

Approved 6/16/89
Date

MINUTES OF THE SENATE COMMITTEE ON WAYS AND MEANS

The meeting was called to order by SENATOR WINT WINTER, Acting Chairman at
Chairperson

11:10 a.m.~~pm~~ on APRIL 7, 1989 in room 123-S of the Capitol.

All members were present except:
All Present

Committee staff present:

Research Department: Diane Duffy, Kathy Porter, Paul West, Russ Mills
Revisor: Norman Furse
Committee Staff: Judy Bromich

Conferees appearing before the committee:

Roger Endell, Secretary, Department of Corrections
Senator Ed Reilly

ANNOUNCEMENTS

Copies of Joint Committee on State Building Construction Recommendations on New Correctional Facilities Construction dated March 29, 1989 were distributed for Committee members. (Attachment 1) The Acting Chairman called attention to a letter from David E. Retter, City Attorney, City of Concordia, dated March 31, 1989 regarding SB 207 (Attachment 2) and copies of a letter to Governor Hayden from the Secretary of Corrections dated April 4, 1989 regarding Legislative Proposal for Correctional Space. (Attachment 3) Copies of the Summary of Proceedings on April 5, 1989 of the status conference held before the Honorable Richard Rogers regarding the pending conditions of confinement lawsuit, Arney v. Hayden were distributed. (Attachment 4)

HB 2548 - Appropriations for FY 1989 and FY 1990, new correctional facility and mental health facility for department of corrections

Staff distributed and reviewed a bill explanation dated April 3, 1989 regarding HB 2548, Capital Improvement Appropriations, and information regarding HB 2548, New Correctional Facilities, dated April 6, 1989 which attempts to set out dollar amounts associated with the bill. (Attachments 5 and 6)

Secretary Endell reviewed Attachment 3. In additional comments, Mr. Endell said they have a mental health plan developed by professionals in which needs have been defined in addition to suggested remedies. He said that SB 49 and SB 50 will be extremely helpful in solving their overcrowding problems in the long run, but they will not get the Department out of trouble in the short term. The inmate population is continuing to increase, one-third of their population is maximum security and the annual increases continue in the "A" and "B" categories. He emphasized the importance of legislative action in order to meet deadlines set out by Judge Rogers.

In answer to questions, Secretary Endell stated that their proposed prison design has, essentially, two campuses supported by a core facility. Ultimately it will accommodate 1400 beds. The management units are planned to be smaller than 500 beds each. There are several such institutions across the country. It is their understanding the court intends to use American Correctional Association (ACA) standards in their approval of the facility. The Secretary noted that if the "House plan" is adopted the Division of Architectural Services will require the Department to hire new consultants which will take a minimum of 60 to 90 days. After that team is selected it will take them a minimum of six months to put together cost estimates, necessary planning, schematic drawings, etc. There are several important questions to be answered in conjunction with the "House plan" such as what

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON WAYS AND MEANS,
room ~~123-S~~, Statehouse, at ~~11:10~~ a.m./~~PM~~ on APRIL 7, 1989

class inmates will be housed in the Hutchinson facility if it is modified. The Secretary stated that he could not overemphasize the Department's need for high security space. Incidents will occur if the wrong inmates are placed in a less secure space than is needed.

Senator Reilly appeared before the Committee. (Attachment 7) He indicated that he was appearing as Ed Reilly, a person from a community with six prisons and not as a Senator with a vested interest asking for a new prison or asking that a prison not be built.

The written testimony of Ted Ayres, Board of Regents was submitted for the record. (Attachment 8)

The meeting was adjourned.

GUEST LIST

COMMITTEE: SENATE WAYS AND MEANS

DATE: 4-7-89

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
Von Stein	Topoka	DOC
Pat Densch	Concordia	Prison Decisions
Bob Lowell	Concordia	Prison Decision Task Force
John Campbell	Topoka	AA
Neil Woormen	Topoka	Atty. Gen.
Roger Erdell	Topoka	DOC
Erny Stotts	Topoka	DOC
Kirby L. Stegmann	Law	DOB
Kathleen A. Vonachen	Topoka	DOB
Bill Miskell	TOPEKA	KDOC
Al Kennedy	Topoka	DOB
Alan Stepat	Topoka	Pete Mcbill & Associates
Patrick Shurley	Topoka	El Dorado Inc
Rep. Glyde Hatcher	Newenworth	Mo. House
Rep. John Linn	Highland	Ka House
Marty Robinson	Topoka	Sec. - Reilly
Mark Entwist	TOPEKA	DOB
John R. Williams	Topoka	DOAS
Rebecca Rice	Topoka	Horton Inc
Dr. Allen	Law	Senate
KENN FORESTSON	Topoka	Russell CC
Glenda Yinko	Russell	Prison Task Force
Sara Yinko	Russell	Prison Task Force
Carol J. Bennett	Russell	Prison Task Force
Louise E. McGee	Russell	Prison Task Force
Loretta Green	Elkhart	Stat Rep 75th
Chuck Timmons	Topoka	DOC
WALT DARLING	TOPEKA	DIV. OF BUDGET
Charles Quinn	Law	Ka
John Miller		

JOINT COMMITTEE ON STATE BUILDING CONSTRUCTION
RECOMMENDATIONS ON NEW CORRECTIONAL FACILITIES CONSTRUCTION

1. Consultant. Appropriate \$30,000 from the State General Fund in FY 1989 to the LCC to hire a consultant to formulate an acceptable mental health program for Department of Corrections inmates. The plan should include the following:
 - a. operational definition of mental illness and/or retardation;
 - b. procedures to screen, identify, and evaluate the inmate's needs;
 - c. the number of mentally ill/mentally retarded and their classification;
 - d. the types of treatment services to be provided;
 - e. staffing patterns and space needs necessary to meet minimal standards; and
 - f. the location of one or more units to provide appropriate mental health services to Department of Corrections' inmates.

The consultant's report should be developed and presented to the Joint Committee prior to the end of FY 1989 or as soon thereafter as possible to insure the minimal amount of delay.

2. New Maximum Security Facility

- A. Core facilities should be constructed to support a 1,408 bed facility, as recommended by the Department.
- B. Final planning funds should be appropriated to start on 512 maximum security beds; in addition, the final planning funds for an additional 256 beds should be appropriated, subject to a recommendation of the Joint Committee to the State Finance Council after the Joint Committee receives the report of the consultant. The site of this facility is not designated by the Joint Committee.

3. Mental Health Unit. Appropriate preliminary and final planning funds for the construction of a mental health unit as recommended by the Governor, subject to the proviso that no expenditures shall be made pending a recommendation from the Joint Committee to the State Finance Council after the Joint Committee receives the report of the consultant. The funding should be flexible so that any improvements required may be made to facilities under the control of the Department of Corrections or the Department of SRS.

4. Bonding. Construction funding of all the facilities should be bonded as recommended by the Governor. Sufficient debt service funding should be appropriated subject to any provisos which may be required to insure the recommendations contained in Nos. 2 and 3 above.

bc-rec/PW/jar

ATTACHMENT 1
SWAM 4-7-89

MEMORANDUM

TO: Senate Ways and Means Committee
FROM: David E. Retter, City Attorney
City of Concordia, Kansas
RE: SB 207
DATE: 3-31-89

As City Attorney for the City of Concordia, Kansas, I present this testimony in favor of SB 207, introduced by Senator Ross Doyen.

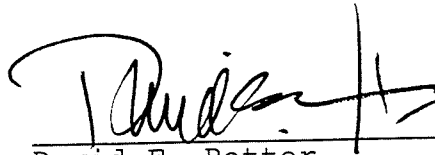
1. Effect of SB 207:

SB 207 would change the way most state agencies would propose, plan and construct capital improvements. With certain exceptions set forth in the bill, state agencies would be required to provide additional data in program statements supporting requests for capital improvements. Under the bill, the program statement must include an economic development impact study. The agency must also justify site selection of the capital improvement based on the study.

2. Rationale:

The public policy fostered by this bill is that the state should have a role in fostering economic development. Capital improvements built by the state anchor programs and jobs to an area. The jobs help diversify the local economy and decrease reliance on declining agricultural employment. The bill requires economic development impact to be factored in and considered along with the agency's needs and other relevant criteria when selecting sites for capital improvements. If you believe the state should actively consider economic development when constructing capital improvements, you should favorably support SB 207.

Respectfully submitted,



David E. Retter
City Attorney
City of Concordia, Kansas

DER:sp

ATTACHMENT 2
SWAM 4-7-89



Judy
FYE
Von

DEPARTMENT OF CORRECTIONS

OFFICE OF THE SECRETARY

Landon State Office Building
900 S.W. Jackson—Suite 400-N
Topeka, Kansas 66612-1284
(913) 296-3317

Mike Hayden
Governor

Roger V. Endell
Secretary

April 4, 1989

The Honorable Mike Hayden
Governor of Kansas
State Capitol - 2nd Floor
Topeka, Kansas 66612

RE: LEGISLATIVE PROPOSAL FOR CORRECTIONAL SPACE

Dear Governor Hayden:

There are several difficulties which must be addressed if major modifications to existing correctional facilities are to provide the primary solution to prison overcrowding. While this list is not comprehensive, it does illustrate several significant problem areas.

1. The dollar figures being utilized in enabling legislation (HB 2548) are only crude approximations, some of which were formulated as much as eight years ago and were predicated on the use of inmate labor. They have not been verified by qualified designers or builders. No funds have been specified for the "C" cellhouse renovation at KSP, "D" cellhouse at KSIR or the potential conversion of the A & T Unit at the Penitentiary, nor has funding been defined for modifications at Norton. (In fact, the court has ordered the closure of the A & T Unit.) There are a multitude of complex design and remodeling issues which must be considered and cost-estimated to coincide with major renovations, remodeling and the addition of new space. For example, Norton is currently being remodeled and will house geriatric and

ATTACHMENT 3
SWAM 4-7-89

mentally retarded inmates in a single room configuration. The larger cells are also necessary to accommodate wheel chairs and other medical equipment. These inmates are more likely to be preyed upon if mixed with a larger ratio of general population medium security inmates. Utility capacities and upgrades, fire-life-safety issues, and security as well as the rehabilitative environment must all be considered, planned and funded.

2. All modifications to existing facilities assume that the Federal Court would permit the state to increase capacities beyond those already set by the court. It is safe to assume that the court will require a comprehensive analysis and plan (which will require nine to twelve months to develop), the plan will have to have a commitment guaranteed by the state that the overcrowding will be ended by July 1, 1991, or the court would have to agree to permit a much later deadline.
3. Major modifications of physical facilities at the Penitentiary will require that prisoners be vacated from housing areas and buildings under construction. There is insufficient space available to house the high-security inmates who must be relocated for even a short period of time; and, unless "A" cellhouse renovation is completed on or ahead of schedule the problem is further exacerbated. HB 2548 makes no provision for segregation cells which are essential for difficult to manage inmates. All construction work will have to be completed by private contractors under difficult working conditions adding to both time and cost. Use of inmate labor for construction will be inappropriate.
4. Modifications as recommended in the House-passed version of the legislation would not even meet the minimum number of beds

required to "uncrowd" the system by the time all additions were complete. Not only will the system be short of space but there will be no additional room for further expansion upon completion of the proposed work. (See attached bed analysis.)

5. Although relatively easy to ignore in the rush to find a "cheaper" solution to the correctional overcrowding crisis, there is a serious and substantial risk to public safety inherent in the legislative plan. Placing more prisoners in facilities inadequately prepared for them, and placing higher-risk prisoners in marginally-secure facilities (which is inevitable under the legislative proposal) will most certainly result in more escapes, assaults, serious incidents and disturbances. This issue becomes critical when great distances separate secure from less secure institutions and resources (local or state as at Norton) and especially acute when even the most secure facilities in the system are at or above capacity. The inmates are aware of how tenuous this situation is even if the Legislature is not. A great deal more in operating expenditures, primarily for better staff-to-inmate ratios will be essential in order to insure staff, inmate and public safety at each of the modified institutions.

6. The Legislature has traditionally insisted on a program statement or plan to be presented for review before releasing funds for final design and construction of correctional facilities. If DOC is required to drop the current planning effort and begin a new approach, several more delays will be encountered. Sixty to 90 days will be required for the Division of Architectural Services to solicit, screen and select a new design team, and a program development consultant. At least six months will be required to develop new analyses, recommendations, and design solutions.

Governor Hayden
Page 4
April 4, 1989

Therefore, we will have this issue back before the January to May 1990 Legislative session for approval, and will have lost yet another construction year.

7. We have invested and may now lose the benefit of a full year of program and design work. Three quarters of a million dollars has been spent, the work of some of the nation's best correctional consultants and designers are being ignored, and the program plan and schematic design developed to meet an ambitious but achievable time frame is being wasted.

Sincerely,



ROGER V. ENDELL
Secretary of Corrections

RVE:dja
Enclosures

HB 2548 Beds Analysis

	Max.	Med.	Min.	Total
<u>KSP</u>				
D	140	(140)	-	-
C	64	(96)	-	(32)
C Special Use	48	-	-	48
A & T	101	-	-	101
Medium Addition	-	192	-	192
HB 2548 Total	<u>353</u>	<u>(44)</u>	-	<u>309</u>
Adjustments				
C Special Use	(48)	-	-	(48)
A & T	(101)	-	-	(101)
	<u>204</u>	<u>(44)</u>	-	<u>160</u>

<u>KSIR</u>				
D	158	(237)	-	(79)
A Special Use	98	-	-	98
A Special Use	50	-	-	50
HB 2548 Total	<u>306</u>	<u>(237)</u>	-	<u>69</u>
Adjustments				
A Special Use	(50)	-	-	(50)
	<u>256</u>	<u>(237)</u>	-	<u>19</u>

<u>Norton</u>				
Kenny Building	-	232	-	232
Adjustments	-	(64)	-	(64)
	-	<u>168</u>	-	<u>168</u>

<u>Hutchinson CWF</u>				
Add Dorm	-	200	-	200

<u>Summary</u>				
Bill				
KSP	353	(44)	-	309
KSIR	306	(237)	-	69
Norton	-	232	-	232
Hutchinson	-	200	-	200
Total	<u>659</u>	<u>151</u>	-	<u>810</u>

Adjusted for A & T and Special Use

KSP	204	(44)	-	160
KSIR	256	(237)	-	19
Norton	-	168	-	168
Hutchinson	-	200	-	200
Total	<u>460</u>	<u>87</u>	-	<u>547</u>

2-6-89 Capacity - Population Analysis Adjusted for HB 2548

Current 2-3-89	Max.	Med.	Min.	Total
Capacity + or (-) Pop.	(506)	186	101	(219)
Add Beds HB 2548 (Adjusted)	460	87	-	547
Cap. + or (-) Pop.	<u>(46)</u>	<u>273</u>	<u>101</u>	<u>328</u>

Last Ten Year Experience - 31 Per Mo. Growth Projected to 7/91

	Max.	Med.	Min.	Total
Capacity + or (-) Pop.	(779)	(38)	(298)	(1115)
Add Beds HB 2548 (Adjusted)	460	87	-	547
Cap. + or (-) Pop.	<u>(319)</u>	<u>49</u>	<u>(298)</u>	<u>(568)</u>

Last Five Year Experience - 44 Per Mo. Growth Projected to 7/91

	Max.	Med.	Min.	Total
Capacity + or (-) Pop.	(893)	(132)	(465)	(1490)
Add Beds HB 2548 (Adjusted)	460	87	-	547
Cap. + or (-) Pop.	<u>(433)</u>	<u>(45)</u>	<u>(465)</u>	<u>(943)</u>

**CAPACITY - POPULATION ANALYSIS,
BY SECURITY DESIGNATION OF BEDSPACE**

DOC FACILITIES, INCLUDING PROJECTS IN PROCESS

	<u>Maximum*</u>	<u>Medium</u>	<u>Minimum**</u>	<u>Total</u>	<u>Spec. Use/ Infirm.</u>	<u>Temp.</u>
Penitentiary	588	524	300	1,412	71	119
Reformatory	450	237	160	847	154	50
Cor. Voc. Tgn. Ctr.	-	40	140	180	6	-
Recpt. & Diag. Ctr.	123	-	90	213	4	10
Cor. Inst. Lansing	40	-	200	240	19	-
Norton Cor. Fac.	-	232	268	500	11	-
Honor Camps	-	-	172	172	-	-
Winfield Cor. Fac.	-	-	290	290	2	-
Wichita Work Rel.	-	-	100	100	-	-
Topeka Cor. Fac.	-	-	111	111	-	-
Osawatomie Cor. Fac.	-	-	80	80	-	-
Hutch Work Rel.	-	-	20	20	-	-
Forbes Cor. Fac.	-	-	80	80	-	-
Hutch Cor. Work Fac.	-	320	80	400	-	-
Stockton Cor. Fac.	-	-	94	94	-	-
Ellswor. Cor. Wk. F.	68	352	96	516	17	-
Subtotal	1,269	1,705	2,281	5,255		

NON-DOC PLACEMENTS

Contract Jail	-	-	75	75		
Comm. Resident. Ctr.	-	-	406	406		
Larned	73	-	43	116		
Subtotal	73	0	524	597		

TOTAL CAPACITY AND PLACEMENTS	1,342	1,705	2,805	5,852		
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CURRENT POPULATION [2-3-89]	1,848	1,519	2,704	6,071		
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CAPACITY + OR (-) CURRENT POPULATION	(506)	186	101	(219)		
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*Includes special management & unclassified.

**Includes community custody.

2-6-89

PROJECTED POPULATION COMPARED TO CAPACITY TO 6-30-91 [28mo, 25da]

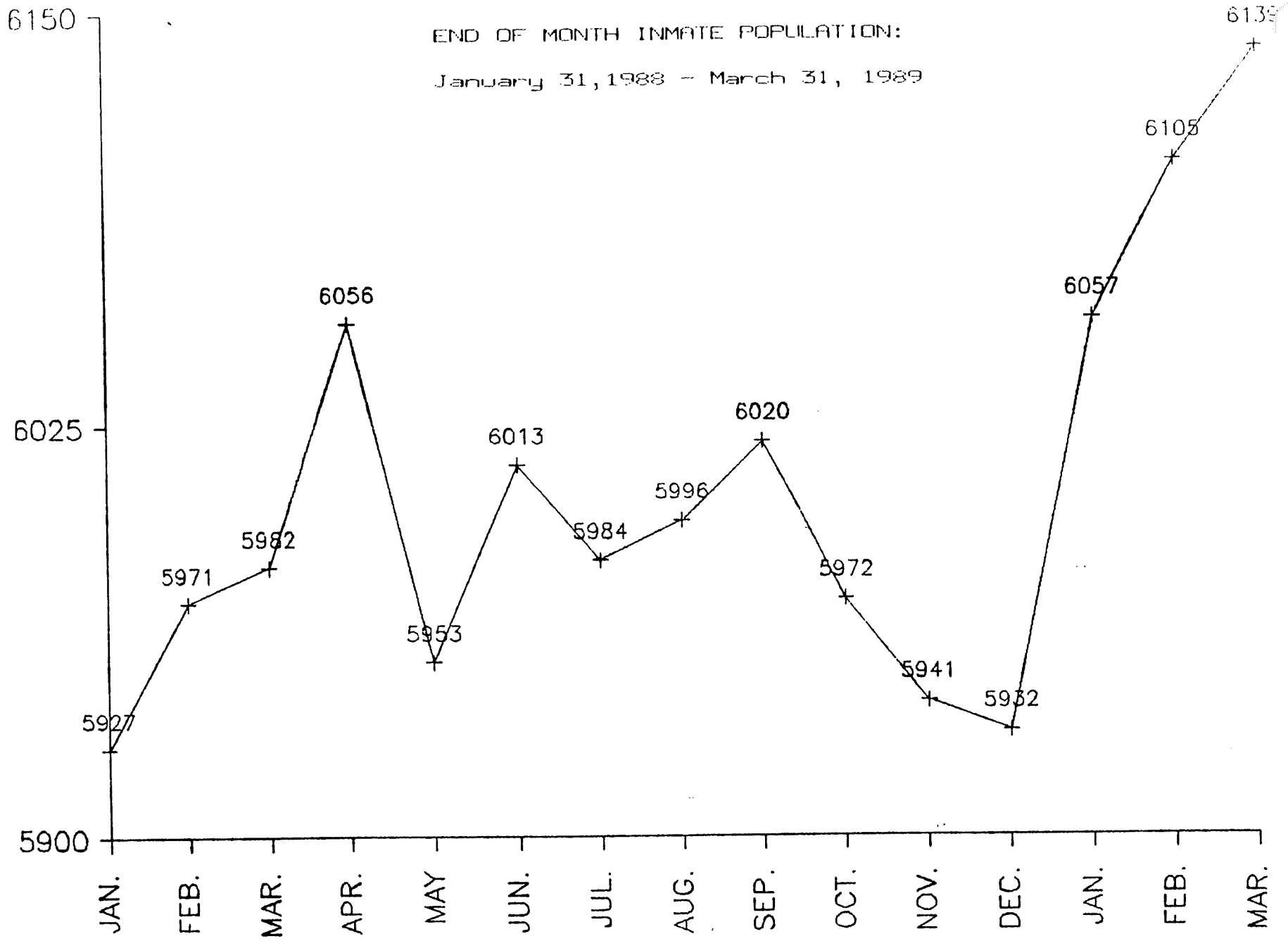
A. Last Five Year Experience - FY 83-88 [44 per mo. = 1272, 28mo, 25da]

	<u>Maximum*</u>	<u>Medium</u>	<u>Minimum**</u>	<u>Total</u>	<u>Spec. Use/ Infirm</u>	<u>Temp.</u>
Projected Pop.	2,235	1,837	3,270	7,343	-	-
Current Capacity	1,342	1,705	2,805	5,852	-	-
Cap. + or (-) Pop.	(893)	(132)	(465)	(1,491)		
Add New Facility	736	-	64	800	64	-
Cap. + or (-) Pop	(157)	(132)	(401)	(691)		

B. Last Ten Year Experience - FY 78-88 [31 per mo. = 896, 28mo, 25da]

	<u>Maximum*</u>	<u>Medium</u>	<u>Minimum**</u>	<u>Total</u>	<u>Spec. Use/ Infirm</u>	<u>Temp.</u>
Projected Pop.	2,121	1,743	3,103	6,967	-	-
Current Capacity	1,342	1,705	2,805	5,852	-	-
Cap. + or (-) Pop	(779)	(38)	(298)	(1,115)		
Add New Facility	736	-	64	800	64	-
Cap. + or (-) Pop	(43)	(38)	(234)	(315)		

*Includes special management & unclassified.
 **Includes community custody.



SUMMARY OF PROCEEDINGS ON APRIL 5, 1989

Arney, et al. v. Hayden, et al., Case No. 77-3045

This memorandum provides a summary of the status conference held before the Honorable Richard Rogers on April 5, 1989, regarding the pending conditions of confinement lawsuit, Arney v. Hayden.

HISTORY - SUMMARY BY THE COURT

In the May 1980 Consent Decree the defendants were to apply to the Commission on Accreditation for Corrections by December 15, 1983, in order to meet the standards of the Adult Correctional Association (ACA). The Court stated, "I have written no compliance on that."

In June 1984, various individuals filed a Motion to Intervene and to require the state to carry out the terms of the original Consent Agreement.

On February 18, 1986, the U.S. Attorney General advised Governor Carlin of an investigation pursuant to the Civil Rights of Institutionalized Persons Act, 42 U.S.C. §1997. The letter to Carlin concluded "that prisoners at Lansing were being subjected to flagrant or egregious conditions which deprive them of their constitutional rights."

On June 3, 1987, the Assistant U.S. Attorney advised Governor Hayden of "numerous flagrant and egregious violations of inmates' rights which deprive [them] of their constitutional rights, and require immediate corrective action by state officials."

In April 1988, the case was reopened and the Court handed down a comprehensive order.

In December 1988, the Court issued an Order requiring population reductions at KSP and KSIR and set March 1, 1989 as the deadline for defendants to present to the Court plans regarding confinement conditions of mentally ill, protective custody, and administrative segregation inmates.

ATTACHMENT 4
SWAM 4-7-89

At the conclusion of this chronology, the Court advised that it should not be a "mystery" regarding what is required of the State. The Court noted that the ACA standards are "explicit and detailed".

The Court briefly summarized the provisions of Tentative Order handed down in February 1989. The Court, reading from a copy of the ACA standards, noted that § 2-4129 requires 60 sq. ft. of floor space if the inmate is to be in his cell no more than 10 hours a day, and 80 sq. ft. per inmate if the inmate is in lock-down more than 10 hours. The Court also cited ACA standard, § 2-4131, and discussed multiple occupancy rooms and the absolute necessity for continued observation of the inmate population by staff.

At this time, the Court summarized a jury trial involving the murder of an inmate. The Court was explicit in its factual summary of this case and focused especially on the need for continual observation of inmates by staff. The Court referenced several other ACA sections including the ones that recommend an inmate population of not more than 500 and proximity of the institution to a population center of not less than 10,000 people. The Court "suggest[ed] that perhaps required reading should be the Standards for Adult Correctional Institutions." The Judge stated that "[i]t seems unusual to me that states that fix the requirements for almost every business, nursing homes, right down the line. . . are so suspicious of standards fixed by other experts in the field." In the Court's view, these standards are "not unduly burdensome."

CHARLES SIMMONS - CHIEF LEGAL COUNSEL, DOC

The Court requested a status report from Charles Simmons. He advised the Court that DOC was in compliance with the Court's order regarding the operating capacities of the various facilities. Simmons

informed the Court about the community corrections legislation (Senate Bill 49), as well as the Kansas Sentencing Commission (Senate Bill 50).

The Court asked what the plans were as to the new penitentiary, if consultants had been involved in the House prison plan and inquired whether the "generous" time tables will be met." The Court was advised that Representative Graber's plan and Senator Riley's plan were not handled through the DOC, but through individual groups of legislatures.

The Court moved on to the current status of double-celling and asked if a self audit regarding compliance with ACA standards had been conducted. Simmons advised that the audit was scheduled for the end of April. Next, the Court asked if the system is "still gaining inmates each month." It is, over 200 this year. The Court stated, "[o]n the first three months, is that not half a penitentiary?"

The Court noted that "[s]ix years after the Consent Decree requiring ACA accreditation, there is none. Four years after the state agreed to single cell occupancy at KSP, there is no single cell occupancy," and KSP is still overcrowded.

ROBERT T. STEPHAN - ATTORNEY GENERAL

The General told the Court the legislature wanted the opportunity to explore avenues to solve the prison overcrowding crisis other than the Governor's plan. The General stated he agreed with the Court's Tentative Order and advised the Court that there was no current effort to appeal that order or seek substantial modification of it.

In response to earlier Court inquiry regarding "whether or not there were attendant support services, and other safeguards in the plan," the General stated, "I doubt frankly that there are at this point." The General noted that legislators are "not used to being told what to do so I think

there is a period of adjustment and I . . . am confident they will arrive at a satisfactory plan [and] meet the deadlines of the court."

Next, the General acknowledged the legislative concern regarding the ACA standards. The Court stated "there is probably an easy answer to that question." The Court agreed that the standards may change because "as civilization advances, it takes better care of its inmates. . . . And that's been a steady progression for last two or three hundred years. We are no longer cutting hands off you understand." The Court stated that any change would not be substantial because the ACA standards are "well studied out."

The General advised the Court that there were questions about the possible renovation of A&T and that he advised the legislators "it would take a lot more than putting some windows in that place." The General mentioned concerns regarding Norton and KCIL but that those would be raised by appropriate motion.

At this time, the Court acknowledged the political process at work and stated that he was a "product of the political process", and that he had no problem with these questions coming before him.

The General mentioned legislative concern regarding the possibility of double-celling at the Medium Security Unit at KSP and the possibility of continued housing of inmates at the R&S Units at KSP. The General concluded by advising the Court that he did not tell any legislative committee that any one plan met the criteria set out in the Tentative Order but that more than one alternative was available.

APPEAL

The Court stated, "[t]here has been talk about appeal." The Judge then engaged in a "lets suppose" discussion and noted, first of all, that for any appeal to be successful, the appealing party must have standing. The Court further advised that the Circuit would not reverse him on his factual findings; however, surmised that his remedy was open to modification. He suggested that if the plaintiffs' were to appeal this case, the Circuit might find his more than 2-year period compliance period too lenient. He suggested that the Circuit might remand the case with an Order that the Department comply within 60 days. The Court concluded by stating "[w]e are going to try to finalize this Order just as quickly as we can so if anyone wants to appeal, they can start this matter."

BILL RICH - PLAINTIFFS' COUNSEL

Bill Rich approached the podium and stated that there had been a lot of talk regarding "numbers" and not much talk regarding the actual conditions of confinement. Professor Rich requested immediate short-term relief as well as planning for long-term relief. He also requested that the Court issue a final order before the legislative recess.

CONCLUSION

In summary, the Court noted that it had been "pushing", it had set limits and asked for compliance. It had "never tried to tell the legislature how to accomplish" compliance. The Court stressed that experts should be making the decisions and that it would be a "waste of taxpayers' money" if the decisions on how to reach compliance were not based on studies conducted by experts.

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS
TOPEKA, KANSAS

JOUETT E. ARNEY, et al,)
)
-----Plaintiffs,)
)
vs.) Case No. 77-3045
)
GOVERNOR MIKE HAYDEN, et al,)
)
-----Defendants.)

TRANSCRIPT OF PROCEEDINGS
BEFORE
HONORABLE RICHARD D. ROGERS

on
APRIL 5, 1989

APPEARANCES:

For the Plaintiffs: MR. BILL RICH
Washburn Law School
Topeka, KS 66614
and
MR. STEPHEN KESSLER
Sixth and Kansas Avenue #930
Topeka, KS 66603
and
MR. ROGER THEIS
P.O. Box 47370
Wichita, KS 67201

For the Defendants: MR. CHARLES SIMMONS
Department of Corrections
900 Jackson - 4th Floor
Topeka, KS 66612

(Continued)

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APPEARANCES CONTINUED:

(For the Defendants:) MR. JOHN PETERSON
Governor's Office
Topeka, KS 66612

MR. ROBERT STEPHAN
Attorney General
Judicial Center
Topeka, KS 66612

Court Reporter: Ms. Debra L. Scott, C.S.R.
Federal Building #410
Topeka, KS 66683

P_R_O_C_E_E_D_I_N_G_S_

1
2 THE COURT: All right I think we are ready
3 to proceed with Jouett Arney and others versus Mike
4 Hayden and others. I note we have a goodly group of
5 attorneys here. My law clerks have put down Bill
6 Rich, Dwight Corrin, Roger Theis, Steve Kessler,
7 Martha Coffman, Chuck Simmons, Tim Madden, and
8 special guest star Attorney General Bob Stephan. My
9 law clerks have always had a great sense of humor.

10 Let me say a few things first that would
11 perhaps refresh our memory. Once again we are
12 meeting on the prison situation. I direct your
13 attention backward to May 2, 1980 in which a consent
14 decree was entered between certain inmates and the
15 State of Kansas in which the state agreed by no
16 later than December 15, 1983 to apply for
17 accreditation to the American Correctional -- the
18 Standards for American Correctional Association. I
19 have written no compliance on that.

20 Later on June 21, 1984, other inmates filed a
21 motion to intervene and to require the state to
22 carry out the terms of the original consent
23 agreement. If now I advise you that private parties
24 are held vigorously and rigidly to consent
25 agreements and are supposed to carry out the terms,

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1 and if they do not, private parties are found to be
2 actually in violation and they are penalized, and
3 are sanctioned for failure to do what they agreed to
4 do.

5 Now let me take you to February 18, 1986, the
6 assistant United States Attorney General advised
7 John Carlin of an investigation of the Kansas State
8 penitentiary at Lansing pursuant to the Civil Rights
9 of Institutional Persons Act, 42 U.S.C. Section
10 1997. Now apparently many people do not know that
11 that congressional act exists. But I tell you, I
12 assure you that it does. This is a Federal law of
13 course for the protection of prisoners. The letter
14 announced the conclusion that prisoners at Lansing
15 were being subjected to flagrant or egregious
16 conditions which deprive them of their
17 constitutional rights.

18 On May 28, 1986 the court was notified of
19 another group of prisoners' intention to intervene,
20 and to press the case on the consent decree which
21 was originally going on. Now later the court was
22 advised that they would not press that based upon
23 the investigation being made by the Department of
24 Justice of the United States.

25 On June 3, 1987 the assistant attorney

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1 general, Bradford Reynolds, advised Governor Michael
 2 Hayden of numerous flagrant and egregious violations
 3 of inmates' rights which deprive the inmates of
 4 their constitutional rights, and required immediate
 5 corrective action by state officials. The assistant
 6 attorney general demanded a legal binding and
 7 judicially enforceable agreement between the United
 8 States and the State of Kansas to eliminate the
 9 constitutional defects.

10 Now we then reopened the original case, and on
 11 April 6 the court issued a 39 page order detailing
 12 the long history of the attempts to persuade the
 13 State of Kansas to correct constitutional
 14 violations. On December -- if you want the history
 15 of the entire affair, read that order and the 39
 16 pages in detail, in considerable detail about what
 17 had actually happened.

18 On December 23, 1988 the court issued a
 19 further order requiring reductions in population at
 20 Lansing and Hutchinson, and experiencing particular
 21 concern with the isolation of mentally ill inmates
 22 and the conditions of confinement for inmates who
 23 were confined to their cells for extended periods of
 24 time. I asked that we have something here by March
 25 1 in regard to that. Nothing was ready by March 1,

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so the court gave additional extensions of this matter until today.

So we are now here today to hear further about the situation, and to perhaps find out what has taken place over the past months, then to get more detail about the mental health and condition of inmates confined constantly.

There seems to be some great history over what is required, and what has been required. I direct you to the Standards for Adult Correctional Institutions, which I have read in detail as late as last night of the American Correctional Association and I find those to be pretty explicit and rather detailed. We have been working towards this since 1980.

Now, the parties here have requested this status conference, and it has been in the papers, in the paper considerably that the attorney general was going to be here to ask certain questions on behalf of the legislature.

And to carry out more here, on March 2, '89 we granted until March 31 to file plans reflecting what action is intended for the mentally ill inmates, and a report has now been made. In our tentative order the defendants were instructed to conduct a self

1 audit regarding compliance with ACA standards. Th
2 would be a yard stick for measuring progress toward
3 the requirement in the TO that the defendants
4 satisfy ACA standards regarding medical and mental
5 health by December 18, 1990, and all other ACA
6 standards by October 1, 1991.

7 The defendants perhaps today will need to tell
8 us if a self audit has been conducted, and what the
9 results of the self audit might be.

10 Now let's look at the penitentiary. Regarding
11 this institution the TO directs the following:
12 population reduced to 1700 by October 1, 1989.
13 Population reduced to 1262 by July 1 of 1991. No
14 double-celling in any cell house after renovation of
15 A cell house is done. No double-celling in the
16 medium security unit after July 1, 1991. Outside
17 dorms limited to operating capacity for a number of
18 inmates. A and T building not used after July 1 of
19 1991 for housing inmates. R dorm and S dorm not
20 used after July 1 of 1991. By October 1 of 1989,
21 there will be work and programs available for all
22 inmates that want to participate. Double-celled
23 inmates will not be confined in cells for more than
24 12 hours a day.

25 If you will look at the Standards for Adult

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1 Correctional Institutions, they there set out in
2 considerable detail how much space is required for
3 inmates, what you do on double-celling of inmates.
4 That's set out in considerable detail.

5 Let's go to KSIR. Regarding this institution
6 the TO requires, directs the following: population
7 reduced to 1126 by October 1, 1989. Population
8 reduced to 847 by July 1, 1991. No one
9 double-celled after October 1, 1989. No more than
10 four men in three-man cells and no more than three
11 men in three-man cells after July 1, 1991. And by
12 October 1, 1989 there will be work and programs
13 available for all inmates that want to participate,
14 and no more than 14 hours per day in cells of less
15 than 60 square feet. And KCIL of course places a
16 population limit of 158 with no double-celling after
17 12-31-89.

18 Now in regard to other institutions, the TO
19 directs that the inmate population of other
20 institutions not exceed the operating capacity of
21 those institutions or the maximum capacity of each
22 institution, whichever is greater. And a list of
23 capacity figures of course is attached to that
24 order.

25 Now other facets of the TO are a population

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1 management system which ensures that the populatio.
2 remains within operating capacity, and this must be
3 in place by 7-1-91. By July 1 of 1991, all inmates
4 who have not yet had a parole hearing shall have an
5 opportunity to enter into a written agreement with
6 the Secretary of Corrections, specifying what
7 programs must be completed for release on parole.
8 The parole plans should be processed within 30 days.
9 Specifics of KSP consent decree regarding recreation
10 facilities and clothes shall be provided by October
11 1, 1989. The Plaintiff's counsel should get
12 semi-annual reports.

13 Now that is a quick rundown of what has taken
14 place up to this time. We might attempt to find out
15 where we are. Mr. Simmons perhaps you can give me
16 some information. Let me first say at 2-4219 of the
17 American Standards for Adult Correctional
18 Institutions, it requires 60 square feet per inmate
19 if he spends no more than ten hours per day locked
20 down. When confinement exceeds 10 hours per day,
21 there needs to be at least 80 square feet floor
22 space. That's eight by ten, you understand, or six
23 by ten. Temperatures are approximate to the summer
24 and winter comfort zones with no noise levels
25 specified.

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1 Now on multiple occupancy rooms, 2-4131,
 2 multiple occupancy rooms are continuously observed
 3 by staff, extremely important you understand. I'm
 4 trying a case right now (sic) against the Federal
 5 government in which a man was stabbed in a shower
 6 room at Leavenworth. He ran 50 feet, or down a
 7 hall. The man pursued him with a knife, stabbed him
 8 again, then threw him over three flights where he
 9 landed on the concrete. The man went -- the
 10 aggressor went clear back down, way back down down
 11 three flights of stairs past the guard who was
 12 reading his magazine, clear down to the other end of
 13 the hall, stabbed the man, who was crawling again on
 14 the cement, stabbed him four or five more times with
 15 inmates going in every direction. The man, the
 16 aggressor was covered with blood. He went back past
 17 the guard place, up three flights of stairs, took a
 18 shower, disposed of his clothes, and they didn't
 19 find the inmate for 30 to 35 minutes later. He had
 20 died approximately ten minutes before they found
 21 him.

22 I know this is not clear as to why you need
 23 observation in a penitentiary to most people who are
 24 now giving expert opinions on penitentiaries, but
 25 that is just one little thing I might tell you in

1 regard to modern institutions, and the protection
2 life and suits that will be filed, have been filed,
3 and will be filed in regard to a desire to ignore
4 those things.

5 Multiple occupancy rooms are to be
6 continuously observed. One operable toilet and
7 shower for every eight occupants. Access to a
8 locker or private storage requirements. Now none of
9 those seem to be extremely rigorous requirements.
10 For segregation you need 80 square feet, and in
11 segregation you know you are locked up generally 23
12 hours a day, and you have one hour out for physical
13 training. Day rooms for general population in a
14 housing unit.

15 2-4141 requires a canteen, which we of course
16 have. 2-4160 recommends an inmate population of not
17 more than five hundred. The Federal penitentiary,
18 most successful penitentiary is perhaps Marion where
19 we have 500 or 550 people. 2-4161, recommends
20 locating near a civilian population center not less
21 than ten thousand people. And the reasons of course
22 are obvious for that. The larger the area, more you
23 can get professional help to live there, the easier
24 it is for people to visit inmates who are confined.
25 Many, many reasons for that.

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So I suggest that perhaps required reading should be the Standards for Adult Correctional Institutions.

It seems unusual to me that states that fix the requirements for almost every business, nursing homes, right down the line, physical requirements, are so suspicious of standards fixed by other experts in the field.

With that background, and suggesting that those standards are not unduly burdensome as far as the court can see, Mr. Simmons, would you like to tell me where we are right now in regard to our population?

And I might point out that the plan that you filed, you understand, the court has now received from the inmates a disagreement we might say with that to a considerable extent.

Now proceed.

MR. SIMMONS: Your Honor, if I might, I just received on my desk this morning the response from Mr. Rich and the other attorneys concerning our report to be filed on March 31. This particular session when Mr. Rich and I requested it last week, it is my understanding was a status conference. I did not come here today prepared to argue the

1 particulars of our report --

2 THE COURT: I understand that. We are
3 going to set that for a further hearing. I have
4 that right in my notes.

5 MR. SIMMONS: Okay. Let me just take a
6 few minutes to bring you up to date. I have here a
7 population report dated March 31, if I could give
8 that to the court. This report indicates the
9 current population for each of the institutions in
10 the Department of Corrections. Those particular
11 institutions which are the subject of this
12 litigation, the penitentiary has been by order of
13 this court, on March 31 it capped 1861 inmates.
14 Reformatory has been capped at 1303 effective April
15 1. As of March 31 it had 1249 inmates. That is a
16 reduction of about 550 inmates since the first of
17 this calendar year at the reformatory. The third
18 institution is KCIL; that has been capped at 158.
19 We have been operating that institution even prior
20 to the court's order in December below the operating
21 capacity of 158. As of March 31 it was 155.

22 The department's population, Your Honor, has
23 been increasing over the last three months, and you
24 can see that on page three of the report. The
25 population increased by 125 inmates in January of

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1 this year, by 48 in February, by 34 in March.

2 That's not entirely reflected within the institution
3 facility population because we have instituted the
4 community residential centers which now have
5 approximately three hundred inmates, will have four
6 hundred by the 14th of this month. Those people are
7 not included.

8 In addition to that, I would point out that we
9 have also begun just this last month an additional
10 policy of placing inmates who have received their
11 parole, but have not yet received a parole
12 certificate, and their parole in effect is imminent
13 within a matter of weeks, certainly within the next
14 30 days, we are now placing those people, at least
15 on a selective basis, on a furlough, and then they
16 would be placed on parole at the time of the date on
17 the certificate. To date, since we began that last
18 month, have placed 66 people on that. So that is a
19 further reflection of the overall institution
20 population. The overall institution populations
21 would be increased by those 66 people had we not
22 done that.

23 In addition we've placed as of March 31 twelve
24 people on extended furlough which was authorized by
25 the 1988 legislature, called a community

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1 reintegration program. So the numbers indicate th
2 we have complied with each of the court's orders
3 throughout, and are maintaining below the operating
4 capacities established by the court at those three
5 institutions.

6 When this order becomes final, there is a
7 provision in the order that we not exceed the
8 maximum or the operating capacity, whichever is
9 effective at the other institutions. We at some of
10 those institutions are over the operating capacity
11 by a handful or less. Once the order here is final,
12 we will of course comply with that particular
13 provision as well. So that is the status of the
14 population throughout the department at the current
15 time.

16 There is several other things here I would
17 like to provide the court and to counsel. This is a
18 report that we prepared at the request of the
19 governor and legislative leadership about a month
20 ago, and it concerns the number of people who have
21 been granted parole but are still confined. I know
22 that that is an issue that comes up on a regular
23 basis to the court, and as of the date of this
24 report, there were 278 people who had been granted
25 parole, but had not yet been released. There is on

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a report that specifies those, it is listed on page four of that report after the index which goes through the numbers of people in each of those categories, and then following that it details the particulars of each individual.

The purpose of this report, and we have had legislative questions raised about this as well as those raised from the court, that we were in effect stockpiling or delaying the release on parole of hundreds of individuals who would otherwise be released. And this report indicates that that is not the case, that there are reasons why people have not been released even though they have seen the parole board and been given a parole. The largest number of those are simply awaiting a report on the parole plan, but other significant numbers are those awaiting interstate detainer at 44, those we have no control over. We process the paperwork. The other state has to make a decision. We can't --

THE COURT: Talking about inmates parolling to a detainer?

MR. SIMMONS: No, parolling to another state. Parolling to a detainer a specific category, and there are only nine in that category.

THE COURT: I noticed that. I received

1 letters from two people, one of them waiting to go
2 to Missouri for 25 years, another waiting to go to
3 Arkansas I think for 40. And I sent those on,
4 letters on I think to you or someone else, and I
5 wondered why they were still in our system, and why
6 they were being required to take certain mental
7 health plans and other plans. I raised that
8 question.

9 MR. SIMMONS: That is a determination made
10 by the parole board, not by the Department of
11 Corrections. We merely go with their order.

12 I think what this indicates is that we are not
13 simply through management delaying the release of
14 people on parole. And there are, it is specified
15 per individual, and it is a pretty detailed report.
16 I think it pretty well clears up some misconceptions
17 with respect to that. I know Your Honor received
18 and forwarded to us last week three letters. Two of
19 those were people that had we not initiated this
20 furlough to parole would not have been writing to
21 the court because nothing would have impacted them.
22 They would have still been there awaiting their
23 certificate. We simply attempted to place them on
24 this furlough early to await their out-date.
25 Through an oversight in the records office at the

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1 institutions, disciplinary action pending against
2 those individuals was overlooked. Once that was
3 found, we had no choice but to rescind that furlough
4 and bring them back for further deliberation. So
5 had we not initiated this policy, that in effect
6 mess-up, confusion would not have occurred. So that
7 is an error that we created in our what I would hope
8 would be construed good faith efforts to get some of
9 these people out of the system.

10 THE COURT: Well, I write to you and
11 Senator Pomeroy, and I have no belief that the
12 letters that I receive represent the exact and true
13 facts, but generally you advise me that they do not,
14 and there is some other things -- still I want to
15 send those on to you because every once in a while
16 someone has been lost in the system.

17 MR. SIMMONS: We appreciate that. And it
18 does not hurt to double check the status of some of
19 those individuals.

20 I would also like to provide the court with
21 the copy of the latest version of Senate Bill 49 and
22 also Senate Bill 50 which are currently in the
23 legislature. They have both advanced to the
24 conference committee stage of the proceedings.

25 Senate Bill 49 deals with questions concerning

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1 state wide basis, and certainly would have an impact
2 on population. The bill --

3 THE COURT: The money is to be provided by
4 counties or the state?

5 MR. SIMMONS: That will be a state
6 proposition. Fiscal impact I think of this is
7 estimated to become six million dollars to expand it
8 beyond the current 12 counties that are
9 participating in community corrections. There are
10 criminal penalty modifications in here. The --

11 THE COURT: Have you checked this with the
12 board of the county commissioners to decide how
13 they are going to accept this?

14 MR. SIMMONS: I assume that the
15 legislature has considered that in their committee
16 process. There are some modifications in the crime
17 classifications. There are some modifications in
18 sentencing, and impact with respect to the Habitual
19 Criminal Act. There is an establishment of what are
20 called in effect community conservation camps.
21 Those are established under this. That becomes then
22 a new sentencing alternative with the option of
23 front door and back door placement for offenders.
24 So it is a comprehensive bill coming out of the
25 legislature.

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It is in conference committee. Some form of Senate Bill 49 will be enacted this session I think undoubtedly, and will have not only a significant short term impact but a significant long term impact as well.

Senate Bill 50 has the potential for a substantial long term impact. This establishes the Kansas Sentencing Commission which was a recommendation of the governor's criminal justice coordinating council and the amendments placed on this bill by the House move up the reporting period from 1991 to 1990, so this report will be presented to the legislature next session. Once the sentencing guidelines are put into place, then certainly the overall impact can be assessed on a clear basis for the Department of Corrections on inmates coming in and being released, and will create a better management tool for the department. So those are two significant measures.

The third measure that was recommended by the governor's criminal justice coordinating council and by the Department of Corrections, and the governor has to do with the construction of a new maximum security penitentiary, that matter is still pending in the legislature. The House last week passed

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House Bill 2548 which contains amendments to that original proposal, and would provide some modifications at the penitentiary, the reformatory at Norton in particular as well as the construction of a mental health unit at a site yet to be determined.

THE COURT: Let me ask you, what plans are already prepared in regard to the new penitentiary?

MR. SIMMONS: We submitted with our plan on March 31 the program statement for the new institution. It was a rather thick document that was a final program statement dated March 14, 1989 for that facility. It contains a plan for a separate 256 bed mental health unit at Larned, and that is the proposal the governor has submitted in his budget message and a subsequent governor's budget amendment to the legislature. That is the plan being debated. The mental health unit is included within House Bill 2548 which was passed by the House on Saturday. The House as part of that mental health unit promised 30 thousand dollars to hire a consultant to advise the legislature on a comprehensive mental health program for inmates through the state. That would determine, or that individual would advise the legislature not only

1 whether that institution should be a part of the
2 Department of Corrections, should be a part of the
3 Department of Social Rehabilitation Services, or a
4 mixed authority, but also what the standards in
5 staffing requirements at that particular institution
6 should need.

7 The bill requires that report to be submitted
8 to the legislature before the end of the fiscal
9 year, and it provides for the building committee,
10 the joint committee on the building construction and
11 finance council then to be able to release planning
12 money for the construction of that facility.

13 THE COURT: Let me ask you, what plans
14 have been prepared in regard to the house prison
15 plan? Has there been a consultant who has come up
16 with that plan? Or what preparation do we have on
17 the house prison plan that will give the court any
18 assurance that our time tables, our generous time
19 tables will be met?

20 MR. SIMMONS: The amendment to House Bill
21 2548 was made in the House by Representative Graeber
22 from Leavenworth. Senator Riley introduced a
23 similar proposal in the Senate. What preparations
24 went into that and any program statement I'm not
25 aware of. That was handled not through the

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1 Department of Corrections, but through individual o
2 groups of legislators. So I am not in a position
3 where I can address that.

4 THE COURT: You can't tell me whether any
5 planning has gone into this, or whether this is many
6 years away, is that correct?

7 MR. SIMMONS: Well, I would not want to
8 speak for the proponants of that particular plan.
9 They have indicated as late as yesterday in
10 testimony to the Joint Committee on State Building
11 Construction that the components of their plan could
12 be implemented before the plan that the Secretary of
13 Corrections has advanced, which would -- right now
14 has a completion date of July 1, 1991. That is the
15 representation they have made, and certainly I am
16 not in a position to address that one way or the
17 other at this point.

18 There will be in all likelihood some building
19 construction in addition to Senate Bills 49 and 50
20 that come out of this legislature before final
21 adjournment around May 1. The plan we submitted
22 very candidly admits that many of the plans we have
23 advanced are contingent upon legislative action. We
24 do not know what that action at this point in time
25 is going to be. There are a variety of plans and

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1 ideas that are out there, and the Secretary has
2 made his thoughts known to the governor and to the
3 legislature. The governor submitted his plan to the
4 legislature through his budget statement and
5 governor's budget amendment, and we will be in a
6 position to better address that aspect of this
7 situation after May 1.

8 THE COURT: I understand you have been
9 very involved. You have answered my question about
10 the current inmate count. How much double-celling
11 is still going on in these institutions, and how
12 large are the cells they are celled in?

13 MR. SIMMONS: Double-celling has been
14 reduced substantially at the reformatory. When we
15 get down in October to 1126 inmates there, we will
16 be entirely single-celled at the reformatory. So at
17 the current time we are 123 inmates above that, so
18 we would have approximately that many people
19 double-celled, or housed more than four people to a
20 six man cell.

21 At the penitentiary in a single cell, we are
22 currently still renovating A cell house. It's
23 totally unoccupied at the current time. We will be
24 in a position to occupy half of A cell house by the
25 end of May. The remainder of A cell house will be

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1 the end of this calendar year before we occupy that
2 There is still a significant degree of
3 double-celling going on in the medium unit as the
4 court allowed, will be double-celled until July 1 of
5 1991. But within the walls, the four buildings
6 within the walls, A, B, C, and D cell houses, there
7 is still considerable amount of double-celling that
8 is taking place there.

9 THE COURT: What are the results of the
10 self audit directed by tentative order to determine
11 compliance with ACA standards?

12 MR. SIMMONS: The self audit is scheduled
13 for the last week of this month. In discussion with
14 Mr. Rich, it was our understanding that that
15 particular provision, 45 days stem from when this
16 order became final, which it has not yet become
17 final. Rather than waiting and delaying our
18 opportunity in effect a window between when we have
19 an audit in October, we have gone ahead and
20 scheduled the self audit bringing in ACA auditors
21 for the last week of this month. I think the 25th
22 is the beginning date for that self audit at those
23 three institutions.

24 THE COURT: I think you have answered
25 this. But let's do it again. Is the prison system

1 still gaining inmates each month?

2 MR. SIMMONS: Prison system is gaining.
3 The rate of increase is down somewhat from previous
4 estimations because of the impact of last
5 legislative session of House Bill 3079. Looking at
6 the last three months, they all exceed the 30 inmate
7 forecast we had based our projections on. The
8 increase again for the last three months is 125 in
9 January, 48 in February, and 34 in March. The
10 average monthly increase over the last year is 13,
11 which is lower than that, but --

12 THE COURT: On the first three months, is
13 that not half a penitentiary?

14 MR. SIMMONS: That would be approximately
15 220 inmates, so it is a substantial increase. We
16 have been able to divert a number of those people to
17 community residential centers.

18 I would point out also that House Bill 49
19 would also provide a decrease, a blip in this trend
20 undoubtedly as did House Bill 3079 a year ago.
21 There will be a decrease in the population due to
22 conditional releases and advanced parole eligibility
23 dates after that bill becomes effective, which will
24 help us certainly in getting through making the
25 reductions in October, and then being in a position

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1 with the on-line facilities for Ellsworth and Norton
2 to go on through into next year.

3 The forecast at 30 inmates, Your Honor, was
4 that we would be totally out of space in February of
5 1990. If we continued to increase at 30 inmates, if
6 we continued to increase at this rate over the last
7 three months, then we certainly will advance that
8 into later this year.

9 THE COURT: As far as Lansing is
10 concerned, we have a consent decree, which has been
11 going since 1980. Of course I assume we are all
12 acting in good faith, and I think you and your
13 people are trying as diligently as you can to meet
14 these problems. But in our consent decree -- and
15 the problem with the state's performance which I
16 have set out to you, but let me call it to your
17 attention. Six years after the consent decree
18 requiring ACA accreditation, there is none. Four
19 years after the state agreed to single cell
20 occupancy at KSP, there is no single cell occupancy.
21 And this about over-crowding, approximately over
22 1200 inmates there, we are going to have reduction
23 down to 933.

24 Now should the principals of the consent
25 decree apply to KSIR? Let me ask you that. We do

1 not have a consent decree on KSIR. I made rulings
2 there. What is your thought about that?

3 MR. SIMMONS: I think in effect by the
4 court's order of February 15, in many respects that
5 consent decree has become applicable to the
6 reformatory. Whether the particular aspects, all of
7 the particular aspects were not applied should remain
8 debatable, but I think in large part that has
9 already been done by the February 15 order.

10 THE COURT: Of course you understand if we
11 have inhumane conditions at KSIR, and it will be
12 arbitrary to have greatly different conditions at
13 KSIR than at KSP, you agree with that, is that
14 correct?

15 MR. SIMMONS: I think that's correct, yes.

16 THE COURT: What applies to the inmates at
17 one institution should apply to another. I don't
18 know that this is happening, but is it against the
19 spirit of the consent decree to achieve compliance
20 by shipping inmates to another institution where
21 there is no compliance with similar standards? Now
22 I recognize that you are having to ship inmates to
23 other areas. I get letters that if they have to go
24 to the toilet, they have to get a guard to open an
25 area to allow them to go to a toilet, and things

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like that. I realize you are doing the best you can to try to alleviate those conditions.

You will agree that is still happening, will you not?

MR. SIMMONS: We make hundreds of transfers weekly of inmates around the system for a variety of reasons. In some occasions those inmates did not want to be transferred for --

THE COURT: They call it incarceration in transit, that they are on the bus constantly.

MR. SIMMONS: I am not aware of the particular issues regarding toilet usage which you refer. I would think that the only institution where that could possibly be a problem right now is the institution at Ellsworth. And admittedly we are placing inmates there much earlier, have much earlier than we would have liked in order to have space available for those. That institution is under construction, it is not completed, it won't be completed until this fall. But we have 300 inmates there. We will have 516 when it is completed this fall. So there are problems in that regard.

THE COURT: All right. I believe that is all the questions I have. Mr. Attorney General, you had some things you were directed I think to come

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here by legislators I believe, and you had certain questions. I would be happy to hear those. The reason I wanted all the attorneys present here at this is because I could give no answers to questions that would not be contained in the evidence that I heard. I can't fashion a suit here without having evidence to back it up.

I would be happy to hear your questions. Then I may have one for you.

ATTORNEY GENERAL STEPHAN: I am afraid that may be the case. After hearing your questions to Mr. Simmons, I hesitate to make any statements. But since you have invited me to do so, I will at my own risk do that.

Your Honor, as you said, many of the questions that were originally asked by members of the legislature have been answered in the interim period of time. And at two different meetings yesterday I tried to advise both a joint committee and an executive committee or subcommittee of legislative coordinating council that I thought it best in regard to questions that had been previously submitted that I answer them from the order and from what had occurred. But I really would like to say to the court, although press reports and other

1 reports of legislative action in this regard just
2 speak to the political process, it's become a
3 political issue. I think certainly the many in the
4 legislature realize that the court has set a time
5 table, I think it is generous, and that the court
6 alluded to.

7 They also want the opportunity to explore
8 avenues other than the avenue that was presented by
9 the plan submitted by the governor through the
10 Secretary of Corrections.

11 Just for example, I hope you know that I have
12 told the members of the legislature early on that I
13 agreed with the order of this court, and that there
14 should be no attempt to appeal or try to get any
15 modification of the order. I was involved in the
16 1980 consent decree. That decree was not honored by
17 the State of Kansas. I think it is important to
18 note that that did not occur just in this
19 administration, but in the prior administration, and
20 the prior secretaries of the Department of
21 Corrections. So the state has the time tables,
22 plans have been advanced.

23 You asked whether or not there were attendance
24 support services, and other safeguards in the plan.
25 I doubt frankly that there are at this point. I,

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1 contrary to some reports, advised the legislature
2 yesterday that you had set out the numbers, that it
3 was up to the legislature to, in accordance with
4 standards that have been decreed and support
5 mechanisms, to see that those numbers were met. I
6 also said if they wanted to release everybody, that
7 might cause some compliance, but I doubted they
8 wanted to do that.

9 As the legislature -- I am sure Your Honor
10 appreciates the fact the members of the legislature
11 in the main have not been involved in the legal
12 matters and principles that are at hand here.
13 Legislators are not used to being told what to do,
14 and so I think there is a period of adjustment, and
15 I think I just am confident they will arrive at a
16 satisfactory plan, meet the deadlines of the court.

17 Some of the questions that first were asked I
18 think have been answered was concern of some
19 legislators as to the ACA standards, not what they
20 are now, but there was concern expressed what are
21 they going to be a year from now, or five years from
22 now, and what will happen as they change. I advised
23 the committees yesterday that certainly if they
24 changed to any marked degree, it would be
25 appropriate to at that time ask the court to make a

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1 ruling if they were indeed onerous to the purposes
2 of the order and the rights of the prisoners. There
3 was concern, I think the question was just tell the
4 legislature to conform to the institution rather
5 than set out any specific standards, and I think
6 that I adequately advised those who propounded that
7 question by setting out ACA standards. The court
8 has indeed set specific guidelines, so that they
9 know exactly what they ought to do, and that that is
10 the only way you can approach the problem.

11 THE COURT: May I suggest there is
12 probably an easy answer to that question. The ACA
13 standards may very well change because as
14 civilization advances, it takes better care of its
15 inmates who are confined. And that's been a steady
16 progression for the last two or three hundred years.
17 We are no longer cutting hands off you understand.

18 So I don't think anyone can assure them that
19 these would not be changed, but I think the ones --
20 if they reach these standards, I doubt if there is
21 going to be any great substantial changes, because
22 these are I think well studied out.

23 ATTORNEY GENERAL STEPHAN: I certainly
24 understand that, and I think more and more members
25 of the legislature understand that. Your Honor

1 knows that there are a lot of political questions
2 involved, and some have raised the alarm,
3 unnecessarily so. And I think as this matter is
4 progressed, many legislators understand that.

5 There was a question in regard to what might
6 be necessary to renovate the A and T building at
7 Lansing. I want you to know that I assured the
8 committee yesterday that it would take a lot more
9 than putting some windows in that place. Hopefully
10 that question has been answered. I mention these
11 things so you will know it has been occurring.

12 There are some questions in regard to Norton
13 and in regard to KCIL, but in talking with Mr.
14 Simmons, we do at a later date want to raise those
15 questions by appropriate motion. I think that
16 although these questions to this learned court and
17 learned counsel in this case may seem unnecessary,
18 but I think in the political process they have been
19 necessary, and I --

20 THE COURT: You understand I am a product
21 of the political process, and I'm very sympathetic
22 to the fact these questions need to be answered. I
23 find no problem with that.

24 ATTORNEY GENERAL STEPHAN: Well, that is
25 also -- in fact I told them that I was sure the

1 court appreciated the legislative process because of
2 your own experience in the state Senate, but that in
3 like manner you expected an unconstitutional
4 institution to be corrected and corrected within the
5 time that the court has said.

6 Another question they were concerned with was
7 what changes or improvements would be necessary for
8 court approval double-celling at the medium security
9 unit at KSP, and changes at the R and S units that
10 would still allow the housing to continue to house
11 inmates at those outside dormitories.

12 Other matters will be taken up by motion.

13 One other thing, Your Honor. Contrary to some
14 reports, I did not tell any legislative committee
15 yesterday that any plan had met the criteria set out
16 by the court in its tentative order. I tried to
17 advise them that there was more than one alternative
18 to compliance with the order, and that was the
19 extent of it.

20 THE COURT: There has been talk about
21 appeal.

22 ATTORNEY GENERAL STEPHAN: I will be happy
23 to answer questions and take anything back to the
24 legislature.

25 THE COURT: Talk about appeal, and of

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1 course first to appeal you have to have standing,
2 you understand. That is one requirement.

3 ATTORNEY GENERAL STEPHAN: Yes, Your
4 Honor.

5 THE COURT: Suppose an appeal is filed.
6 Suppose it is filed by the prisoners based upon my
7 order. Suppose the prisoners -- and it goes to the
8 Tenth Circuit Court of Appeals, and suppose the
9 Tenth Circuit Court of Appeals makes the following
10 finding: The judge has ruled on factual matters,
11 and the judge found from a factual situation
12 inhumane and unconstitutional things taking place at
13 the penitentiary. Now, and suppose experts on both
14 sides came in and testified about inhumane and
15 unconstitutional things at the penitentiary, no
16 evidence to the contrary. Then suppose the Tenth
17 Circuit Court of Appeals says we cannot go behind a
18 district judge's findings in regard to factual
19 matters. That is not our job, and we cannot do
20 that. But then suppose they looked at what this
21 court has done, and said, and will say let's look at
22 the remedy that he applied. Let's look at the
23 remedy. This is a legal matter that we have the
24 right to look at. Suppose they say that if
25 unconstitutional conditions exist, this is not

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1 something to be corrected by 1991, you understand.

2 This is something to be corrected within 60 days.

3 I throw that out to you because I'm sure the
4 keen legal minds that are here today have recognized
5 this situation, and let me tell you that that has
6 happened to me by the Tenth Circuit on some things
7 that I have sent up there where I gave what I
8 thought was a reasonable remedy, and they felt my
9 remedy, although reasonable, was long delayed. And
10 so I just throw that out to you to see that all this
11 talk about appeal here that we are talking about, it
12 may very well come, but the appeal may not come from
13 the State of Kansas or from the legislature. It may
14 come from another direction.

15 ATTORNEY GENERAL STEPHAN: That is why I
16 hope His Honor will make this a tentative order for
17 some period of time.

18 THE COURT: Well, that is not something I
19 am able to do. We are going to try to finalize this
20 order just as quickly as we can so if anyone wants
21 to appeal, they can start this matter.

22 Well, I could see a possibility, I am sure the
23 attorneys can too, of the Tenth Circuit ordering
24 that these populations be reduced within 60 days.
25 And then the situation is what happens then, how do

1 you do it? Do you reduce -- do you turn out a large
2 number of minimum security people, minor felonies
3 who are now incarcerated somewhere? And people who
4 need maximum protection, are they placed in many of
5 the areas? I leave that to someone else's judgment,
6 but I just throw that out to you as a possibility.

7 ATTORNEY GENERAL STEPHAN: Yes, so far as
8 the State of Kansas is concerned, as I am sure you
9 are aware, I told the legislature that the
10 conditions were certainly unconstitutional, and --

11 THE COURT: I believe you have advised
12 them.

13 ATTORNEY GENERAL STEPHAN: I have. And
14 that I wouldn't appeal the case, so then they
15 talked about getting outside counsel. Of course no
16 one discussed the standing issue, and I just thought
17 somebody some day would mention that. At this point
18 there is no longer a cry that I can hear for outside
19 counsel, or for appeal on behalf of the state, but I
20 will mention the other aspect to them, Your Honor.

21 THE COURT: All right. Legal judgment
22 here is far better than mine that we have assembled
23 here. But someone else might think about this.

24 All right. I don't know that we have given
25 you any answers at all.

1 ATTORNEY GENERAL STEPHAN: Yes, I got them
2 sitting here really, Your Honor.

3 THE COURT: All right.

4 ATTORNEY GENERAL STEPHAN: I will try to
5 deliver an appropriate message.

6 THE COURT: All right.

7 ATTORNEY GENERAL STEPHAN: Thank you.

8 THE COURT: Mr. Rich, why don't you
9 comment on this situation as to where you think we
10 are. Then I need to get back to a jury trial with a
11 jury waiting. But take your time.

12 MR. RICH: I understand, Your Honor. As
13 Mr. Simmons indicated earlier, when we arranged for
14 the status conference, really it was our understanding
15 that it would be appropriate to try to get together
16 and figure out where we go next. At that time it
17 was our understanding as well that the Department of
18 Corrections was going to submit a plan on the 31st
19 of March which would demonstrate what they were
20 going to do with respect to the protective custody
21 administrative segregation and mentally ill inmates.
22 And unfortunately, it was our conclusion that the
23 document they submitted on Friday the 31st did not
24 present any plan at all.

25 For that reason, we in turn filed a response

1 with the court last evening, and delivered it at
2 that time to the Department of Corrections as well.
3 I think it is our primary concern at this point that
4 we need to focus more carefully on the needs of
5 those groups of inmates, and that those are really
6 unresolved issues whose importance we do not want to
7 in any way minimize or forget, is that these are
8 inmates we have been concerned about from the
9 beginning of these proceedings, that these are
10 inmates who were suffering from the worst of the
11 conditions at both KSP and KSIR, and continued to
12 suffer from exactly or essentially the same
13 conditions now they were experiencing more than a
14 year ago.

15 It was our feeling on the one hand that we
16 might recommend at this stage that if necessary, if
17 the state really did not understand the necessity of
18 planning specifically to care for those inmates,
19 that that could be made clear perhaps even in the
20 context of the final order which we believe is now
21 appropriate from this court.

22 THE COURT: Now as I understand it, we
23 have published notices. Inmates know about this,
24 the tentative order. I have heard from many of them
25 that they have seen the publications, so forth.

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1 MR. RICH: That's right. I have read most of
2 the objections you have received. I also spent two
3 days at the penitentiary just personally meeting
4 with those groups of inmates who wanted to respond.
5 I should say that the groups that were most upset
6 are the groups that we're wanting to shift some
7 focus to.

8 I am also most concerned about these groups of
9 inmates in part because of observations from afar
10 about what's occurring in the legislative context as
11 well. There has been a lot of talk about numbers,
12 and do we -- can we put people here, put them there?
13 How can we get the numbers down? Haven't heard much
14 talk about what can we do to assure that those
15 inmates who are high secure segregation inmates are
16 in a humane environment. How can we be certain
17 that the protective custody inmates are going to be
18 permitted to participate in programs as they have
19 been assured for nine years they would be? How can
20 we be assured there is going to be a comprehensive
21 mental health plan. I was in fact pleased that the
22 state legislature decided to hire a consultant to do
23 what should have been done several months ago in
24 terms of beginning a process of really thoroughly
25 developing a plan for treating mentally ill inmates,

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1 in regard to what has been submitted up to now as
2 just frightening to say the least in terms of what
3 it could spell in the long term for those inmates.

4 On the one hand part of our concern is for
5 some immediate short-term relief for this group of
6 inmates. We also think, I want to support the idea
7 in terms of the long-term treatment for instance of
8 the mentally ill. If it takes a consultant study
9 and 30 thousand dollars, you know, a lot of work to
10 find out even who they are, let's do it properly,
11 let's take the time that it takes for that process.
12 But that doesn't mean we should not also be doing
13 something right away.

14 If you would prefer to set a time for further
15 hearing of these issues --

16 THE COURT: I thought we would do that
17 before we leave today.

18 MR. RICH: Yeah. I do think our greatest
19 concern now is on the functional needs of all those
20 inmates. The quicker we can address it, respond to
21 any need -- our position on the one hand is the plan
22 was to be submitted, no plan has been submitted.
23 The need for hearing is uncertain to us in terms of
24 not knowing exactly what could be expected then.
25 But we would like to have further discussion on that

1 issue.

2 THE COURT: Well, the legislature has
3 apparently -- is going to grant money for a study
4 which would be ahead, but I think probably we should
5 have a hearing before that study is going to come
6 in. That may be six months from now. I think we
7 should hear from the -- I should look at what each
8 side has filed, and we should see what further can
9 be done here perhaps by the Department of
10 Corrections to give us more information about this
11 until a study comes in.

12 MR. RICH: It was our feeling it may be
13 essential if your orders issue from this court
14 before the legislature is finished with its work
15 this term, particularly as to these groups of
16 inmates. It is with that concern that we rushed a
17 response. On the first line of our response I
18 referred to the tentative order issued on, was it --
19 well, I guess the order issued in December --

20 THE COURT: A hundred years from now.

21 MR. RICH: A thousand years from now. I
22 am not really that depressed. I don't think it is
23 going to take quite that long, but I hope we will be
24 able to schedule that quickly. We are prepared.

25 THE COURT: All right. Thank you. Mr.

1 Theis or Mr. Kessler, anything you want to add?

2 MR. KESSLER: I really have nothing other than
3 I have a question as to what we may address at the
4 further hearing. That is in addition to the plan
5 that was filed Friday by the department. I only ask
6 that because the attorney general made remarks about
7 possibly filing other motions. There is also talk
8 about finalizing the tentative order. So I don't
9 know whether we will need to set times for that.

10 THE COURT: I am ready to set a time that is
11 agreeable to both sides in regard to the matters
12 briefed on the treatment of mentally ill and
13 protective custody inmates. We are able to do that.
14 I might suggest in addition to that, while you are
15 all together here, why don't you also discuss a
16 final order, and when the court might issue my final
17 order, and whether you want us to prepare it, or
18 whether you want to try to get together on an agreed
19 order now based upon my tentative order.

20 MR. RICH: It was certainly our thought in
21 part that the issues we are still dealing with could
22 be severed. We could have pursuant to rule 54b what
23 is for all purposes a final order with respect to
24 those issues that have been resolved. We see no
25 reason to delay that process.

1 THE COURT: All right. Why don't you
2 discuss that with Mr. Simmons and the attorney
3 general and the other attorneys who are here, see if
4 we can get that worked out. What about a date, Jim
5 can we give them a date, or Sharon?

6 (OFF THE RECORD DISCUSSION.)

7 THE COURT: Let's look at the first week
8 in May to set this down. How would that strike
9 everyone?

10 MR. RICH: Now, I assume that would be
11 after the final session of the legislature?

12 THE COURT: Yes, it will. You want
13 something earlier, is that right?

14 MR. RICH: Yes, and there is a question
15 about a need for an evidentiary hearing, or --

16 THE COURT: Do you have any further time?

17 (OFF THE RECORD DISCUSSION.)

18 THE COURT: What about Thursday and Friday
19 next week? We have the race track pipeline case the
20 first part of the week. Will the legislature still
21 be here at that time?

22 ATTORNEY GENERAL STEPHAN: When was that?

23 THE COURT: The 13th and 14th.

24 ATTORNEY GENERAL STEPHAN: They are
25 supposed to adjourn this weekend, then come back

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for the final session.

MR. PETERSON: Out the next two weeks,
Your Honor.

MR. SIMMONS: We are not looking at a
two-day hearing.

THE COURT: No, I think were just looking
at one or the other day, and decide what you think
you want to present at that time. You get together,
see if you want to present some evidentiary matters
at that time. We will decide. We have severed
those two issues, and also discuss a final order
which ordinarily is just routine after the tentative
order, and it has been approved by, and notice has
been given. If you come up with a final order which
I could sign this week, we would be agreeable to
doing that.

What day is best next week?

MR. SIMMONS: Friday would be best for me,
Your Honor.

MR. RICH: I have problems on Friday
mornings.

ATTORNEY GENERAL STEPHAN: Just miss
class.

THE COURT: How much time do you think?
What about Thursday afternoon, and if necessary, we

1 could take Friday afternoon, if we do not get
2 finished.

3 MR. RICH: That would be good for me.

4 MR. SIMMONS: That is fine, Your Honor.

5 THE COURT: All right. Let's look at
6 that. Let me say to you, I have been pushing to try
7 to get things done, and try to move this matter
8 along. Let me once more say to you I have never
9 tried to tell -- all we have done is set certain
10 limits here, you understand, and asked for
11 compliance over a period of time, which the court
12 feels have been reasonable. We have never tried to
13 tell anyone, the legislature, Department of
14 Corrections or anyone else how they should
15 accomplish these matters. We are not experts in
16 prison construction, and I frankly think decisions
17 on prisons should be made by experts and people that
18 understand the operations of prisons. I hope that
19 whatever is done, it is based upon some expertise
20 being done by people who understand the new modern
21 conditions that are required in institutions. Those
22 conditions are generally where you can see what is
23 going on in an institution, where people are not hid
24 back in corridors. It would be a waste of
25 taxpayers' money if it is not based upon expert

1 studies when you are spending huge sums of money to
2 do things. How it is done as far as this court is
3 concerned, as long as you meet the requirements and
4 take care of the constitutional rights of the
5 prisoners, it is strictly up to the Department of
6 Corrections, the governor and the legislature as far
7 as I'm concerned.

8 We need to go to another hearing. Let's
9 recess the court.

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11 (WHEREUPON, Court was adjourned.)

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UNITED STATES OF AMERICA)
) ss.
DISTRICT OF KANSAS)

C E R T I F I C A T E

I, DEBRA L. SCOTT, Certified Shorthand Reporter in and for the State of Kansas, do hereby certify that I was present at and reported in machine shorthand the Proceedings had the 5th day of April, 1989, in the above-mentioned court; that the foregoing transcript is a true, correct, and complete transcript of the requested proceedings.

I further certify that I am not attorney for, nor employed by, nor related to any of the parties or attorneys in this action, nor financially interested in the action.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal at Topeka, Kansas, this 6th day of April, 1989.



Debra L. Scott
DEBRA L. SCOTT
Certified Shorthand Reporter

* *

HOUSE BILL NO. 2548
(Capital Improvement Appropriations)

Recommended by the Governor

The Governor recommends capital improvement projects for the Department of Corrections for a new 768-bed correctional facility and a new 256-bed mental health facility. H.B. 2548, as introduced, appropriated \$718,865 in FY 1989 for planning for a new correctional facility and a new mental health facility, and \$7,406,009 in FY 1990 for debt service on the two new facilities. All funding is from the State General Fund.

As Amended by House Committee

The House Committee recommendation appropriates FY 1989 planning funds of \$3,176,501 for new correctional and mental health facilities, including final planning for a 512-bed maximum security facility and an additional 256-bed expansion or one or more new mental health units; \$7,406,009 for debt service in FY 1990; and \$30,000 for a consultant's study concerning mental health services for inmates. Release of the planning funds for an additional 256-bed expansion or for one or more new mental health units is made subject to review of the consultants study by the Joint Committee on State Building Construction and approval of the State Finance Council.

As Amended by House Committee of the Whole

The House Committee of the Whole amendment directs the Secretary of Corrections to make certain transfers of inmates and certain renovation and construction of facilities to accomplish the capacity levels specified in the bill; appropriates \$5,540,021 in FY 1989 for two capital improvement projects at the Kansas State Penitentiary; appropriates \$3.1 million in FY 1989 for construction of a new housing unit for medium security inmates at the Hutchinson Correctional Work Facility; appropriates \$718,865 in FY 1989 for planning of new mental health facilities; makes provision for housing certain inmates in private facilities in the cities of Horton and Washington; appropriates \$30,000 in FY 1989 to the Legislative Coordinating Council for a consultant's study concerning mental health services for inmates; and makes construction projects for any new state correctional or mental health facility subject to the wage rates of the federal Davis-Bacon Act.

ATTACHMENT 5
SWAM 4-7-89

Agency Request/Governor's RecommendationHouse AdjustmentsSenate Committee AdjustmentsSec. 1 -- Appropriation Bill Format LanguageSec. 2 -- Department of Corrections

The agency originally requested \$65 million for the construction of two new multi-security prison facilities in FY 1990. On March 15, 1989, the agency submitted a final program statement providing for a 768-bed maximum security facility and a 256-bed Larned Mental Health Unit. Construction costs for the maximum facility are estimated at \$58.7 million; construction costs for the 256-bed mental health unit are estimated at \$14.5 million.

Governor's Budget Amendment No. 2 recommends construction of a 768-bed maximum security facility and a 256-bed Larned Mental Health Unit. Governor's Budget Amendment No. 2 recommends a total of \$3,176,501 for planning in FY 1989, and \$7,406,009 for debt service in FY 1990.

Sec. 3 -- Legislative Coordinating Council

The original bill did not include this section.

Sec. 1 -- Department of Corrections

The House Committee of the Whole amendment directs the Secretary of Corrections to make certain transfers of inmates and undertake certain renovation and construction of facilities to accomplish the capacity levels specified for Kansas State Penitentiary, Kansas State Industrial Reformatory, Norton Correctional Facility, and the Hutchinson Correctional Work Facility.

Sec. 2 -- Kansas State Penitentiary

The House Committee of the Whole amendments appropriates \$5,540,021 from the State General Fund in FY 1989 for two capital improvement projects at the Penitentiary. The projects involve renovation of D cellhouse for maximum security inmates (\$2,130,021) and expansion of the Medium Security Unit for 192 medium security inmates (\$3,410,000).

Sec. 3 -- Hutchinson Correctional Work Facility

The House Committee of the Whole amendments appropriates \$3,100,000 from the State General Fund in FY 1989 for a capital improvements project at the Hutchinson Correctional Work Facility. The project involves construction of a new housing unit for 200 medium security inmates.

Sec. 4 -- Department of Corrections

The House Committee of the Whole amendment appropriates \$718,865 from the State General Fund in FY 1989 for planning for new mental health facilities for mentally ill inmates.

A new subsection prohibits expenditures of appropriated funds unless the Secretary of Corrections has negotiated and executed a preliminary letter of commitment for the housing of inmates classified as medium custody or higher in facilities owned and

Agency Request/Governor's RecommendationHouse AdjustmentsSenate Committee Adjustments

operated by the cities of Horton or Washington, if inmates are to be placed in facilities other than those of the Department of Corrections.

Sec. 5 -- Legislative Coordinating Council

The House Committee of the Whole recommendation appropriates \$30,000 in FY 1989 to the LCC for a consultant's study concerning mental health services for inmates.

Sec. 6 -- Department of Corrections

The House Committee of the Whole amendment requires that, on construction projects for any new state correctional facility or new mental health facility, employees of any contractor shall be paid in accordance with job classifications and wage rates prescribed under the federal Davis-Bacon Act.

H.B. 2548
(Capital Improvements)

	<u>As Introduced</u>	<u>House Committee</u>	<u>House Floor</u>
Planning for Correction Facility and Mental Health Facility	\$ 718,865 ^a	\$ 3,176,501 ^a	\$ 718,865 ^a
Debt Service for Correction Facility and Mental Health Facility	7,406,009 ^b	7,406,009 ^b	--
LCC - Consultant's Study	--	30,000 ^a	30,000 ^a
KSP			
Renovate D	--	--	2,130,021 ^a
Expand Medium Security Unit			3,410,000 ^a
HCWF - Expand 200-bed Unit	--	--	<u>3,100,000^a</u>
Total	<u>\$ 8,124,874</u>	<u>\$ 10,612,510</u>	<u>\$ 9,388,886</u>

a) FY 1989.

b) FY 1990.

Braden

Cost Data for Speaker Braden [PRISON4]

	Capital	First Year Operating	Annual Operating	20 Year Cost Per Bed **
768 Bed Facility	\$58.7	\$18.2	\$16.0	\$0.496
256 Mental Unit at Larned	<u>14.5</u>	<u>9.0</u>	<u>8.3</u>	\$0.708
Total 1,024 Beds	\$73.2	\$27.2	\$24.3	\$0.549
768 Bed Facility				
w/ 192 Bed Mental Unit	\$60.5	\$19.5	\$17.3	\$0.532
73 Mental Unit at Larned	<u>\$0.0</u>	<u>\$4.2</u>	<u>\$4.2</u>	\$1.139
Total 841 Beds	\$60.5	\$23.7	\$21.5	\$0.585
512 Bed Facility w/o				
Mental Unit	\$47.9	\$12.8	\$11.4	\$0.542
256 Mental Unit at Larned	<u>14.5</u>	<u>9.0</u>	<u>8.3</u>	\$0.708
Total 768 Beds	\$62.4	\$21.8	\$19.7	\$0.597
768 Bed Facility w/ 256 Bed				
Mental Unit (Close Unit at Larned)	<u>\$60.5</u>	<u>\$20.0</u>	<u>\$17.8</u>	\$0.545
Total 768 Beds	\$60.5	\$20.0	\$17.8	\$0.545

** Per bed cost is total 20 year costs in FY 1990 dollars divided by the number of beds. Capital costs are total project costs. Operating costs are the sum of first year and (19 * annual) operating costs.

<u>Governor's Plan</u>	<u>Maximum</u>	<u>Medium</u>	<u>Minimum</u>	<u>\$ Const.</u>
New Correctional Facility	768	--	--	\$56,259,488
New Mental Health Facility	<u>256</u>	--	--	<u>13,823,785</u>
	1,024	--	--	\$70,083,193

New Bedspace: Maximum = 1,024

<u>Representative Graeber</u>	<u>Maximum</u>	<u>Medium</u>	<u>Minimum</u>	<u>\$ Const.</u>
KSP - Convert D Cellhouse	140	(140)	--	\$ 2,130,000
HCWF - Add Bedspace	--	200	--	3,100,000
KSP - Add Bedspace at Medium	--	192	--	5,607,432 ^a
NCF - Double Cell Existing Bedspace	--	--	232 ^b	--
New Mental Health Facility	<u>256</u>	<u>--</u>	<u>--</u>	<u>13,823,785</u>
	396	252	232	\$24,661,570

New Bedspace: Maximum = 256; Medium = 252; Minimum = 232 = 880
 Converted Bedspace: Maximum = 140.

^aAssumes 1981 cost of \$3,410,000 per DOC times five percent per year through 1990 plus six percent architectural fees.
^bPresently used as minimum bedspace. Plans are to use as a geriatric unit.

<u>Senator Reilly</u>	<u>Maximum</u>	<u>Medium</u>	<u>Minimum</u>	<u>\$ Const.</u>
KSP - Convert C and D Cellhouses and A and T Building	353	(204)	--	\$ 5,389,185 ^c
Less Segregation Bedspace	(48)	--	--	--
KSIR - Convert D Cellhouse	306	--	--	4,260,000
Less Segregation Bedspace	(50)	--	--	--
HCWF - Add Bedspace	--	200	--	3,100,000
KSP - Add Bedspace at Medium	--	192	--	5,607,432
NCF - Double Cell Existing Bedspace	--	--	232 ^d	--
New Mental Health Facility	<u>256</u>	<u>--</u>	<u>--</u>	<u>13,823,785</u>
	817	188	232	\$32,180,402

New Bedspace: Maximum = 256; Medium = 188; Minimum = 232.
 Converted Bedspace: Maximum = 561

^cD Cellhouse \$2,130,000; A & T \$1,129,185; and C Cellhouse \$2,130,000
^dPresently used as minimum bedspace. Plans are to use as a geriatric unit.

2-6-89

**CAPACITY - POPULATION ANALYSIS,
BY SECURITY DESIGNATION OF BEDSPACE**

DOC FACILITIES, INCLUDING PROJECTS IN PROCESS

	<u>Maximum*</u>	<u>Medium</u>	<u>Minimum**</u>	<u>Total</u>	<u>Spec. Use/ Infirm.</u>	<u>Temp.</u>
Penitentiary	588	524	300	1,412	71	119
Reformatory	450	237	160	847	154	50
Cor. Voc. Tgn. Ctr.	-	40	140	180	6	-
Recpt. & Diag. Ctr.	123	-	90	213	4	10
Cor. Inst. Lansing	40	-	200	240	19	-
Norton Cor. Fac.	-	232	268	500	11	-
Honor Camps	-	-	172	172	-	-
Winfield Cor. Fac.	-	-	290	290	2	-
Wichita Work Rel.	-	-	100	100	-	-
Topeka Cor. Fac.	-	-	111	111	-	-
Osawatomie Cor. Fac.	-	-	80	80	-	-
Hutch Work Rel.	-	-	20	20	-	-
Forbes Cor. Fac.	-	-	80	80	-	-
Hutch Cor. Work Fac.	-	320	80	400	-	-
Stockton Cor. Fac.	-	-	94	94	-	-
Ellswor. Cor. Wk. F.	68	352	96	516	17	-
Subtotal	1,269	1,705	2,281	5,255		

NON-DOC PLACEMENTS

Contract Jail	-	-	75	75		
Comm. Resident. Ctr.	-	-	406	406		
Larned	73	-	43	116		
Subtotal	73	0	524	597		

TOTAL CAPACITY AND PLACEMENTS	1,342	1,705	2,805	5,852		
--	--------------	--------------	--------------	--------------	--	--

CURRENT POPULATION [2-3-89]	1,848	1,519	2,704	6,071		
--	--------------	--------------	--------------	--------------	--	--

CAPACITY + OR (-) CURRENT POPULATION	(506)	186	101	(219)		
---	---------------	------------	------------	---------------	--	--

*Includes special management & unclassified.
**Includes community custody.

2-6-89

PROJECTED POPULATION COMPARED TO CAPACITY TO 6-30-91 [28mo, 25da]

A. Last Five Year Experience - FY 83-88 [44 per mo. = 1272, 28mo, 25da]

	<u>Maximum*</u>	<u>Medium</u>	<u>Minimum**</u>	<u>Total</u>	<u>Spec. Use/ Infirm.</u>	<u>Temp.</u>
Projected Pop.	2,235	1,837	3,270	7,343	-	-
Current Capacity	1,342	1,705	2,805	5,852	-	-
Cap. + or (-) Pop.	(893)	(132)	(465)	(1,491)		
Add New Facility	736	-	64	800	64	-
Cap. + or (-) Pop	(157)	(132)	(401)	(691)		

B. Last Ten Year Experience - FY 78-88 [31 per mo. = 896, 28mo, 25da]

	<u>Maximum*</u>	<u>Medium</u>	<u>Minimum**</u>	<u>Total</u>	<u>Spec. Use/ Infirm.</u>	<u>Temp.</u>
Projected Pop.	2,121	1,743	3,103	6,967	-	-
Current Capacity	1,342	1,705	2,805	5,852	-	-
Cap. + or (-) Pop	(779)	(38)	(298)	(1,115)		
Add New Facility	736	-	64	800	64	-
Cap. + or (-) Pop	(43)	(38)	(234)	(315)		

*Includes special management & unclassified.

**Includes community custody.

STATE OF KANSAS



DEPARTMENT OF CORRECTIONS
OFFICE OF THE SECRETARY
Landon State Office Building
900 S.W. Jackson—Suite 400-N
Topeka, Kansas 66612-1284
(913) 296-3317

Mike Hayden
Governor

Roger V. Endell
Secretary

February 15, 1989

TO: Kansas Legislators
FROM: Roger V. Endell, Secretary of Corrections
SUBJECT: Tentative Order Issued by Federal District
Judge Richard Rogers

Enclosed is a copy of Judge Richard Rogers' order in the "overcrowding" case brought by inmates at KSP, KSIR, and KCIL. The order is tentative due to the fact that the case is a class action and members of the class (inmates) must be given an opportunity to respond to the order. A final order will be issued after the notice period expires March 10.

Summary:

A. Kansas State Penitentiary

1. Population at KSP shall be reduced to no more than 1,262 by July 1, 1991, (population on February 13, 1989, was 1,856);
2. The population shall be reduced to not more than 1,700 inmates by October 1, 1989.
3. No double-celling in A, B, C, or D cellhouses shall occur;

4. Double-celling in the medium security facility shall not occur after July 1, 1991;
5. The "Adjustment and Treatment (A & T) Building" and "Outside Dormitories" (R & S Units) shall not be used to house inmates after July 1, 1991.

B. Kansas State Industrial Reformatory

1. KSIR population shall be reduced to not more than 847 inmates by July 1, 1991, (population on February 13, 1989, was 1,571);
2. The population shall be reduced to not more than 1,126 by October 1, 1989;
3. Inmates shall not be double-celled after October 1, 1989.

C. Kansas Correctional Institution at Lansing

1. KCIL inmate population shall not exceed 158 until new housing unit is completed (population February 13, 1989, was 157);
2. The new housing unit shall be completed by December 31, 1989. After that date only one of the three existing housing units may be used to house inmates.

D. Judge Richard Rogers stated in his order that the existing accommodations for the long-term confinement of mentally ill, protective custody and high-security inmates are not appropriate. By March 1, 1989, Secretary of Corrections shall present to the court a plan for improving conditions of the above inmates. Constitutionally adequate housing accommodations for these inmates will need to be developed.

E. Inmate population at other DOC institutions shall not exceed the "operating capacity" of each institution.

- F. By July 1, 1991, a population management system which assures that the Kansas inmate population remains within the operating capacity of the state's correctional institutions shall be in effective operation. In the event the population exceeds the established operating capacity, the DOC shall have 30 days in which to reduce the population; should this not be accomplished, inmates shall be released.
- G. American Correctional Association and National Commission on Correctional Health Care standards shall be met and certified by October 1, 1991.
- H. By July 1, 1991, all inmates shall have the opportunity to enter into written agreements with the DOC specifying the educational, vocational, mental health or other programs which the inmate should complete in preparation for release on parole.

RVE:dja
Enclosures

House Bill No. 2548
 (New Correctional Facilities)

I. Governor's Recommendation:

768 Bed Facility	\$58.7M
256 Bed Mental Health Facility	14.5M
-----	-----
1,024	\$73.2M

II. House Committee Recommendation:

512 Bed Facility	\$47.9M
256 Bed Mental Health Facility	14.5M
-----	-----
768	\$62.4M
LCC--consultant's study	\$30,000

III. House Committee of the Whole Recommendation:

353 Bed Renovation--KSP	\$2,130,021
192 Bed Expansion--KSP	3,410,000
306 Bed Renovation--KSIR	No funding inc.
232 Bed Double Celling at Norton	--
200 Bed Dormitory--HCWF	3,100,000
(473) Less cells converted	-----
810	\$8,640,021
Planning funds for mental health unit	\$718,865
LCC--consultant's study	30,000

Testimony

Before the Senate Ways & Means Committee

Senator Edward F. Reilly

April 6, 1989

ATTACHMENT 7
SWAM 4-7-89

Senator Winter and Members of the Committee:

Thank you for this opportunity to appear before the Senate Ways and Means Committee regarding the optional plans that have been presented to this Legislature that would impact upon the current Kansas prison crisis.

I've included in the packets before you, comments made on Tuesday to the Joint Building Committee of the Senate and House urging favorable consideration of the proposal passed by the House of Representatives by 103 votes last Saturday.

The proposal is relatively simple in view of the fact that it is a one page bill developed by members of the Senate and House, Republicans and Democrats, after meeting several weeks ago in an effort to arrive at some additional options for this Legislature.

Since the action by the House of Representatives, the Attorney General Bob Stephan and former Secretary of Corrections, Michael Barbara, have appeared before the Joint Building Committee to further clarify the issue of the court decree by United State District Court Judge Richard Rogers, as well as some philosophical statements about the future of the Kansas Correctional System.

It's important to note here that the Attorney General of Kansas met with Judge Rogers on Wednesday, April 5, and the following are general conclusions that were made at that meeting.

- (1) That a comprehensive master plan be developed,
- (2) That such a plan be verified as feasible, and justifiable by correction experts, and
- (3) That A.C.A. standards be utilized.

In addition, the Attorney General has distributed to members of the Legislature a memo from his office dated April 5, 1989 to Senator Paul Burke, President of the Senate, and Speaker James Braden, Speaker of the House, further clarifying remarks that he made before the Senate and House Joint Building Committee. This memo is included and I would call your attention to items 1, 2, 3, 4, and 5.

This is a complex issue requiring some of the greatest innovation ever conceived by any Legislature in view of the continued growth in the Correctional System and the increase in expenditures that will be necessary.

It is incumbent upon us to address three major issues:

- (1) The increased number of beds needed in order to meet Judge Roger's mandate by July 1991,
- (2) The time frame in which to accomplish a reduction in the population within the correctional institutions by modification and new construction to achieve single celling where ordered in the shortest possible period, and
- (3) Achievement of these goals at the least possible cost to our fellow Kansans.

Although the plan adopted by the House appears relatively simple, in

view of the complicated issues that this Legislature frequently becomes engaged in, the action by the House is understood.

It entails changing the mission of the State to major correctional institutions, KSIR (Hutchinson) and KSP (Lansing) to totally maximum security institutions. Modification of these institutions on land that is already owned by the State will provide the most immediate response to what we know is a very dangerous and tense situation everyday in the Kansas system, which continues to become overcrowded. This response will be done promptly and not delayed by two years of construction. This is not to dismiss the need that there may very well be the demand for construction of new institutions in addition to those recommended in the House plan in the future. The immediate need, however, with which we are faced, is to respond to the Judge's order by acquiring additional bedspace before July 1, 1991. That is the major task.

Very simply, the concept embodied in the plan that is being offered as an option involves several major components.

It is proposed that the missions of the Kansas State Industrial Reformatory (KSIR) at Hutchinson and the Kansas State Penitentiary (KSP) at Lansing be changed to predominately maximum security institutions, with the elimination of all medium security inmates, resulting in an increase of single cell beds, maximum security status, of 659. This requires a modification of the medium security dormitories in those institutions and that can be initiated promptly.

The displacement of medium security prisoners to other institutions of the State can be accomplished in the following manner:

- I. The expansion of Hutchinson Correctional Work Facility (HCWF) by 200 inmates on existing state-owned ground can be initiated immediately with the further construction of dormitory units at that institution.
- II. The new Norton Correctional Facility, with 110 square feet per cell, can be utilized with clarification of the federal judge concerning double celling for an additional 230 inmates, for a total of 460 inmates at the Norton facility.
- III. The addition of two housing pods to the already constructed new Medium Security Unit at Kansas State Penitentiary, Lansing, will result in the addition of 96 new beds per pod, or 192 new inmates.
- IV. On Wednesday, April 5, city officials from the City of Horton, Kansas, released the attached press release relative to a facility that they proposed building in that city to be operated by that municipality. I would call your attention to the fact that they clarify that it has never been their intention that the State of Kansas guarantee bonds for the City of Horton and that all they seek is a letter of commitment to utilize their facility for State of Kansas needs in excess of the state's capacity on a per diem basis.

They are proposing, through their consultants who have managed projects

for states and counties throughout the U.S. specializing in correctional facilities, including the new Johnson County, Kansas Detention Center and the Northwest Missouri Correctional Facility in Cameron, Missouri, to build a 1,000 bed multi-level security facility that can be completed within 24 months at an approximate cost of \$50 million.

I think it is extremely important to realize and to recognize that the House of Representatives thoroughly understood the proposal that was presented. Although on its face simplistic in its approach, in making modifications to existing facilities in order to meet the time table, is not only a popular approach but a very reasonable, responsive, and cost effective approach.

I would like to review the elements of this plan and how these numbers are achieved briefly for the committee.

Proposal delivered

Before the Joint Building Committee

House and Senate

April 3, 1989

This proposal was introduced on March 28, 1989, by the Senate Federal & State Affairs Committee as an option to the Kansas Prison Crisis.

Dear Mr. Chairman & Members:

Members of the Kansas House of Representatives and Kansas Senate, Democrats and Republicans, have developed options to the current Kansas prison crisis. By changing the mission of some of the State's correctional institutions, the Kansas Legislature can immediately address the overcrowding issue in the State of Kansas at the least possible cost to the Kansas citizens while addressing the Federal Court Order requiring action prior to July 1, 1991. The modification of certain state correctional institutions on land that is already owned by the State will provide an immediate response to what is a very dangerous and tense situation in the Kansas prison system, which continues to become overcrowded. This response will be done promptly and not be delayed by two years of building.

The response embodies the following:

It is proposed that the missions of the Kansas State Industrial Reformatory (KSIR) at Hutchinson and the Kansas State Penitentiary

(KSP) at Lansing be changed to predominately maximum security institutions, with the elimination of all medium security inmates, resulting in an increase of single cell beds, maximum security status, of 659. This requires a modification of the medium security dormitories in those institutions and that can be initiated promptly.

The displacement of medium security prisoners to other institutions of the State can be accomplished in the following manner:

- I. The expansion of Hutchinson Correctional Work Facility (HCWF) by 200 inmates on existing state-owned ground can be initiated immediately with the further construction of dormitory units at that institution.

- II. The new Norton Correctional Facility, with 110 square feet per cell, can be utilized with clarification of the federal judge concerning double celling for an additional 230 inmates, for a

total of 460 inmates at the Norton facility.

III. The addition of two housing pods to the already constructed new Medium Security Unit at Kansas State Penitentiary, Lansing, will result in the addition of 96 new beds per pod, or 192 new inmates.

These modifications can be promptly initiated and if accomplished as outlined in the proposal, have an estimated cost of approximately \$9 million. The total number of maximum security beds this proposal would yield is 659 beds. Not included in these proposals, would be the necessary additions to the Larned State Hospital to treat the mentally ill inmates incarcerated in the Kansas correctional system. That estimated cost by the Governor's estimates and the Department of Corrections estimates is \$14^M for a 256-bed facility. In addition, there would be a need to either demolish or renovate the existing Adjustment and Treatment (A&T) building at Lansing, based upon the federal judge's order, which would house, as it is currently existing,

101 inmates in single cells. That facility could be expanded or rebuilt and is within the walls of the maximum security institution.

These options are available to the Kansas Legislature immediately and to proceed with them would be a sign of not only good faith to the court, but it would also be an indication of the State's commitment to address prison overcrowding at the least possible investment to the Kansas taxpayer. To save approximately \$50 million for the Kansas taxpayers is our goal and commitment.

CONTENTS

- 1) Joint Committee Proposal
- 2) Letter to Attorney General
- 3) Correctional Figures
- 4) Summary of Current Housing Space
- 5) Housing Capacity, KSP
- 6) Compiled Newspaper Articles
- 7) Arney Memorandum

LETTER TO ATTORNEY GENERAL

STATE OF KANSAS

EDWARD F. REILLY, JR.
SENATOR, THIRD DISTRICT
LEAVENWORTH AND JEFFERSON COUNTIES
430 DELAWARE
LEAVENWORTH, KANSAS 66048-2733
913-682-1236



COMMITTEE ASSIGNMENTS
CHAIRMAN: FEDERAL AND STATE AFFAIRS
AND INSURANCE SUBCOMMITTEE
VICE CHAIRMAN: ELECTIONS
MEMBER: CONFIRMATIONS
FINANCIAL INSTITUTIONS AND
INSURANCE
PUBLIC HEALTH AND WELFARE

TOPEKA

SENATE CHAMBER

March 30, 1989

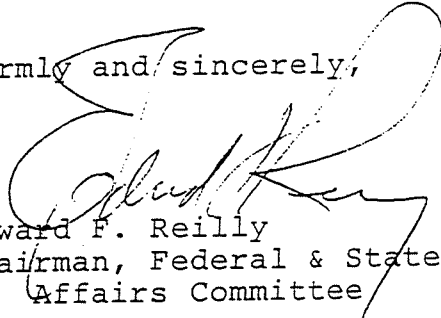
Attorney General Robert Stephan
Kansas Judicial Center
Topeka, KS 66612

Dear General:

Senate Bill 385 was introduced by the Senate Federal & State Affairs Committee on March 28 and is being referred to the Joint Building Committee for consideration as an option to immediately address prison overcrowding. I have reviewed this proposal with your staff and it is a combined effort on the part of Republicans and Democrats, House and Senate, to make a timely response to the Kansas correctional crisis and the federal court decree requesting action by July 1, 1991.

I would respectfully request, in view of your meeting with U.S. Judge Richard Rogers, that you inform him of this proposal for any appropriate comments the court wishes to make.

Warmly and sincerely,


Edward F. Reilly
Chairman, Federal & State
Affairs Committee

EFR:mr

CORRECTIONAL FIGURES

MEMORANDUM

March 24, 1989

To: Members of the Senate
Re: Corrections Options Available to the Kansas Legislature

Issues to be Addressed

1. Number of beds needed in order to meet judge's mandate by July, 1991.
2. Shortest timeframe in which to accomplish a reduction in population pressures and achieve single-celling.
3. Achieving our goals at the least possible investment to Kansas.

Options Available -- Maximum
Security Inmate Placement

1. Conversion of KSIR (Hutchinson) and KSP (Lansing) immediately to maximum security institutions. Remove all medium custody inmates from the KSIR and KSP facilities. Doing this would achieve 659 maximum security beds with the conversions of cellhouses to maximum security.

Mediums now housed	KSP	605
	KSIR	<u>437</u>
TOTAL		1,042

2. Hutchinson and Lansing currently have existing space adjacent to those institutions for medium security beds to be added on. Hutchinson is manufacturing units and the new medium security prison at Lansing was constructed to add two pods which would house 192 medium security inmates (96 inmates per pod). Continue constructing units at Hutchinson to provide space on existing grounds adjacent to KSIR for medium/minimum custody inmates.
3. Amount of vacant state ground available and adjacent to existing institutions:

	<u>Total Acres</u>	<u>Used for Facility</u>	<u>Leased for Farmland</u>
KSP	2,546	985	1,561
KSIR	382	182	200

4. Immediately authorize and proceed to appeal the U.S. Federal Judge's order with regard to not allowing double celling and the closing of Dorm 2 at Lansing, which currently houses 150 inmates. Currently, there are 197 double cells at KSIR and 406 double cells at KSP. Modify existing A&T building which would house up to 101 inmates for maximum security use inside KSP.
5. Provide for Larned expansion for mental unit of 256 beds.
6. Retain KRDC (Topeka) as the state's reception and diagnostic center close to Menninger Foundation and support services.
7. Continue emphasizing options for first-time offenders to remain at the community level. Need for additional Community Residential Center (CRC) somewhere in northeast Kansas.
8. Sentencing Commission.
9. Community Corrections expansion.
10. Appoint a special interim committee to insure a sound master plan is developed regarding the future of the Kansas correctional system. None is currently in existence.

Discussions that have taken place regarding the prison population problems nationwide indicate that the construction of a new facility with a large annual operating cost will achieve little in view of the consistent pattern that, "once built they are immediately filled and you cannot build yourself out of this dilemma." This would indicate that innovative and prudent steps must be taken to work with existing facilities and programs that can be put on line quickly (not within years) to reduce tensions in existing institutions and to do so at the least possible cost.

We would not dismiss the option of a private institution being developed, as suggested by investors from Horton, Kansas, as a supplement to already existing state institutions. This could undoubtedly be done quickly and at less cost by private enterprise and investors. This would require a partnership between the state and the developers and may very well be a wise and fruitful partnership.

Our state cannot justify, nor does it have unlimited resources in view of the current economic problems from the drought, resulting in a billion dollar estimated loss to Kansas, to embark on a massive expenditure of funds for corrections when our educational and social programs have great needs.

March 24, 1989

Note: In order to provide for medium security prisoners displaced by modification of cells at KSP and KSIR to maximum security, the following options are possible and achievable:

- 1) At the Norton facility each single cell has 110 square feet and currently there are 232 cells.

(Note: 80 to 95 square feet is acceptable by the U.S. Bureau of Prisons for 2 man celling.)

PROPOSAL: Add 232 men by double celling at Norton for a total of 464 inmates.

- 2) Hutchinson Correctional Work Facility currently serves a population of 400, but can handle 600.

PROPOSAL: Programs would need to be modified for an addition of 200 more new medium security cells.

- 3) KSP Medium Security Unit could be modified to house an additional 192 new beds by expanding the institution.

PROPOSAL: Add 2 pods to the existing institution where each pod could handle 96 inmates. Thus, an additional 192 new beds would be created.

<u>TOTAL</u> Proposed New Medium Security Beds:	KSP	192
	KSIR	200
	Norton	<u>232</u>
	TOTAL	642

KANSAS LEGISLATIVE RESEARCH DEPARTMENT

Room 545-N - Statehouse

Phone 296-3181

March 20, 1989

TO: Senator Edward Reilly

Office No. 255-E

RE: Corrections Issues - I

You have inquired about a number of issues concerning the Department of Corrections (DOC) and related information and data. I will attempt to respond to each point as the information is gathered and becomes available.

1. End-of-Month Inmate Population. The enclosed table indicates the end-of-month inmate population count at each DOC facility for the period of July, 1984 to February, 1989.
2. Carter Goble Population Projections. The consulting firm of Carter Goble Associates, Inc. presented a document entitled "Review of KDOC Inmate Forecast and Determination of Bedspace Expansion Need by Security Classification," dated September 19, 1988. Enclosed is a copy of Table 5 of this report, which projects year-end populations for FY 1990 and FY 1992, and pages 13-15 of the associated narrative. The narrative indicates that a range of 556 to 696 new maximum security beds will be needed by 1992. The narrative (p. 14) also indicates that KSP has 659 beds designated as maximum security which should not be used for maximum security inmates. Removal of these beds at KSP will result in the need for from 1,215 to 1,355 new maximum security beds by 1992.
3. Maximum Security Capacity. By way of comparison, I am enclosing: (a) the appropriate pages of a 1986 DOC report indicating rated optimum capacities at the various facilities; (b) the operating capacity at DOC facilities as decreed in Judge Roger's order (Attachment A); and (c) a capacity-population analysis, by security designation, which was presented by the Department of Corrections on February 6, 1989. The capacity of the medium security unit at KSP is rated at 288 inmates in all three documents. The DOC information dated February 3, 1989 indicates that the A and T unit at KSP has 101 one-inmate cells and 6 three-inmate cells. The capacity of the E Dormitory at KSIR is listed at 50 temporary beds.
4. Double-Celling at Kansas Facilities. Information supplied by KDOC indicates the following current practices regarding double-celling as of March 17, 1989.

Kansas Correctional Institution at Lansing -- no double celling

Kansas State Industrial Reformatory:

- of the 678 cells in cellhouses A, B, C, and D, 197 cells are double-celled (two inmates in one-man cells and six inmates in three-man cells)

- E Dormitory (rated at 50) currently houses 56 inmates
- Minimum Security Unit houses 160 inmates, which is at operating capacity

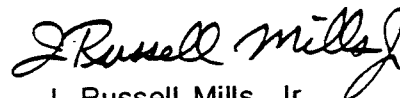
Kansas State Penitentiary:

- of the 808 cells inside the walls, 210 are double-celled. The 808 cells include 222 cells in A Cellhouse currently vacant because of the renovation project
- of the 288 cells in the Medium Security Unit, 196 are double-celled (units K, L, and M)
- Q Dormitory (rated at 150 minimum security) is at 189 inmates
- outside dormitory No. 2 (R and S units rated at 150) are currently at 215 inmates
- A and T Unit is single-celled

5. Appeal of District Court Decision. There has been some discussion of appealing the district court ruling regarding the corrections system. It is my understanding that the issue is still under consideration by the Legislative Coordinating Council at this time. Attorney General Stephan presented a statement largely in opposition to such an appeal to the LCC on February 23, 1989. A copy of his statement is included for your review.

6. Proposed El Dorado Site. The proposed site for the new prison which was recommended by Secretary Endell, known as the "Valley View site," is east of El Dorado. The site contains approximately 615 acres, of which 80 acres would be used for the actual construction of the facility. The city of El Dorado, with a population of about 12,000, is approximately one mile west of the proposed site, and the El Dorado airport is about two miles south of the site. U.S. 54 Highway runs along the northern edge of the site. The city of El Dorado and Butler County entered into an Interlocal Cooperation Agreement in December, 1988, to acquire the site, to create a special benefit district to improve the site, to issue bonds for improvements, and to lease the site to the Secretary of Corrections upon mutually agreed terms. The resolution authorizing the interlocal agreement commits Butler County to not more than \$560,000 for the development of an appropriate site.

I will supply the further information you requested as soon as possible.



J. Russell Mills, Jr.
Fiscal Analyst

JRM/sls

Enclosures

KANSAS LEGISLATIVE RESEARCH DEPARTMENT

Room 545-N - Statehouse

Phone 296-3181

March 24, 1989

TO: Senator Edward Reilly

Office No. 255-E

RE: Single Cells Available at Kansas State Penitentiary and
Kansas State Industrial Reformatory if Converted
to Maximum Custody Use; Based on Assumptions
You Directed

Kansas State Penitentiary

<u>Unit</u>	<u>One-Inmate Cells</u>	<u>Now Used for Maximum</u>
A Cellhouse	222	222
B Cellhouse	270	270
C Cellhouse	144	96
C 3-Man Cells ¹	64	--
D Cellhouse ²	140	--
A&T ⁴	101	--
TOTAL	<u>941</u>	<u>588</u>
New Maximum Cells		353

Kansas State Industrial Reformatory

A Cellhouse	198	50
B Cellhouse	200	200
C Cellhouse	200	200
D 3-Man Cell ⁴	<u>158</u>	<u>--</u>
TOTAL	756	450
New Maximum Cells		<u>306</u>
GRAND TOTAL		659

- 1) Would require renovation for 64 cells.
- 2) Would require plumbing and renovation.
- 3) Court order forbids use as inmate housing after July 1, 1991.
- 4) Would require renovation for 158 cells.

I hope this information is useful to you.

J. Russell Mills
Fiscal Analyst

JRM/pb

October 12, 1981

PRELIMINARY BUDGET FOR
DORMITORY - 96 BEDS
Medium Security Facility (First Phase)
Kansas State Penitentiary
Lansing, Kansas

Costs based on June, 1982 Bidding. Any variance from this schedule will change the costs at the rate of 12% per year.

(Based on Floor Plan dated October 6, 1981.)

BUILDING CONSTRUCTION		\$1,586,700
Base Price 24,681 SF at \$55.90 ..	\$1,379,700	
Security at 15%	207,000	
SITWORK		\$ 37,000
Grading	\$ 6,000	
Walks, Terraces, etc	13,000	
Retaining Walls, etc	16,000	
Utility Connections	2,000	
BIDDING CONTINGENCY (5% x \$1,623,700)		\$ 81,300
TOTAL ESTIMATED COST		<u>\$1,705,000</u>
	x 3	<u>\$5,115,000</u>

KANSAS LEGISLATIVE RESEARCH DEPARTMENT

Room 545-N - Statehouse

Phone 296-3181

March 29, 1989

TO: Senator Edward Reilly

Office No. 255-E

RE: Proposed Prison Renovation Cost Estimates

- I. Renovation of D Cellhouse at Kansas State Penitentiary (KSP). The Department of Corrections has provided the following estimate of costs for renovation of D Cellhouse at KSP for maximum security inmates.

Cellfronts, Doors, and Locking System	\$ 1,143,650
Plumbing	564,230
Toilets and Sinks	144,312
Architectural Fees and Miscellaneous Costs	<u>277,829</u>
Total	<u>\$ 2,130,021</u>

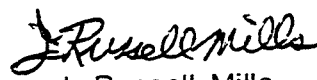
- II. Addition of 200-bed dormitory at the Hutchinson Correctional Work Facility (HCWF). Director Rayl has provided the following cost estimate for construction and operation of a 200-bed addition at the HCWF.

200-Bed Dormitory	\$ 1,800,000
Vehicle Maintenance Shop	200,000
Program Space Expansion	600,000
Prison Industries Expansion	<u>500,000</u>
Total	<u>\$ 3,100,000</u>

- III. Addition of the two new 96-man housing pods at KSP. The amount budgeted for each 96-bed housing pod at the Medium Security Unit in 1981 was \$1,705,000 for each unit. Using this dollar amount, construction of two pods would total \$3,410,000.

Summary:

140-Bed Renovation of D Cellhouse	\$ 2,130,021
200-Bed Expansion at HCWF	3,100,000
192-Bed Expansion at KSP	<u>3,410,000</u>
Total 532 Beds	<u>\$ 8,640,021</u>



J. Russell Mills
Fiscal Analyst

JRM/jar

SUMMARY OF CURRENT HOUSING SPACE

TABLE 1
Summary of Current Housing Space

(Size and Amount of Space by Institution/Facility)

Cell/Room Housing

Cell Size sq. ft.	KSP	KSIR	KCVTC	SRDC	KCIL	THC	EHC	TWRC	WWRC	HWRC	WPRC	TPRC	Total
40		300											300
44		200											200
56	6												6
57	6												6
58	26												26
59	239												239
60	272												272
61	25				48								73
62	40												40
63	17			28									45
64	2												2
65	8												8
66	96												96
67	35				48								83
70	288												288
85	1												1
87	1												1
88	1												1
90	1												1
105			180										180
110									3				3
130									11				11
140									13				13
144											27		27
150									9				9
160									3				3
168		80										1	81
187	1												1
190	1												1
192	3												3
193	5												5

TABLE 1 (cont.)

Cell/Room Housing (cont.)

Cell Size sq. ft.	KSP	KSIR	KCVTC	SRDC	KCIL	THC	EHC	TWRC	WWRC	HWRC	WPRC	TPRC	Total
194	8												8
195	4												4
196	3												3
197	3												3
198	4												4
220									2				2
256											2		2
264												10	10
265									4				4
276												2	2
288												2	2
Total (Cells/Rooms)	1096	580	180	28	96	-	-	-	45	-	29	15	2069

TABLE 1 (cont.)

Open/Dorm Housing

Sleeping Area Size	KSP	KSIR	KCVTC	SRDC	KCIL	THC	EHC	TWRC	WWRC	HWRC	WPRC	TPRC	Total
324				1									1
611				2									2
701				2									2
800												1	1
980							6						6
996										1			1
1169					1								1
1200											2		2
1300								1					1
1483	2												2
1600		5											5
1683						1							1
1982						1							1
2000	1												1
2300					1								1
2862		1											1
3000		1											1
3312	1												1
3321	1												1
4000	1												1
5400	1												1
Total Open Dorm	7	7	-	5	2	2	6	1	-	1	2	1	34

HOUSING CAPACITY, KSP

7-70
11-17-88

Inmate Housing Capacity, Kansas State Penitentiary
November 1988
(All Size Dimensions are in Square Feet)

TABLE II

Living Unit	# Cells/ Rooms	Average Cell/ Room Size	Range	Tier Capacity	Living Unit Capacity	Special Beds
A1	48	62.9	58-81	48		
A2	58	60.0	N/A	58		
A3	58	59.9	58-60	58		
A4	58	60.0	N/A	58	222	
B1	54	59.2	59-60	54		
B2	54	59.1	59-60	54		
B3	54	59.5	58-61	54		
B4	54	59.1	59-60	54		
B5	54	59.1	59-60	54	270	
C1	48	58.1	55-62	24		24**
C2	48	61.6	59-65	24		24**
C3	48	61.7	59-63	48		
C4	16	195.8	192-198	48		
C5	16	192.1	187-195	48	192	
D1	44	67.0	66-70	44		
D2	48	67.0	61-88	48		
D3	48	66.0	65-67	48	140	
E1E	20	50.0	N/A	20		
E1S	19	50.0	N/A	19		
E1N	18	50.0	49-50	18		
E2E	22	50.0	N/A	22		
E2S	20	50.0	49-50	20		
*E2N	6	158.3	156-159	18		
*E2N	2	49.5	49-50	2		119**
K	96	71.6	N/A	N/A	96	
L	96	71.6	N/A	N/A	96	
M	96	71.6	N/A	N/A	96	
Q1	1	3397.0	N/A	N/A	0***	
Q2	1	5274.0	N/A	N/A	75	
Q3	1	5544.0	N/A	N/A	75	
R	1	3500.0	N/A	N/A	70	
SN	1	1400.0	N/A	N/A	40	
SS	1	1400.0	N/A	N/A	40	
Clinic						23
					1,412.	190

MAY BE
ABLE TO
DIVIDE
INTO 3

[

]

NOTE: The Total Capacity does not include clinic, segregation, certain sleepout, and other special beds.

*Note that there are cells of two different architectural configurations in this area.

**Note that none of the cells in E-Unit nor the two half tiers of C1 and C2 meet current accreditation standards for segregation inmates. Multi-occupancy cell capacities are calculated at 50 square feet per inmate.

***ACI 2-4137 requires 35 square feet of day space per inmate. This capacity figure assumes conversion of the third floor for that use.

Source: Kansas State Penitentiary, Accreditation Program
November 17, 1988

7-11-17-88

KANSAS STATE PENITENTIARY

Inmate Housing Capacity

Authorized for FY 1989

<u>Institution/Unit</u>	<u>Number and Type of Housing</u>		<u>Oper.</u>	<u>FY 1989</u>		<u>Temp.</u>
				<u>Spec.</u>		
Penitentiary						
A Cellhouse	222	1-inmate cells	222			
B Cellhouse	270	1-inmate cells	270			
C Cellhouse	144	1-inmate cells	96	48		
C Cellhouse	32	3-inmate cells	96			
D Cellhouse	140	1-inmate cells	140			
E Cellhouse	101	1-inmate cells		101		
E Cellhouse	6	3-inmate cells		18		
K, L, & M Units	288	1-inmate cells	288			
Q Unit	2	Dormitories	150			
R & S	3	Dormitories	150			
Clinic				23		
Totals			1412	190		0

Source: Kansas State Penitentiary, November 17, 1988

COMPILED NEWSPAPER CLIPPINGS

Topeka CJ 3-89

Briefly...in Topeka

Number of inmates at CRC to grow to 200

The Community Residential Center at Forbes Field will have 200 inmates residing there today, the center's new administrator said Thursday.

Mike Watkins said 59 state prisoners moved into the minimum-security center Thursday and 36 more are scheduled to arrive today. That will complete a doubling of the number of inmates at the center.

The increase also means the Kansas Department of Corrections will meet a federal court deadline to reduce the number of inmates at the Kansas State Industrial Reformatory at Hutchinson to no more than 1,303 by Saturday, said Bill Miskell, corrections department spokesman.

The Shawnee County Commission approved on March 14 a special-use permit that allowed the expansion. The corrections department and VIP Cos. Inc., the Oklahoma City-based company that operates the center for the department, agreed to a contract on the expansion last week.

Watkins said remodeling of the center's second floor into living quarters for the new inmates was virtually complete Thursday. New second-floor administrative offices were about half done.

Watkins said he will replace Jerry Sunderland as the center's administrator Monday. VIP has promoted Sunderland to a regional administrator position.

USD 501 citizens advisory council to meet

The District Citizens Advisory Council of Topeka Unified School District 501 will meet at 7 p.m. Monday in the board room of the Topeka Public Schools Administrative Center, 624 W. 24th.

Reports of Topeka Board of Education meetings and other committees are on the agenda.

The council acts in an advisory capacity to the Topeka Board of Education.

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Panel suggests prison plan changes

By The Associated Press

Topeka—A Kansas legislative committee today scaled back Gov. Mike Hayden's proposal for new prison construction, and the director of the state's penal system complained about what he sees as attacks on his credibility.

The Joint Committee on State Building Construction recommended the state build a 512-bed, \$47.9 million prison, giving the state the option of expanding it by 256 beds later. The committee also proposed hiring a consultant to study the needs of mentally ill

inmates and ways to improve Department of Corrections services for them.

Hayden recommended building a 768-bed, \$58.7 million prison and a 256-bed, \$14.5 million expansion of housing for mentally ill inmates at Larned State Hospital.

The recommendation will go to the Legislature's two standing appropriations committees. Those committees traditionally do not vote to finance construction projects without the building committee's endorsement.

"I believe this is the best plan we could adopt," said Rep. Phil

Kline of Overland Park, vice chairman of the building committee.

Corrections Secretary Roger Endell, however, was not pleased with the committee's decision. He called it "really not very helpful."

"It's becoming very frustrating," he said. "We submitted a solid plan."

Endell told the committee he was worried about repeated questions about the department's figures and projections. He said lawmakers were questioning the department's credibility.

KC Star 3/29/89

In God We Trust

Editorials

Minimum wage, major concern

Kansas newspapers had differing views of the proposal to increase the minimum wage. They also discussed prisons, savings and paid tribute to Charles S. Scott Sr. Here is what they said in recent editorials.

Let employees survive

"The arguments being passed back and forth about a proposed hike in the nation's minimum wage seem to be getting as confusing as the smoke screen thrown up around the Oliver North trial.

"While the Iran-Contra trial disagreements are somewhat understandable because they involve matters of national security, the arguments against raising the minimum wage are mostly so much tripe.

"What has been lost in all the discussion is just who would be affected by an increase in the minimum wage. Most people would say it would apply to teenagers with part-time jobs trying to earn some pocket change or to retired persons looking to supplement monthly pensions or Social Security checks.

"The reality is that many of the Americans who earn a minimum wage (currently \$3.35 an hour) are adults with young children and all the bills related to supporting a family. ...

"Keeping the minimum wage low is supposed to help businesses maintain employment levels. But it also forces government to spend more money on social services. ...

"Congress should adopt the new minimum wage, drop the training wage and make it all effective this year — not wait until 1991 as has been discussed.

"In his campaign, President Bush asked for a kinder, gentler nation. This would be one way in which to accomplish that goal."

— Dodge City Daily Globe

lies. People may have to retrain themselves to consider minor medical expenses as things they must pay for themselves; that health insurance is there to cover the big expenses.

"The cost of insurance must be lowered if private industry is to foot the bill of health insurance. The expectations of the public must be lowered if government health care is the answer. ..."

— Wilson County Citizen

Prison problems

"...Last month Judge Richard Rogers gave the state an ultimatum to eliminate overcrowding in the existing prisons by July 1, 1991, or he would do it for us by releasing prisoners.

"The problem with merely building a new prison, however, is that it doesn't reach the cause, which is simply the fact that we have lengthened sentencing laws to the point that we're taking more prisoners into the system each year than we let out.

"Solutions other than building new prisons each year need to be looked at. Simply by reviewing sentencing laws and creating alternative penalties for non-violent criminals might eliminate the problem, or it may be considerably cheaper to expand community corrections programs.

"Those issues — it seems — should be thoroughly addressed before we simply throw more money at the problem in just another Band-Aid solution."

— McPherson Sentinel

Saving ourselves

"Americans don't seem to put much stock in savings these days.

"As a nation, we used to put money aside to prepare for major expenses and as a nest egg for emergencies. That tradition ..."

Prisoners may be released early

By JOHN HANNA
Associated Press writer

The director of the state's prison system is warning that next year Kansas may have to release prisoners early if the Legislature does not change sentencing laws or expand community corrections programs.

Corrections Secretary Roger Endell complains that his proposal to build a new prison gets far more attention than his support for sentencing reforms or expansion of community corrections.

Yet, he says, he will have to ask the Kansas Parole Board to release some inmates before their time or request that judges and Gov. Mike Hayden commute their sentences by February if the state does not take steps to decrease the gap between the number of inmates being released and the number entering prison each month.

The Legislature won't change that situation if it accepts his plan to

build a \$58.7 million, 768-bed prison, because the prison will not open until July 1, 1991, he says.

When asked whether he was simply giving a gloom-and-doom forecast, Endell was good-natured but adamant in his reply.

"I want you to write it down," he said. "I'd be willing to put money on it unless somebody does something about the net increase. That's fact. That's absolute fact."

U.S. District Judge Richard Rogers of Topeka ordered the state last month to reduce its population at three large prisons and to eliminate all overcrowding. He also in effect set a limit on the population for the states' prisons.

At the end of the year, with the completion of all projects approved in past sessions of the Legislature, the state's prisons will have a designated operating capacity of 5,080 inmates. Rogers' order will allow 5,699 inmates to be housed in those buildings at the end of the year.

Senate minority leader criticizes governor

Top C-I 5-18-89

By MATT TRUELL
Associated Press writer

Senate Minority Leader Michael Johnston, D-Parsons, criticized Gov. Mike Hayden Friday for what he called a lack of leadership on major issues.

"It is no wonder that things are moving through the Legislature so slowly, considering the lack of direction from the administration," Johnston told a news conference following a brief Senate session.

"For example, we have only scratched the surface in addressing our prison needs and have yet to deal with the question of building a new prison," Johnston said. "We keep getting different prison plans with varying levels of support from the governor."

He also was critical of Hayden for withholding support for any type of comprehensive highway plan. The House Friday passed a \$1.3 billion highway plan, greatly scaled down from a proposal developed by an interim committee in the fall. Hayden said earlier he would not endorse a

specific plan because it would politicize any proposal to improve the state's highways.

But Johnston said a highway program is too important an issue for the governor to remain aloof.

"That's really a sad commentary on leadership," the senator said.

Johnston is considering seeking the Democratic nomination for governor in 1990, although he has not announced his candidacy.

Hayden responded that Johnston's criticism is politically motivated since the senator is considering a bid for governor.

"His remarks today don't come as any surprise," Hayden said at his first Statehouse news conference since Jan. 25.

"I expect to work closely with legislative leaders in fashioning a comprehensive (highway) plan," the governor added. "We'll put pressure on the Legislature to keep their shoulder to the wheel."

Johnston said Hayden's approach toward governing Kansas is different this session.

"He clearly has adopted a different style this

year that raises legitimate questions about his leadership," he said.

He said the Legislature has received mixed signals from the governor on prison construction proposals.

Last year, Corrections Secretary Roger Endell proposed building two new prisons with a total of 1,200 beds at a cost of \$62 million.

"The governor distanced himself from that plan, saying that it was Secretary Endell's plan," Johnston said.

Last September, Endell proposed two new prisons totaling 1,500 beds at a cost of \$107.8 million.

"The governor expressed lukewarm support for this plan," Johnston said.

Hayden finally endorsed this session the construction of a 750-bed prison at El Dorado for \$55.3 million, the senator noted.

"After including this recommendation in his budget message to the Legislature, the governor not only failed to promote his plan, but has remained virtually silent on this issue since then," Johnston said.

Penal officials outline plan to build prison, mental unit

By ROGER MYERS
Capital-Journal Statehouse writer

State corrections officials unveiled a revised plan Thursday to build a new maximum-security prison and a facility for mentally ill prisoners that would cost a total of \$73.2 million and house 1,024 inmates.

The plan calls for construction of a prison for 768 inmates at an estimated cost of \$58.7 million. It would be built on an isolated ridge about 1 1/4 miles east of El Dorado in Butler County. Bow tie-shaped units could be built later to increase the prison's total capacity to 1,408 beds, authorities said.

The proposal also provides for building a separate mental health unit for 256 inmates at an estimated cost of \$14.5 million on the grounds of the State Security Hospital at Larned.

The total cost of the package would decrease by \$3 million to \$3.5 million if the mental health unit was built on the same site as the prison.

The revised plan for dealing with the state's prison overcrowding problem was presented to the Joint Committee on State Building Construction, which must give its approval before the Legislature will consider financing the proposal.

The plan would cost \$17.9 million more than a proposal originally contained in Gov. Mike Hayden's budget. Hayden had proposed only the construction of \$55.3 million, 800-bed prison.

The architects and consultants who briefed the committee Thursday said the prison and mental health unit could be ready by July 1991, the deadline a federal judge has set for Kansas to eliminate prison overcrowding, but only if work begins immediately.

Bill Livingston, of Johnson and Livingston Associates in Wichita, which helped design the proposed facilities, acknowledged the construction schedule is extremely ambitious, but said it is achievable even if the Legislature decides to locate either facility at other sites.

He said construction should start on the above ground portion of both facilities in February 1990.

After the presentation, Sen. Joe Harder, R-Moundridge, committee chairman, said he wanted time to review the proposal, which the panel saw for the first time Thursday.

He did not immediately schedule another meeting of the committee, but said it could meet next week to discuss the plan.

In response to questions from Roger Endell, the state corrections

secretary, Harder said he was not ready to vote for release of \$2.9 million in final planning money that the Senate Ways and Means Committee has removed from the Department of Corrections' capital improvements supplemental appropriations bill.

Endell said restoration of the final planning money was needed immediately if the design team is to be kept at work on the project. He said his agency has no planning money left.

Harder said he is confident the Legislature will act on the \$2.9 million before its scheduled first adjournment in April.

Rep. Phil Kline, R-Overland Park, vice chairman of the committee and a consulting engineer, said he also wants time to study the new proposal before reconvening the panel.

Harder said he was concerned about whether builders could meet the construction schedule, and Kline said he was concerned about the ability of the state to get enough mental health specialists to staff a facility in sparsely settled Kansas around Larned.

Endell said he had been assured by Winston Barton, secretary of the Department of Social and Rehabilitation Services, that staffing of the mental health unit would not be a problem.

3-24-89

Guards quell inmate strike at new Hutch facility

By Hurst Laviana
and Dave Hendrick
Staff Writers

HUTCHINSON — A work stoppage by inmates shut down operations at the state's newest prison Thursday, before correctional officers used batons and shotguns to end the uprising with a show of force. For four tense hours Thursday afternoon, prison counselors and

inmates at the Hutchinson Correctional Work Facility negotiated over several inmate demands. Those included better work assignments, improved medical care and access to personal items, such as tennis shoes, ice chests and chewing tobacco.

Prison officials broke off negotiations at 4 p.m., and ended the uprising an hour later, when 100 armed corrections officers sur-

rounded the inmates' dormitories and ordered the men outside.

All 350 inmates involved in the work stoppage surrendered and were handcuffed without resistance. At least 63 of the inmates were transferred to the maximum-security Kansas State Industrial Reformatory, about a mile from the work facility.

Les Harmon, associate director at KSIR, acted as a spokesman for

the prison. He said the inmates walked off their jobs shortly after noon in a move sparked by a confrontation between a guard and an inmate. The inmate, who allegedly struck the guard with his fist, was placed in an isolation cell.

Most of the other 400 inmates at the facility — now the third largest in Kansas — returned to their dormitories and prepared a list of demands. The list included a de-

mand that the isolated inmate be released. Inmates also asked for full-time access to a doctor and the right to own personal items that are routinely sold in some other prisons around the state.

"Ice chests, tennis shoes, sweat pants, hot pots — those seem to be the principal items," Harmon said.

The hot pots, which inmates use

● INMATES, 5D, Col. 1

● INMATES, from 1D

to heat coffee in their cells, are not available at KSIR, but are allowed at the Kansas State Penitentiary at Lansing. Although prison officials said they ended the disturbance without promising to meet any demands, they said many of the demands would be taken care of as prison officials work out rules and regulations at the new facility.

Don Thomas, an administrative officer at the prison, said 40 unarmed guards were on duty when the work stoppage began, but none were injured. He said work stoppages were not uncommon in prisons.

"It's not an unusual event," he said. "It's one mechanism inmates have to bring forth their grievances and concerns . . . Crowding

is not the issue here. It's basically a question of rights."

The new \$6 million facility was hastily built and filled to capacity as part of Kansas' efforts to ease crowding at the state's two largest prisons — the reformatory and the penitentiary.

The 36-acre Hutchinson Correctional Work Facility is surrounded by a 20-foot fence and includes two 200-bed dormitories. Eventually, the state will build seven factories inside the fence for inmate work on restoring cars, making furniture and sewing clothing. Thomas said many of the inmates now are helping to build the factories.

The 320 medium-security and 80 minimum-security inmates are paid 75 cents to \$1.05 a day, depending on the level of their skills. The prison opened Jan. 23, and

was filled to capacity March 14.

Harmon said one of the inmates' demands — round-the-clock access to a doctor to respond to emergency calls — was already in the planning stages.

About half of the inmates at the new facility came from the penitentiary, a prison that allows inmates to purchase sweat suits, chewing tobacco and electric stoves, Harmon said. But he said that such items were banned at the reformatory, partly because of a lack of storage space.

Thomas said the confrontation between the inmate and the guard stemmed from a Wednesday night incident that ended with the guard writing disciplinary reports on two inmates. The guard was investigating the disappearance of \$800 worth of items from a store that sells personal items to inmates.

Legislature '89

Lawmakers wary of Endell

Corrections chief has disdain for workings of Legislature

By JOHN HANNA
Associated Press writer

When the House debated a proposal Saturday to build a new prison, Kansas Corrections Secretary Roger



Roger Endell

Endell was conspicuously absent.

Perhaps his absence should have been expected, given his past public statements about how he dislikes watching the legislative process. The House debate came just days after a joint committee scaled down his proposal for new prison construction, which many House members did not support.

However, the House went even further. It not only rejected a smaller version of his plan, it endorsed one his agency had dismissed as inadequate and unworkable.

The House actions showed clearly that many legislators mistrust Endell, who helped overhaul Alaska's prison system before he came to Kansas. They see him as a builder, a person who wants to put his name on a new building or win a design award for one.

But some legislators say Gov. Mike Hayden also must take part of the blame. They say they're getting mixed messages from him on prison issues.

"He puts people out on a limb and leaves them there," one lawmaker said of Hayden. "By our nature, we start sawing the limb off."

Endell proposed and Hayden endorsed a plan to build a 768-bed, \$58.7 million prison and a \$14.5 million expansion of housing for mentally ill inmates at Larned State Hospital.

Analysis

The Joint Committee on State Building Construction endorsed a plan for a 512-bed, \$47.9 million prison and recommended the state hire a consultant to study the needs of mentally ill inmates.

The House plan substitutes an \$11.73 million renovation and expansion of facilities in Lansing, Hutchinson and Norton for the new prison.

"There's more of a question as to the need for such, let's say, a lavish undertaking," said Rep. Clyde Graeber, R-Leavenworth, of Endell's proposal.

Hayden's chief spokeswoman, Kathy Peterson, said she thinks the issue of trust is used by opponents of a new prison to cloud the debate. She noted the Legislature also has vigorously questioned the plans of past corrections secretaries.

"It makes me think that's a straw argument," she said. "I think that's an excuse people are using all too often."

However, Endell complained last week that lawmakers kept questioning the projections and figures offered by his department. Lawmakers were in effect questioning his and his agency's credibility, he said.

But they have questioned his credibility since he arrived in December 1987.

"Prisons don't have any constituency and corrections secretaries who advocate improvements and expansions of facilities are always resented," said Rep. Phil Kline, R-Overland Park, vice chairman of the building committee.

Part of some lawmakers' distrust seems to stem from what they see as an overly ambitious and expensive building program.

When Endell unveiled his latest plans, architects that his agency had hired admitted their construction schedule of less than 17 months was ambitious.

And when the House prepared to debate the department's proposed budget last month, Rep. Kerry Patrick, R-Leawood, an outspoken critic of the Hayden administration, distributed copies of a June 1988 investigative story by an Anchorage, Alaska, newspaper. It detailed problems and cost overruns involved in the construction of a new prison in that state.

Continued mention of the story frustrates Endell, who says he is not responsible for the problems because another Alaska agency oversaw the actual construction of the prison. The secretary says they are part of a "kill the messenger" syndrome.

"I don't think anyone trusts him or his prison plan of the week," Patrick said. "It appears as if the governor doesn't trust Endell. If he doesn't trust his own secretary of corrections, why should we?"

Hayden has at times publicly expressed confidence in Endell's work, and Endell has refused to criticize Hayden publicly.

However, when Endell's agency told legislators it was considering moving maximum-security female inmates to the Kansas Reception and Diagnostic Center in east Topeka, Hayden told reporters shortly afterward that he opposed the plan.

Last year, when Endell criticized lawmakers for not approving a new prison, Hayden publicly chastised him. And when Endell unveiled his building program last session, Hayden did not attend the news conference and waited nearly a month to endorse a version of the plan.

"The Hayden-Endell team is like Abbott and Costello, doing the routine, 'Who's on First?'" Patrick said.

Legislative meetings outlined

By the Associated Press

Here is a list of major committee activity in the Kansas Legislature the week of April 3 to 7. Because both the House and Senate will

Joint

Building Construction, 8 a.m.: Capital improvement projects.

House

Appropriations, noon or during House recess: Appropriations bills.

Legislative Judicial and Congressional Apportionment, first House recess: HB 2492.

WEDNESDAY

Senate

Ways and Means, 11 a.m.: Appropriations bills.

Education, 1:30 p.m.: HB 2085, amends the school finance formula for distributing state aid to local districts in the 1989-90 school year.

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ARNEY MEMORANDUM

MEMORANDUM

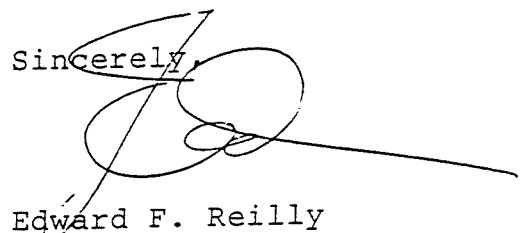
February 22, 1989

Dear Senator,

The attached letter of June 8, 1988 from inmate Jouett E. Arney of Kansas State Penitentiary #20538, is one you should take the time to read as it is an indication of how "the tail is now wagging the dog". The people of Kansas deserve a bit of input into the future direction and course of our criminal justice system if they are to have any confidence at all in our ability to manage our state and address the problems that are pressuring those who violate our Kansas statutes.

I share this with you as an indication of the type of challenges that undoubtedly will continue to face the members of this Legislature.

Sincerely,



Edward F. Reilly

EFR:mr

8 June, 1988

Senator Edward F. Reilly, Jr.
State of Kansas
1112 S. Broadway
Leavenworth, Kansas 66048

Representative Martha Jenkins
State of Kansas
Route 1, Box 47
Leavenworth, Kansas 66048

Dear Senator Reilly and Representative Jenkins:

Permit me to introduce myself as Jouett E. Arney, #20538
Kansas State Penitentiary
P. O. Box 2
Lansing, Kansas 66043

in the event my name is unfamiliar to you, I am the convict who filed the initial prison law suit based on unconstitutional conditions of confinement and tenaciously pursued it for ten years to what is fastly becoming a successful (in my favor) conclusion.

The Connie Parish article "County joins forces to halt proposal to move KCIL" published in the June 3, 1988 Edition of The Leavenworth Times with your comments was handed to me two days passed. I find your comments to be very interesting - especially in view of the fact it appears you lose again.

A bit of personal information about myself is here proper. In excess of 15 years ago Nick Tomasic Wyandotte County District Attorney and Judge Harry Miller "railroaded" and innocent man (me) to prison. While I begged Judge Miller to not commit such atrocity against an innocent human my pleas went unheard. After my arrival at Kansas State Penitentiary I continued to beg your state courts to correct a grave injustice, including your current Governor. Nonetheless, all my pleas were simply ignored. Thus I vowed to learn a bit about law and the constitution - and it appears I learned well.

As I look back at all this, it was as though Kansas State Officials were inviting someone to come - come force Kansas to clean up it's filthy prison system -- like an "invitation" of to "COME SLAY THE DRAGON." Well, I accepted that invitation (although not by choice) and now it appears my initial work and tenacious pursuit has indeed brought the great hypocritical dragon to its knees.

Even to this day state officials continue to run and hide - hide their face because they believe admitting to a grave injustice and correcting it would lower their social standing - but I assure you (and guarantee it) some of you will have to talk with me - whether you believe having to meet and talk with a convict is below your standing in life, before this long standing case is settled. After all somewhere in time someone, or many, will request my signature on certain legal documents to agree to terms of your surrender and I shall be a bit difficult to please.

And the interesting part (to me at least) is I achieved an overpowering goal on a worn-out portable typewriter (this one) held together with paper clips. A ten-cent typewriter has now cost Kansas about one-quarter billion dollars. A nice return on my ten-cent investment.

Senator Edward F. Reilly, Jr.
Representative Martha Jenkins

8 June, 1988
page two

In the event anyone questions my sincerity, I suggest you obtain a copy of Civil Rights Violation Law Suit, United States District Court (Topeka) Case No. 87 - 3292 - S, filed October, 1987 and read it carefully.

Please read me well. Kansas State Penitentiary is loaded with PCB and other deadly toxins are buried all over KSP grounds. KSP itself is a death trap. And Ms. Jenkins after reading your comment re to your concern what may happen to Kansas State Penitentiary because of the \$28 million spent on renovation already - I assure you because of the PCB and other highly deadly toxin contamination - my remaining life is dedicated to closing Kansas State Penitentiary altogether. I am also working to ascertain justice shall prevail for those inmates who died at Kansas State Penitentiary because of prison employee attitude of total deliberate serious indifferences toward a life of another and out-right and direct contributed to those inmate deaths by denying to them emergency, necessary and competent medical care, or no care at all.

Kansas State Legislators are playing a patch-quilt game with the facility at Norton, Kansas. Just another piece-meal Kansas State Penitentiary. You employ Secretary and Deputy Secretary's of Corrections who are nothing more than political gangsters and they can only add to an already horrible situation. Endell tied up with a group from Oregon. The (female) One Deputy Secretary tied in with the group from Oklahoma whom she associated with awarding or rewarding a \$2.1 million contract to house released inmates.


And then to nearly top off matters, after I returned from my March 16, 1988 hearing in Federal Court to KSP one of your Shift Captains had the foolish audacity to "threatened me." --- All because of my work to bring constructive and positive changes to a dehumanizing environment.

While my effort to achieve goals established already shall require tenacious dedication on my part, I'll not rest until my work is successful to: 1. Close Kansas State Penitentiary. 2. Near close KCIR (the Hutchinson facility). and, 3. Close the Norton, Kansas facility altogether.

If I may be permitted to make a suggestion, it is, please seek a way to find or raise taxes to locate another quarter-billion dollars because I suspect that sum will be required by Kansas corrections to just keep up with increased costs to keep prison doors open to receive new commitments.

I would appreciate hearing your input toward achieving an acceptable solution to a grave problem. Should you be willing to meet with, and discuss reaching a sensible solution to a troublesome and serious problem - you can visit, me at Kansas State Penitentiary. Expecting your response in the near term, thank you for your time reading my letter.

Sincerely,


Jouett E. Arney
Kansas State Penitentiary
P. O. Box 2
Lansing, Kansas 66043

Senator Edward F. Reilly Jr.
1412 South Broadway
Leavenworth, Kansas 66048

1 July, 1988

Representative Martha Jenkins
Route 1, Box 47
Leavenworth, Kansas 66048

Dear Senator Reilly and Representative Jenkins:

Jouett E. Arney, Kansas State Penitentiary here again. Since it appears Kansas Legislators can do nothing or just simply don't care to attempt to put an end to this body-shift just to make it appear Kansas prisons populations are decreasing, I have kept my word I promised you recently.

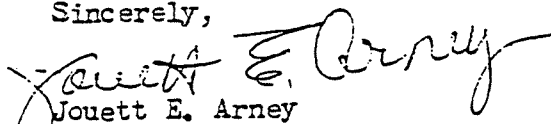
This letter is to inform you on Wednesday, June 29, 1988, I prepared and assisted Inmate James L. Russell, now incarcerated at KSIR, Kansas State Industrial Reformatory, with filing a conditions of confinement in United States District Court Topeka, naming KSIR in a similar law suit as I filed originally against Kansas State Penitentiary. The Clerk United States District Court can furnish you with the assigned case number.

Even as I write this letter I am at work preparing a similar law suit to be filed early in July naming Kansas Correctional Institution (for women) at Lansing as defendant. As soon as I get the law suit filed naming the women's facility as defendant, I shall begin to prepare a similar law suit naming the Norton facility as defendant.

While nature may have dealt Kansas a heat-wave costing Kansas farmers a bit of money, the heat I shall turn-up in 1988 shall be more devastating financially to build prisons than the heat wave in June 1988 cost Kansas tax payers. In fact, two conditions of confinement law suits were filed against the Hutchinson facility during June. I shall keep you informed with the filing of each additional law suit.

Thank you for your time.

Sincerely,


Jouett E. Arney
Kansas State Penitentiary
P. O. Box 2
Lansing, Kansas 66043

6 December, 1968

Dear Legislators:

Thank you citizens for paying postage for me to mail this
exquisitely decorated envelope to you.

Signed:

Jouett E. Arney
Kansas State Penitentiary

Jouett E. Arney
K.S.P. P.O. BOX 2
Lansing, Kansas 66043



Mr. Edward F. Reilly, Jr.
Kansas State Senator
1412 S. Broadway
Leavenworth, Kansas 66048

INMATE MAIL

KANSAS STATE PENITENTIARY

Again let me say that we recognize that as the policymakers of this State, we have a tremendous obligation to make wise and prudent decisions as regards expenditures of our tax dollars. I have long recognized that we have approached that responsibility carefully and prudently. This obligation has not been diminished by the crisis that we have facing us this year in meeting the Federal Court mandate. Recognizing the realities of life, it is next to impossible to believe that the State of Kansas will be able to complete a facility within the time frame given by the Court, that in the words of the Secretary of Corrections is "not very much help at all". This proposal is one that was submitted by the Joint Building Committee for our consideration and in view of their effort and hard work to address both the number of beds desired and the construction of a mental health facility for the mentally ill inmates, it is obvious that the Secretary does not feel that is enough.

This plan, however, as passed by the House of Representatives, does answer immediately the need for additional maximum security beds, single celled, and medium security beds within the State Correctional System.

Obviously, the need for a comprehensive, master plan is still grave and certainly needed as we struggle with the future needs of our correctional system.

RE: Proposed Prison Renovation Cost Estimates

- I. Renovation of D Cellhouse at Kansas State Penitentiary (KSP). The Department of Corrections has provided the following estimate of costs for renovation of D Cellhouse at KSP for maximum security inmates.

Cellfronts, Doors, and Locking System	\$ 1,143,650
Plumbing	564,230
Toilets and Sinks	144,312
Architectural Fees and Miscellaneous Costs	<u>277,829</u>
Total	<u>\$ 2,130,021</u>

- II. Addition of 200-bed dormitory at the Hutchinson Correctional Work Facility (HCWF). Director Rayl has provided the following cost estimate for construction and operation of a 200-bed addition at the HCWF.

200-Bed Dormitory	\$ 1,800,000
Vehicle Maintenance Shop	200,000
Program Space Expansion	600,000
Prison Industries Expansion	<u>500,000</u>
Total	<u>\$ 3,100,000</u>

- III. Addition of the two new 96-man housing pods at KSP. The amount budgeted for each 96-bed housing pod at the Medium Security Unit in 1981 was \$1,705,000 for each unit. Using this dollar amount, construction of two pods would total \$3,410,000. To update the 1981 figures to current construction costs, it would be necessary to make a 6 percent a year inflation allowance to the existing figures. The updated estimates would yield a \$2.4 million construction cost for each unit. The total cost estimate would be \$4.8 million for the KSP expansion.

Summary:

140-Bed Renovation of D Cellhouse	\$ 2,130,021
200-Bed Expansion at HCWF	3,100,000
192-Bed Expansion at KSP	<u>4,800,000</u>
Total 532 Beds	<u>\$ 9,230,021</u>

A Written Supplement to
The Testimony of

Ted D. Ayres
General Counsel
Kansas Board of Regents

before

THE SENATE COMMITTEE ON WAYS AND MEANS
1989 Legislative Session

in re
Senate Bill 391

April 5, 1989

ATTACHMENT 8
SWAM 4-7-89

Mr. Chairman and Members of the Committee:

My name is Ted D. Ayres and I am General Counsel to the Kansas Board of Regents. It is my pleasure to provide this written supplement to my oral testimony on April 5, 1989, to the Senate Committee on Ways and Means in support of Senate Bill 391.

Senate Bill 391 was introduced at the behest of the Kansas Board of Regents. It incorporates various legislative initiatives previously considered and approved by the Board. Senate Bill 391 makes numerous revisions to K.S.A. 74-4925, the basic statute which authorizes and controls the Regents retirement program for faculty and unclassified employees.

The addition made at lines 33-43 on page 9 and lines 1-2 on page 10 are intended to provide faculty/employees the option of maintaining long-term disability coverage, at their own cost, while on leaves of absence without pay [said leaves of absence without pay are authorized by the Board of Regents]. I have enclosed herewith, as Exhibit 1, a letter written by Professor Bob Jerry of the University of Kansas. His letter explains, in some detail, the purpose of the proposed amendment, and should be considered as the genesis of this initiative.

Senate Bill 391 makes numerous deletions at lines 16-43, page 5; lines 1-43, page 6; and lines 1-37, page 7. In consultation with the Revisor's Office, we are suggesting these deletions of historical language in an effort to shorten and simplify the statute.

A third revision of the basic statute is located on page 3, lines 20-26, of Senate Bill 391. The purpose of this amendment is to assist those Regents employees with pre-1962 service to the State. It allows 9-month faculty who were employed before July 1, 1962, and who were

still employed on July 1, 1988, to receive 12 months of prior service credits for each 9 months of service completed prior to July 1, 1962. This amendment will impact approximately 500 employees and is designed to maintain the status quo and allow Regents employees to be treated in a manner similar to public school employees.

A significant revision to K.S.A. 74-4925 is contained at lines 41-43, page 3, and line 1, page 4. This revision is designed to give the Board authority to operate its retirement program in accordance with alternate provisions of the internal revenue code. This review is proposed for legislative consideration because of certain requirements made by the Tax Reform Act of 1986. Exhibit 2 provides a more detailed explanation, but the intent of our recommendation is merely to clarify the Board's authority to qualify, as deemed necessary or appropriate, its retirement plan under Section 403(a) of the IRC, or "any other section of the . . . code . . . which defers or excludes amounts from inclusion in income" [The present Board retirement program is currently structured pursuant to Section 403(b) of the code.] We would then await further developments to determine what is actually the most cost-effective and advantageous way for the Board and the state of Kansas to proceed.

Finally, I would refer you to line 23 on page 2. The purpose of this addition is to require all employer contributions to the retirement plan to be made on a pretax basis. Currently, only individuals who are with TIAA-CREF have the option of pretax or after-tax contributions. We would like to be uniform. Additionally, were the Board to qualify its plan under 403(a), pre-tax contributions would be mandatory.

The continuing assistance, leadership and cooperation of the Senate Ways and Means Committee is appreciated. We would be happy to stand for further questions or provide additional information as needed and requested.

The University of Kansas

University Governance
Senate Executive Committee
Faculty Executive Committee

December 22, 1988

The Hon. Richard W. Dodderidge
Chair, Kansas Board of Regents
5333 Mission Woods Road
Mission Woods, Kansas 66205

Dear Regent Dodderidge:

In a separate letter, Ev Swartz and I express our appreciation to you and the other Regents for your attending the breakfast meeting last week with the Senate Presidents.

I write to you about a significant problem that I believe should be easy to remedy. Currently, the disability insurance benefit offered to faculty at the Regents institutions is provided by the state to all state employees through KPERS. The state self-insures this benefit; Security Benefit, as I understand it, administers the program pursuant to a contract with KPERS.

As matters now stand, if a faculty member assumes a leave-without-pay status for professional development, etc., the disability benefit ceases. This means, for example, if I were to visit for a semester at another institution, perform government service, or engage in some other similar activity, and if I became disabled during that time, I would have no disability coverage. In contrast, the health insurance benefit provided through the state has a provision whereby I can continue the health insurance coverage while in a leave-without-pay status by personally paying the monthly premium. What I propose is that a similar arrangement be established for disability coverage: If I choose, I would be able, through a direct billing arrangement, to continue my disability coverage while in this status. Making this coverage available during the leave-without-pay period would involve no expense to the state, because the employee pays for the benefit, as is the case with health insurance.

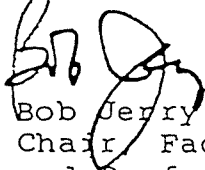
In October, I met with Marshall Crowther, the Executive Secretary of KPERS, and he indicated that such an arrangement would be feasible.

My understanding is that some sort of action may be required by the Regents Benefits Committee, and that some sort of statutory change might be needed.

The Hon. Richard W. Dodderidge
December 22, 1988
Page 2

I would be happy to discuss this further with you at your convenience. I appreciate your consideration of this important issue.

Sincerely,



Bob Jerry
Chair Faculty Executive Committee
and Professor of Law

cc: Marshall Crowther
Executive Vice Chancellor Ramaley
Richard Mann
FacEx

KANSAS BOARD OF REGENTS

SUITE 609 • CAPITOL TOWER • 400 SW EIGHTH • TOPEKA, KANSAS 66603-3911 • (913) 296-3421

M E M O R A N D U M

TO: Board of Regents
FROM: Ted D. Ayres, General Counsel *Ted*
RE: Retirement Plan/Agenda Item 5.c.
DATE: February 16, 1989

As the Board knows, contributions to the Regents mandatory retirement plan for faculty and unclassified employees can presently be made on a tax-deferred basis pursuant to Section 403(b) of the Internal Revenue Code. Contributions are defined as a percentage of salary and are applied to the purchase of annuities that are fully funded and provide for full and immediate vesting of all contributions in the participant.

The Tax Reform Act of 1986, imposed nondiscrimination requirements for 403(b) retirement and tax-deferred annuity plans [the Tax Reform Act has subsequently been amended by the Technical and Miscellaneous Revenue Act of 1988, which was signed into law on November 10, 1988]. The basic and proposed purpose of the new nondiscrimination requirements for employer-sponsored retirement plans is to ensure that a minimum number or percentage of an employer's employees are covered by a retirement plan and that a retirement plan does not benefit a disproportionate number of highly compensated employees.

Like many well-intentioned plans of Congress, this has turned into a nightmare. Implementing regulations have not been forthcoming [even though the Tax Reform Bill was signed by President Reagan on October 22, 1986, and even though the nondiscrimination requirements were to become effective January 1, 1989]. Furthermore, the requirements are extremely technical and numerous important questions remain for resolution.

We have had discussions with representatives of our retirement annuity carriers, TIAA-CREF, Aetna, Lincoln National and Union Mutual. One alternative which has been suggested is to seek to "qualify" our plan under Section 401 of the Internal Revenue Code. While this would not avoid all discrimination tests, we understand that we can avoid many of the 403(b) requirements while maintaining protections for our employees.

Our request is to seek authority to go to the Legislature to amend our current statutory authority [K.S.A. 1988 Supp. 74-4925] to provide the Board with the option of qualifying its plan under Section 403 of the Internal Revenue Code. Then we would propose awaiting further developments to determine what is actually the most advantageous way to proceed. We would also like authority to seek language which would give the Board the ability to require that all contributions be made on a tax-deferred basis [Such a requirement would, in fact, be mandatory under a 403 plan].

TDA:bf