DEMAND.

7 **JUDGE KARLTON:** I'M SORRY. I'VE FORGOTTEN, WHAT DO
8 YOU HAVE NOW?

9 **THE WITNESS:** RIGHT NOW I'M CAPPED AT 1,492.

10 **JUDGE KARLTON:** AND THE SUGGESTION BY THESE PEOPLE
11 WHO STUDIED YOUR PROGRAM IS YOU GOT TO GO UP TO --

12 **THE WITNESS:** TWENTY TWO HUNDRED.

13 **JUDGE REINHARDT:** DID THEY TELL YOU HOW TO GET THE
14 MONEY?

15 **THE WITNESS:** WELL, YOUR HONOR, CONCRETE AND STEEL IS
16 VERY EXPENSIVE, SO IT'S A PHASED -- THAT'S WHY IT'S A PHASED
17 PROJECT, AND IN PHASE ONE WE ARE LOOKING AT 420 MEDIUM TO
18 MAXIMUM SECURITY BEDS.

19 **JUDGE KARLTON:** AND HAVE THEY TOLD YOU HOW TO GET THE
20 MONEY FOR THEM?

21 **THE WITNESS:** NO, YOUR HONOR, THEY HAVEN'T. THIS IS
22 GOING TO BE A CHALLENGE.

23 **BY MS. BARLOW**

24 **Q** ASSUMING YOU GET THE MONEY FOR THAT, SHERIFF, WHAT TIMEFRAME
25 ARE YOU LOOKING AT IN TERMS OF BUILDING THAT OUT?

1 **A** I HOPE TO HAVE THE PROJECT COMPLETED WITHIN THREE YEARS, BUT
2 GIVEN OUR CURRENT ECONOMIC CLIMATE AND THE ECONOMIC UNCERTAINTY,
3 I'M PROBABLY GOING TO PUMP THAT TO FOUR OR FIVE BEFORE WE GET IT
4 DONE.

5 **Q** SO IN THE MEANTIME, IF THERE'S A PRISONER RELEASE ORDER, AND
6 YOU GET 728 OVER TWO YEARS AND THEY DO REOFFEND --

7 **A** TO SOME EXTENT THERE WILL BE AN IMPACT, YES, AND WE WILL
8 HAVE TO MITIGATE THAT.

9 **Q** AND THIS 2,200 BED RECOMMENDATION DIDN'T TAKE INTO ACCOUNT
10 ANY ADDITIONAL PRISONERS FROM A PRISON POPULATION REDUCTION, DID
11 IT?

12 **A** NO. THAT WASN'T EVEN PART OF THE DESIGN OR PROCESS IN WHAT
13 WE'RE DOING NOW.

14 **Q** OKAY. NOW, WITH RESPECT TO THOSE PROGRAMS THAT YOU TALKED
15 ABOUT, ESPECIALLY FOR THE MENTALLY ILL, WOULD YOU EXPECT AN
16 IMPACT TO THOSE PROGRAMS FROM A PRISON RELEASE ORDER IN THIS
17 CASE?

18 **A** WELL, CERTAINLY I HAVE ALREADY BEEN IMPACTED. THE STATE'S
19 BUDGET ELIMINATED A ONE-MILLION-DOLLAR GRANT THAT WE RECEIVED
20 FOR THE MENTALLY ILL OFFENDER GRANT PROGRAM, AND JUST BECAUSE
21 THE FUNDING GOES AWAY DOESN'T MEAN THE PROBLEM GOES AWAY. SO
22 WHAT I DID WAS I FOUND A WAY, USING EXISTING APPROPRIATIONS, TO
23 MAINTAIN STRENGTH OF THE PROGRAM BECAUSE IT IS SO IMPORTANT. IT
24 DIRECTLY IMPACTS OUR DAILY INMATE POPULATION AND RECIDIVISM IN
25 THAT PARTICULAR GROUP OF OFFENDERS.

1 Q AND YOU SAID 44 PERCENT OF THOSE ARE --

2 A RIGHT NOW ARE RECEIVING SOME TYPE OF MENTAL HEALTHCARE
3 SERVICES BECAUSE OF OUR PARTNERSHIPS WITH THE COURTS, PROBATION,
4 AND THE MENTAL -- THE MENTAL HEALTH, FOR EXAMPLE, IN STANISLAUS
5 COUNTY, WHICH IS STANISLAUS BEHAVIORAL HEALTH AND RECOVERY
6 SERVICES PROGRAM.

7 Q NOW, IF YOU -- I'M SORRY. STRIKE THAT.

8 YOU MENTIONED THAT THE CURRENT BUDGET SITUATION MAY
9 INVOLVE HAVING TO CUT BACK ON YOUR STAFFING?

10 A THE CURRENT BUDGET SITUATION IS BLEAK. THE COUNTY ISSUED MY
11 BASE ALLOCATION IN THE CURRENT FISCAL YEAR WITH A THREE PERCENT
12 REDUCTION BUILT IN. THEY JUST TOLD US LAST TUESDAY AT
13 5:00 O'CLOCK I HAVE TO CUT ANOTHER 2.8 PERCENT OF MY BUDGET. MY
14 OVERALL OPERATING BUDGET IS \$93 MILLION. THEY'RE ASKING ME TO
15 CUT MONEY FROM MY BUDGET THAT I SIMPLY DON'T HAVE. THE ONLY WAY
16 TO MEET THAT EXPECTATION IS START CUTTING SERVICES TO THE
17 COMMUNITY OR COME UP WITH A REDUCTION-IN-FORCE POLICY.

18 THE LAST THING I WANT TO DO IS REDUCE MY ABILITY TO
19 PROPERLY HOUSE AND MAINTAIN PEOPLE WHO POTENTIALLY POSE A RISK
20 OR THREAT TO THE PUBLIC. SO, UNFORTUNATELY, THAT MEANS THE
21 OPERATIONS SIDE OF THE HOUSE IS WHERE IT'S GOING TO GET THAT
22 FIRST. THAT USUALLY INVOLVES CIVILIAN STAFF AND, HOPEFULLY NOT,
23 DEPUTY SHERIFFS.

24 Q WOULD THAT REDUCTION, DO YOU THINK, IMPAIR YOUR ABILITY TO
25 RESPOND TO ANY ADDITIONAL CRIME WHICH COULD RESULT FROM AN EARLY

1 RELEASE?

2 **A** ABSOLUTELY. EVERY DAY IS A CHALLENGE, AND THERE'S ALWAYS
3 GOING TO BE THE CHALLENGE IN MITIGATING PUBLIC SAFETY AND
4 FINDING SOLUTIONS ON HOW TO PROTECT THE COMMUNITY.

5 **JUDGE REINHARDT:** ANY CUT TO YOUR BUDGET FOR ANY SIDE
6 IS GOING TO AFFECT PUBLIC SAFETY?

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

8 **MS. BARLOW:** IF I COULD JUST TAKE A MOMENT?

9 (PAUSE IN PROCEEDINGS.)

10 **BY MS. BARLOW**

11 **Q** NOW, SHERIFF, DO YOU HAVE A COPY OF YOUR REPORT THERE IN
12 FRONT OF YOU, OR YOUR DECLARATION, RATHER?

13 **A** I DO.

14 **Q** IF YOU COULD REFER TO EXHIBIT 2, COULD YOU TELL US WHAT THIS
15 IS?

16 **A** WHAT --

17 **Q** EXHIBIT 2 OF YOUR DECLARATION? IF YOU DON'T HAVE IT, I
18 CAN --

19 **A** I'M LOOKING AT THE DECLARATION. I'M TRYING TO FIND EXHIBIT
20 NUMBER 2.

21 **MS. BARLOW:** MAY I APPROACH, YOUR HONOR?

22 **JUDGE HENDERSON:** YOU MAY.

23 **THE WITNESS:** THAT WOULD HELP. THANK YOU.

24 **BY MS. BARLOW**

25 **Q** COULD YOU DESCRIBE WHAT EXHIBIT 2 IS AND HOW IT WAS

1 PREPARED?

2 **A** THIS WAS DONE AT MY DIRECTION. AGAIN, THE CAPTAIN IN CHARGE
3 OF MY ADULT DETENTION DIVISION, WHICH WAS CORRECTIONS, AND MY
4 LIEUTENANTS, AND I ASKED THEM TO COME UP WITH WHAT THEY THOUGHT
5 WOULD BE THE IMPACTS WITH REGARD TO ANY DECISION ON A PRISONER
6 RELEASE ORDER, AND THIS WAS THEIR IMPACT REPORT TO ME.

7 **Q** DID YOU REVIEW THE REPORT WITH THEM?

8 **A** I DID. I ACTUALLY SAT DOWN AND WORKED WITH THEM ON IT.

9 **Q** AND DO YOU CONCUR IN THE ASSESSMENT THAT THEY MADE?

10 **A** ABSOLUTELY.

11 **Q** EXHIBIT 3 TO YOUR DECLARATION?

12 **A** COULD YOU MAYBE FIND THAT ONE AGAIN? CAN YOU DIRECT ME TO
13 IT SO WE DON'T WASTE THE COURT'S TIME?

14 **MS. BARLOW:** MAY I APPROACH, YOUR HONOR?

15 **THE WITNESS:** THANK YOU.

16 **BY MS. BARLOW**

17 **Q** COULD YOU DESCRIBE WHAT EXHIBIT 3 IS?

18 **A** YEAH. THESE ARE THE RECOMMENDATIONS THAT WE WANTED TO
19 SUBMIT, BECAUSE I BELIEVE THAT PARTNERSHIPS ARE VERY IMPORTANT
20 AND THAT PARTNERSHIPS ARE A CRITICAL PART OF SOLUTIONS. AND SO
21 I WANTED TO PROVIDE SOME SOLUTIONS THAT I THOUGHT WOULD WORK IN
22 MITIGATING WHAT'S BEFORE THE COURT.

23 **Q** OKAY. CAN I GET THE DECLARATION BACK?

24 **A** I FOUND IT IN MINE, THANK YOU.

25 **Q** THANKS.

1 IS IT FAIR TO SAY, SHERIFF CHRISTIANSON, THAT THE
2 SIZE OF THE PROPOSED ORDER OF 52,000 PRISONERS CAUSES YOU
3 GREATER CONCERN THAN EVER BEFORE?

4 **A** IT DOES.

5 **Q** AND DO YOU BELIEVE THAT YOU HAVE THE RESOURCES TO HANDLE THE
6 IMPACTS FROM THAT?

7 **A** I DON'T.

8 **Q** DO YOU BELIEVE YOUR COMMUNITY HAS THE RESOURCES TO HANDLE
9 THE IMPACTS FROM THAT?

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

11 **MS. BARLOW:** THANK YOU. I HAVE NOTHING FURTHER.

12 **MS. TILLMAN:** NO QUESTIONS, YOUR HONOR. THANK YOU.

13 **JUDGE HENDERSON:** THANK YOU. CROSS?

14 **MR. SANGSTER:** THANK YOU, YOUR HONOR. ED SANGSTER
15 FOR THE PLAINTIFFS.

16 **CROSS-EXAMINATION BY MR. SANGSTER**

17 **BY MR. SANGSTER**

18 **Q** I WANT TO FOLLOW UP ON A COUPLE OF POINTS.

19 FIRST OF ALL, YOU WERE ASKED HOW MANY BOOKINGS THERE
20 WERE OF PAROLEES?

21 **A** YES.

22 **Q** IN 2007 THAT WAS ABOUT 1,800?

23 **A** YES, SIR.

24 **Q** AND THE TOTAL NUMBER OF ARRESTS, YOU DIDN'T KNOW THE
25 PERCENTAGE, BUT THE TOTAL NUMBER OF BOOKINGS IN 2007 WAS 26,000?

1 **A** THAT SOUNDS ABOUT RIGHT, WITHOUT REFERRING BACK TO THE
2 DOCUMENTATION.

3 **Q** SO YOUR PAROLEE BOOKINGS WERE LESS THAN TEN PERCENT OF YOUR
4 TOTAL BOOKINGS?

5 **A** CORRECT.

6 **Q** NOW, ON DIRECT, YOU WERE ANSWERING QUESTIONS UNDER THE
7 ASSUMPTION THAT THERE WOULD BE 728 INMATES RETURNED TO YOUR
8 COUNTY. THAT'S A DIFFERENT NUMBER THAN YOU USED IN YOUR TRIAL
9 DECLARATION, RIGHT?

10 **A** IT WAS.

11 **Q** WHAT NUMBER DID YOU USE IN YOUR TRIAL DECLARATION?

12 **A** AGAIN, IN SITTING DOWN WITH MY CAPTAINS AND MY STAFF, WE
13 BASED OUR NUMBERS ON THE NUMBER OF ACTIVE -- OR THE NUMBER OF
14 BOOKINGS INVOLVING PAROLEES OR PEOPLE WHO HAD BEEN TO PRISON AND
15 THE NUMBER WE SENT BACK.

16 WHAT YOU REFER TO AS 728 IS WHAT CDCR IS TELLING ME
17 THAT STANISLAUS COUNTY HAS RECEIVED BACK, THE 1.4 PERCENT THAT
18 WAS REFERRED TO EARLIER.

19 **Q** RIGHT. IN YOUR TRIAL DECLARATION, YOU EXPRESSED THE OPINION
20 THAT A PRISONER RELEASE ORDER WOULD RESULT IN 200 TO 400
21 PAROLEES COMING BACK -- ADDITIONAL PAROLEES COMING BACK TO YOUR
22 COUNTY?

23 **A** CORRECT.

24 **Q** WHAT DID YOU DO TO ARRIVE AT THE 200 TO 400 NUMBER?

25 **A** WE LOOKED AT THE NUMBER OF PAROLEES THAT WE WERE TRACKING

1 THAT WERE COMING BACK OR REOFFENDING THAT WE ACCEPTED INTO OUR
2 SYSTEM, AND EITHER ON NEW OFFENSES OR TECHNICAL VIOLATIONS, AND
3 THEN THOSE THAT WERE SENT BACK.

4 **Q** SO DID YOU USE THE SAME PROCESS TO COME UP WITH THE 200 TO
5 400 ESTIMATE AS YOU DID TO COME UP WITH THE 758 ESTIMATE?

6 **A** CLEARLY NOT. THE NUMBERS ARE DIFFERENT.

7 **Q** WHICH IS MORE RELIABLE?

8 **A** WELL, IT DEPENDS ON WHOSE DATA YOU ARE LOOKING AT, WHETHER
9 WE ARE USING OUR DATA AND METHODOLOGY OF COMING UP WITH AN
10 ESTIMATE OR CDCR'S NUMBER AND THEIR METHODOLOGY OF COMING UP
11 WITH A NUMBER. EITHER WAY THERE'S A NUMBER. WE JUST HAVE TO
12 MEET IN THE MIDDLE.

13 **Q** THE NUMBER YOU USED FROM YOUR OWN PERSONAL EXPERIENCE --
14 EXCUSE ME. THE NUMBER YOU CAME UP WITH FROM YOUR PERSONAL
15 EXPERIENCE IN STANISLAUS COUNTY WAS 200 TO 400?

16 **A** CORRECT. THAT'S WHAT I SAID IN THE DECLARATION. THAT WAS
17 BASED UPON THAT THREE YEARS' WORTH OF DATA THAT WE LOOKED AT IN
18 THE NUMBER OF PAROLEES THAT WENT BACK TO CDCR.

19 **Q** I WANT TO TALK ABOUT HOW YOU GET FROM THE 200 TO 400 UP TO
20 THE AVERAGE DAILY POPULATION INCREASE IN YOUR JAIL. OKAY?

21 THE AVERAGE DAILY POPULATION INCREASE IN YOUR JAIL
22 THAT YOU PROJECT IS 100 TO 200?

23 **A** REPEAT THE QUESTION.

24 **Q** PART OF IT WAS JUST TRANSITIONING, TELLING YOU WHERE I WAS
25 GOING. I'M GOING TO TALK TO YOU ABOUT THE AVERAGE DAILY

1 POPULATION INCREASE.

2 **A** THAT WE POTENTIALLY SEE BECAUSE OF A RELEASE ORDER?

3 **Q** YES.

4 **A** OKAY.

5 **Q** THE NUMBER IS 100 TO 200, RIGHT?

6 **A** OKAY.

7 **Q** SO, IN A SENSE -- IN ESSENCE, YOU'RE SAYING ONE OUT OF EVERY
8 TWO PAROLEES IS GOING TO END UP IN YOUR JAIL AND INCREASE YOUR
9 AVERAGE DAILY POPULATION?

10 **A** WELL, WHETHER YOU BASE THE NUMBERS ON OUR STATISTICS OR
11 CDCR'S STATISTICS, WE KNOW THAT WE'RE GOING TO GET A CERTAIN
12 NUMBER OF PEOPLE BACK IN THE COMMUNITY.

13 **Q** WELL, AGAIN, I'M JUST FOCUSING ON THE OPINION YOU GAVE UNDER
14 PENALTY OF PERJURY WHEN YOU SUBMITTED YOUR DECLARATION FOR THIS
15 CASE.

16 **MS. BARLOW:** BASED ON A 40,000 PERSON PRISONER
17 RELEASE ORDER.

18 **BY MR. SANGSTER**

19 **Q** CAME UP WITH -- OKAY. I WANT TO FIND OUT -- I WANT TO
20 EXPLORE HOW YOU COME UP WITH ROUGHLY ONE OUT OF EVERY TWO
21 PAROLEES ENDING UP INCREASING YOUR AVERAGE DAILY POPULATION?

22 **JUDGE KARLTON:** LET'S STOP THERE. DO YOU AGREE IT'S
23 ONE OUT OF EVERY TWO?

24 **THE WITNESS:** I WOULD, YOUR HONOR, I THINK THAT'S A
25 REASONABLE ESTIMATE.

1 **JUDGE KARLTON:** ALL RIGHT. NOW YOU CAN GO AHEAD.

2 **BY MR. SANGSTER**

3 **Q** HOW LONG ARE PAROLEES IN YOUR JAIL?

4 **A** DEPENDS UPON WHY THEY ARE IN MY CUSTODY.

5 **Q** ON AVERAGE, HOW LONG ARE YOUR INMATES IN YOUR JAIL ON
6 AVERAGE, GENERAL POPULATION?

7 **A** IT'S ALL OVER THE BOARD. IT DEPENDS UPON WHETHER OR NOT
8 THEY HAVE REOFFENDED AND THEIR CRIMINAL HISTORY --

9 **JUDGE KARLTON:** NO. HE'S SAYING FORGETTING ABOUT
10 PAROLEES. GENERALLY, HOW MANY PEOPLE? HOW LONG DOES YOUR
11 GENERAL POPULATION REMAIN IN JAIL? IS THAT YOUR QUESTION,
12 COUNSEL?

13 **MR. SANGSTER:** YES, SIR.

14 **THE WITNESS:** I DON'T HAVE A SPECIFIC ANSWER FOR YOU,
15 YOUR HONOR, I DON'T HAVE THOSE STATISTICS.

16 **BY MR. SANGSTER**

17 **Q** IT'S LESS THAN A YEAR, CORRECT?

18 **A** AGAIN, I CAN TELL YOU THAT RIGHT NOW, TODAY, 90 PERCENT OF
19 MY INMATES ARE IN ON FELONY CHARGES. WHERE THEY COME OUT OF THE
20 SYSTEM, THERE'S A NUMBER OF DIFFERENT CONTRIBUTING FACTORS, FROM
21 THE NEW OFFENSE OR REOFFENSE, FROM WARRANTS, TO THE COURT'S
22 DECISION, TO PROBATION'S DECISION. THERE'S A NUMBER OF
23 DIFFERENT THINGS THAT -- OR DIRECTIVES THAT DICTATE TO US HOW
24 LONG THEY STAY.

25 **Q** SO THE -- I GUESS THE BOTTOM LINE IS YOU JUST DON'T KNOW?

1 **A** YOU ARE ABSOLUTELY CORRECT. WE DON'T TRACK THAT DATA.

2 **Q** ALL RIGHT. SO TAKING YOUR ESTIMATE OF 200 TO 400, HOW DID
3 YOU GET TO THE 100 TO 200 PER AVERAGE DAILY POPULATION INCREASE?

4 **A** WE BASE THAT AMOUNT ON THE NEW NUMBERS THAT CDCR WAS GIVING
5 US ABOUT WHAT THEIR STATISTICS WERE. AT THE TIME WE LOOKED AT
6 OUR NUMBERS WE DIDN'T HAVE THEIRS.

7 **Q** OKAY. BUT -- I KNOW WHAT NUMBERS YOU LOOKED AT. I WANT YOU
8 TO TELL THE COURT HOW YOU GOT THERE. WHAT PROCESS DID YOU
9 FOLLOW?

10 **A** WE TOOK THREE YEARS' WORTH OF OUR DATA, AND WE PROJECTED
11 WHAT WE THOUGHT WOULD COME BACK TO STANISLAUS COUNTY BASED ON
12 THE KNOWN NUMBERS THAT WE HAVE, AND THAT'S HOW WE THOUGHT WE
13 WOULD GET ANYWHERE FROM 200 TO 400 PER YEAR BACK IN STANISLAUS
14 COUNTY.

15 **Q** THEN YOU TOOK SOME SET OF NUMBERS TO COME UP WITH A 100 TO
16 200 INCREASE IN THE AVERAGE DAILY POPULATION, AND WHAT I WANT TO
17 FIND OUT IS HOW YOU GOT FROM THE 200 TO 400 COMING BACK TO YOUR
18 COUNTY, TO INCREASING YOUR AVERAGE DAILY POPULATION BY 100 TO
19 200?

20 **MS. BARLOW:** ASKED AND ANSWERED.

21 **JUDGE HENDERSON:** OVERRULED. CAN YOU TELL US THAT,
22 SHERIFF?

23 **THE WITNESS:** AGAIN, MR. SANGSTER, I'M NOT SURE THAT
24 I UNDERSTAND WHERE YOU'RE GOING. I GAVE YOU A SET OF NUMBERS
25 BASED UPON WHAT MY STAFF PULLED TOGETHER IN A DECLARATION.

1 **JUDGE KARLTON:** IS YOUR ANSWER --

2 **THE WITNESS:** CDCR GIVES US NEW NUMBERS. HERE WE
3 ARE.

4 **JUDGE KARLTON:** IS YOUR ANSWER, THAT'S WHAT MY STAFF
5 CAME UP WITH, AND I REALLY CAN'T TELL YOU HOW THEY CAME UP WITH
6 THAT NUMBER?

7 **THE WITNESS:** THAT WOULD BE APPROPRIATE, YOUR HONOR.

8 **MR. SANGSTER:** NO FURTHER QUESTIONS, YOUR HONOR.

9 **JUDGE KARLTON:** I HAVE -- MAY NOT HAVE ANYTHING TO DO
10 WITH ANYTHING, BUT I'M NOT CLEAR.

11 IF IT IS CORRECT THAT YOU ESTIMATED 100 TO 200 BASED
12 ON YOUR OWN NUMBERS AND DOUBLE THAT BASED UPON CDCR'S NUMBERS --
13 IS THAT ESSENTIALLY RIGHT?

14 **THE WITNESS:** THE LOWER NUMBERS, YOUR HONOR, ARE
15 BASED UPON WHAT CDCR IS TELLING US COMES BACK. OUR HIGHER
16 NUMBERS ARE BASED UPON WHAT WE -- BASED UPON WHAT WE SENT BACK.

17 **JUDGE KARLTON:** I THINK IT'S VICE VERSA.

18 **THE WITNESS:** OKAY.

19 **JUDGE KARLTON:** THIS IS NOT UNIMPORTANT. I'M REALLY
20 TRYING TO UNDERSTAND. I HAD UNDERSTOOD THAT IT WENT UP BECAUSE
21 CDCR'S NUMBERS WERE GREATER THAN YOURS. IS THAT WRONG OR RIGHT,
22 IF YOU KNOW? IF YOU DON'T, YOU KNOW --

23 **THE WITNESS:** WHAT I'M GOING OFF OF, YOUR HONOR, IS
24 THAT 1.4 PERCENT. THAT'S WHAT THEY'RE TELLING US CAME BACK. IT
25 SEEMS THOSE NUMBERS ARE MORE ACCURATE THAN OURS.

1 **JUDGE KARLTON:** AND IF THOSE NUMBERS INDICATE A
2 HIGHER RETURN, DOES THAT MEAN -- I'M ASKING YOU, NOT TELLING
3 YOU -- DOES THAT MEAN THAT THERE ARE A SUBSTANTIAL NUMBER OF
4 PAROLEES THAT YOU DON'T SEE BECAUSE YOU DIDN'T EVEN KNOW THEY
5 WERE BEING RETURNED TO THE COUNTY?

6 **THE WITNESS:** YES, YOUR HONOR, THAT WOULD BE A FACTOR
7 AS WELL.

8 **JUDGE HENDERSON:** YOU SAID 1.4. DID YOU MEAN THAT,
9 OR DID YOU MEAN .14?

10 **THE WITNESS:** 1.4 PERCENT OF CDCR'S POPULATION COMES
11 BACK TO STANISLAUS COUNTY.

12 **JUDGE HENDERSON:** OKAY.

13 **REDIRECT EXAMINATION BY MS. BARLOW**

14 **MS. BARLOW:** ONE QUICK FOLLOW-UP QUESTION, YOUR
15 HONOR.

16 **BY MS. BARLOW**

17 **Q** CHIEF, WHEN YOU DID THE ANALYSIS AND CALCULATIONS THAT ARE
18 REFLECTED IN YOUR DECLARATION, THAT WAS ON THE ASSUMPTION THAT
19 THE RELEASE ORDER WOULD BE 40,000, NOT 52, CORRECT?

20 **A** THAT'S CORRECT.

21 **MS. BARLOW:** I HAVE NOTHING FURTHER.

22 **JUDGE HENDERSON:** THANK YOU FOR TESTIFYING, SHERIFF
23 CHRISTIANSON. YOU ARE EXCUSED.

24 **THE WITNESS:** THANK YOU, YOUR HONOR.

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

1 **MS. BARLOW:** LAW ENFORCEMENT INTERVENORS CALL SHERIFF
2 MARTIN RYAN.

3 **MARTIN RYAN**

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

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

8 **THE WITNESS:** MY NAME IS MARTIN RYAN. FIRST NAME
9 M-A-R-T-I-N. LAST NAME IS RYAN, R-Y-A-N.

10 **DIRECT EXAMINATION BY MS. BARLOW**

11 **BY MS. BARLOW**

12 **Q** THANK YOU, SHERIFF.

13 WHAT COUNTY ARE YOU SHERIFF OF?

14 **A** I'M THE SHERIFF/CORONER OF AMADOR COUNTY.

15 **Q** HOW BIG IS AMADOR COUNTY?

16 **A** WE HAVE A POPULATION OF 38,000, INCLUDING THE STATE PRISON
17 POPULATION, AND SQUARE MILES ABOUT 640.

18 **MS. BARLOW:** FOR THE COURT'S REFERENCE, THE WITNESS'S
19 DECLARATION, PARAGRAPHS 1 THROUGH 9, CONTAIN A SUMMARY OR DETAIL
20 OF HIS BACKGROUND, AND DEFENDANT'S EXHIBIT 623 IS HIS CURRICULUM
21 VITAE.

22 DO YOU HAVE ANY OBJECTION TO THAT?

23 **MR. SANGSTER:** NO OBJECTIONS.

24 **MS. BARLOW:** THANK YOU.

25

1 **BY MS. BARLOW**

2 **Q** COULD YOU DESCRIBE, SHERIFF, JUST BRIEFLY YOUR HISTORY AND
3 BACKGROUND FOR THE COURT?

4 **A** CERTAINLY. I STARTED MY CAREER IN 1975 AS THE CHIEF
5 INVESTIGATOR FOR THE AMADOR COUNTY DISTRICT ATTORNEY'S OFFICE.
6 I THEN WENT TO THE CALIFORNIA DEPARTMENT OF JUSTICE, WHERE I
7 SPENT THE NEXT 25 YEARS WORKING MY WAY UP THE RANKS THROUGH THAT
8 TIME. SPENT THE LAST SEVEN YEARS AS THE CHIEF OF THE ATTORNEY
9 GENERAL'S BUREAU OF INVESTIGATION. RETIRED IN 2005 FROM THAT
10 POSITION TO RUN FOR SHERIFF OF AMADOR COUNTY.

11 **JUDGE REINHARDT:** YOU FORGET TO ASK HIM WHERE HE WENT
12 TO SCHOOL.

13 **JUDGE KARLTON:** SHE'S GOING TO.

14 **MS. BARLOW:** NO, IT'S IN THE CV, I THINK.

15 **JUDGE REINHARDT:** IT WASN'T IN THE OTHERS?

16 **MS. BARLOW:** I JUST WANTED A SUMMARY, YOUR HONOR.

17 **JUDGE KARLTON:** LET'S GO ON.

18 **BY MS. BARLOW**

19 **Q** COULD YOU DESCRIBE WHAT YOUR DUTIES ARE AS SHERIFF/CORONER
20 OF AMADOR COUNTY?

21 **A** YES. I'M RESPONSIBLE FOR PUBLIC SAFETY FOR THE COUNTY. I'M
22 ALSO SERVING AS THE CORONER; RESPONSIBLE FOR CRIMINAL
23 INVESTIGATIONS; THE JAIL FACILITY; CIVIL PROCESS SERVING; AND
24 GENERAL LAW ENFORCEMENT.

25 **Q** ALL RIGHT. NOW -- SO, DO YOU WORK WITH THE POLICE

1 DEPARTMENTS THAT ARE WITHIN YOUR CITY -- WITHIN YOUR COUNTY,
2 RATHER?

3 **A** YES, VERY MUCH SO.

4 **Q** DO YOU PROVIDE SERVICES FOR ANY OF THE CITIES WITHIN THE
5 COUNTY, OTHER THAN GENERAL COUNTY?

6 **A** WE HAVE TWO CONTRACT CITIES THAT WE PROVIDE SERVICE TO.

7 **Q** AND THOSE ARE WHICH CITIES?

8 **A** THE CITIES OF PLYMOUTH AND THE CITY OF AMADOR CITY.

9 **Q** YOU HAVE A JAIL FACILITY IN AMADOR COUNTY?

10 **A** YES.

11 **Q** WHAT IS YOUR JAIL CAPACITY, RATED CAPACITY?

12 **A** OUR RATED CAPACITY IS 76 BEDS; 65 MALE BEDS, 11 FEMALE BEDS.

13 **Q** NOT VERY BIG, IS IT?

14 **A** NO, MA'AM.

15 **Q** OKAY. AT THE PRESENT TIME DO YOU KNOW WHAT PERCENTAGE OF
16 PEOPLE ARE BEING HELD IN YOUR JAIL ON FELONY CHARGES OR -- ON
17 FELONY CHARGES? SORRY.

18 **A** THE LAST NUMBER I HAD WAS 80 PERCENT WERE FELONS AWAITING
19 SENTENCING OR SENTENCED.

20 **Q** AND THEN ARE YOU AT OR ABOVE CAPACITY, OR ARE YOU BELOW
21 CAPACITY WITH RESPECT TO EITHER --

22 **A** WE GENERALLY, ON AVERAGE, HISTORICALLY RUN BETWEEN 10 TO
23 15 PERCENT ABOVE CAPACITY. THEN, IN ADDITION TO THAT, ANOTHER
24 TEN PERCENT ON AVERAGE ARE ON OUR WORK RELEASE, HOME ELECTRONIC
25 MONITORING, OTHER METHODS TO KEEP THEM OUT OF THE FACILITY.

1 Q AND, CURRENTLY, ARE YOU ABOVE CAPACITY FOR YOUR FEMALE
2 INMATES?

3 A AS OF TODAY, WE HAVE 11 FEMALE BEDS, I HAVE 23 FEMALES IN
4 THE FACILITY.

5 Q HAVE YOU HAD TO TAKE STEPS TO ADDRESS THE OVERAGE, IF YOU
6 WILL?

7 A WE HAVE -- AS I SAID EARLIER, WE DO HOME ELECTRONIC
8 MONITORING, WORK FURLOUGH PROGRAMS, CITATION-RELEASE, SHERIFF'S
9 PAROLE, ALL THE AVENUES THAT ARE AVAILABLE TO US WE TRY TO
10 UTILIZE.

11 Q OKAY. DO YOU EVER EXPAND THE WOMEN PRISONERS INTO ANOTHER
12 PORTION OF THE JAIL IF THEY GET TOO BIG?

13 A REGULARLY. THAT'S THE PROBLEM WE HAVE. WE HAVE SO MANY
14 HOUSING UNITS. NORMALLY, THE FEMALES TAKE UP ONE. THEY ARE NOW
15 TAKING UP TWO. SO WE ARE COMPACTING THE MALE PRISONERS INTO THE
16 THREE REMAINING AREAS.

17 Q DOES THAT IMPACT YOUR ABILITY TO SEGREGATE YOUR PRISONERS
18 FOR SAFETY REASONS?

19 A ABSOLUTELY.

20 Q LET'S TALK ABOUT YOUR STAFFING. YOU'RE -- FOR THE JAIL AT
21 LEAST. WE'LL JUST TALK ABOUT THAT FOR A MINUTE.

22 WHAT'S YOUR CURRENT STAFFING LEVEL AT THE JAIL? ARE
23 YOU AT WHAT YOUR AUTHORIZED POSITIONS ARE, OR ARE YOU BELOW?

24 A WE ARE DOWN IN THOSE POSITIONS. I WAS AUTHORIZED 20
25 CORRECTIONAL OFFICERS. I'M DOWN A COUPLE OF POSITIONS THERE.

1 I'M DOWN TWO EXTRA HELP TRANSPORT OFFICERS. I'M DOWN TWO
2 SERGEANT POSITIONS OUT OF SIX.

3 **Q** ARE THERE -- DO YOU KNOW WHAT THE REASON IS THAT YOU ARE
4 DOWN OFFICERS?

5 **A** I'M SORRY?

6 **Q** WHAT'S THE REASON THAT YOU ARE DOWN?

7 **A** RETIREMENTS. THE BUDGET IS SUCH WE HAVE BEEN FROZEN FOR ANY
8 VACANCIES THAT OCCUR, AS WELL AS POSITIONS THAT HAVE BEEN
9 DEFUNDED BY THE BOARD OF SUPERVISORS.

10 **JUDGE KARLTON:** I'M SORRY. DEFUNDED BY?

11 **THE WITNESS:** THE BOARD OF SUPERVISORS.

12 **BY MS. BARLOW**

13 **Q** AND IN YOUR VIEW, IS THE CAPACITY OF YOUR JAIL ADEQUATE FOR
14 YOUR NEEDS?

15 **A** NO, MA'AM, IT'S NOT. AS A MATTER OF FACT, THE RECENT JAIL
16 NEEDS ASSESSMENT WE DID IN OUR EFFORTS TO ACQUIRE ASSEMBLY BILL
17 900 FUNDING FOR LOCAL JAIL FACILITY RATED OUR NEED AT 165 BEDS
18 FOR THE YEAR 2010.

19 **Q** ONE HUNDRED SIXTY-FIVE BEDS?

20 **A** YES, MA'AM.

21 **Q** SO THAT'S 90 SOME MORE THAN YOU ALREADY HAVE, RIGHT?

22 **A** THAT'S CORRECT.

23 **Q** AND I'M ASSUMING THAT IF YOU HAD ADDITIONAL BEDS, YOU
24 WOULDN'T NEED TO USE SOME OF THE ALTERNATIVE PROGRAMS YOU TALKED
25 ABOUT?

1 **A** HOPEFULLY, FOR A WHILE UNTIL WE GET CAUGHT UP WITH
2 POPULATION, YES.

3 **Q** AND IF YOU HAD THOSE ADDITIONAL BEDS -- WELL, FIRST OF ALL,
4 HOW LONG DO YOU THINK IT MIGHT BE BEFORE YOU GET THOSE
5 ADDITIONAL BEDS?

6 **A** IT'S IFFY AT THIS POINT. PART OF ASSEMBLY BILL 900 PROCESS
7 WAS PARTICIPATION IN A REENTRY FACILITY IN ORDER TO BE QUALIFIED
8 TO EVEN GET CONSIDERED FOR THE LOCAL JAIL CONSTRUCTION FUNDS.
9 WE DID GET CONDITIONAL FUNDING BASED UPON OUR PARTICIPATION IN
10 REENTRY WITH SAN JOAQUIN AND CALAVERAS COUNTIES, BUT THE CONCERN
11 FOR THE BOARD NOW, THE 25 PERCENT MATCH OF OUR \$30 MILLION
12 PROJECT, WHEN THEY ARE IN THE PROCESS OF LAYING PEOPLE OFF,
13 WHERE THAT MONEY IS GOING TO COME FROM.

14 **Q** SO EVEN IF YOU -- EVEN IF ALL THE AB 900 WENT FORWARD, YOU
15 MIGHT NOT BE ABLE TO MEET YOUR MATCH?

16 **A** THAT IS A VERY REAL POSSIBILITY.

17 **Q** OKAY. SO OUTSIDE OF THE JAIL ARE YOU DOWN IN YOUR STAFFING
18 AT ALL?

19 **A** YES, WE ARE.

20 **Q** AND WHAT KIND OF -- AT WHAT LEVEL ARE YOU DOWN?

21 **A** I HAVE AN ALLOCATED NUMBER OF DEPUTY SHERIFFS AT 32. I
22 HAVE -- BY THE END OF THIS YEAR, I'M GOING TO HAVE, I BELIEVE,
23 FIVE VACANCIES IN THOSE AREAS. WITH THAT, AGENCY WIDE, AT THE
24 END OF THE YEAR, I'M GOING TO BE DOWN 15 POSITIONS OUT OF 116,
25 ASSUMING NO FURTHER CUTS.

1 Q CAN YOU ASSUME NO FURTHER CUTS?

2 A WHAT'S THAT?

3 Q CAN YOU ASSUME NO FURTHER CUTS?

4 A NO, BECAUSE WE DON'T KNOW YET WHAT THE STATE OF CALIFORNIA
5 IS GOING TO DO TO OUR FUNDING SOURCES.

6 Q OKAY. NOW, YOU GET A PARTICULAR KIND OF FUNDING FOR A SMALL
7 COUNTY, RIGHT, CALLED RURAL CRIMES FUNDING?

8 A WE GET A HALF MILLION DOLLARS ANNUALLY, ALONG WITH THE OTHER
9 36 SMALLEST COUNTIES IN THE STATE, TO ASSIST US WITH OUR RURAL
10 CRIME ISSUES, A HALF MILLION DOLLARS.

11 Q IS THAT RURAL CRIMES FUNDING ON THE CHOPPING BLOCK FOR THE
12 CURRENT BUDGET?

13 A VERY MUCH SO. IN ALL THE NEGOTIATIONS WE HAVE BEEN
14 FOLLOWING, IT IS ZERO BALANCE AND OUT.

15 Q SO IF THAT MONEY IS LOST, WHAT KIND OF AN IMPACT IS THAT
16 GOING TO HAVE ON YOUR STAFFING?

17 A WE ARE IN DEEP TROUBLE. I HAVE A \$14-MILLION BUDGET THAT'S
18 BEING CUT REGULARLY AS WE SPEAK NOW. THAT'S A HALF MILLION
19 DOLLARS OUT OF THAT 14, IN ADDITION TO THE \$300,000 IN COPS
20 MONIES THAT WE GET AS WELL THAT'S ALSO UNDER ATTACK, AND I COULD
21 BE DOWN 800,000.

22 Q LET'S TALK AGAIN ABOUT THE AB 900 REENTRY PROGRAM. IN
23 CONNECTION WITH THAT PROGRAM, DID YOU ASSIST IN PREPARING A
24 PROPOSAL TO CDCR WITH RESPECT TO THE CREATION OF A REENTRY
25 PROGRAM?

1 **A** YES.

2 **Q** AND YOU SAID THAT WAS JOINTLY WITH AMADOR -- I'M SORRY --
3 WITH SAN JOAQUIN AND CALAVERAS COUNTIES; IS THAT CORRECT?

4 **A** THAT'S CORRECT.

5 **Q** HOW IS THAT -- EXACTLY WHAT WAS THE PROCESS BY WHICH YOU
6 WERE ASSESSING WHAT YOU WOULD NEED TO DO TO CREATE A REENTRY
7 FACILITY?

8 **MR. SANGSTER:** OBJECTION. IRRELEVANT. OBJECTION.
9 IRRELEVANT.

10 **JUDGE HENDERSON:** GO ON. YOU CAN ANSWER.

11 **THE WITNESS:** THE REASON FOR THE REENTRY WAS TO TRY
12 TO GET SOME TRAINING AND COUNSELING TO PEOPLE COMING OUT OF CDCR
13 THAT WOULD BE RETURNING TO THE THREE COUNTIES SO THEY WOULD BE
14 BETTER PREPARED TO ENTER SOCIETY AND BE SUCCESSFUL, THEREBY
15 CUTTING DOWN THE RECIDIVISM RATE.

16 **MR. SANGSTER:** MOVE TO STRIKE. NON-RESPONSIVE.

17 **JUDGE HENDERSON:** OVERRULED.

18 **BY MS. BARLOW**

19 **Q** WILL YOU MEET WITH CDCR AND EVALUATE DATA TO DETERMINE WHAT
20 THE NEEDS MIGHT BE OF PEOPLE COMING BACK INTO A REENTRY
21 FACILITY?

22 **A** YES.

23 **Q** DID THEY PROVIDE YOU WITH WHAT'S CALLED COMPAS ASSESSMENT
24 DATA AS PART OF THAT PROCESS?

25 **A** YES, THEY DID.

1 **Q** IF WE COULD PUT UP DI 647?

2 **MR. SANGSTER:** YOUR HONOR, WE HAVE -- I UNDERSTAND
3 SOME OF THE OBJECTIONS ARE RESERVED, BUT WE'VE OBJECTED TO THIS
4 ON THE GROUNDS IT'S HEARSAY AND AN IMPROPER COMPILATION. THE
5 UNDERLYING DATA WAS NEVER PROVIDED.

6 **MS. BARLOW:** THESE ARE REPORTS FROM CDCR, AND
7 MR. LEWIS HAS INDICATED TO ME THESE ARE OFFICIAL RECORDS OF
8 CDCR, YOUR HONOR. IF WE NEED TO CALL SOMEBODY OR GET A
9 DECLARATION, I GUESS WE CAN DO THAT, BUT THAT SEEMS --

10 **MR. SANGSTER:** THE DEFENDANTS HAVE ACTUALLY AGREED
11 THAT THESE ARE ONLY TO BE CONSIDERED FOR A LIMITED PURPOSE.

12 **MS. BARLOW:** THAT'S ALL I'M ASKING HIM ABOUT.

13 **JUDGE KARLTON:** LET'S FIND OUT WHAT THE LIMITED
14 PURPOSE IS.

15 **MR. SANGSTER:** THE LIMITED PURPOSE IS TO SHOW THERE
16 IS, IN FACT, A RISK ASSESSMENT PROGRAM IN PLACE.

17 **JUDGE HENDERSON:** WOULD YOU AGREE WITH THAT?

18 **MS. BARLOW:** THAT'S NOT WHAT THIS WITNESS GOT THEM
19 FOR.

20 **JUDGE HENDERSON:** HE SAID THERE WAS AN AGREEMENT THAT
21 THESE WOULD BE INTRODUCED FOR A LIMITED PURPOSE. HE STATED HIS
22 UNDERSTANDING. DO YOU DISAGREE?

23 **MS. BARLOW:** NOBODY ASKED ME ABOUT SUCH AN AGREEMENT,
24 YOUR HONOR. IT'S THE FIRST I HEARD OF IT.

25 **JUDGE HENDERSON:** WHO DID YOU ENTER INTO THE

1 AGREEMENT WITH?

2 **MR. SANGSTER:** MAY I LET MS. EVENSON RESPOND ON THIS,
3 YOUR HONOR? I KNOW IT'S MY WITNESS, BUT SHE'S THE ONE WHO
4 HANDLED THIS.

5 **JUDGE HENDERSON:** OKAY.

6 **MS. EVENSON:** JUST BRIEFLY, YOUR HONOR. DEFENDANTS
7 OFFERED THIS SAME EXHIBIT, AND PLAINTIFFS OBJECTED, AND IN THE
8 MEET AND CONFER PROCESS, AND I BELIEVE A FINAL DOCUMENT WAS
9 FILED WITH THE COURT, WITH RESPECT TO THE OBJECTIONS, AND THE
10 RESPONSES TO OBJECTIONS TO DEFENDANT'S EXHIBITS, AND IN THAT
11 DOCUMENT MY UNDERSTANDING IS THAT DEFENDANTS AGREED TO THE USE
12 OF THESE DOCUMENTS ONLY FOR THE VERY LIMITED PURPOSE TO SHOW
13 THAT THEY WERE DOING THE RISK ASSESSMENT, BUT NOT FOR THE TRUTH
14 OF THE MATTERS CONTAINED IN THEM.

15 **MS. BARLOW:** I AM NOT OFFERING THEM FOR THE TRUTH OF
16 THE MATTERS CONTAINED IN THEM, YOUR HONOR.

17 **JUDGE HENDERSON:** ARE YOU OFFERING THEM TO SHOW THEY
18 ARE DOING THE RISK ASSESSMENT?

19 **MS. BARLOW:** NO, YOUR HONOR. IT HAS TO DO WITH AB
20 900 REENTRY AND HOW HE FORMED HIS OPINIONS IN THIS MATTER, THE
21 INFORMATION THAT HE WAS USING.

22 **JUDGE KARLTON:** I DON'T UNDERSTAND. MS. EVENSON SAID
23 "THE DEFENDANTS." BUT YOU SAY YOU DIDN'T KNOW ANYTHING ABOUT
24 IT.

25 **JUDGE REINHARDT:** SHE SAID THE STATE.

1 **JUDGE KARLTON:** NO, SHE DIDN'T. SHE SAID "THE
2 DEFENDANTS."

3 **MS. BARLOW:** YOUR HONOR, I'VE NEVER SEEN SUCH A
4 STIPULATION. I HAVE NEVER BEEN ASKED TO AGREE TO ONE. THAT MAY
5 HAVE BEEN ENTERED INTO WITH RESPECT TO PHASE ONE. I DON'T KNOW.

6 **MR. LEWIS:** YOUR HONOR, IF I MIGHT? KYLE LEWIS FOR
7 THE STATE DEFENDANTS.

8 THIS DOCUMENT THAT'S UP RIGHT NOW IS ACTUALLY NOT A
9 DEFENDANT DOCUMENT. THIS IS DEFENDANT INTERVENOR DOCUMENT.

10 COMPAS DATA WAS RELEASED. IT WAS RELEASED TO SHOW
11 THE CAPABILITIES OF THE SYSTEM. THERE IS NO INDICATION THAT
12 IT'S INACCURATE FOR ANY REASON WHATSOEVER. IT WAS VERIFIED BY
13 TOM HOFFMAN. IT IS IN HIS AFFIDAVIT.

14 BUT THIS INFORMATION RIGHT HERE THAT IS BEING RELIED
15 UPON APPARENTLY BY THE WITNESS IS IN THE CONTROL OF THE WITNESS
16 AND THE DEFENDANT INTERVENOR, NOT THE STATE. THIS IS A
17 COMPLETELY DIFFERENT EXHIBIT THAN THAT WAS --

18 **JUDGE KARLTON:** ARE YOU TELLING ME THAT THE STATE
19 DOESN'T VERIFY THIS IS A DOCUMENT OF THE STATE?

20 **MR. LEWIS:** IT'S NOT A STATE DEFENDANT --

21 **JUDGE KARLTON:** I BELIEVE THAT. IT'S LATE IN THE
22 AFTERNOON, AND I'M REALLY STARTING TO LOSE IT.

23 SIR, DO YOU -- ARE YOU NOT PREPARED TO SAY THAT THIS
24 DOCUMENT WAS PREPARED BY THE STATE?

25 **MR. LEWIS:** THIS DOCUMENT RIGHT HERE, TO MY

1 KNOWLEDGE, WAS NOT PREPARED BY THE STATE. THIS DOESN'T EVEN
2 HAVE OUR -- THE EXHIBIT NUMBER ON IT IS NOT OUR EXHIBIT NUMBER.

3 **JUDGE HENDERSON:** LET'S TAKE THIS OFF THE SCREEN AND
4 MOVE ON.

5 **BY MS. BARLOW**

6 **Q** SHERIFF RYAN, DID YOU RECEIVE THIS DOCUMENT FROM CDCR?

7 **A** YES, MA'AM.

8 **Q** AND WHAT WAS THE PURPOSE OF THE DOCUMENT, TO YOUR
9 UNDERSTANDING?

10 **A** IT WAS RECEIVED IN CONNECTION WITH THE REENTRY FACILITY TO
11 TRY TO IDENTIFY RISK ASSOCIATED WITH THOSE COMING OUT OF THE
12 FACILITY THAT THE REENTRY PIECE WOULD HAVE TO IDENTIFY AND
13 TREAT.

14 **Q** SO FOR PURPOSES OF PLANNING WHAT YOU WOULD DO IN A REENTRY
15 FACILITY, THAT'S WHY YOU GOT THE DATA?

16 **A** THE SORT OF SERVICES THAT WOULD BE REQUIRED, YES.

17 **Q** OKAY. AND THEN DID YOU RECEIVE FURTHER DATA LATER?

18 THAT DOCUMENT, YOUR HONOR, ON 647 WAS FROM AUGUST OF
19 '07.

20 IS THAT CORRECT?

21 **A** TO THE BEST OF MY RECOLLECTION, YES.

22 **Q** AND DID YOU RECEIVE ADDITIONAL DATA OF A SIMILAR NATURE FROM
23 CDCR AFTER THAT DATE?

24 **A** I RECEIVED TWO ADDITIONAL COMPAS ASSESSMENTS IN 2008.

25 **Q** OKAY.

1 COULD WE PUT UP 468, PLEASE?

2 **JUDGE HENDERSON:** ARE WE GOING TO HAVE THE SAME
3 PROBLEM?

4 **MS. BARLOW:** I JUST WANT TO HAVE HIM IDENTIFY IT,
5 YOUR HONOR. WE CAN ARGUE ABOUT ITS ADMISSIBILITY LATER.

6 **JUDGE KARLTON:** I'M GOING TO ASK AGAIN. 648 -- PUT
7 IT UP SO HE CAN LOOK AT IT. IT SEEMS TO ME WHAT -- WELL, NEVER
8 MIND.

9 **MR. LEWIS:** THIS DOES APPEAR TO BE A COMPAS
10 ASSESSMENT, YOUR HONOR, BUT IT IS NOT INFORMATION PRODUCED BY
11 THE STATE DEFENDANTS IN THE COURSE OF DISCOVERY.

12 **JUDGE KARLTON:** I BELIEVE THAT. MY QUESTION IS
13 DIFFERENT. IS THIS A DOCUMENT PRODUCED BY THE STATE?

14 **MR. LEWIS:** YES, IT IS, YOUR HONOR.

15 **JUDGE KARLTON:** AND YOU GOT IT FROM THE STATE?

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

17 **MS. BARLOW:** MAY I PROCEED? THANK YOU, YOUR HONOR.

18 **BY MS. BARLOW**

19 **Q** AND WAS THIS DATA ALSO PART OF HOW YOU WERE EVALUATING WHAT
20 TO DO WITH THE FOLKS WHO MIGHT END UP IN A REENTRY FACILITY IN
21 AMADOR COUNTY?

22 **A** YES, MA'AM.

23 **Q** DID YOU USE THIS DATA, AS WELL AS THE PRIOR DATA, IN
24 FORMULATING SOME OF YOUR OPINIONS ABOUT THE IMPACT OF A PRISON
25 RELEASE ORDER?

1 **JUDGE KARLTON:** THAT'S BEGGING TO HAVE THAT TESTIMONY
2 STRICKEN.

3 YOU USED THIS DATA TO MAKE YOUR DECISIONS ABOUT WHAT
4 YOU NEEDED TO DO, RIGHT?

5 **THE WITNESS:** YOUR HONOR, I USED ALL THREE REPORTS
6 COMBINED, YES, SIR.

7 **JUDGE KARLTON:** ALL RIGHT. NOW WE HAVE A PROBLEM.

8 **MS. BARLOW:** IF WE COULD PUT UP 649, PLEASE?

9 **MR. SANGSTER:** SAME OBJECTION, YOUR HONOR.

10 **JUDGE HENDERSON:** PROCEED. YOU'LL HAVE A RUNNING
11 OBJECTION ON THIS AREA.

12 **JUDGE KARLTON:** LET'S FIND OUT WHAT THE STATE SAYS.

13 **MR. LEWIS:** YES, YOUR HONOR. IT APPEARS TO BE A CDCR
14 DOCUMENT, BUT IT WAS NOT PRODUCED BY THE STATE DEFENDANTS.

15 **JUDGE KARLTON:** BUT YOU RECEIVED THIS DOCUMENT FROM
16 CDCR?

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

18 **MS. BARLOW:** FINALLY, IF WE COULD PUT UP 650?

19 (DOCUMENT DISPLAYED.)

20 **BY MS. BARLOW**

21 **Q** NOW, THIS IS A -- PURPORTS TO BE, AND I'LL ASK MR. LEWIS TO
22 CONFIRM, STATEWIDE SUMMARY OF COMPAS RISK ASSESSMENT DATA,
23 CORRECT?

24 **A** YES, MA'AM.

25 **Q** AND YOU USED JUST THE PORTION RELATING TO AMADOR COUNTY IN

1 YOUR OPINIONS, CORRECT?

2 **A** THAT'S CORRECT.

3 **Q** ALL RIGHT.

4 **MS. BARLOW:** DO YOU WANT HIM TO CONFIRM THIS IS A
5 STATE DOCUMENT, YOUR HONOR?

6 **JUDGE KARLTON:** I THINK THIS HAS COME IN BEFORE, HAS
7 IT NOT? NO? BUT THERE'S NO OBJECTION, SO LET'S GO ON.

8 **MR. SANGSTER:** THERE WAS AN OBJECTION, YOUR HONOR. I
9 THOUGHT I HAD A STANDING OBJECTION.

10 **JUDGE HENDERSON:** I HAVE SAID HE HAD A STANDING
11 OBJECTION.

12 **JUDGE KARLTON:** I DIDN'T UNDERSTAND THERE WAS AN
13 OBJECTION.

14 **MR. LEWIS:** YOUR HONOR, IF I COULD CLARIFY? THIS WAS
15 A DOCUMENT THAT WAS PRODUCED. IT IS ON STATE DEFENDANTS'
16 CURRENT EXHIBIT LIST. THIS IS ONE OF THE COMPAS DOCUMENTS. THE
17 OTHER ONES WERE NOT PRODUCED BY THE STATE DEFENDANTS.

18 **JUDGE KARLTON:** WE'LL HAVE TO SORT IT OUT IN DUE
19 COURSE, MA'AM. YOU MAY PROCEED.

20 **BY MS. BARLOW**

21 **Q** NOW, WITHOUT KNOWING THAT THE STATE PRODUCED THESE, BUT
22 WITHOUT BEING ABLE TO TELL -- SAY PERSONALLY THAT THE DATA IN
23 THEM IS CORRECT, WHAT DID YOU USE THE DATA FOR?

24 **A** I TRIED TO TAKE A LOOK AT WHAT THE NUMBERS WERE FOR AMADOR
25 COUNTY WITH REGARDS TO THE RISK THAT WE COULD EXPECT FROM PEOPLE

1 RELEASED FROM STATE PRISON INTO OUR COMMUNITY AND THE SORT OF
2 SUPPORT MECHANISMS THAT THEY WOULD NEED.

3 **Q** OKAY. AND DID YOU USE OTHER DATA IN TRYING TO ASSESS WHAT
4 KIND OF IMPACTS THERE WOULD BE?

5 **A** THE OTHER DATA HAPPENED TO BE THE STAFFING LEVELS OF THE
6 OTHER AGENCIES THAT WOULD BE IMPACTED BY THE RELEASE.

7 **Q** AND YOUR HISTORY WITH PAROLEES IN GENERAL, IS THAT SOMETHING
8 YOU ALSO CONSIDERED?

9 **A** YES, MA'AM.

10 **Q** DO YOU KNOW HOW MANY PAROLEES YOU HAD IN AMADOR COUNTY IN
11 APPROXIMATELY 2007/2008 TIMEFRAME?

12 **A** WHEN I CHECKED THE WEBSITE, THE NUMBERS FOR JUNE --

13 **MR. SANGSTER:** EXCUSE ME, YOUR HONOR. LACKS
14 FOUNDATION, PERSONAL KNOWLEDGE AND THE ANSWER WAS
15 NON-RESPONSIVE.

16 **JUDGE HENDERSON:** WHOSE WEBSITE DID YOU CHECK?

17 **THE WITNESS:** IT WAS CDCR'S AND PAROLE'S WEBSITE,
18 YOUR HONOR.

19 **JUDGE HENDERSON:** WE'VE ALLOWED THIS IN THE PAST. GO
20 ON.

21 **BY MS. BARLOW**

22 **Q** GO AHEAD. YOU CAN ANSWER THE QUESTION. WHAT DID YOU
23 DETERMINE FROM THAT?

24 **A** I LOST MY TRAIN OF THOUGHT NOW.

25 **Q** HOW MANY PAROLEES DID YOU HAVE IN AMADOR COUNTY?

1 **A** WE HAD, ACCORDING TO THE JUNE '07 REPORT, 151 PAROLEES.

2 **Q** AND HOW MANY PAROLEES WERE ARRESTED IN AMADOR COUNTY IN
3 2007?

4 **A** WE HAD A TOTAL OF 74 ARRESTS.

5 **Q** AND HOW MANY OF THOSE PAROLEES -- HOW MANY PAROLEES TOTAL
6 WERE ARRESTED ON NEW CHARGES IN 2007?

7 **A** THERE WERE 43.

8 **Q** NOW, HAVE YOU COME TO A CONCLUSION ABOUT HOW MANY PERSONS
9 YOU WOULD GET BACK INTO AMADOR COUNTY, EITHER THROUGH DIVERSION,
10 EARLY RELEASE, OR ANY OF THE OTHER METHODOLOGIES PROPOSED BY
11 PLAINTIFFS, IF 52,000 PEOPLE ARE REDUCED FROM THE PRISON
12 POPULATION?

13 **A** BASED ON OUR ONE PERCENT OF THE STATE PRISON POPULATION, I
14 EXPECT TO GET 52.

15 **JUDGE HENDERSON:** DO YOU HAVE ONE PERCENT OF THE
16 STATE'S PRISON POPULATION, SIR?

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

18 **JUDGE HENDERSON:** AMADOR COUNTY HAS ONE PERCENT?

19 **THE WITNESS:** (NODS HEAD.)

20 **JUDGE HENDERSON:** I'M JUST ASKING.

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

22 **JUDGE HENDERSON:** OKAY.

23 **BY MS. BARLOW**

24 **Q** THAT'S 52 ADDITIONAL TO THE 150 OR SO YOU HAVE NOW?

25 **A** THAT WOULD BE MY UNDERSTANDING, YES.

1 **Q** AND DO YOU EXPECT THAT 52 PEOPLE RELEASED INTO YOUR
2 COMMUNITY, ON TOP OF WHAT YOU ALREADY HAVE, OVER THE SPACE OF
3 TWO YEARS IS GOING TO HAVE AN IMPACT ON LAW ENFORCEMENT OR CRIME
4 IN THE COMMUNITY?

5 **A** ABSOLUTELY. THAT'S A 25 PERCENT INCREASE OVER TWO YEARS IN
6 OUR CURRENT PAROLEE POPULATION.

7 **Q** TWENTY-FIVE PERCENT INCREASE OVER TWO YEARS?

8 **A** YES.

9 **Q** I'M SURE PLAINTIFFS' COUNSEL IS GOING TO ASK YOU, SO I'M
10 JUST GOING TO ASK YOU MYSELF. FIFTY-TWO PEOPLE DOESN'T SEEM
11 LIKE THAT MANY PEOPLE, SHERIFF.

12 **JUDGE HENDERSON:** THAT'S NOT A BASIS FOR YOU
13 QUESTIONING, TO ANTICIPATE --

14 **JUDGE KARLTON:** I MEAN, IF YOU HAVE A QUESTION, YOU
15 CAN ASK.

16 **MS. BARLOW:** I'M ASKING. I'M JUST ASKING.

17 **JUDGE HENDERSON:** THE EDITORIAL, YOU DON'T HAVE TO DO
18 THAT.

19 **MS. BARLOW:** I APOLOGIZE.

20 **BY MS. BARLOW**

21 **Q** COULD YOU EXPLAIN TO THE COURT WHY YOU THINK THERE WILL BE
22 AN IMPACT EVEN IF IT'S ONLY 52 PEOPLE?

23 **A** BASED ON THE RESOURCES AVAILABLE TO DEAL WITH THAT
24 POPULATION, NOT ONLY WITHIN MY PARTICULAR AGENCY, BUT AS FAR AS
25 THE DISTRICT ATTORNEY, THE COURT'S BEHAVIORAL HEALTH, PROBATION,

1 ALL THE PEOPLE THAT WILL BE IMPACTED, THEY'RE SHORT STAFFED AND
2 LOSING STAFF AS WE SPEAK, AND WE DON'T HAVE ENOUGH, REALLY, TO
3 HAVE A GOOD HANDLE ON THE NUMBER OF PEOPLE WE HAVE CURRENTLY.

4 **Q** SO IF YOU GOT 52 CUMULATIVELY, WHAT KIND OF RECIDIVISM RATE
5 WOULD YOU EXPECT FOR THEM?

6 **A** BASED ON THE DATA THAT I LOOKED AT, WE ARE LOOKING AT ABOUT
7 60 PERCENT RECIDIVISM OF THOSE PEOPLE.

8 **Q** SO 60 PERCENT OF 52, WHAT DOES THAT DO TO YOUR JAIL
9 POPULATION?

10 **A** CONSIDERING 10 TO 15 PERCENT OVER ALREADY, NOT KNOWING WHAT
11 THE POPULATION IS GOING TO DO IN THE NEXT TWO YEARS DURING THE
12 COURSE OF THIS, WE ARE GOING TO BE EXCESSIVELY OVER. I WOULD
13 EXPECT THAT MY NUMBER OF FELON POPULATION, THE PERCENTAGE WOULD
14 GO UP OVER 80 PERCENT. WE WOULD BE RELEASING MORE AND MORE
15 SIGNIFICANT OFFENDERS IN THE COMMUNITY.

16 **Q** SHERIFF, DID YOU MEAN TO SAY .1 PERCENT OF THE POPULATION --

17 **A** I'M SORRY .1 PERCENT. I APOLOGIZE.

18 **Q** ONE-TENTH OF ONE PERCENT?

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

20 **BY MS. BARLOW**

21 **Q** BACK UP. HOW EXACTLY WAS THE COMPAS DATA THAT WAS SPECIFIC
22 TO AMADOR COUNTY RELEVANT TO YOUR ASSESSMENT OF THE IMPACTS?

23 **A** WHAT I DID WAS I TOOK THE DATA, TOOK THE PERCENTAGES THAT
24 CAME OUT OF THERE THAT I COULD ANTICIPATE AND APPLIED THAT TO
25 OUR NUMBERS. USING THAT, I CAME UP WITH AN APPROXIMATION OF THE

1 NEEDS OF THOSE INDIVIDUALS, AND ALSO THE RECIDIVISM RISK.

2 **Q** SO YOU WERE -- AND IF I'M WRONG TELL ME. YOU WERE
3 ANTICIPATING THAT PEOPLE THAT MIGHT GET RELEASED EARLY THROUGH A
4 CAP OR OTHER KIND OF ORDER WOULD BE SIMILAR TO WHAT CDCR WAS
5 PROPOSING TO GO INTO REENTRY FACILITIES?

6 **A** THAT IS CORRECT. I KNOW THAT EVEN WITHOUT THE REENTRY
7 FACILITIES, THE PEOPLE THAT ARE GETTING RELEASED CURRENTLY,
8 BASICALLY, GET A BUS TICKET AND \$200. THEY HAVE NO REENTRY,
9 WHICH WOULD BE VERY SIMILAR TO WHAT WE ARE LOOKING AT WITH THIS
10 POPULATION, IF I UNDERSTAND IT CORRECTLY.

11 **Q** OKAY. AND DID THAT DATA INFORM YOUR DECISION ABOUT HOW MUCH
12 OF AN IMPACT YOU MIGHT HAVE?

13 **A** IT DID, IN A LOT OF DIFFERENT AREAS.

14 **Q** AND IS THAT DESCRIBED IN YOUR DECLARATION?

15 **A** YES, MA'AM, IT IS.

16 **MS. BARLOW:** I HAVE NOTHING FURTHER. THANK YOU.

17 **JUDGE HENDERSON:** OKAY. ANYTHING FROM STATE
18 DEFENDANT?

19 **MR. LEWIS:** NOTHING, YOUR HONOR. THANK YOU.

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

21 **MR. SANGSTER:** THANK YOU, YOUR HONOR. ED SANGSTER
22 FOR THE PLAINTIFFS.

23 **JUDGE KARLTON:** WILL YOU LIFT THAT MICROPHONE, SIR?
24 THANK YOU.

25 **MS. BARLOW:** I APOLOGIZE FOR BEING SO SHORT.

CROSS-EXAMINATION BY MR. SANGSTER

1
2 **BY MR. SANGSTER**

3 **Q** IS THE 52 PEOPLE BASED ON ONE PERCENT OR .1 PERCENT?

4 **A** .1 PERCENT.

5 **Q** OKAY. YOU SAID THAT YOUR JAIL IS REGULARLY OVERCAPACITY BY
6 10 TO 15 PERCENT. WHAT KINDS OF PROBLEMS DOES THAT CREATE FOR
7 YOU?

8 **A** IT CREATES CLASSIFICATION -- NOT CLASSIFICATION, BUT
9 SEGREGATION ISSUES FOR US. IT CREATES SAFETY ISSUES, NOT ONLY
10 FOR STAFF, BUT INMATES ALIKE. IT CAUSES US DIFFICULTY WITH
11 REGARDS TO PROVIDING PROGRAMMING. IT CAUSES US PROBLEMS IN
12 STAFFING WHEN WE HAVE TO PULL PEOPLE OUT TO TRANSPORT TO COURT.
13 THERE'S A LOT OF --

14 **Q** SO YOU START ENCOUNTERING SAFETY ISSUES AT 10 TO 15 PERCENT
15 ABOVE RATED CAPACITY?

16 **A** THEY ARE AGGRAVATED AT THAT LEVEL. THEY ARE ALWAYS EXISTING
17 IN A FACILITY. THERE'S ALWAYS A DANGER INVOLVED.

18 **Q** OKAY. YOU TALKED ABOUT THE NUMBER OF ARRESTS THAT WERE MADE
19 OF PAROLEES. WHAT WAS THAT NUMBER?

20 **A** THE NUMBER WAS 74 FOR 2007.

21 **Q** AND HOW MANY PEACE OFFICERS IN AMADOR COUNTY MAKE ARRESTS,
22 THAT IS, ARE BOOKED INTO THE AMADOR COUNTY JAIL?

23 **A** I'VE GOT 50 STAFF, INCLUDING MYSELF. THE POLICE DEPARTMENT
24 IN IONE HAS SEVEN, INCLUDING THE CHIEF. THE POLICE DEPARTMENT
25 IN JACKSON HAS 11, INCLUDING THE CHIEF. AND I BELIEVE THE

1 POLICE DEPARTMENT IN SUTTER CREEK HAS EIGHT, INCLUDING THE
2 CHIEF. AND HIGHWAY PATROL IS ALSO THERE.

3 **Q** ALL RIGHT. SO YOU'VE GOT ROUGHLY 70 PEOPLE, PLUS THE
4 HIGHWAY PATROL, MAKING ARRESTS THAT ARE BOOKED INTO AMADOR
5 COUNTY JAILS?

6 **A** ASSUMING WE ARE FULLY STAFFED, THAT IS CORRECT. ACTUALLY,
7 SOME OF THOSE ARE NOT -- SOME OF THOSE OFFICERS THAT WE HAVE ARE
8 ASSIGNED TO COURT RESPONSIBILITY, OR ASSIGNED TO ADMINISTRATION,
9 OR ASSIGNED TO A NARCOTICS TASK FORCE.

10 **Q** WHAT I WANT TO GIVE THIS COURT IS SOME SENSE OF HOW MANY
11 PEOPLE ARE MAKING THE ARRESTS IN AMADOR COUNTY.

12 **A** PATROL STAFF -- EXCUSE ME. PATROL STAFF IS ALLOCATED AT 32
13 LESS COURT SECURITY STAFF. I WOULD SAY 30, 30 DEPUTIES ON THE
14 ROAD CERTAIN SHIFTS.

15 **Q** SO 50 PEOPLE MAKING THE ARRESTS, PLUS THE HIGHWAY PATROL?

16 **A** THAT'S MY BEST ESTIMATE, YES, SIR.

17 **Q** IN THE COURSE OF THE YEAR, THOSE 50 PEOPLE ARRESTED 74
18 PAROLEES?

19 **A** YES, SIR.

20 **Q** DID THE 74 PAROLEES INCLUDE ARRESTS BY PAROLE AGENTS?

21 **A** I DIDN'T SEE ANY ON THE PRINTOUT. I TAKE THAT BACK. I
22 BELIEVE THERE WAS ONE.

23 **Q** WELL, YOU TOLD THE COURT ON DIRECT THAT THERE WERE 43
24 ARRESTS OF PAROLEES DURING THE COURSE OF THE YEAR, AND I TAKE IT
25 THAT'S 43, WHICH THE ROUGHLY 50 OFFICERS --

1 **A** THOSE ARE 43 OF THE 74 ON FRESH CHARGES IN ADDITION TO
2 THE --

3 **Q** IS THE NUMBER 43 OR 23?

4 **A** THE NUMBER IS 43.

5 **Q** IN 2007 THE NUMBER IS 43?

6 **A** YES.

7 **Q** I'D LIKE TO SHOW YOU A COPY OF YOUR DECLARATION.

8 **MS. BARLOW:** WE ISSUED AN ERRATA TO THE DECLARATION
9 THAT COUNSEL WAS NOTIFIED ABOUT.

10 **MR. SANGSTER:** I'M SORRY.

11 **JUDGE HENDERSON:** SHE SAID SHE ISSUED AN ERRATA WHICH
12 WAS SERVED TO YOU THAT WOULD CORRECT, I ASSUME, WHATEVER YOU
13 WERE ABOUT TO DO.

14 **MR. SANGSTER:** OKAY.

15 **BY MR. SANGSTER**

16 **Q** DO YOU REMEMBER SEEING AN ERRATA -- SIGNING SOMETHING, SIR,
17 THAT CORRECTED YOUR DECLARATION FROM 23 TO 43?

18 **A** I DON'T RECALL IF I SIGNED IT OR NOT. THERE'S A DISCUSSION
19 ABOUT IT WITH COUNSEL, BUT I DON'T RECALL IF IT SIGNED IT.

20 **Q** AT ANY RATE, THE TOTAL NUMBER OF ARRESTS OF PAROLE --

21 **JUDGE KARLTON:** YOU MIGHT AS WELL DO WHATEVER YOU
22 WERE GOING TO DO, AND THEN COUNSEL WILL DEMONSTRATE THE ERRATA
23 SHEET.

24 **MR. SANGSTER:** AT 20 ARRESTS, YOUR HONOR. I THINK
25 I'M GOING TO MOVE ON. IT'S A DIFFERENCE BETWEEN 23 AND 43 --

1 **JUDGE REINHARDT:** IT'S NOT EARTHSHAKING, RIGHT?

2 **MR. SANGSTER:** PARDON ME?

3 **JUDGE REINHARDT:** IT'S NOT GOING TO BE DECISIVE IN
4 THIS CASE.

5 **MR. SANGSTER:** THAT'S -- I JUST WANTED TO GET THE
6 CORRECT NUMBER.

7 **JUDGE REINHARDT:** GO AHEAD. THAT'S FINE.

8 **BY MR. SANGSTER**

9 **Q** AT ANY RATE, HOW MANY TOTAL ARRESTS ARE BOOKED INTO AMADOR
10 COUNTY JAIL?

11 **A** WE HAD -- I DID THE FELONY COUNT THE OTHER DAY. I HAVE 876
12 FELONIES IN 2007.

13 **Q** HOW MANY TOTAL ARRESTS?

14 **A** I DON'T HAVE THAT NUMBER OFF THE TOP OF MY HEAD.

15 **Q** ARE YOU ABLE TO TELL US WHETHER IT'S -- THE TOTAL NUMBER IS
16 DOUBLE THE NUMBER OF FELONY ARREST?

17 **A** I CANNOT.

18 **Q** AT ANY RATE, THE NUMBER OF PAROLEE ARRESTS WAS A VERY SMALL
19 PERCENTAGE OF THE BOOKING OF THE TOTAL ARRESTS; YOU WOULD AGREE
20 WITH THAT?

21 **A** THE 74 ARRESTS REPRESENT, I BELIEVE, EIGHT AND A HALF
22 PERCENT OF THE TOTAL FELONY ARRESTS, YES.

23 **Q** ALL RIGHT. JUST THE FELONY ARRESTS?

24 **A** CORRECT.

25 **Q** NOW, IN YOUR DECLARATION YOU TALKED ABOUT THE IMPACT ON THE

1 LOCAL PROSECUTORS.

2 **A** RIGHT.

3 **Q** THERE'S SEVEN CRIMINAL PROSECUTORS?

4 **A** I JUST TALKED TO THE DA, AND HE'S DOWN TO SIX WITH THE
5 BUDGET CUTS.

6 **Q** AND SO THEY ARE DOING -- AT LEAST AT THE TIME YOU SIGNED
7 YOUR DECLARATION TWO MONTHS AGO, THEY WERE DOING CLOSE TO 400
8 CASES APIECE?

9 **A** THAT'S CORRECT.

10 **Q** AND SO IF EVERY NEW CRIME COMMITTED BY A PAROLEE WAS
11 PROSECUTED, THOSE PROSECUTIONS WOULD AMOUNT TO ABOUT ONE PERCENT
12 OF THE PROSECUTORS' CASELOAD?

13 **MS. BARLOW:** ASSUMES FACTS NOT IN EVIDENCE, THAT THEY
14 ARE ALL GOING TO BE ARRESTED EACH TIME THEY COMMIT A CRIME.

15 **JUDGE KARLTON:** IT'S NOT AN OBJECTION.

16 **MS. BARLOW:** IT ASSUMES FACTS NOT IN EVIDENCE.

17 **JUDGE HENDERSON:** OVERRULED. YOU MAY ANSWER THE
18 QUESTION.

19 **THE WITNESS:** WOULD YOU REPEAT THE QUESTION, SIR?

20 **BY MR. SANGSTER**

21 **Q** THERE'S ABOUT 3,000 PROSECUTIONS ONGOING AT ANY ONE TIME,
22 RIGHT?

23 **A** THAT'S CORRECT.

24 **Q** AND EVEN IF YOU -- EVEN IF EVERY SINGLE PAROLEE WAS
25 PROSECUTED ALL AT THE SAME TIME, THE PROSECUTIONS OF PAROLEES

1 WOULD BE TAKING UP LESS THAN ONE PERCENT OF THE PROSECUTORS'
2 CASELOAD, RIGHT?

3 **A** ASSUMING THEY ONLY COMMIT ONE.

4 **Q** ASSUMING WHAT?

5 **A** ASSUMING THEY ONLY COMMIT ONE CRIME AND ARRESTED ONCE, YES.

6 **Q** YOU ALSO TALKED ABOUT THE IMPACT ON PROBATION IN YOUR
7 DECLARATION. THERE ARE 14 PROBATION OFFICERS?

8 **A** THEY HAVE BEEN CUT TO 11.

9 **Q** OKAY. YOU HAVE -- HOW MANY PEOPLE ARE ON PROBATION IN
10 AMADOR COUNTY RIGHT NOW?

11 **A** I DO NOT HAVE THAT NUMBER.

12 **Q** DO YOU REMEMBER TELLING THE COURT IN YOUR DECLARATION THAT,
13 AT LEAST WHEN THERE WERE 14 OF THEM, THERE WERE 300 CASES PER
14 PROBATION OFFICER?

15 **A** THAT NUMBER, IT WAS THE NUMBER I GAVE YOU AT THE TIME, YES.

16 **Q** ALL RIGHT. SO NOW IT'S GONE UP BECAUSE YOU HAVE FEWER
17 PROBATION OFFICERS?

18 **A** RIGHT. THEY ARE DISTRIBUTING THE 900 ADDITIONAL THROUGH 11
19 PEOPLE.

20 **Q** THE NUMBER OF PEOPLE ON PROBATION IN YOUR COUNTY DWARFS THE
21 NUMBER OF PEOPLE ON PAROLE, DOESN'T IT?

22 **A** THAT'S A FAIR STATEMENT, YES.

23 **MR. SANGSTER:** THAT'S ALL THE QUESTIONS I HAVE FOR
24 THIS WITNESS, YOUR HONOR.

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

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

2 **JUDGE HENDERSON:** REDIRECT?

3 **REDIRECT BY MS. BARLOW**

4 **BY MS. BARLOW**

5 **Q** JUST SO I CAN CLEAR THIS UP FOR THE RECORD, SHERIFF, WE HAD
6 DISCUSSION ABOUT THAT 23 NUMBER, AND IT WAS AN ERROR ON MY PART,
7 AND I ISSUED AN ERRATA. I DIDN'T ASK YOU TO SIGN ANYTHING,
8 RIGHT?

9 **A** NO, I DON'T HAVE A RECOLLECTION THAT YOU DID.

10 **Q** BUT THE CORRECT NUMBER IS 43?

11 **A** THE CORRECT NUMBER IS 43. THE NUMBER 23 WAS DRAWN FROM THE
12 WRONG DATABASE.

13 **Q** OKAY.

14 **A** IT GAVE FAULTY INFORMATION.

15 **MS. BARLOW:** GREAT. THANK YOU VERY MUCH. I HAVE
16 NOTHING FURTHER.

17 **JUDGE HENDERSON:** THANK YOU FOR APPEARING AND
18 TESTIFYING, SIR. YOU'RE EXCUSED. OKAY.

19 I ASSUME THAT'S IT.

20 **MR. SPECTER:** ISN'T THAT ENOUGH?

21 **JUDGE KARLTON:** NO.

22 **MR. SANGSTER:** MR. MACINTOSH I THOUGHT WAS ON
23 SCHEDULE FOR TODAY, AND THEN THERE IS AN EVIDENTIARY ISSUE
24 THAT --

25 **JUDGE KARLTON:** MR. MACINTOSH IS NOT ON ANY LIST,

1 SIR.

2 **JUDGE REINHARDT:** NOT ON OUR LIST.

3 WE'LL, WE'RE HERE. IS MR. MACINTOSH HERE?

4 **MR. SANGSTER:** SOMETHING HAS CHANGED, YOUR HONOR, AND
5 I WASN'T AWARE OF IT.

6 I GUESS THAT'S IT. I HAD ONE MORE WITNESS ON THE
7 LIST, BUT THERE IS AN EVIDENTIARY ISSUE THAT MS. BARLOW AND I
8 WOULD LIKE TO BRING TO THE COURT'S ATTENTION.

9 **JUDGE HENDERSON:** OKAY.

10 **MS. BARLOW:** I'LL LET YOU --

11 **MR. SANGSTER:** WE HAVE A WITNESS COMING TOMORROW
12 SCHEDULED FROM ORANGE COUNTY. THERE'S A FAIRLY NARROW
13 EVIDENTIARY ISSUE THAT'S GOING TO DETERMINE WHETHER THE WITNESS
14 COMES OR NOT, AND YOUR HONORS EARLIER SAID TO BRING TO YOUR
15 ATTENTION WHETHER --

16 **JUDGE KARLTON:** JUST TELL US WHAT THE PROBLEM IS.

17 **MR. SANGSTER:** OKAY. THE WITNESS IS COMING TO TRY
18 AND AUTHENTICATE THE TRANSCRIPT OF A SPEECH GIVEN BY THE ORANGE
19 COUNTY SHERIFF TO THE BOARD OF SUPERVISORS. THE WITNESS DIDN'T
20 GIVE THE SPEECH. IT'S OUR POSITION THAT THERE'S NO FOUNDATION
21 FOR THIS AS AN OFFICIAL RECORD, AND SO WE'VE ENDED UP IN AN
22 IMPEDIMENT, AND THE SOLE ISSUE -- WE HAD OFFERED TO STIPULATE TO
23 THIS WITNESS'S TESTIMONY WITHOUT OBJECTION -- WELL, NO, THERE
24 WAS -- THAT WAS THE OBJECTION, AND SO WE'RE FACED WITH THIS
25 WITNESS COMING FOR THIS --

1 **JUDGE KARLTON:** WHY WOULD IT BE RELEVANT THAT THE
2 SHERIFF MADE A SPEECH TO THE BOARD OF SUPERVISORS?

3 **MS. BARLOW:** IT'S THE RECORD, YOUR HONOR, AND THE
4 RECORD CONTAINS DATA -- THE OFFICIAL RECORD FROM THE SHERIFF'S
5 DEPARTMENT CONTAINS DATA ABOUT CRIMES THAT OCCURRED DURING EARLY
6 RELEASE IN ORANGE COUNTY. THAT'S WHAT THEY DON'T WANT YOU TO
7 SEE.

8 **JUDGE KARLTON:** AND YOU ARE NOT CALLING THE SHERIFF
9 OR SOMEBODY TO DEMONSTRATE THESE DOCUMENTS; YOU JUST WANT TO
10 INTRODUCE A SPEECH?

11 **MS. BARLOW:** NO, IT'S NOT A SPEECH, ACTUALLY, YOUR
12 HONOR. IT'S A POWERPOINT PRESENTATION THAT WAS PREPARED TO GO
13 ALONG WITH THE SPEECH, AND IT'S -- FORMS THE BASIS OF ANOTHER
14 WITNESS'S OPINIONS FROM ORANGE COUNTY, BECAUSE OF IMPACTS OF
15 EARLY RELEASE THAT HAD OCCURRED PREVIOUSLY. IT'S A PUBLIC
16 RECORD AND --

17 **JUDGE KARLTON:** NOT EVERYTHING THAT'S SAID TO THE
18 BOARD OF SUPERVISORS QUALIFIES IT -- QUALIFIES AS A PUBLIC
19 RECORD IN THE SENSE THAT, YES, THAT OCCURRED.

20 **MS. BARLOW:** YES.

21 **JUDGE KARLTON:** THE QUESTION IS WHETHER IT'S TRUE OR
22 NOT.

23 **MS. BARLOW:** WELL, YOUR HONOR, THE WITNESS WOULD
24 TESTIFY, IF CALLED, THAT THE DATA IN -- THE EARLY RELEASE DATA
25 WAS FROM INFORMATION DERIVED FROM THE SHERIFF'S DEPARTMENT'S

1 RECORDS. IT WAS COMPILED BY SHERIFF'S DEPARTMENT STAFF.

2 **JUDGE HENDERSON:** WHO IS THIS PERSON?

3 **MS. BARLOW:** MR. DOSTAL IS THE EXECUTIVE DIRECTOR OF
4 THE SHERIFF'S DEPARTMENT. HE HANDLES THE FINANCIAL MATTERS FOR
5 THE SHERIFF'S DEPARTMENT.

6 **JUDGE REINHARDT:** I ASSUME IT'S THE FORMER SHERIFF'S
7 SPEECH.

8 **MS. BARLOW:** WELL, IT'S STILL THE SHERIFF'S
9 DEPARTMENT, YOUR HONOR. IT HAPPENS TO HAVE A DIFFERENT SHERIFF
10 NOW.

11 **JUDGE REINHARDT:** IT DOESN'T MATTER WHOSE SPEECH IT
12 IS. IT'S THE FORMER SHERIFF.

13 **MS. BARLOW:** YES, IT WAS THE FORMER SHERIFF'S, YOUR
14 HONOR. IT WAS PRIOR TO THE EXPANSION OF THE MUSIC FACILITY, AND
15 IT'S PART OF WHAT LED TO THE EXPANSION --

16 **JUDGE REINHARDT:** PRIOR TO RESIGNATION OF THE SHERIFF
17 OR HIS REMOVAL.

18 **MS. BARLOW:** YES, YOUR HONOR.

19 **JUDGE KARLTON:** COULD WE TALK FOR JUST A MOMENT? I
20 THINK I'M JUST VERY TIRED, AND I'VE STOPPED THINKING.

21 (DISCUSSION HELD OFF THE RECORD.)

22 **JUDGE REINHARDT:** WHAT IS IT YOU WANT TO INTRODUCE?
23 IS IT JUST THE SPEECH OR YOU WANT TO INTRODUCE A POWERPOINT?

24 **MS. BARLOW:** IT'S A WRITTEN DOCUMENT, YOUR HONOR,
25 THAT WAS PREPARED BY THE SHERIFF'S DEPARTMENT IN THE ORDINARY

1 COURSE OF SHERIFF'S DEPARTMENT OFFICIALS TO PRESENT TO THE BOARD
2 OF SUPERVISORS INFORMATION ABOUT EARLY RELEASE CRIME STATISTICS
3 THAT LED TO A REQUEST TO EXPAND THE COUNTY'S JAILS FACILITIES.
4 IT FORMS THE BASIS FOR ANOTHER WITNESS'S, MR. JAMES, TESTIMONY,
5 AS TO WHY HE BELIEVES THERE WILL BE NEGATIVE IMPACTS IF THERE IS
6 A PRISON RELEASE ORDER.

7 **JUDGE REINHARDT:** BECAUSE HE HEARD THIS OR READ THIS
8 REPORT OR --

9 **MS. BARLOW:** YES, YOUR HONOR.

10 **MR. SCHUMANN:** HE COULDN'T HAVE READ IT BECAUSE IT'S
11 A POWERPOINT.

12 **MS. BARLOW:** IT'S A PRINTOUT OF THE POWERPOINT, YOUR
13 HONOR.

14 **JUDGE KARLTON:** OKAY. AND HE'S READ THE PRINTOUT?

15 **MS. BARLOW:** AND HE'S ALSO REVIEWED THE UNDERLYING
16 DATA.

17 **JUDGE KARLTON:** WHY DON'T YOU JUST CALL HIM?

18 **MS. BARLOW:** WE STIPULATED TO HIM BECAUSE I EXPECTED
19 WE WOULD HAVE TO AUTHENTICATE THE DOCUMENT THROUGH MR. DOSTAL.
20 IT'S HIS DECLARATION THAT IT'S ATTACHED TO.

21 **JUDGE KARLTON:** WHO IS COMING IN TO TALK ABOUT
22 WHATEVER IT IS YOU ARE GOING TO TALK ABOUT, NOT MR. DOSTAL, BUT
23 THE NEXT GUY?

24 **MS. BARLOW:** MR. JAMES HAS BEEN SUBMITTED ON HIS
25 DECLARATION.

1 **JUDGE KARLTON:** OKAY. SO HE'S NOT COMING IN; YOU
2 JUST WANT HIM, WHATEVER HIS TESTIMONY IS.

3 **MS. BARLOW:** HE RELIED ON THE DOCUMENT.

4 **JUDGE KARLTON:** NO, NO. I'M WITH YOU.

5 **MS. BARLOW:** YES.

6 **JUDGE KARLTON:** I'M JUST ASKING, IS HE COMING IN?

7 **MS. BARLOW:** NO.

8 **JUDGE KARLTON:** WON'T YOU STIPULATE THAT HE
9 REVIEWED -- YOU WON'T, I GATHER. HOW CAN YOU -- DOES HE SAY IN
10 HIS DECLARATION THAT'S ADMITTED INTO EVIDENCE THAT HE REVIEWED
11 THE DOCUMENT AND IT REFLECTS WHAT THE UNDERLYING DATA SAYS?

12 **MS. BARLOW:** MR. DOSTAL'S DECLARATION REFERS TO IT,
13 AND I OFFERED, IN LIGHT OF THE FOUNDATIONAL OBJECTION THAT
14 COUNSEL HAD, AS TO WHETHER OR NOT IT WAS A PUBLIC RECORD.

15 **JUDGE KARLTON:** FORGETTING --

16 **MS. BARLOW:** AN OFFICIAL RECORD. WE OFFERED TO
17 PROPOSE AN ADDITIONAL --

18 **JUDGE KARLTON:** I'M JUST ASKING A DIFFERENT QUESTION.

19 **MS. BARLOW:** OKAY.

20 **JUDGE KARLTON:** APPARENTLY, MR. JAMES, HIS
21 DECLARATION SAYS HE'S LOOKED AT THIS DOCUMENT AND HE'S LOOKED AT
22 THE DATA THAT WAS THE BASIS OF THIS DOCUMENT; IS THAT RIGHT?

23 **MS. BARLOW:** NO, YOUR HONOR. HE REFERS TO THE
24 PROBLEMS FROM EARLY RELEASE PREVIOUSLY AS PART OF THE BASIS FOR
25 HIS OPINION.

1 **JUDGE KARLTON:** I THOUGHT YOU JUST TOLD ME --

2 **MS. BARLOW:** YES, HE REFERS TO THE DOCUMENT IN HIS
3 DECLARATION. IT'S NOT ATTACHED TO HIS DECLARATION. IT WAS TO
4 BE AUTHENTICATED BY THE OTHER WITNESS.

5 **JUDGE KARLTON:** HE LOOKED AT THE DOCUMENT?

6 **MS. BARLOW:** YES.

7 **JUDGE KARLTON:** HE LOOKED AT THE UNDERLYING DATA?

8 **MS. BARLOW:** YES.

9 **JUDGE KARLTON:** AND HE'S PREPARED TO SAY THE
10 UNDERLYING DATA WHICH WAS DRAWN FROM THE SHERIFF'S DEPARTMENT IS
11 ACCURATELY REFLECTED IN THE DOCUMENT?

12 **MS. BARLOW:** MR. DOSTAL IS PROPOSED SAY THAT.

13 **JUDGE KARLTON:** MR. JAMES NEVER LOOKED AT THE
14 UNDERLYING --

15 **MS. BARLOW:** HE DIDN'T LOOK AT THE UNDERLYING DATA;
16 MR. DOSTAL DID.

17 **JUDGE KARLTON:** I'M TOO TIRED TO UNDERSTAND. I'LL DO
18 WHATEVER YOU SAY.

19 **MS. BARLOW:** ONE SUGGESTION THAT COUNSEL HAD WAS THAT
20 WE -- I CAN SUBMIT A SUPPLEMENTAL DECLARATION FROM MR. DOSTAL
21 EXPLAINING THE MANNER IN WHICH THE DATA WAS COMPILED AND
22 PREPARED, AND WE CAN RESOLVE IT THAT WAY. I WANTED TO DO THAT
23 BY STIPULATION, BUT COUNSEL THOUGHT WE SHOULD BRING THIS ISSUE
24 TO THE COURT.

25 **JUDGE KARLTON:** IF SHE PREPARES A DECLARATION FROM

1 MR. DOSTAL, OR WHOEVER, AND SAYS, I LOOKED AT THE DOCUMENT, I
2 LOOKED AT THE UNDERLYING DATA, THE DOCUMENT REPRESENTS A CORRECT
3 COMPILATION OF THE UNDERLYING DATA, WOULD YOU STILL OBJECT?

4 **MR. SANGSTER:** PROBABLY NOT, YOUR HONOR.

5 **JUDGE KARLTON:** WHY DON'T YOU JUST DO THAT?

6 **MS. BARLOW:** I WOULD BE HAPPY TO, YOUR HONOR.

7 **JUDGE KARLTON:** ALL RIGHT.

8 **MS. BARLOW:** THANK YOU.

9 **JUDGE KARLTON:** I DON'T KNOW WHAT I JUST DID BUT. . .

10 **JUDGE HENDERSON:** SO, WE HAVE HOW MANY WITNESSES
11 TOMORROW?

12 **MS. BARLOW:** YOUR HONOR, I BELIEVE THERE ARE -- I
13 HAVE ONE WITNESS, AND I BELIEVE THERE IS ONE -- I HAVE ONE
14 WITNESS TOMORROW, AND I BELIEVE IF -- SINCE WE'VE RESOLVED
15 MR. DOSTAL, AND I BELIEVE THERE IS A REBUTTAL WITNESS. IS THAT
16 IT.

17 **MR. SANGSTER:** THREE WITNESSES.

18 **MS. BARLOW:** THREE WITNESSES.

19 **MS. JOHNSON:** YOUR HONORS, THERE MAY BE --

20 **JUDGE HENDERSON:** THREE ALL TOGETHER OR THREE PLUS
21 HER ONE?

22 **MR. SANGSTER:** MY UNDERSTANDING IS THREE TOTAL.

23 **JUDGE REINHARDT:** THE STATE HAS HOW MANY?

24 **MS. JOHNSON:** PLAINTIFFS ARE SEEKING TO ADMIT AN
25 EXHIBIT 842 THAT WAS PREPARED BY SOMEONE IN THEIR OFFICE, WHICH

1 WE OBJECT TO ON NUMEROUS GROUNDS, INCLUDING HEARSAY. IF THEY
2 CONTINUE TO CONTINUE TO ATTEMPT TO ADMIT THAT DOCUMENT, WE ASK
3 THEY PRESENT THE PERSON WHO PREPARED THE DOCUMENT, WHICH IS A
4 COMPLEX DATA COMPILATION, SEVERAL PAGES TO TESTIFY.

5 **JUDGE HENDERSON:** I JUST HAD NODDING FROM MR. BIEN
6 INDICATING THEY ARE PREPARED TO DO THAT.

7 **MR. BIEN:** YES.

8 **JUDGE KARLTON:** IS THAT ONE OF THE THREE WITNESSES?

9 **MR. SANGSTER:** NO, I'M SORRY, YOUR HONOR. THAT'S A
10 FOURTH.

11 **JUDGE KARLTON:** THAT'S A FOURTH. BUT IF WE CAN DO
12 THE SAME THING, WE ARE DOING WITH MR. DOSTAL.

13 **MS. JOHNSON:** YOUR HONORS, WE WANT TO QUESTION THIS
14 WITNESS LIVE. IT IS THEIR OWN AGENT; IT'S NOT A THIRD PARTY.

15 **MR. BIEN:** THAT'S FINE.

16 **JUDGE KARLTON:** THIS GUY IS AN AGENT OF THE SHERIFF'S
17 DEPARTMENT, APPARENTLY.

18 **MS. JOHNSON:** THIS IS PLAINTIFF'S COUNSEL'S AGENT,
19 YOUR HONOR. IT WAS SOMEONE IN THEIR OFFICE. IT WAS A DOCUMENT
20 PREPARED BY PLAINTIFFS' COUNSEL.

21 **JUDGE REINHARDT:** ALL RIGHT. SO WE HAVE THAT WITNESS
22 AND SENATOR RUNNER, I ASSUME? AND WHO IS THE THIRD WITNESS?

23 **MS. BARLOW:** DON MEYER, YOLO COUNTY CHIEF PROBATION
24 OFFICER.

25 **JUDGE REINHARDT:** THAT'S IT?

1 **MR. MELLO:** AREN'T PLAINTIFFS CALLING SHERIFF
2 HENNESSY?

3 **JUDGE KARLTON:** WHAT?

4 **MR. BIEN:** AND SHERIFF HENNESSY.

5 **JUDGE REINHARDT:** FROM SAN FRANCISCO?

6 **MR. BIEN:** HE'S THE REBUTTAL WITNESS FOR PLAINTIFF.

7 **JUDGE KARLTON:** THAT'S FOUR WITNESSES NOW.

8 **JUDGE REINHARDT:** THAT'S NOT BAD. IT WILL BE
9 INTERESTING.

10 **JUDGE HENDERSON:** OKAY. COURT IS ADJOURNED.

11 (PROCEEDINGS ADJOURNED.)

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I N D E XDEFENDANT'S WITNESSESPAGE VOL.GALE BATAILLE

DIRECT EXAMINATION BY MR. LEWIS	2510	13
CROSS-EXAMINATION BY MR. GALVAN	2526	13

PLAINTIFF'S WITNESSESJAMES AUSTIN (RESUMED)

CROSS-EXAMINATION BY MS. BARLOW (RESUMED)	2565	13
REDIRECT EXAMINATION BY MS. EVENSON	2626	13

DEFENDANT INTERVENOR'S WITNESSESALEXANDER R. YIM

DIRECT EXAMINATION BY MS. BARLOW	2631	13
CROSS-EXAMINATION BY MR. HEATHER	2643	13
REDIRECT EXAMINATION BY MS. BARLOW	2651	13

ADAM CHRISTIANSON

DIRECT EXAMINATION BY MS. BARLOW	2657	13
CROSS-EXAMINATION BY MR. SANGSTER	2674	13
REDIRECT EXAMINATION BY MS. BARLOW	2681	13

MARTIN RYAN

DIRECT EXAMINATION BY MS. BARLOW	2682	13
CROSS-EXAMINATION BY MR. SANGSTER	2702	13
REDIRECT EXAMINATION BY MS. BARLOW	2708	13

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CERTIFICATE OF REPORTERS

WE, JOAN MARIE COLUMBINI AND DEBRA L. PAS, OFFICIAL REPORTERS FOR THE UNITED STATES COURT, NORTHERN DISTRICT OF CALIFORNIA, HEREBY CERTIFY THAT THE FOREGOING PROCEEDINGS IN CIV S-90-0520 LKK JPM, RALPH COLEMAN, ET AL V. ARNOLD SCHWARZENEGGER AND C 01-1351 TEH, MARCIANO PLATA V. ARNOLD SCHWARZENEGGER, WERE REPORTED BY US, CERTIFIED SHORTHAND REPORTERS, AND WERE THEREAFTER TRANSCRIBED UNDER OUR DIRECTION INTO TYPEWRITING; THAT THE FOREGOING IS A FULL, COMPLETE AND TRUE RECORD OF SAID PROCEEDINGS AS BOUND BY US AT THE TIME OF FILING.

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/S/ JOAN MARIE COLUMBINI

JOAN MARIE COLUMBINI, CSR 5435, RPR

S/ DEBRA L. PAS

DEBRA L. PAS, CSR 11916, CRR, RMR, RPR

THURSDAY, DECEMBER 18, 2008

**JOAN MARIE COLUMBINI, CSR, RPR
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