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LR424  
August 08, 2014

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[LR424]

The Department of Correctional Services Special Investigative Committee of the Legislature met at 9:00 a.m., Friday, August 8, 2014, in Room 1524 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LR424. Senators present: Steve Lathrop, Chairman; Les Seiler, Vice Chairman; Kate Bolz; Ernie Chambers; Bob Krist; Heath Mello; and Paul Schumacher. Senators absent: None.

SENATOR LATHROP: Good morning, everyone. My name is Steve Lathrop. I'm chairing the LR424 committee, which is the Department of Correctional Services Special Investigative Committee. We're here this morning for the purpose of taking testimony from Mr. Houston. We appreciate the fact that he's here today. I think we'll begin by having everyone introduce themselves so the record reflects who's here and so forth. And we'll begin with Senator Bolz. [LR424]

SENATOR BOLZ: Good morning, Senator. Kate Bolz. I represent south Lincoln. [LR424]

SENATOR CHAMBERS: Ernie Chambers, the 11th Legislative District in Omaha. [LR424]

SENATOR SCHUMACHER: Paul Schumacher, District 22; that's Platte, Colfax, and parts of Stanton County. [LR424]

SENATOR LATHROP: Of course, I'm Steve Lathrop, District 12. [LR424]

SENATOR SEILER: Les Seiler, District 33, which is Adams and all but Grand Island in Hall County. [LR424]

SENATOR MELLO: Heath Mello, District 5, south Omaha and parts of midtown.

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[LR424]

SENATOR KRIST: Bob Krist, District 10; that's Omaha and Bennington. [LR424]

SENATOR LATHROP: Okay. Just as a matter of sort of housekeeping because this is being recorded, we want to make sure that everybody speaks into the mike today so that the transcriber doesn't have any trouble with picking up the questions and the answers. And if you need a break, this isn't a contest to see how long you can sit in front of this committee; and it is already a bit warm in the room, so if you need a break, let us know, Bob. [LR424]

ROBERT HOUSTON: Thank you. [LR424]

SENATOR LATHROP: And I think we'll start by having you raise you right hand and swear you in. Do you swear that the testimony you're about to give will be the whole truth and nothing but the truth? [LR424]

ROBERT HOUSTON: I do. [LR424]

SENATOR LATHROP: All right. Thank you. Mr. Houston, why don't we begin with your name. [LR424]

ROBERT HOUSTON: My name is Bob Houston, H-o-u-s-t-o-n. [LR424]

SENATOR LATHROP: Okay. You live in Omaha. [LR424]

ROBERT HOUSTON: Yes. [LR424]

SENATOR LATHROP: I won't make you give your address. [LR424]

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ROBERT HOUSTON: No. [LR424]

SENATOR LATHROP: All right. [LR424]

ROBERT HOUSTON: I live in Omaha. [LR424]

SENATOR LATHROP: Okay. You were formerly the director of the Department of Corrections? [LR424]

ROBERT HOUSTON: That is correct. [LR424]

SENATOR LATHROP: And can you tell us during what period of time you were the director? [LR424]

ROBERT HOUSTON: I was the director from 2003, I think it was March of 2003, until September of 2013. [LR424]

SENATOR LATHROP: Were you appointed by Dave Heineman to that post? [LR424]

ROBERT HOUSTON: Yes, I was. [LR424]

SENATOR LATHROP: Okay. And is that position a cabinet position in the Heineman administration? [LR424]

ROBERT HOUSTON: Yes, it is. [LR424]

SENATOR LATHROP: Can you tell us and maybe give you an opportunity to tell us what your work experience was and your education prior to taking the appointment from the Governor as the director of the Department of Corrections. [LR424]

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ROBERT HOUSTON: Okay. Well, I started as a Douglas County correction officer in 1973. And went to UNO; graduated from UNO in 1974. Came to work at the penitentiary as a counselor, a club counselor, to be more specific. I worked in that capacity for five years. Then I was promoted to unit manager when the Lincoln Correctional Center opened, and I worked in that capacity for three years. I went back to the penitentiary as the unit administrator, to begin unit management at the penitentiary, and I served in that capacity for a year. I was promoted to associate superintendent of the Omaha Correctional Center when that opened up. From there I took a promotion to deputy warden of the Nebraska State Penitentiary, and from there I was promoted to my first warden's job. I was warden for 11 years at the youth facility; at the Omaha Correctional Center, twice; and warden of the Lincoln Correctional Center, a max unit, for four years. And, let's see, from there I was promoted to assistant director, it's called deputy director now, over at Community Services, and I did that for about eight months. I was put on loan to Douglas County and then was appointed as the permanent director of Corrections for Douglas County; served in that capacity for about two years. And in 2005, I was appointed to this position. [LR424]

SENATOR LATHROP: 2005 or 2003? [LR424]

ROBERT HOUSTON: I'm sorry, 2003 I went to Douglas County; 2005, I came to the state. [LR424]

SENATOR LATHROP: Oh, okay. And that's when you took the appointment as the director. [LR424]

ROBERT HOUSTON: Yes. [LR424]

SENATOR LATHROP: So March of 2005 to September of 2013. [LR424]

ROBERT HOUSTON: Yes. [LR424]

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SENATOR LATHROP: Okay. Can you tell us what your duties were as the director.  
[LR424]

ROBERT HOUSTON: As the director I was responsible for all administrative functions for the department. I was responsible to review and set in policy operating procedures throughout the agency. I was responsible for overseeing 2,400 staff and just under 5,000 inmates, and another 1,100, or so, on parole. I was responsible to interact with other agency directors. I was responsible for a biennium budget to be submitted to the Appropriations Committee through the Governor's Office, and responsible for the safety and security for the men and women and the inmates of the Department of Corrections.  
[LR424]

SENATOR LATHROP: As a member of the Governor's cabinet, did you have regular meetings with the Governor? [LR424]

ROBERT HOUSTON: Yes. With the... [LR424]

SENATOR LATHROP: Can you tell us the...did the entire cabinet have regular meetings or just you had regular meetings as the director? [LR424]

ROBERT HOUSTON: No. The...I had meetings with the Governor in line with the agency directors, and that was on a monthly basis. [LR424]

SENATOR LATHROP: You had monthly meetings with the Governor. [LR424]

ROBERT HOUSTON: Yes. Those were cabinet meetings. [LR424]

SENATOR LATHROP: And so when you had the monthly meetings, was that all of the directors, or the commissioners, if you will, that sit in the cabinet; or was this a monthly

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meeting where the two of you would sit down and discuss issues relative to Corrections? [LR424]

ROBERT HOUSTON: No. This was all the cabinet members. [LR424]

SENATOR LATHROP: All right. And was that an opportunity for you to express concerns that you had with whatever may be going on over in Corrections at the time? [LR424]

ROBERT HOUSTON: Well, mostly my communication was with Larry Bare, and that was sometimes on a daily basis, sometimes on a weekly basis. [LR424]

SENATOR LATHROP: And the record should reflect that would be the Governor's chief of staff. [LR424]

ROBERT HOUSTON: Yes. [LR424]

SENATOR LATHROP: All right. In addition to your regular and sometimes daily conversations with Mr. Bare, did you have communications with the Governor himself? [LR424]

ROBERT HOUSTON: On occasion. [LR424]

SENATOR LATHROP: And how frequently would that have been during the time you were director? [LR424]

ROBERT HOUSTON: Not that frequently. [LR424]

SENATOR LATHROP: If you had a concern over at the Department of Corrections that you thought needed to be directed to the attention of the Governor, what was the line of

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communication? [LR424]

ROBERT HOUSTON: I would call Larry Bare. [LR424]

SENATOR LATHROP: All right. [LR424]

ROBERT HOUSTON: Um-hum. [LR424]

SENATOR LATHROP: And would you request time with the Governor, or would you lay your concern or the problem in front of Larry Bare? [LR424]

ROBERT HOUSTON: Ninety-nine percent of the time Larry Bare was able to answer my question. [LR424]

SENATOR LATHROP: Okay. You talked about your responsibilities for appropriations, and I assume at least every other year you had to present a budget to the Governor, which would be Corrections' proposed budget. [LR424]

ROBERT HOUSTON: All right. Tell me what that process looked like. [LR424]

ROBERT HOUSTON: Well, we started quite a few months ahead of time, nearly a year...a little over a year ahead of time. We had...we have, in the central office, about 100 employees, and among those are five deputy directors. We also had the person responsible for the budget, a person responsible for engineering. And we would have a panel and each one of the program heads and each one of the wardens would come in, either by himself or herself, or with a couple of their staff, and they would go over the budget requests that they had. They would turn in written material. The last time we did the budget we went electronically. And we would go over each one of their requests. At the end of that process, the committee would then get together several times over the next month or two and go over those requests and categorize those as high, medium,

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low. And those that fell into the high category, we gave the greatest amount of attention to. We would then submit that budget. Usually I'd have a pre-meeting with Gerry Oligmueller and with Joe Wilcox, and we would go over what our budget requests are, what our expenses are, and then a final determination would be made as to the budget we submitted. [LR424]

SENATOR LATHROP: And did you have a meeting with the Governor when you would present what would be Corrections' budget, or was that done with Mr. Bare? [LR424]

ROBERT HOUSTON: I believe that would have been done with Mr. Bare. I...the...yeah, I didn't meet directly with...I think your question is, did I meet directly with the Governor? No. [LR424]

SENATOR LATHROP: Right. You have explained that most of the problems that you would take to the Governor's Office would be through his chief of staff, and that you had some meetings, which would be cabinet meetings, a group of people... [LR424]

ROBERT HOUSTON: Yes. [LR424]

SENATOR LATHROP: ...that had agencies like you do. [LR424]

ROBERT HOUSTON: Yes. [LR424]

SENATOR LATHROP: What occasions did you have to meet with the Governor himself to express or discuss concerns that you might have with issues going on at the Department of Corrections? [LR424]

ROBERT HOUSTON: Well, if...I mean, there was never a time where I really thought I needed to meet with the Governor. That was usually...when I met with the Governor, that was usually suggested by Larry Bare. I felt that Larry Bare could answer my



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questions. [LR424]

SENATOR LATHROP: So in the eight years or so that you were the director, how many times do you think you met with Governor Heineman? [LR424]

ROBERT HOUSTON: A dozen. A dozen times. [LR424]

SENATOR LATHROP: And that would be in addition to cabinet meetings. [LR424]

ROBERT HOUSTON: Yes. [LR424]

SENATOR LATHROP: Otherwise, you dealt with his chief of staff. [LR424]

ROBERT HOUSTON: Yes. [LR424]

SENATOR LATHROP: What's your current employment? [LR424]

ROBERT HOUSTON: I am at the University of Nebraska at Omaha. [LR424]

SENATOR LATHROP: What do you do there? [LR424]

ROBERT HOUSTON: I'm with the School of Criminology and Criminal Justice, and I'm teaching. And... [LR424]

SENATOR LATHROP: And what do you teach? [LR424]

ROBERT HOUSTON: I'm teaching corrections. [LR424]

SENATOR LATHROP: Okay. [LR424]

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ROBERT HOUSTON: And also next year I'll be involved with the certified public manager's course, a justice leadership speciality. And so I'm working with Public Administration within CPACS to form that curriculum for next year. [LR424]

SENATOR LATHROP: Are you, in addition, doing some consulting too? [LR424]

ROBERT HOUSTON: Yes. [LR424]

SENATOR LATHROP: And who do you consult for? Do you have a business name? [LR424]

ROBERT HOUSTON: No. No, I didn't establish a business. No. I sought permission from UNO and received permission to take on a second position. In that position I'm a federal monitor for the Los Angeles County Jail, and in that capacity I work with two other persons: one, an attorney in Los Angeles; another one, a consultant in California. And we started that about four months ago, and the Los Angeles County Jail is the largest jail in the world. It has 19,200 inmates. They've had about two decades of either...of accusations on uses of force, and there is a case, Rosas v. Baca, out of which an agreement was reached between the ACLU and the county to bring in three corrections consultants, myself included in the three, to work with that county to look at its use of force policies and practices, to look at the grievance processes, and then to set out a monitoring plan. That monitoring plan will carry into the future. [LR424]

SENATOR LATHROP: Okay. During the time that you were director, did you serve or were you a member of some professional organizations? [LR424]

ROBERT HOUSTON: Yes. [LR424]

SENATOR LATHROP: And did you serve as a member of those organizations? Did you chair any subcommittees? [LR424]

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ROBERT HOUSTON: Yes. [LR424]

SENATOR LATHROP: Tell me what subcommittees you chaired. [LR424]

ROBERT HOUSTON: I chaired the Prison Rape Elimination Act for the state directors. The Association of State Correctional Administrators is made up of the 50 state directors, Puerto Rico, the Los Angeles County Jail, the largest jails in the United States and the 50 states. And the Prison Rape Elimination Act was put into law several years ago. It affects jails and prisons nationwide. [LR424]

SENATOR LATHROP: Any other committees that you chaired? [LR424]

ROBERT HOUSTON: The restrictive housing. [LR424]

SENATOR LATHROP: What's that mean? [LR424]

ROBERT HOUSTON: Administrative segregation. [LR424]

SENATOR LATHROP: Okay. What was your role on that committee? [LR424]

ROBERT HOUSTON: I was a member. [LR424]

SENATOR LATHROP: What was the purpose of that committee? Was it to establish standards for the organization? [LR424]

ROBERT HOUSTON: It's going to lead to that. The purpose of that is, is that restrictive housing is the new name that's been given to administrative confinement. And the reason that restrictive housing was given that is, is that different states did administrative confinement in different ways. Some did it through the disciplinary

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process and made administrative decisions, some of them made administrative decisions. But at the end of the day it was restrictive housing where inmates were separated from the general population. [LR424]

SENATOR LATHROP: Did your group ever develop any standards before? Are you still on it, I should ask. [LR424]

ROBERT HOUSTON: As a...I'm an associate member, and... [LR424]

SENATOR LATHROP: Okay. Has the group established any standards for restrictive housing? [LR424]

ROBERT HOUSTON: They have set out 13 principles for restrictive housing, and those standards can be gotten on-line by Googling the Association of State Correctional Administrators. Go into "resolutions" and there will be a resolution there on restrictive housing and the 13 standards that go with it. [LR424]

SENATOR LATHROP: Did that group study the mental health effects of restrictive housing? [LR424]

ROBERT HOUSTON: One of the standards...I think one of the standards in there does address mental health. [LR424]

SENATOR LATHROP: That would be whether there's a...did they study the problems, though, related to administrative confinement or restrictive housing? [LR424]

ROBERT HOUSTON: Yes. That's an ongoing concern and that's an ongoing study by that committee. [LR424]

SENATOR LATHROP: They recognize, you recognize, that there are mental health

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consequences to restrictive housing in some circumstances. [LR424]

ROBERT HOUSTON: Absolutely. [LR424]

SENATOR LATHROP: And we'll talk about that in a little more detail when we get to that subject. I do want to...tell me a little bit about the organization at the Department of Corrections. There's...your...if we could, the corporate structure. [LR424]

ROBERT HOUSTON: Okay. [LR424]

SENATOR LATHROP: You're obviously...well, the Governor is at the top... [LR424]

ROBERT HOUSTON: Yes. [LR424]

SENATOR LATHROP: ...and then you, right, as the director? [LR424]

ROBERT HOUSTON: Yes. There are...in addition to myself, there are five deputy directors: a deputy director for administration, a deputy director for health services, one for industries, one for community services, and one for fenced and walled facilities. [LR424]

SENATOR LATHROP: Fenced and walled facilities? [LR424]

ROBERT HOUSTON: Which would be seven facilities. [LR424]

SENATOR LATHROP: Okay. Those people report directly to you. [LR424]

ROBERT HOUSTON: Yes. [LR424]

SENATOR LATHROP: And then they have their own staff. [LR424]

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ROBERT HOUSTON: Yes. [LR424]

SENATOR LATHROP: Where does the legal department fit in the corporate structure at the Department of Corrections, at least, during the time you were there? [LR424]

ROBERT HOUSTON: That is an additional direct report position to me. [LR424]

SENATOR LATHROP: They're not...that's not a deputy director level function. [LR424]

ROBERT HOUSTON: No. [LR424]

SENATOR LATHROP: Do they report to a deputy director or report directly to you? [LR424]

ROBERT HOUSTON: To me. [LR424]

SENATOR LATHROP: Okay. And is there somebody over there that was in charge of the legal department at the Department of Corrections when you were there? [LR424]

ROBERT HOUSTON: Yes. George Green. [LR424]

SENATOR LATHROP: Who was that? [LR424]

ROBERT HOUSTON: George Green. [LR424]

SENATOR LATHROP: Was George Green in charge the entire time you were there? [LR424]

ROBERT HOUSTON: Yes. [LR424]

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SENATOR LATHROP: What was the...did you have regular meetings with your deputy directors? [LR424]

ROBERT HOUSTON: Yes. [LR424]

SENATOR LATHROP: And did you have regular meetings with Mr. Green? [LR424]

ROBERT HOUSTON: Yes. [LR424]

SENATOR LATHROP: How often did you meet with Mr. Green? [LR424]

ROBERT HOUSTON: Well, we met weekly. [LR424]

SENATOR LATHROP: And what was the purpose in meeting weekly with Mr. Green? [LR424]

ROBERT HOUSTON: Well, he was part of...he would sit in...my direct reports established the executive team, and he was a member of that team. And we would have... [LR424]

SENATOR LATHROP: So while the guy that may be in charge of industries is asking you a question or taking up a problem with you, you have your lawyer there to answer questions, legal questions, that might come up. [LR424]

ROBERT HOUSTON: It could be. [LR424]

SENATOR LATHROP: That would be the purpose in having him present at the monthly meetings. [LR424]

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ROBERT HOUSTON: Yeah. The weekly... [LR424]

SENATOR LATHROP: In addition to that...pardon me. [LR424]

ROBERT HOUSTON: Weekly meetings. [LR424]

SENATOR LATHROP: Pardon me. Weekly meetings. In addition to that, was he allowed opportunities to express concerns that he may have from the legal department? [LR424]

ROBERT HOUSTON: Yes. [LR424]

SENATOR LATHROP: You said you left the state of Nebraska, or at least the Department of Corrections, in September of 2013. [LR424]

ROBERT HOUSTON: Um-hum. [LR424]

SENATOR LATHROP: And I don't ask these questions to be prying or to embarrass you, but can you tell us the circumstances? [LR424]

ROBERT HOUSTON: Sure. Well, it was a personal decision. I saw myself moving into a situation where I had become a controversial public official. I didn't want that to happen. And the Governor didn't need it, I didn't need it, the Department of Corrections certainly didn't need it. The Governor did not ask me to retire. In fact, I had a meeting scheduled for the following Friday with him, concerning crowding. I did it on my own. I did it after a discussion with my wife and with my family. And I knew that there were things that I could do after retirement. I put in 38 long years with the department. As you can imagine, doing what we do in the Department of Corrections, it is a very tough responsibility. And I had an opportunity to sit on Governor Heineman's cabinet; I'm very proud of that. It was a very good career. I was very proud to work for Douglas County. I



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was proud in every position I had, and it was time to go. [LR424]

SENATOR LATHROP: Did you simply take retirement? I mean, this wasn't an early departure or you had to negotiate some kind of a departure relative to whatever pension you might be due for your 38 years? [LR424]

ROBERT HOUSTON: Well, our pensions are cash-based, so it really...you know, doing the calculations like you would on a defined retirement does not apply to my position. [LR424]

SENATOR LATHROP: Okay. [LR424]

ROBERT HOUSTON: Um-hum. [LR424]

SENATOR LATHROP: So the question I have is, was there any kind of an agreement reached about your departure that would include a requirement that you maintain the confidence of anything that you observed in your time at the Department of Corrections or in meetings with the Governor or his chief of staff? [LR424]

ROBERT HOUSTON: No. [LR424]

SENATOR LATHROP: Okay. So you're under no...there's no agreement that you had that prohibits you from freely expressing what you observed and what you can tell us today. [LR424]

ROBERT HOUSTON: That's correct. [LR424]

SENATOR LATHROP: Okay. I want to visit with you about overcrowding or start with questions about overcrowding. [LR424]

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ROBERT HOUSTON: Um-hum. [LR424]

SENATOR CHAMBERS: Excuse me. Mr. Chairman,... [LR424]

SENATOR LATHROP: Yes, sir. [LR424]

SENATOR CHAMBERS: ...I don't want to disrupt, but I don't know that the record reflected the fact that Mr. Cookson, the chief deputy of the Attorney General's Office, is here. And since Mr. Houston is not under any obligation to withhold or keep anything from the committee, would it be inappropriate to explore why Mr. Cookson is here, whether he's representing Mr. Houston... [LR424]

SENATOR LATHROP: How about I ask a few questions about that. [LR424]

SENATOR CHAMBERS: That's what I meant. [LR424]

SENATOR LATHROP: Okay. [LR424]

SENATOR CHAMBERS: Then we can proceed. [LR424]

SENATOR LATHROP: Yeah. The record should reflect that David Cookson, who is the chief deputy in the Attorney General's Office, is here today. Can you tell us why you have Mr. Cookson along with you? [LR424]

ROBERT HOUSTON: Okay. He didn't come at my request. I'm glad that he's here for good reason and so forth. But we're involved with litigation concerning the Nikko Jenkins case. [LR424]

SENATOR LATHROP: Okay. I do have to make this observation while we're on the record, and that is you have the Attorney General's Office with you here today. The

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Department of Corrections has been sued by one or more of the families of the victims of Nikko Jenkins' rampage, and to that extent they represent the state in that litigation. [LR424]

ROBERT HOUSTON: That's correct. [LR424]

SENATOR LATHROP: The Attorney General has met with you and prepared your testimony today, or discussed your testimony today? [LR424]

ROBERT HOUSTON: Yes, we discussed. [LR424]

SENATOR LATHROP: And gave you advice about your testimony today. [LR424]

ROBERT HOUSTON: Yes. [LR424]

SENATOR LATHROP: And yesterday, apparently, the Attorney General announced that he's going to participate in an investigation of certain things that took place at the Department of Corrections while you were the director. [LR424]

ROBERT HOUSTON: Yes. [LR424]

DAVID COOKSON: Mr. Chairman, if I might. The record should reflect Mr. Houston is a named defendant, both officially and individually, which is why we're here in the limited capacity, individually. [LR424]

SENATOR LATHROP: Okay. And the...okay. And so the record can reflect that you're here to provide some counsel to him as he answers questions regarding Nikko Jenkins? [LR424]

DAVID COOKSON: Just that may be specific to the claims that have been filed, which I

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don't anticipate I will have to offer him. [LR424]

SENATOR LATHROP: Okay. I guess I will say this just as a lawyer trying to figure out how many hats one guy can wear without creating a conflict. So your office is investigating the Department of Corrections and representing them, and specifically representing Mr. Houston today. [LR424]

DAVID COOKSON: And as we do, we've done in literally hundreds of cases since the Attorney General's Office was formed as a constitutional officer, we perform many roles. And we wall the people off from the different capacities that are involved. We advised Mr. Houston to consult with personal counsel to make sure that any rights he might have are protected. [LR424]

SENATOR SEILER: Dave, could you speak into the mike? It's not picking up on the... [LR424]

DAVID COOKSON: Sure. Sorry. We advised Mr. Houston with regards to the possibility of a criminal investigation to seek private counsel and to be advised by them because we could not discuss that, even though that's a different part of the office. So we have to...that's the nature of what the constitution and statutes provide we have to do; and so we take the appropriate measures, and we've done this, again, for a number of years. [LR424]

SENATOR LATHROP: And I don't know if Dennis Carlson could sort this out, to be perfectly honest. I don't know how a lawyer can investigate the Department of Corrections, represent the Department of Corrections, and then sit next to and prepare the former director to testify in front of this committee. And I can't sort that out. That...I mean, that would be sort of the role of Dennis Carlson or Mark Weber, who apparently is going to succeed him. I don't have the answer to that. [LR424]

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DAVID COOKSON: Nationwide there is a unique situation with attorneys general because of the multiple hats we wear, which is why the prosecution and criminal investigation part is walled off from the civil part. I'm only here on the civil part. I am going to be walled off from the criminal investigation. [LR424]

SENATOR LATHROP: Senator Chambers. [LR424]

SENATOR CHAMBERS: Mr. Cookson, not to be argumentative, haven't there been times when the Attorney General's Office itself retained outside counsel? [LR424]

DAVID COOKSON: Yes. [LR424]

SENATOR CHAMBERS: And in a situation where we are all discussing, for various reasons, the public's skepticism about what government is doing, would it not have been possible...let me not phrase it with a negative. Would it have been possible for the Attorney General's Office to send somebody here to do what you're doing? [LR424]

DAVID COOKSON: Actually yes. The two gentlemen behind me are the ones who are actually working on the claims against Nikko Jenkins. [LR424]

SENATOR CHAMBERS: Could you speak into the mike and say it a little louder. [LR424]

DAVID COOKSON: Again, I'm sorry. The two lawyers in our office who are specifically handling the claims brought by the victims of Nikko Jenkins are here today. [LR424]

SENATOR CHAMBERS: There are two lawyers from the Attorney General's Office in addition to you. [LR424]

DAVID COOKSON: Correct. [LR424]

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SENATOR CHAMBERS: But I'm talking about instances where the Attorney General's Office retained counsel on issues pertaining to the state who did not work for the Attorney General's Office. Hasn't that occurred? [LR424]

DAVID COOKSON: It does happen in rare occasion, yes, if we're not either have manpower or have a specific direct conflict that we can't wall off, like we've done in this situation. [LR424]

SENATOR CHAMBERS: If the Attorney General's Office is conducting a criminal investigation, would that investigation include activities that have occurred, that would have occurred, while Mr. Houston was the director? [LR424]

DAVID COOKSON: That's correct. Which is, again, why we advised him to speak to private counsel. [LR424]

SENATOR CHAMBERS: Has the...then why are you here if he's going to speak to private counsel? [LR424]

DAVID COOKSON: That is only to the issue on miscalculation of release dates. I am here only for the limited purpose of questions that may get into attorney-client privilege with regards to the Nikko...claims resulting from the Nikko Jenkins victims. And I, again, don't anticipate that the committee will ask any, but nonetheless, we have an obligation to protect the interests of the state and Mr. Houston. [LR424]

SENATOR CHAMBERS: Well, I may not be aware of where that line is, so some questions I ask may approach that line, and we'll have to discuss that when it comes. But if we have a situation where the Attorney General's Office is conducting a criminal investigation... [LR424]

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DAVID COOKSON: Just so it's clear, we're not conducting the criminal investigation. The State Patrol is doing it and they are working with prosecutors from the Lancaster County Attorney's Office and prosecutors from our office. [LR424]

SENATOR CHAMBERS: Well, I had seen the Attorney General, by way of the news, talking about the investigation that they are launching, and I know you are aware of the fact that the Attorney General has already stated publicly that he does not believe any crime had been committed by anybody. You're aware of that, aren't you. [LR424]

DAVID COOKSON: Based on the information he had at the time, yes. [LR424]

SENATOR CHAMBERS: And you and I have talked about that, and you told me the Attorney General's Office did not believe that a crime had been committed. [LR424]

DAVID COOKSON: Based on the information we had available to us at the time, what we had seen. [LR424]

SENATOR CHAMBERS: And now there is a criminal investigation. [LR424]

DAVID COOKSON: And there's been additional information provided to us as part of the personnel investigation at Corrections. [LR424]

SENATOR CHAMBERS: So the personnel investigation came up with information that the Attorney General's Office could not come up with. [LR424]

DAVID COOKSON: No, we had not done an investigation. We had information provided to us in the course of dealing with the aftermath of the miscalculation issue, and with regards to both the aftermath and information we had with regards...that we collected with regards to pending litigation. But that didn't include the investigation done by Jackson Lewis until that report was received by us earlier this week. [LR424]

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SENATOR CHAMBERS: By Jack somebody? [LR424]

DAVID COOKSON: Jackson Lewis is a law firm in Omaha. [LR424]

SENATOR CHAMBERS: Oh, Jackson. Did...now did the Attorney General say...well, who retained this Jackson person, the Attorney General or the Governor? []

DAVID COOKSON: The Department of Corrections' director, Mike Kenney, made a request to hire outside counsel to conduct an investigation of personnel within his department. As is customary, that request was forwarded to us, and they had recommended the Jackson Lewis firm and we concurred. [LR424]

SENATOR CHAMBERS: Was one of Mr. Kenney's directives to "Jack be nimble, Jack be quick," so that there would be no delays? [LR424]

DAVID COOKSON: There is no Jack involved in the investigation. But yes, they were asked to expedite this as quickly as possible. [LR424]

SENATOR CHAMBERS: There was nothing in all that had been disclosed publicly that led the Attorney General's Office, the Attorney General who was the chief legal officer of the state, to see a need to look into what had been disclosed. He saw no need to do that, correct? [LR424]

DAVID COOKSON: No, that is not correct. We...the request for the personnel investigation came relatively in the middle of the process of fixing the aftermath of the miscalculation. We were aware he had begun an internal investigation and then came to us asking for the ability to bring in outside counsel. []

SENATOR CHAMBERS: But the Attorney General's Office is not beholden to nor does



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it take direction from the Department of Corrections' director, is that true or false? []

DAVID COOKSON: No, we do not. But we also have an obligation to let our client agency conduct its internal investigation, particularly when it relates to personnel matters, which would normally not be involved in. []

SENATOR CHAMBERS: And you felt, or the Attorney General's Office felt, there was no overarching public responsibility on the Attorney General's Office, given his statutory duties to not delay in looking into this situation of great magnitude and seriousness. []

DAVID COOKSON: I would disagree with that characterization. Our primary focus, once this was brought to the public's attention by the Omaha World-Herald, was to assist the Department of Corrections in fixing the mistakes they'd made, and then to also, we understood, at the same time we were doing that, they were looking into beginning an initial investigation. Once we had completed the process of fixing it, they came to us and asked us to bring in outside counsel, which we then determined it was appropriate to let outside counsel conduct their investigation before we made a determination. [LR424]

SENATOR CHAMBERS: But while the Attorney General's Office was looking into this matter, it was coextensive and it preceded the request by Mr. Kenney that Jackson et al. conduct this internal investigation. Isn't that true? The Attorney General's Office had begun to move prior to the request by the director that this Jackson firm get involved. Is that true? [LR424]

DAVID COOKSON: With regards to an investigation, no. Our focus was on trying to figure out the scope of the problem with the miscalculations and then to assist Corrections in fixing the problem and making sure they were doing it correctly this time. [LR424]

SENATOR CHAMBERS: But in looking at that, you did see what actions had been

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taken, what actions that should have been taken, were not taken. The Attorney General's Office was aware of these things before Jackson et al. got involved. Is that true or false? [LR424]

DAVID COOKSON: Yes, we were aware there was an issue with their lack of following the direction they'd received both from our office and from the Nebraska Supreme Court. And at the time we were aware that the director was doing an internal investigation, and so our focus was primarily, at that initial stage, on getting a handle on the number of inmates, who was involved in fixing it. [LR424]

SENATOR CHAMBERS: But you were aware of... [LR424]

DAVID COOKSON: Yes. [LR424]

SENATOR CHAMBERS: Well, I haven't asked the question yet. You were aware of the fact that officials and/or employees in the Department of Corrections were aware of what the Nebraska Supreme Court said should be the methodology of calculating good time. You were aware that those officials knew that and disregarded what the Supreme Court said. Is that true or false? [LR424]

DAVID COOKSON: We knew preliminarily there were individuals at Corrections. We didn't have access to all of the internal communications of Corrections to know to what extent that was, but we knew the extent of our communications with Corrections with regards to that issue, yes. [LR424]

SENATOR CHAMBERS: And did the Attorney General's Office know that if a state employee knowingly and intentionally disregarded the law as articulated by the Nebraska Supreme Court, if the Attorney General's Office knew that, did not that office...was...let me back up. Is the Attorney General's Office presumed to know the law? [LR424]

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DAVID COOKSON: Yes. All lawyers are required to know the law, presumed to know the law. [LR424]

SENATOR CHAMBERS: And ignorance of the law is not even an excuse for a layperson, such as myself, is it. [LR424]

DAVID COOKSON: That's correct. [LR424]

SENATOR CHAMBERS: So knowing that these officials deliberately, knowingly, and intentionally violated the law, wasn't that also a violation of statutes relative to their duty and the consequences of violating that duty? [LR424]

DAVID COOKSON: We knew that it was a possibility based on the limited information we had available. What we could not establish...at that time we did not have access to the information that would establish what the level of knowing, intentional, and deliberate activity was. [LR424]

SENATOR CHAMBERS: So then you really didn't know what the World-Herald found out, that there were employees with the Department of Corrections not following what the Supreme Court said they should have followed. You didn't know that. [LR424]

DAVID COOKSON: We knew that basic fact but we didn't know why and we didn't know who, and we didn't have a very good idea of when. [LR424]

SENATOR CHAMBERS: Then if you didn't know that, how could the Attorney General have said there is no evidence of any intent to do anything? If you didn't know, you didn't know one way or the other, did you? [LR424]

DAVID COOKSON: Again, based on the information we had, it was...there was specific

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indications that some people had questions about the decision. Some people had indicated they didn't think they should be doing it, a nonlawyer. But there was no information with regards to what legal counsel had said internally to the people in the department. And without knowing that, because as you know, a defense to a criminal charge is, I relied on the advice of my counsel. We couldn't make a determination about to what extent that went. We had information from one person in Corrections and some additional people copied on the e-mail. That's what we had. [LR424]

SENATOR CHAMBERS: It seems to me, then I will stop at this point because I can pursue it later and I don't want to break the thread of Mr. Houston's thought. It seems to me that to avoid the appearance, which I think exists for sure, that Mr. Bruning ought not to have said that his office doesn't think a crime was committed. I did and I said so immediately, and I listed the statutes and the World-Herald printed them, not just from me but from other people they described as legal experts and attorneys. It might have been more prudent for the Attorney General to have maintained total neutrality and said, that is a aspect on which we will not comment at this time until we get additional information. But instead, without information, he's going to take what amounts to me a cover-up position and say there was nothing wrong and because there is nothing wrong there is no need for certain types of investigation. And when I contacted the colonel of the State Patrol, Colonel Sankey, and asked about launching a criminal investigation, he said that he had not been requested to do so; that he's going to talk to the Attorney General's Office. And prior to my calling Colonel Sankey, I had mentioned to you that's what I intended to do, and you thought it was an appropriate step to take. Is it a fact that he can only launch an investigation if requested by the Attorney General's Office or the Governor's Office and is unable to become aware of possible violations of the law and launch an investigation? Here's the question I'm asking: Can the State Patrol launch a criminal investigation only when requested to do so by the Attorney General's Office or the Governor? [LR424]

DAVID COOKSON: Not to my knowledge, no. [LR424]

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SENATOR CHAMBERS: So he could have launched that investigation pursuant to my request had he chosen to do so. Is that correct? [LR424]

DAVID COOKSON: I...he...I'm sure that they have a process for determining whether an investigation is warranted. [LR424]

SENATOR CHAMBERS: And as I said, that's all I'll ask at this time. Thank you. [LR424]

SENATOR LATHROP: Okay. [LR424]

DAVID COOKSON: And I apologize. I didn't mean to be a distraction today. [LR424]

SENATOR LATHROP: No. We'll decide if you're a distraction at some point between now and the end of the day, but for the moment we'll go back to asking Mr. Houston some questions. And I suggested that I wanted to visit a little bit about the overcrowding. And clearly, we're at, what, 160 percent or something like that, close to that in men's, right? [LR424]

ROBERT HOUSTON: That's correct. [LR424]

SENATOR LATHROP: Okay. Can you tell us when you began your tenure in 2005 what the capacity was of the Department of Corrections? [LR424]

ROBERT HOUSTON: If you include the Work Ethic Camp, 3,275 is the rated capacity of the department. [LR424]

SENATOR LATHROP: Okay. So at the beginning of your tenure, what was the census? [LR424]

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ROBERT HOUSTON: What was the...? [LR424]

SENATOR LATHROP: Census. The population. [LR424]

ROBERT HOUSTON: Oh. I think we were somewhere around the 130 percent level...132 percent, somewhere in there. That was in...well, we reached...in 2006, we reached 140 percent; so it was an amount smaller than when I started in 2005. [LR424]

SENATOR LATHROP: Okay. So tell us what the problem is with getting to that number up to 140 percent. As the director of Corrections, what kind of a problem does that present for the state of Nebraska? [LR424]

ROBERT HOUSTON: Well, I mean, it...let me see if I can explain it. We have what's called the rated capacity, which is the 3,275. Kind of a benchmark across the country as far as a capacity would be at about 125 percent. In other words, you're not going to get to the architect's 100 percent. You're going to be somewhere above that. And when you think about all the things that go into the care and security observation of inmates, as you become more crowded that becomes an issue. There is not a relationship necessarily between crowding and the level of safety. It can vary. You can have institutions that have a low population and have some security issues. You could have a prison system that is at a higher level and is safe. It really depends upon the quality of your institutions, the quality of the staff and the training that you have, and so forth, to deal with that capacity. [LR424]

SENATOR LATHROP: Right. Two things are true though. In Nebraska statute, at 140 percent, the Governor can declare an emergency. [LR424]

ROBERT HOUSTON: That's correct. [LR424]

SENATOR LATHROP: Okay. So that does tell us it's a benchmark for an opportunity for

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the Governor to declare an emergency and make something happen to remedy the overcrowding. [LR424]

ROBERT HOUSTON: Yes. [LR424]

SENATOR LATHROP: So somewhere between 125 and 140 percent, it becomes a possible emergency for the Governor's attention. [LR424]

ROBERT HOUSTON: By law, yes. [LR424]

SENATOR LATHROP: By law. The other thing is, is that at some point you can get so overcrowded that you can subject the institution in the state to some type of civil rights proceeding. [LR424]

ROBERT HOUSTON: That's correct. [LR424]

SENATOR LATHROP: And there is some precedents for that, particularly or most notably in California. [LR424]

ROBERT HOUSTON: Yes. [LR424]

SENATOR LATHROP: And I think we've had this conversation maybe when you were in front of Judiciary Committee, and I think you told me at that time when you get over 140 percent, and the services drop off and the environment gets troublesome because you're housing so many people in a confined area, that you hit the sweet spot for a lawsuit. [LR424]

ROBERT HOUSTON: Well, what happens is, is it puts...it just puts a stress on everything that you do. And the dining room becomes more crowded, the yards become more crowded, your existing resources gets stretched a little further, and that's what

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crowding does. I mean, it does...what you imagine it does if you increase the size for your household, imagine the prison system that each one of those puts a little bit more level of stress. [LR424]

SENATOR LATHROP: And that's why it becomes a problem for the inmate lawsuit against the Department of Corrections or the potential for that. [LR424]

ROBERT HOUSTON: The potential. It depends on how the agency responds to that. [LR424]

SENATOR LATHROP: And as a practical matter, it's no way to run the railroad, right? You don't want to be at 140 percent or greater than that and have...you can't effectively run the Department of Corrections and provide the prisoners with the kind of services and mental healthcare they need when you get too high in your census. [LR424]

ROBERT HOUSTON: It becomes more difficult. We were at 147 percent or 146 percent when I retired. [LR424]

SENATOR LATHROP: And it's somewhere around 160 now. [LR424]

ROBERT HOUSTON: I haven't looked at the count sheet. [LR424]

SENATOR LATHROP: Okay. I what to visit with you about a document. You're getting, I think, the executive summary, which is the "Strategic Capital Facilities Master Plan" that was done in 2006. [LR424]

ROBERT HOUSTON: Um-hum. Yes. [LR424]

SENATOR LATHROP: Were you...first of all, you're familiar with the document. [LR424]



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ROBERT HOUSTON: Yes, I am. [LR424]

SENATOR LATHROP: And you have a copy of the executive summary in front of you. [LR424]

ROBERT HOUSTON: Yes. [LR424]

SENATOR LATHROP: It's quite an extensive document, would you agree? [LR424]

ROBERT HOUSTON: Yes. [LR424]

SENATOR LATHROP: And the state of Nebraska had one done in 1993 and in 1997, did they not? [LR424]

ROBERT HOUSTON: That's correct. [LR424]

SENATOR LATHROP: And then carried out the recommendations in that strategic plan in both cases, did they not? [LR424]

ROBERT HOUSTON: Well, I can't say that without, you know, looking at what they recommended and what we did. [LR424]

SENATOR LATHROP: Okay. I think I've seen documents that suggest they did, but... [LR424]

ROBERT HOUSTON: Okay. [LR424]

SENATOR LATHROP: ...in 2006, were you the person that initiated this? Can you tell us how the state came to have this study done? [LR424]

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ROBERT HOUSTON: I'm not sure if I would have...we had to have this funded and I'm not sure what budget year this was funded, whether it was funded in a biennium budget that I submitted or a biennium budget that Director Clarke would have submitted.  
[LR424]

SENATOR LATHROP: Okay. You would have participated in the process of providing information to the group that prepared this report. [LR424]

ROBERT HOUSTON: That is correct. [LR424]

SENATOR LATHROP: And the report is prepared by a group called Carter Goble Lee.  
[LR424]

ROBERT HOUSTON: Yes. [LR424]

SENATOR LATHROP: Are they vendors that do this all over the country? [LR424]

ROBERT HOUSTON: All over the world. [LR424]

SENATOR LATHROP: All right. And what's the purpose having one of these master plans done? [LR424]

ROBERT HOUSTON: Well, in Nebraska, in order to...well, a couple things. You have to look at your population. You have to look at the stratification of your population, how many are max, how many are medium, minimum, community, and so forth. You have to look at the existing physical plant. Are there opportunities with the existing facilities to increase the capacity or are there mechanical problems and so forth that have to be addressed? So you want to make certain that you get that in to the plan. And then along with that is to look at the population that you have and how it's growing. So you have experts that do population projections and they look at the demographics, they look at

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your existing population, and they look into the future, if you will, to see what the growth might be. And as they look into the future, that determines what recommendations they make. [LR424]

SENATOR LATHROP: Okay. Was this done because it was time to do one or was it done because we were getting to a place where someone had a concern about overcrowding? [LR424]

ROBERT HOUSTON: It was done because it just needed to be updated. As you saw in 1993 and 1997, there's a four-year difference there. From 1997 to 2006, that would be, the quick math, would say nine years. That's quite a bit of time span between. So we just needed to get one done for an update. [LR424]

SENATOR LATHROP: Okay. And as it turns out, it was done when we were at 130 percent of capacity, and I think that's even a finding in the report. [LR424]

ROBERT HOUSTON: Yeah. I would have to look through it to see that but I don't doubt that. [LR424]

SENATOR LATHROP: Okay. You're familiar with the report... [LR424]

ROBERT HOUSTON: Yeah. Well, it's... [LR424]

SENATOR LATHROP: ...and so I'm not going to ask you, but maybe what I'll do is ask you if you agree with my summary of it... [LR424]

ROBERT HOUSTON: Okay. [LR424]

SENATOR LATHROP: ...that at the time that it was done in 2006 we were at 130 percent of capacity and those who did this study made certain projections. [LR424]

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ROBERT HOUSTON: Yes. [LR424]

SENATOR LATHROP: The projections that they did, they did two different projections. One was if we experience natural growth, which is historic growth in our population, we will have so many inmates coming in and have whatever they need they identify later on, on the report. [LR424]

ROBERT HOUSTON: That's correct. [LR424]

SENATOR LATHROP: They did another scenario and the second scenario would be if we have an onslaught or a wave of people who are coming in with methamphetamine charges... [LR424]

ROBERT HOUSTON: Yes. [LR424]

SENATOR LATHROP: ...because the Legislature changed some of the statutes relative to punishment of those involved in methamphetamine. [LR424]

ROBERT HOUSTON: Yes. [LR424]

SENATOR LATHROP: Right? [LR424]

ROBERT HOUSTON: Um-hum. [LR424]

SENATOR LATHROP: And so we had the natural...the projections that dealt with the natural increase in the population if nothing changed with methamphetamine, and then we had the accelerated increase which they were expecting but weren't clear exactly how much that would be with the people that were going to be charged under new laws related to methamphetamine. [LR424]

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ROBERT HOUSTON: That is my recollection. [LR424]

SENATOR LATHROP: Then they went through the process of identifying how many more...how much growth the Department of Corrections would experience... [LR424]

ROBERT HOUSTON: Yes. [LR424]

SENATOR LATHROP: ...naturally or with the methamphetamine people they anticipated. [LR424]

ROBERT HOUSTON: Um-hum. [LR424]

SENATOR LATHROP: And then they gave us two different estimates, did they not? [LR424]

ROBERT HOUSTON: That's correct. [LR424]

SENATOR LATHROP: And the estimates, after they decided how much the population was going to grow under either scenario, they made a recommendation about the number of units we were going to need or beds, is that right? [LR424]

ROBERT HOUSTON: That's correct. [LR424]

SENATOR LATHROP: And in that estimate they suggested that we needed about 1,300 beds under the...additional beds, in 2006; additional beds for the period of time between 2006 and 2015 just to take care of the natural growth. Historical growth. [LR424]

ROBERT HOUSTON: Yes. [LR424]

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SENATOR LATHROP: Right? And if we took into account or made some projections of these people that were going to be charged under the new laws relating to methamphetamines, we might need 4,500 new beds, is that right? [LR424]

ROBERT HOUSTON: Yes. [LR424]

SENATOR LATHROP: And then they made recommendations about the expense, and the cost to just do the additional 1,300 beds was going to be \$88 million. Sound about right? [LR424]

ROBERT HOUSTON: Yes. I don't have a reason to disagree with that. [LR424]

SENATOR LATHROP: Okay. And the annual cost would have been \$28.6 million, right? [LR424]

ROBERT HOUSTON: Yes. [LR424]

SENATOR LATHROP: And if we tried to accommodate the scenario of accelerated growth it would be another \$52 million, because we'd need another 3,000 beds or something like that... [LR424]

ROBERT HOUSTON: Yes. [LR424]

SENATOR LATHROP: ...to get to 4,500. And that was the report and the recommendation of these folks. [LR424]

ROBERT HOUSTON: Yes. [LR424]

SENATOR LATHROP: It was given to you. And their conclusion, and it's on the last page, and I'm going to...at the risk...this doesn't always work out so well when you start

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reading stuff in the middle of a question, but I'm going to read it only because I think it's important when we talk about overcrowding. Their conclusion: Clearly, the state cannot expect to accommodate the level of growth expected even under the natural growth model without significant expansion of bed space. For the past ten years, the ADP--which is the number of people... [LR424]

ROBERT HOUSTON: No. Daily population. [LR424]

SENATOR LATHROP: ...coming in, right?--has increased on average 135 inmates per year. Simple math indicates that if the 862 fiscal year 2007-09 bed space recommendation in the plan are not occupied until 2009, the population will have increased by at least another 300 prisoners to be added to the 700 that currently exceed the new recommended operational capacity of 3,704. The need for funding the phase one plan is apparent. The state, unfortunately, does not have a history of funding alternatives to incarceration. But even if this trend were reversed overnight, the current facilities are well beyond the ability to offer reasonable conditions of confinement much less treatment-focused incarceration. That was their conclusion after giving the recommendation... [LR424]

ROBERT HOUSTON: Yes. [LR424]

SENATOR LATHROP: ...of at least 1,300 new beds. [LR424]

ROBERT HOUSTON: Yes. [LR424]

SENATOR LATHROP: Did you present this report to the Governor? [LR424]

ROBERT HOUSTON: I did not present it him. This... [LR424]

SENATOR LATHROP: Tell me what you did with the report. Did you advocate for the

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findings in this report, Mr. Houston? [LR424]

ROBERT HOUSTON: No. [LR424]

SENATOR LATHROP: Did you take the findings in this report to the Governor, the Governor's chief of staff, somebody in the Governor's Office? [LR424]

ROBERT HOUSTON: Yes. This report would have gone to Robert Bell, the Policy and Research Office. [LR424]

SENATOR LATHROP: Okay. Did it go any further up than Robert Bell? [LR424]

ROBERT HOUSTON: That I couldn't tell you. [LR424]

SENATOR LATHROP: Did you ever have a conversation with the Governor about the findings in this master plan that we paid to have done? [LR424]

ROBERT HOUSTON: No. [LR424]

SENATOR LATHROP: Did you ever have a conversation with Mr. Bare about the findings or have a discussion with him? [LR424]

ROBERT HOUSTON: We had discussions about capacity. [LR424]

SENATOR LATHROP: Okay. Did you have discussions with Mr....and when you say "we," you're talking about you and Mr. Bare. [LR424]

ROBERT HOUSTON: Yes. [LR424]

SENATOR LATHROP: Okay. Did you sit down with Mr. Bare and talk about the



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findings, the projections, and the need for 1,300 beds recommended in the master plan? [LR424]

ROBERT HOUSTON: I don't think so, not in that specific of terms. [LR424]

SENATOR LATHROP: All right. In general terms, did you tell Mr. Bare after this report came out, or somebody in the Governor's Office, that we need 1,300 beds to accommodate the anticipated growth, assuming the most conservative scenario in the report? [LR424]

ROBERT HOUSTON: We had general conversations about capacity issues and about safety. [LR424]

SENATOR LATHROP: You and Mr. Bare. [LR424]

ROBERT HOUSTON: And also I talked to the Governor in 2006 when we reached the 140 percent mark. [LR424]

SENATOR LATHROP: When did that conversation take place? [LR424]

ROBERT HOUSTON: It would have been whatever day we hit 140 percent. It would have been within 30 days of that or so. And the Governor called me and he asked me if our institutions were safe, to which I said, yes, the institutions are safe. [LR424]

SENATOR LATHROP: Was that a phone call? [LR424]

ROBERT HOUSTON: That was a phone call. [LR424]

SENATOR LATHROP: Did you have...did you use that occasion to visit with him about the findings in this master plan? [LR424]

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ROBERT HOUSTON: No. [LR424]

SENATOR LATHROP: Did you ever send him an e-mail, have any memo or communication with the Governor about the fact that we were at 130 percent and this master plan anticipated significant growth and the need for 1,300 new beds? [LR424]

ROBERT HOUSTON: Not that I recall. [LR424]

SENATOR LATHROP: But you did have those conversations with Mr. Bare. [LR424]

ROBERT HOUSTON: Yes. [LR424]

SENATOR LATHROP: How many times do you think you visited with Mr. Bare about that? [LR424]

ROBERT HOUSTON: About capacity issues? Oh, probably on several occasions. [LR424]

SENATOR LATHROP: And is that a conversation you would have had with Mr. Bare weekly? [LR424]

ROBERT HOUSTON: Concerning capacity issues? [LR424]

SENATOR LATHROP: Yes. [LR424]

ROBERT HOUSTON: No. [LR424]

SENATOR LATHROP: Monthly? [LR424]

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ROBERT HOUSTON: Probably not. [LR424]

SENATOR LATHROP: Would you e-mail Mr. Bare or would you have conversations in person or on the telephone? How did you communicate with him? [LR424]

ROBERT HOUSTON: By telephone. [LR424]

SENATOR LATHROP: And what was the nature of your concern that you would visit with the Governor's chief of staff? [LR424]

ROBERT HOUSTON: If we had things related to capacity. Mostly, during those years, what we were looking at was can we parole more people. During that time we doubled the size, the capacity, or doubled the number of people that we had in our community centers, and we... [LR424]

SENATOR LATHROP: And I don't mean to interrupt... [LR424]

ROBERT HOUSTON: Yes. [LR424]

SENATOR LATHROP: ...but I'll talk about the things that we did other than build these, but I want to ask the questions about the 1,300 beds that were recommended, because the next budget opportunity that you had to go before the Legislature to get an appropriations for Corrections, did you include in your recommendations to the Governor the addition of 1,300 new beds? [LR424]

ROBERT HOUSTON: No. [LR424]

SENATOR LATHROP: Had you been told not to? [LR424]

ROBERT HOUSTON: No. [LR424]

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SENATOR LATHROP: Had anybody advised you against making that recommendation? [LR424]

ROBERT HOUSTON: No. [LR424]

SENATOR LATHROP: Did you think you were going to be okay without 1,300 new beds? [LR424]

ROBERT HOUSTON: Yes. [LR424]

SENATOR LATHROP: In any case, the 1,300 new beds were not adopted or incorporated into a budget, and that master plan was never implemented. [LR424]

ROBERT HOUSTON: That aspect of it, no. [LR424]

SENATOR LATHROP: Okay. Then in 2009, you have...I have an e-mail that you sent in response to an inquiry from Mr. Bell. And just to be clear, Mr. Bell is sort of the Governor's policy guy when it comes to Corrections. [LR424]

ROBERT HOUSTON: That's correct. [LR424]

SENATOR LATHROP: So when you talk to Mr. Bell, presumably you're communicating with the Governor's Office at that point. [LR424]

ROBERT HOUSTON: That's correct. [LR424]

SENATOR LATHROP: And he asks you to follow up and get an estimate on, now that the report is three years old, what would it take to build those beds. Is that right? [LR424]

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ROBERT HOUSTON: I'll have to look at the e-mail. Thank you. [LR424]

SENATOR LATHROP: You see on the first page of the document that you've been handed, it's an e-mail from you to Doug Hanson, dated May 4, 2009, in which you're responding to an e-mail from Robert Bell. Is that right? Where he's ask you for updated estimates on the cost of those beds. [LR424]

ROBERT HOUSTON: Okay. Let me read it. Yes. [LR424]

SENATOR LATHROP: And attached to that e-mail is a memorandum dated May 7, 2009, and it's to Robert Bell in the Governor's Office from yourself as the director. [LR424]

ROBERT HOUSTON: Yes. [LR424]

SENATOR LATHROP: And it's responsive to the e-mail that says, what's the updated numbers regarding the recommendations in the 2006 master plan? [LR424]

ROBERT HOUSTON: Yes. [LR424]

SENATOR LATHROP: And you provide that information? [LR424]

ROBERT HOUSTON: Um-hum. [LR424]

SENATOR LATHROP: And the conclusion is, it's now going to cost \$150 million to come up with that 1,300-and-some beds. [LR424]

ROBERT HOUSTON: Yeah. I don't see that in here, but I'm sure it is. [LR424]

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SENATOR LATHROP: After...do you know why you wrote that? Did you have some conversation with Mr. Bare or Mr. Bell, where they said, well, what do you think the...what do you...what was our census in 2009 when this question came to you as a percent of its capacity? [LR424]

ROBERT HOUSTON: I'm not sure what it was in 2009. We had 140 percent in 2006, and we had enabling legislation that allowed us to put people at the Work Ethic Camp. And so the numbers dipped down below 140 percent for two or three years, or so. And we also had the reentry furlough program where we had individuals up to 80 or 100 that were pre-parole that could live at home. And so that soaked up the numbers for 2006 through 2009, 2010, '11, somewhere in there. [LR424]

SENATOR LATHROP: Somebody was concerned enough to ask you to give them the numbers again. [LR424]

ROBERT HOUSTON: Yes. [LR424]

SENATOR LATHROP: Who was that? [LR424]

ROBERT HOUSTON: Well,... [LR424]

SENATOR LATHROP: Robert Bell? [LR424]

ROBERT HOUSTON: Robert Bell. [LR424]

SENATOR LATHROP: So either the Governor or Larry Bare wanted information and they passed that request through Robert Bell to you. [LR424]

ROBERT HOUSTON: Yes. [LR424]

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SENATOR LATHROP: And you came up with this memo, giving them an update on the cost once again for the 1,300-and-some beds. [LR424]

ROBERT HOUSTON: Yes. In 2009. [LR424]

SENATOR LATHROP: What happened? Did we build the beds after you gave them this information? Did they incorporate it into a budget request? [LR424]

ROBERT HOUSTON: No. [LR424]

SENATOR LATHROP: Okay. 2010. Did you have a similar conversation, other conversations with Robert Bell, Larry Bare, or the Governor concerning overcrowding in 2009? [LR424]

ROBERT HOUSTON: I don't have any documents to that effect in front of me. [LR424]

SENATOR LATHROP: Okay. You may have because you were visiting with Larry Bare from time to time. [LR424]

ROBERT HOUSTON: Yes. [LR424]

SENATOR LATHROP: But you can't specifically recall at this point. [LR424]

ROBERT HOUSTON: Right. [LR424]

SENATOR LATHROP: In September of 2009, September 28...I'll give you this document too. [LR424]

ROBERT HOUSTON: Okay. [LR424]

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SENATOR LATHROP: In September 28, 2009, you generated, apparently in response to another request of a meeting in Mr. Bare's office to discuss...this would have been a document prepared in September...September 28, 2009, is attached to an e-mail about a meeting with Mr. Bare in 2010 regarding overcrowding. [LR424]

ROBERT HOUSTON: Um-hum. [LR424]

SENATOR LATHROP: And again it's a memo that outlines the problem, does it not? [LR424]

ROBERT HOUSTON: Yes. [LR424]

SENATOR LATHROP: And then it talks about plans to increase capacity and it talks about a scaled-down version of increasing beds and a scaled-down price tag. [LR424]

ROBERT HOUSTON: Okay. [LR424]

SENATOR LATHROP: And you had a meeting with Mr. Bare about that. [LR424]

ROBERT HOUSTON: That would have followed. [LR424]

SENATOR LATHROP: It talks about the percent of overcapacity and so forth. But the information contained in here about increasing capacity was never followed up and provided in the form of a request to the Legislature for an appropriation to build what's set out here. Is that true? [LR424]

ROBERT HOUSTON: That's true. [LR424]

SENATOR LATHROP: March of 2012. Now, in the meantime, we haven't built any of the beds that were recommended in 2006, is that right? [LR424]



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ROBERT HOUSTON: That's correct. [LR424]

SENATOR LATHROP: And in March of 2012, there's...March 14, 2012, there's another document, and this document is captioned, "Nebraska Department of Corrections," and it simply says "March 14, 2012." Can you tell me what this document is or what it was generated in connection with? [LR424]

ROBERT HOUSTON: Okay. [LR424]

SENATOR LATHROP: Do you know where that came from? [LR424]

ROBERT HOUSTON: Yes. I mean... [LR424]

SENATOR LATHROP: Or can you give us some context for this document? [LR424]

ROBERT HOUSTON: Yeah. This I believe...well, I don't want to speculate whether or not this would have originated from a conversation with Robert Bell or not, but this is something we would have prepared to visit with the Governor's Office about. [LR424]

SENATOR LATHROP: Okay. So it begins...it has something about laundry price increase, which is not relevant or important to us today, but it does talk about capacity, and says that you're at 143 percent. The number of inmates on parole has increased but not to the level necessary for budget modifications. [LR424]

ROBERT HOUSTON: Yes. [LR424]

SENATOR LATHROP: NDCS must reduce its population or increase its capacity. [LR424]

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ROBERT HOUSTON: Yes. [LR424]

SENATOR LATHROP: Right? And below that you have no-cost options... [LR424]

ROBERT HOUSTON: Yes. [LR424]

SENATOR LATHROP: ...and then you have low-cost options... [LR424]

ROBERT HOUSTON: Yes. [LR424]

SENATOR LATHROP: ...and build capacity. [LR424]

ROBERT HOUSTON: Yes. [LR424]

SENATOR LATHROP: The build capacity, which is the third option in this sheet, is again going back to the recommendations of the master plan done in 2006. [LR424]

ROBERT HOUSTON: Yes. [LR424]

SENATOR LATHROP: And same number of beds and it recommends or suggests the cost is \$109 million, and operating costs at 28.5 [LR424]

ROBERT HOUSTON: That's correct. [LR424]

SENATOR LATHROP: That was in 2012. [LR424]

ROBERT HOUSTON: Yes. [LR424]

SENATOR LATHROP: And then it has no-cost options, right? [LR424]

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ROBERT HOUSTON: Um-hum. [LR424]

SENATOR LATHROP: So this would appear to be an agenda or a framework for some meeting you were going to have with the Governor or somebody in his office. [LR424]

ROBERT HOUSTON: That's correct. [LR424]

SENATOR LATHROP: Do you remember the meeting? [LR424]

ROBERT HOUSTON: I remember...I remember this document...I remember preparing this document, and this would have been prepared for a meeting with Larry Bare. Yes. [LR424]

SENATOR LATHROP: Okay. And do you remember that meeting at all? [LR424]

ROBERT HOUSTON: No, I can't say that I remember the meeting. [LR424]

SENATOR LATHROP: But the document would suggest that the meeting included a discussion of whether we do the no-cost option or we build. [LR424]

ROBERT HOUSTON: Yes. [LR424]

SENATOR LATHROP: After that meeting did we ever build? [LR424]

ROBERT HOUSTON: What we did was, in the budget submittal of 2012, we put in there for \$550,000 for a master plan, and that master plan--I don't know what the status is, I've been gone and so forth--is included program statements. And those program statements are documents that need to be prepared before a building project is begun in Nebraska. [LR424]

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SENATOR LATHROP: Okay. But here's the point: 2012, we're talking about the 2006 master plan. They told us that by 2015 we were going to need the 1,375 more beds, and you're still talking about it in 2012, and every time you talk about it the Governor's Office is not turning that into policy or requesting an appropriation to increase the capacity as suggested by the master plan work done in 2006. Is that true? [LR424]

ROBERT HOUSTON: Well, it's true that the requests that follow the 2006 study was a request that was funded for \$550,000 to do the programming statement, which would precede construction. [LR424]

SENATOR LATHROP: Perhaps under somebody else's administration. But for six years, or from 2006 to today, we've never built the things that were recommended that we do because of the projected increases in population, and today we sit at 160, or close to 160 percent of capacity. True? [LR424]

ROBERT HOUSTON: Yes. [LR424]

SENATOR LATHROP: Okay. So the alternative is the no-cost option. We're not going to spend money or other than do another master plan for somebody else to implement, because it won't be done before this Governor is done. The no-cost options are things like change the Parole Board practices so that we move people out the door. Going back to your comment before, there's only two ways to do this: We either increase capacity, and that wasn't being well-received by this administration; or we get people out the door. [LR424]

ROBERT HOUSTON: Yes. [LR424]

SENATOR LATHROP: Okay. That involved changing the way we do parole, right, so that we move more people through the parole process and put them back on the street. [LR424]

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ROBERT HOUSTON: Yes. [LR424]

SENATOR LATHROP: This thing also has good time laws on it, and I want to ask you about that. It is a bullet point under the no-cost options, and it reads, "Good time laws--AG Opinion/law change." Below that it says, "Allow current good time law to apply to all inmates regardless of sentencing date if it benefits the inmate." This was generated by the Department of Corrections. [LR424]

ROBERT HOUSTON: Yes. [LR424]

SENATOR LATHROP: Did you do this yourself, Mr. Houston? [LR424]

ROBERT HOUSTON: I would have done it with my executive staff. [LR424]

SENATOR LATHROP: Okay. Tell me what you meant when you wrote, "Good time laws--AG Opinion/law change." Were you expecting the Attorney General's Office to issue an Opinion that would be favorable to improving the good time laws? [LR424]

ROBERT HOUSTON: No. What this refers to, to the best of my recollection, was LB191. And LB191 is the one where after an inmate has served a year, they can earn up to three days of good time per month. And that law was only going to apply to inmates who committed their crime and were convicted after that date. It was in relationship to LB191. [LR424]

SENATOR LATHROP: Okay. [LR424]

ROBERT HOUSTON: And what this was put down, because again, we're brainstorming, is we'd have to get an Attorney General's Opinion to see if that could apply to currently housed inmates or whether it had to be inmates who again committed their crime and

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were sentenced after that. [LR424]

SENATOR LATHROP: And I want to talk about LB191 in a little bit more detail later. But that was put in at the request of the administration by Senator Council. [LR424]

ROBERT HOUSTON: Yes. [LR424]

SENATOR LATHROP: And that made the good time law more lenient for inmates. [LR424]

ROBERT HOUSTON: I wouldn't say that it made it more lenient. [LR424]

SENATOR LATHROP: It gave them more good time. [LR424]

ROBERT HOUSTON: It gave them more good time... [LR424]

SENATOR LATHROP: Okay. [LR424]

ROBERT HOUSTON: ...but it they had to behave for a year before they could start earning that good time. [LR424]

SENATOR LATHROP: Sure. But it did liberalize good time. And the point was, it was a no-cost option to get people out the door. [LR424]

ROBERT HOUSTON: Well, let me see if I can put different words to it. I don't see it as liberalizing good time. The inmates had to behave for a whole year before they could start earning any of the good time. Additionally, people that went on parole, they would receive ten days a month under LB191, which isn't currently in effect. And so the inmates had to behave while they're on parole to earn that good time. And so it offered the inmates and the parolees an incentive to do well. But it's very difficult when you're

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incarcerated to behave that well for that long a period of time. And so not all the inmates that served that year are going to be misconduct report-free. They have to work at it to do that. [LR424]

SENATOR LATHROP: I appreciate that. And to be perfectly clear, the good time law, as it's presently constituted, does provide an incentive for inmates to behave. [LR424]

ROBERT HOUSTON: That's correct. [LR424]

SENATOR LATHROP: And that's the purpose of it. [LR424]

ROBERT HOUSTON: That's correct. [LR424]

SENATOR LATHROP: But it's on this list of no-cost options because it helps get them out the door. [LR424]

ROBERT HOUSTON: Yes, if...yes, it helps get them out the door. But that's into the future. [LR424]

SENATOR LATHROP: Okay. At some point, do... [LR424]

SENATOR CHAMBERS: Mr. Chairman,... [LR424]

SENATOR LATHROP: Yes, sir. [LR424]

SENATOR CHAMBERS: ...in order that I not get lost, may I ask a question based on LB191 about this good time issue? [LR424]

SENATOR LATHROP: I'm going to get to LB191, if that's okay. [LR424]

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SENATOR CHAMBERS: But here's the question I want you to ask. [LR424]

SENATOR LATHROP: Okay. Go ahead. [LR424]

SENATOR CHAMBERS: You continue to ask whether or not budget recommendations from the Governor's Office had contained a response to what had been mentioned. Well, Mr. Houston, when he gave his testimony on LB191, in 2011, when I was not here, he mentioned savings that would result. And he said, the savings have been incorporated into the Governor's recommended budget. And the question I would have asked: Why would none of these other things recommended over a period of years not be the subject of a budget recommendation, but when something that might cut costs--and that was theoretical--would nevertheless be incorporated into the Governor's budget recommendation? But in order not to sidetrack you, I won't ask that question at this point. [LR424]

SENATOR LATHROP: Okay. I'll try to get there before I'm done with the subject. [LR424]

SENATOR CHAMBERS: Okay. [LR424]

SENATOR LATHROP: I appreciate the question. At some point, do you have a conversation? The direction we take from 2006, when that master plan was done, clearly, after 2012, is to take the no-cost option. We're going to look at everything that doesn't cost money as an option, and not build the beds that were recommended in 2006. Would that be true? [LR424]

ROBERT HOUSTON: Well, it would be partly true. With that submittal for program statements in 2012, that is pre-construction. [LR424]

SENATOR LATHROP: You mean the \$500,000? [LR424]



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ROBERT HOUSTON: The \$550,000. [LR424]

SENATOR LATHROP: That's to build...that's to do another master plan. [LR424]

ROBERT HOUSTON: Well, to do another master plan, but also develop program statements. [LR424]

SENATOR LATHROP: Okay. [LR424]

ROBERT HOUSTON: And program statements, by law, my understanding of the law, have to be done before you can do construction. [LR424]

SENATOR LATHROP: Okay. So along with taking the no-cost option, we did provide for another master plan. [LR424]

ROBERT HOUSTON: Yes. [LR424]

SENATOR LATHROP: And we spent \$500,000 on that, and hopefully, somebody reads it and follows the recommendation. But the one that was done in 2006, we never implemented the recommended increase in capacity. [LR424]

ROBERT HOUSTON: That is correct. [LR424]

SENATOR LATHROP: And in 2012, you had a meeting with the administration where you sat down and you, once again, said we can build these beds and here's the cost, and here's the no-cost option. And the election was to go with something that didn't cost as a remedy for the overcrowding. [LR424]

ROBERT HOUSTON: Well, yes. I mean we did the no-cost options as best we could.

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[LR424]

SENATOR LATHROP: All right. At some point there had to have been a meeting where somebody told you, we're not spending any money, Mr. Houston; go find a way to reduce the overcrowding without building more capacity. [LR424]

ROBERT HOUSTON: Well, there was not a meeting that specified it that way. There was...I was working with the Parole Board on increasing the number... [LR424]

SENATOR LATHROP: On no-cost options. [LR424]

ROBERT HOUSTON: On no-cost options to increase people on parole. We were using the Work Ethic Camp and we were using the reentry furlough program. [LR424]

SENATOR LATHROP: Right. But we just went through four different opportunities where you have provided cost estimates for building those beds. Somebody is asking you, you know, what's it going to cost to build those beds they recommended back in 2006? And you tell them. And in the end, no one will build it, or the administration won't get behind it; and instead, they tell you, come up with no-cost options. Would that be true? [LR424]

ROBERT HOUSTON: Well, what I can say is, is that when we submitted for the \$550,000, it was the intention that if there wasn't other sentencing options available, if the prison population didn't go down, that that's the prerequisite for the program plans to build. [LR424]

SENATOR LATHROP: But historically, we knew the numbers weren't going down, right? [LR424]

ROBERT HOUSTON: Right. [LR424]

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SENATOR LATHROP: You've done some things with community corrections, you did some things at the Work Ethic Camp. Things dipped for a time but then they started back up, right? [LR424]

ROBERT HOUSTON: Yes. [LR424]

SENATOR LATHROP: You had done what you could and the census was still increasing past what could be an emergency in a particular administration, and we're not building, we're not creating more capacity; instead, we're doing the no-cost option. [LR424]

ROBERT HOUSTON: Well, I've been gone for 11 months, but I know that there's 87 inmates at the Hall County Corrections, and I think that was... [LR424]

SENATOR LATHROP: Okay. And we ended up this last year, because we were near 160 percent of capacity, sending some of them out to counties. [LR424]

ROBERT HOUSTON: Yes. [LR424]

SENATOR LATHROP: But before that, we were taking the no-cost option, which means instead of increasing capacity we were reducing the population. [LR424]

ROBERT HOUSTON: We were reducing the population or putting the population...let me see if I can define it this way. We got law changes concerning the Work Ethic Camp so that we could use that to house inmates. And the last census I saw out there was about 185 inmates. The efforts that we were making as a department was to increase the chances that an inmate could be successful in the community by going through community placement. So if we doubled the number of people that we have in the community center, the Omaha Community Center was built for 80. At any one time it

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has about 160...or 90...anywhere below 180. The community center in Lincoln was built for 200, and at any given time there's probably 350-375 people there. So we took the lower custody facilities and we increased the capacity there, and we were putting the inmates there to try to get them...because we know that going through community placement is a much safer way of returning people to the community. Putting people at the Work Ethic Camp is a very high-intensity programming facility. And by getting people out there to get their programs and then to reenter is a much better option than to be in a security bed inside of a facility. [LR424]

SENATOR LATHROP: Sure. [LR424]

ROBERT HOUSTON: So we were making...the department was making tremendous efforts to house them. [LR424]

SENATOR LATHROP: I don't disagree with that. I'm not quarreling with that nor am I critical of what you did, once you realized you weren't going to get more capacity in the form of the beds that were recommended in 2006, and that was what was happening. [LR424]

ROBERT HOUSTON: Okay. [LR424]

SENATOR LATHROP: You had to parole more people. You had to put them into community corrections. You had to do...make a change to good time so that some of them would be moved through the process quicker, and those were the no-cost options the administration went with, notwithstanding the recommendations in the master plan. [LR424]

ROBERT HOUSTON: Yes. [LR424]

SENATOR LATHROP: Okay. I want to talk a little bit about the programming and the

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mental health services provided to inmates at the Department of Corrections. In particular, as the population grew from 130 to 140 to 150 or to 160, or wherever it was when you left, Bob, what was happening to the services received by the inmates? Were we scaling back the services to provide for more security? [LR424]

ROBERT HOUSTON: We held on to programming positions preciously. In 2006, we got a significant increase for our substance abuse and mental health staff. We received, if I remember right, about 30, 35, 36 positions. And in addition to that, we received, I believe, \$200,000 that we could contract services with. The increase that we got in the mental health services, and mostly it was in substance abuse, we took some of those substance abuse positions and turned those into mental health positions, and we opened up two mental health units: one at the Lincoln Correctional Center and then a smaller unit at the women's facility, which opened up more recently. The mental health services was used basically for two reasons. One is to do evaluations in line with LB1199, and then the second part of it was to do evaluations at the request of the Parole Board for anybody who is on a violent offense, to do a mental health assessment before the Parole Board sees them. And then the rest of the mental health staff provides counseling for the inmates. The substance abuse staff obviously provides both residential--by residential that means at the institution--residential services. But then what is called outpatient, which doesn't mean the person is out of prison, but they're living in the inmate population and they go to the mental health unit for services. And so those resources, obviously as the population went up, those percentage points, got stretched a bit. I think that's getting to your question. [LR424]

SENATOR LATHROP: Yeah, did they stretch because the population went up, or the population went up at the same time as the resources available for programming were diminished? [LR424]

ROBERT HOUSTON: Well,... [LR424]

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SENATOR LATHROP: Because we have more programs in alcohol treatment, and I appreciate that we funded more and there was more money spent on mental health and alcohol treatment. But there's anger management, there's all kinds of things that these guys might take advantage of that would improve the opportunity or the likelihood they won't get out and reoffend. Were we scaling back during this same period of time on the number of people available to do that work? [LR424]

ROBERT HOUSTON: Let me see if I can put it this way to conceptualize: Going back to what I said earlier, we doubled the population in our community centers, okay, so we went from being 290 up to 580 people, inmates in our community center. So we doubled the size of our community center. Well, what we did also was we were then able, by having them at the community center, put them in a better position for parole, and our parole numbers did go up, but we also put them in a position where they could access community services. And we moved some of our mental health and substance abuse, mostly our substance abuse, to the Parole Office. And so now the people both on parole and at the community center could access substance abuse treatment at the day reporting centers. And so the best way to look at how the resources were allocated is to look at how, by increasing the number of people in the community, we are able to access community resources in addition to the resources we had at the institution. [LR424]

SENATOR LATHROP: Let me see if I can interpret that or let me tell you what I think I just heard you say,... [LR424]

ROBERT HOUSTON: Okay. [LR424]

SENATOR LATHROP: ...that we appropriated more money for drug and alcohol and mental health treatment and much of it was spent on people who had been released on parole. So they were getting the services after their release on parole and not within the institution. [LR424]

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ROBERT HOUSTON: No, they were getting it within the institution. The vast majority of our resources were...are at the institution. [LR424]

SENATOR LATHROP: Okay. [LR424]

ROBERT HOUSTON: A smaller amount of that is at the community...at the Parole Office. [LR424]

SENATOR LATHROP: I remember having Ms. Casmer in front of the Judiciary Committee in her last appointment... [LR424]

ROBERT HOUSTON: Um-hum. [LR424]

SENATOR LATHROP: ...and asking her, with respect to parole...the model I always understood to be the case is that an inmate worked to get to parole... [LR424]

ROBERT HOUSTON: Yes. [LR424]

SENATOR LATHROP: ...and when they came before the Parole Board they said, I've been through alcohol treatment, I've been through anger management, I've been through every program they want me to do, I've done them well, I've bought into what they're teaching,... [LR424]

ROBERT HOUSTON: Um-hum. [LR424]

SENATOR LATHROP: ...and I've been a model prisoner, let me out on parole and I'll be a good citizen. When we did her confirmation hearing I remember asking questions because we were talking about the overcrowding and the resource question and it...I thought I understood her to say that the model is shifting, in some respects or with some

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of the inmates, to they come before the Parole Board, we parole them, and then we tell them where to go get the services. [LR424]

ROBERT HOUSTON: Um-hum. [LR424]

SENATOR LATHROP: Is that the case? [LR424]

ROBERT HOUSTON: That would be with some inmates. [LR424]

SENATOR LATHROP: So now, instead of getting them parole ready or release ready, where they've been through all the programming, we're doing some of it after they've left. [LR424]

ROBERT HOUSTON: That's correct. [LR424]

SENATOR LATHROP: And that is part of the no-cost options that we're doing to lower the population of Corrections. [LR424]

ROBERT HOUSTON: No, I wouldn't term it that way. I think what you have is that when we receive a male inmate, that male inmate is going to be gone...about 80 percent of them are going to be gone within 36 months. Okay. When we receive a female inmate, that female is going to be gone in less than 24 months, or 90 percent of them will be. Okay. And so what we had was we had people passing...coming into the institution with short sentences that weren't really getting any programs to begin with because they were there for such a short period of time. And they would move out to the community centers without having programs. By increasing the number at the community centers and by increasing the services in the community for both parolees and for community inmates, in a sense, we were getting programming for a lot of people that weren't getting any at all inside the institutions. Now that wasn't true in every case by any stretch of the imagination. Another thing to keep in mind is, is that the substance abuse



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unit that we began. We started that out as a ten-month program. And I asked our head of behavioral services, can we intensify it and reduce that number down to somewhere around six months? And I think we ended up at about eight months and maybe a little bit less than that, and so we could have...we can be more to more people. And so if you come into the prison system serving an average sentence of two-and-a-half years, getting into that, into , at that time, a ten-month program and serving that out would take you well beyond your parole eligibility date. And so if you go beyond your parole eligibility date, it's a parole opportunity that is missed. And so we need to figure out how do we shorten the length of that and intensify it to keep the quality of it but, at the same time, how do we move a person, now that we've increased the beds, into a community bed where they can access community service, as well the services we moved to the Parole Office. And so what we were doing was very fluid as far as how we moved the inmates and tried to match up the resources with where we move them to. [LR424]

SENATOR LATHROP: So after you had established the services for those who had been released, were there adequate resources for those who remained incarcerated for longer periods of time than you've just described? [LR424]

ROBERT HOUSTON: Yeah, you know, I knew you'd be asking that question, you know, and I've thought about that question. Every two years we put in for a budget, and Director Kenney will be putting in, you know, for a budget that he thinks is adequate. And I think that, if I could scale away from the Department of Corrections in Nebraska and to look at this on a national level, and when you look on a national level and you look at what we're doing in Nebraska, Nebraska looks really good. We've got an outstanding Department of Corrections. And I know that we've been taking hits over the past year, but it is an outstanding department and the resources that we have match up with resources in other states. Now do we have all the resources that we could want to get everybody programming? No. But as you look across the country--and I've been in...I audited prisons for 40 years and I sit on...I'm a commissioner with the American Correctional Association, I sit on the national panel to accredit jails and prisons across

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the country, I'll be doing that next week--and as I look at the best facilities in the nation and I look at the Nebraska Department of Correctional Services, I see a very parallel track when it comes to crowding, when it comes to resources, that we're among the best in the country. Now does that mean that we have the numbers again that we'd like to have? No. I don't think any...I think that if Health and Human Services was here they would want more workers as well. But when we look across the country as to how we're doing here, we're doing very well. Now notwithstanding the fact that we have a population that's going up and we don't have beds that they're going to be moving into, Director Kenney will get that figured out. It's very difficult. Prisons are obscenely expensive to build. And once you build them, you fill them and... [LR424]

SENATOR LATHROP: I agree. And I guess I appreciate your observation and giving us sort of a national view on where we fit, and I gave you the opportunity to do that. [LR424]

ROBERT HOUSTON: Yes. [LR424]

SENATOR LATHROP: My concern, I suppose, when I look at it is I can't think that 160 percent of capacity is a model because, you know, we have the ACLU breathing down our neck,... [LR424]

ROBERT HOUSTON: Um-hum. [LR424]

SENATOR LATHROP: ...we're looking at the possibility of a federal lawsuit if we don't do something different,... [LR424]

ROBERT HOUSTON: Um-hum. [LR424]

SENATOR LATHROP: ...and we have two committees studying the problems over there. [LR424]

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ROBERT HOUSTON: Um-hum. [LR424]

SENATOR LATHROP: And if that's true in every state, this country has got problems.  
[LR424]

ROBERT HOUSTON: Um-hum. [LR424]

SENATOR LATHROP: There is a direct relationship between recidivism and that programming, and I can't believe that our programming level over the last ten years has been a model because our recidivism rate is higher than those states that have been through this CSG process, which suggests there's a better way to build a mousetrap when it comes to running Corrections. Would you agree with that much? [LR424]

ROBERT HOUSTON: Well, you know, I haven't been here the last 11 months to look at it. And again, the population has gone up...I think you said 160. It's gone up 13 percent since I was here and it was 146 percent or so. [LR424]

SENATOR LATHROP: That should be an alarming rate of increase in the time that you've been gone. [LR424]

ROBERT HOUSTON: Um-hum. [LR424]

SENATOR LATHROP: Right? And I can't help but go back to that 2006 master plan that somebody asked you to dust off four times... [LR424]

ROBERT HOUSTON: Um-hum. [LR424]

SENATOR LATHROP: ...and asked you what it would cost to build that capacity. And I'm not here to advocate for more jails. There may be a lot of different solutions. But

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somebody appreciated when they had you develop estimates on three or four different occasions that we needed more capacity. [LR424]

ROBERT HOUSTON: Well,... [LR424]

SENATOR LATHROP: And instead we developed a plan that wouldn't cost anything and involved getting prisoners out the door faster. [LR424]

ROBERT HOUSTON: Well, Senator, I would...I need to answer your question in this way: I certainly wasn't getting a lot of calls from anybody else in state government or outside state government saying, why don't you build another prison. I mean we weren't getting those calls. There was... [LR424]

SENATOR LATHROP: Well, but here is the problem: That estimate, that master plan, nobody put that in the form of a Governor's proposal and walked it down to the Appropriations Committee. [LR424]

ROBERT HOUSTON: Um-hum. [LR424]

SENATOR LATHROP: I mean it stopped before that process. So I appreciate that you don't have a specific recollection and you're not going to tell me about a meeting where somebody told you to drop it. [LR424]

ROBERT HOUSTON: Um-hum. [LR424]

SENATOR LATHROP: But we do know that the plan was there, people asked you to update the numbers, and none of it ever turned into a request by the Governor's Office for the additional appropriation to build the beds to ease the overcapacity,... [LR424]

ROBERT HOUSTON: Um-hum. [LR424]

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SENATOR LATHROP: ...which was a different strategy than the no-cost strategy which was get them out the door. [LR424]

ROBERT HOUSTON: Okay. [LR424]

SENATOR LATHROP: Tell me about or I want to talk about administrative segregation too. [LR424]

ROBERT HOUSTON: Yes. [LR424]

SENATOR LATHROP: You called it "restrictive housing"? [LR424]

ROBERT HOUSTON: That's the new term that's been added to it, yes. [LR424]

SENATOR LATHROP: Earlier you told me how many...what our capacity was when you started. I don't see what I...where I wrote it down. [LR424]

ROBERT HOUSTON: Okay. [LR424]

SENATOR LATHROP: But what percentage of our capacity was administrative...restrictive housing? [LR424]

ROBERT HOUSTON: If you consider administrative confinement, it's about 5 percent if... [LR424]

SENATOR LATHROP: Five percent? [LR424]

ROBERT HOUSTON: Five percent if you can... [LR424]

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SENATOR LATHROP: So 5 percent of the population inside the walls of...in Corrections are in administrative confinement at any one time. [LR424]

ROBERT HOUSTON: Administrative, yes. Now a higher number of that might be down there for disciplinary reasons or on protective custody. But of those people that are administratively confined, where an administrative decision has been made, it's somewhere around 250 inmates or about 5 percent. [LR424]

SENATOR LATHROP: What if we take those other two groups? [LR424]

ROBERT HOUSTON: What's that? [LR424]

SENATOR LATHROP: The other two groups of people that are there for their own protection, they get treated the same way, don't they? [LR424]

ROBERT HOUSTON: Well, no, they don't. They're out throughout the day. The people in protective custody? [LR424]

SENATOR LATHROP: Yeah. [LR424]

ROBERT HOUSTON: No, they're in special housing. [LR424]

SENATOR LATHROP: Okay. [LR424]

ROBERT HOUSTON: But they mingle among each other throughout the day. [LR424]

SENATOR LATHROP: Okay. Okay. [LR424]

ROBERT HOUSTON: And then you have the people down that, let's say there's a fight on the yard, those two or three or four individuals would go into segregation, but they

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would not be considered administrative segregation. That would be what's called immediate segregation. [LR424]

SENATOR LATHROP: So immediate segregation breaks the guys up so you can sort it out? [LR424]

ROBERT HOUSTON: Right. [LR424]

SENATOR LATHROP: And the restrictive housing is for people who the administration has made a decision they need to be there. [LR424]

ROBERT HOUSTON: Yes. [LR424]

SENATOR LATHROP: Is that disciplinary reasons or because we can't control them in general population? [LR424]

ROBERT HOUSTON: Well, it would be for administrative reasons. It would... [LR424]

SENATOR LATHROP: What...give me the list of administrative reasons. [LR424]

ROBERT HOUSTON: Well, if you...if we have inmates who have killed a staff member. [LR424]

SENATOR LATHROP: Okay. [LR424]

ROBERT HOUSTON: We had one down there that killed a psychiatrist. [LR424]

SENATOR LATHROP: Sure. [LR424]

ROBERT HOUSTON: If they possess a knife, if they assaulted someone, they would be

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in administrative confinement. [LR424]

SENATOR LATHROP: How long does that last? [LR424]

ROBERT HOUSTON: It's reviewed. It was reviewed every six months and I reduced that to four months. [LR424]

SENATOR LATHROP: So if they get involved in an assault, you'd put them in there for four months and then look at it and see if they're behaving or generally compliant with what's going on in their environment? [LR424]

ROBERT HOUSTON: They'd probably go down there...if there was a fight, for example, we don't know if that's in a fight or an assault, so they would go down there on immediate segregation and they'd be confined there while we do the investigation. And then at the end of the investigation a determination would be made whether or not to administratively place them, and then that decision would be reviewed every four months. [LR424]

SENATOR LATHROP: You told us at the beginning of your testimony that you're on a panel that deals with this very subject,... [LR424]

ROBERT HOUSTON: Yes. [LR424]

SENATOR LATHROP: ...restrictive housing. [LR424]

ROBERT HOUSTON: Yes. [LR424]

SENATOR LATHROP: And you also said that the panel you're on recognizes some mental health consequences from restrictive housing. [LR424]



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ROBERT HOUSTON: That's right. [LR424]

SENATOR LATHROP: Tell us what those are. [LR424]

ROBERT HOUSTON: Well,... [LR424]

SENATOR LATHROP: You put a guy...and to be clear, and maybe just as a matter of foundation, these people are going into a cell, not a big cell,... [LR424]

ROBERT HOUSTON: Right. [LR424]

SENATOR LATHROP: ...not a roomy cell. They're staying there 23 hours a day,... [LR424]

ROBERT HOUSTON: Um-hum. [LR424]

SENATOR LATHROP: ...and then they get out into an area that has a fence, their own area, and it's outside. [LR424]

ROBERT HOUSTON: Yes. [LR424]

SENATOR LATHROP: Okay. Tell us what that does or what you...your group in this study group on this subject, what you understand to be the mental health consequences to that. I'm asking that because I don't know. [LR424]

ROBERT HOUSTON: Okay, good. Well, let me first say that when we administratively confine somebody we have a responsibility to separate them from the general population because we can't put the general population in the threat of somebody who has acted in such a way that gives rise to our concern. [LR424]

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SENATOR LATHROP: So the segregation is to protect the general population of prisoners. [LR424]

ROBERT HOUSTON: As well. [LR424]

SENATOR LATHROP: You can't trust this guy among the general population or he's going to hurt somebody. [LR424]

ROBERT HOUSTON: At least not at that moment in time. [LR424]

SENATOR LATHROP: Okay. [LR424]

ROBERT HOUSTON: And we hope that changes. Okay, so they're separated for that reason. With that separation they go into administrative confinement. And the conditions are much as you described, where they're in their cell for 23 hours a day and then they have exercise time and so forth. And what...over the years, the number of people that we have that have mental health issues has gone up. And that's nation... [LR424]

SENATOR LATHROP: In the population at the prison? [LR424]

ROBERT HOUSTON: The population in prisons nationwide and in jails nationwide has gone up, more so in jails than in prisons. And so while they're there, what we did at Tecumseh where we have a 194-bed special management unit, we put a psychologist on the unit to be part of the mental health support for that individual. But when you separate in that regard it's a concern. It's a concern that while that person is in administrative confinement, under those conditions, that it can exasperate any mental health issues that they have. It's also of concern that those individuals who may not have a mental health concern would find that they have a mental health concern while they're down there. And so... [LR424]

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SENATOR LATHROP: You mean develop one? [LR424]

ROBERT HOUSTON: Develop one. And so it's really incumbent upon us to try to reduce that isolation as best we can. And that's what the national effort of restrictive housing is about. We have people that discharge... [LR424]

SENATOR LATHROP: How long does it take for that to happen? [LR424]

ROBERT HOUSTON: For what to happen? [LR424]

SENATOR LATHROP: If I go in there and I'm all...I'm fine. I may not follow the rules and I may shoplift but now I'm in restrictive housing. [LR424]

ROBERT HOUSTON: Yes. [LR424]

SENATOR LATHROP: And I go in there and you're not going to look at me for four months, right? [LR424]

ROBERT HOUSTON: Well, no... [LR424]

SENATOR LATHROP: Now we got a psychologist that's going to come talk to me... [LR424]

ROBERT HOUSTON: Right. [LR424]

SENATOR LATHROP: ...and 194 other guys. [LR424]

ROBERT HOUSTON: Um-hum. [LR424]

SENATOR LATHROP: But you're not going to reevaluate me for four more months

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because I got into a fight, whether I should come out of there. [LR424]

ROBERT HOUSTON: Well,... [LR424]

SENATOR LATHROP: How long does it take before these people begin to experience mental health consequences from that type of solitary confinement, 23 hours a day and 1 hour of stretching out in a little... [LR424]

ROBERT HOUSTON: Um-hum. [LR424]

SENATOR LATHROP: ...chain-link fence area? [LR424]

ROBERT HOUSTON: Yeah. Now the four-month review is a classification review; it's not a mental health review. [LR424]

SENATOR LATHROP: Oh, no, I understand that. [LR424]

ROBERT HOUSTON: Right. Yeah. Okay. [LR424]

SENATOR LATHROP: How long does it...so you're studying this topic in your group that you're involved in... [LR424]

ROBERT HOUSTON: Um-hum. [LR424]

SENATOR LATHROP: ...and still involved in on restrictive housing. What's the science on how long does it take before people start developing mental health issues? [LR424]

ROBERT HOUSTON: I've never seen the science on it. You know, that, you'd have to get an expert in here to discuss that with you. [LR424]

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SENATOR LATHROP: But your group hasn't examined that as part of developing policy on restrictive housing? [LR424]

ROBERT HOUSTON: One of 13 principles has to do with a mental health review within 72 hours of placement by a trained mental health person, by someone trained in mental health. And so it's the beginning of recognition that the way that we're doing it nationwide needs to change. We can't continue to have administrative confinement. That doesn't mean that there's going to be a change tomorrow or the next day or even the year. But it has to change. We have a legal responsibility to separate the individuals from the general population, but at the same time we have a responsibility to that individual to attend to their mental health issues, their substance abuse issues, their social issues, and so forth, as best we can. And although I can say very definitively that Nebraska is doing it as good as anybody in the country, it's still not good enough. [LR424]

SENATOR LATHROP: And the problem there is the mental health issue, isn't it? [LR424]

ROBERT HOUSTON: Well, that's a big part of it. [LR424]

SENATOR LATHROP: You isolate somebody from other... [LR424]

ROBERT HOUSTON: Um-hum. [LR424]

SENATOR LATHROP: ...human beings... [LR424]

ROBERT HOUSTON: Yes. [LR424]

SENATOR LATHROP: ...for day in and day out,... [LR424]

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ROBERT HOUSTON: Yes. [LR424]

SENATOR LATHROP: ...months at a time,... [LR424]

ROBERT HOUSTON: Yes. [LR424]

SENATOR LATHROP: ...and they will develop mental health issues. [LR424]

ROBERT HOUSTON: You know, there...I have no reason to believe otherwise. [LR424]

SENATOR LATHROP: And your group is trying to develop a standard to reduce the amount of time these folks spend, as best you can, in that solitary confinement. [LR424]

ROBERT HOUSTON: Well, that's only step one. Step one is that, with the group, is that we want to reduce nationwide down to those people that absolutely have to be separated; and if we can get to a smaller number, we could resource it better. And then the next step is: How do we do things in a congregate way? And since I left the department I've had an opportunity to go down to the Tecumseh facility. And Warden Gage did something I think is very innovative, along with Mark Weilage, one of our psychologists, and that is, is they've brought people out in a congregate situation, albeit in restraints, to have group mental health counseling. That didn't take place a year ago when I was here but it's taking place now, and I think it's one of many steps that not only Nebraska but departments across the country are taking to try to address what is a very serious issue, and that has to do with administrative confinement. [LR424]

SENATOR LATHROP: Has your group established a standard for how long is appropriate? In other words, a goal, nobody should remain in restrictive housing, unless they're a danger to some other inmate, for longer than X? [LR424]

ROBERT HOUSTON: No. The standard is, is that a person is in administrative

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confinement as long as they pose a threat to the good order of the institution, the safety of the inmates, and the safety of staff. [LR424]

SENATOR LATHROP: As reviewed every four months. [LR424]

ROBERT HOUSTON: As reviewed every four months, yes, and it would be...now that doesn't mean that you're going to have to go a whole four months. It could be that a month or two months into that four-month period that for some reason the classification committee brings you back up for review. [LR424]

SENATOR LATHROP: I saw something, and maybe I am wandering into Nikko Jenkins now, but I saw something, a memo that you wrote about three inmates at the same time. It was near Jenkins' release, and we'll perhaps talk about it in a little more detail. But the concern was that he was going directly from administrative confinement back into society. [LR424]

ROBERT HOUSTON: That's correct. [LR424]

SENATOR LATHROP: I think you were...might have been responsive to something the Ombudsman had sent you or something like that. [LR424]

ROBERT HOUSTON: Yes. [LR424]

SENATOR LATHROP: What's the risk there? Or do you have a...did you have a policy, and now I'm not talking about Jenkins in particular, but generally a policy about releasing people from a long stretch in administrative confinement directly to the outside world? [LR424]

ROBERT HOUSTON: It's a concern. It's a... [LR424]

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SENATOR LATHROP: Why is that, Bob? [LR424]

ROBERT HOUSTON: It's a concern that Marshall Lux and I share. It's a concern that the Department of Corrections recognizes. It's not good. It's hundreds of people, thousands of people across the country are released from either jails in high-security jails or from prisons right into the community. And it is certainly something that's being addressed by the restrictive housing because it's not good. We wish there was an option to not do that. [LR424]

SENATOR LATHROP: What would it take to have an option to not do that? [LR424]

ROBERT HOUSTON: Well,... [LR424]

SENATOR LATHROP: Do we need more beds, more programs, more space? [LR424]

ROBERT HOUSTON: I think probably the best way to look at it more definitively is that we know what the facilities are that we have in the Department of Correctional Services here, and we have 250 people, we'll say, at any one time on administrative or restrictive housing. Each one of those individuals has to be separated from other individuals not only in general population but also within the administrative confinement unit. And so you take your resources and dissect that 250 ways, and so how do you ever have the resources to provide 250 segments of mental health services that would match up with services they could get in general population? It's difficult. There's nobody in the country that does it any better and have figured out how to do that. It's tough. [LR424]

SENATOR LATHROP: Yeah, I keep hearing you say that, and it sounds like, well, everybody is doing it this way, it ain't good, but we're no worse than the...than anybody else, and so I guess we're going to keep doing it that way. But it... [LR424]

ROBERT HOUSTON: No, that isn't what I said. What I said was that it's not the most



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desirable way to do it, and it's something that we as a country have to change, we as an industry of corrections has to change. And I'm not satisfied with how we're doing it in Nebraska or elsewhere that we're there, and that's what the committee is about, to look into the future and to see how do we address what I think is a national problem. [LR424]

SENATOR LATHROP: Because of the mental health issues they develop and the problem with them getting out into society straight from administrative segregation? [LR424]

ROBERT HOUSTON: Well, it's more than that. You have not only the mental health issues but also the substance abuse and the social issues and the contact with family that goes on when they're in administrative confinement. All of those things are restricted. And so we have to find a better way of doing it for more than just the mental health. The step down is part of that process, the contact with family. It limits everything except for their mail. And we've got to figure out a better way of doing it. [LR424]

SENATOR LATHROP: Did you ever make a proposal to the administration to do anything different? [LR424]

ROBERT HOUSTON: In that regard, no. [LR424]

SENATOR LATHROP: I want to talk about Jenkins for a little while... [LR424]

ROBERT HOUSTON: Um-hum. [LR424]

SENATOR LATHROP: ...or turn our attention to Nikko Jenkins, which was in some ways sort of a precipitating even for the formation of the LR424 committee. Were you familiar with Jenkins during the time he was incarcerated? [LR424]

ROBERT HOUSTON: Yes. [LR424]

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SENATOR LATHROP: Okay. And earlier you told me what your duties were at the Department of Corrections and none of it involved any one particular inmate--right?--budget, policy, bigger-picture things. [LR424]

ROBERT HOUSTON: Well, I, you know, I still went to the institutions and, you know, talked to the inmates and worked with the inmates or would take up issues concerning inmates, you know, when called upon. [LR424]

SENATOR LATHROP: There's probably a lot of people that pass through there who never draw your attention, who you never know are there, and they come and go and leave and everything is fine. [LR424]

ROBERT HOUSTON: We hope it's fine. [LR424]

SENATOR LATHROP: Yeah. And so Jenkins became somebody that... [LR424]

ROBERT HOUSTON: ...came onto my radar screen. [LR424]

SENATOR LATHROP: I couldn't have put it better. He was on your radar screen. Was he on your radar screen from the time he got there? [LR424]

ROBERT HOUSTON: No. [LR424]

SENATOR LATHROP: When did he show up on your radar screen? [LR424]

ROBERT HOUSTON: I think it might have been when he was at NCYF but I think, more specifically, it was when he had an attempted escape from funeral travel or... [LR424]

SENATOR LATHROP: And I'm going to try to...just so the record reflects the time line.

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And I just did this, this morning, and you can tell me if I got it wrong. But his initial confinement was in 2003. He was convicted of something, I think spent some time in a youth center,... [LR424]

ROBERT HOUSTON: Um-hum. [LR424]

SENATOR LATHROP: ...and then was transferred to the Department of Corrections in 2005, right? [LR424]

ROBERT HOUSTON: Yeah, I don't have any reason to doubt that. [LR424]

SENATOR LATHROP: Sound about right? And in 2009 he attended a funeral, assaulted one of your security folks,... [LR424]

ROBERT HOUSTON: Yes. [LR424]

SENATOR LATHROP: ...was sentenced in the Douglas County District Court July 11, 2011,... [LR424]

ROBERT HOUSTON: Okay. [LR424]

SENATOR LATHROP: ...came back to Corrections... [LR424]

ROBERT HOUSTON: Yes. [LR424]

SENATOR LATHROP: ...after that sentence, went out to Tecumseh and stayed there until his release, July 30, 2013. [LR424]

ROBERT HOUSTON: No, he went to the penitentiary I think the last several months. [LR424]

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SENATOR LATHROP: The last couple of months anyway, you're right, he was at Tecumseh and at the very end he was transferred... [LR424]

ROBERT HOUSTON: Yes. [LR424]

SENATOR LATHROP: ...to the State Penitentiary. [LR424]

ROBERT HOUSTON: Yes. [LR424]

SENATOR LATHROP: Okay. You said he was on your radar. How did he become one of those inmates that shows up on the director's radar? [LR424]

ROBERT HOUSTON: We had interactions with the Ombudsman's Office concerning Mr. Jenkins. [LR424]

SENATOR LATHROP: Okay. What does that mean? [LR424]

ROBERT HOUSTON: Well, the Ombudsman's Office was concerned about Nikko Jenkins, as we were, and so we had interactions with the Ombudsman's Office, as in the Public Counsel's report reflects, pretty much step by step with the Ombudsman's Office, trying to address Nikko Jenkins. [LR424]

SENATOR LATHROP: Okay. You said that he showed up on your radar after the assault on the guard. [LR424]

ROBERT HOUSTON: Yes. [LR424]

SENATOR LATHROP: So from '05--I'm just trying to narrow this down--from '05 to '09, when he went to the funeral for his grandmother, he would not have been on your radar,

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he would have just been another inmate. [LR424]

ROBERT HOUSTON: Yes. [LR424]

SENATOR LATHROP: You're not having contact with the Ombudsman's Office...  
[LR424]

ROBERT HOUSTON: Right. [LR424]

SENATOR LATHROP: ...or it's all...be a matter of routine. [LR424]

ROBERT HOUSTON: Right. [LR424]

SENATOR LATHROP: He's involved in the assault on the guard while attending his  
grandmother's funeral, and that happens in '09, and then he shows up on your radar.  
[LR424]

ROBERT HOUSTON: Of the correction offer, yes. [LR424]

SENATOR LATHROP: Corrections officer, pardon me. [LR424]

ROBERT HOUSTON: Yes. [LR424]

SENATOR LATHROP: The involvement...or he shows up on your radar screen because  
you're getting calls from the Ombudsman? [LR424]

ROBERT HOUSTON: No, my staff has contacts. [LR424]

SENATOR LATHROP: Okay, let me jump ahead. This guy at different times, after he  
has returned to the Department of Corrections after the 2011 sentencing, is writing

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e-mails or writing...not e-mails, but writing letters to you. [LR424]

ROBERT HOUSTON: I'd have to see those letters. I'm not...I don't recall. [LR424]

SENATOR LATHROP: Do you...as you sit here today, do you remember ever getting any of the letters that he was writing to you? [LR424]

ROBERT HOUSTON: No. I, you know, I'd have to see them to see if I signed off on the responses. What happens with letters: Letters come to my office and if I'm away there is a deputy director that will take the correspondence; or if I'm there, which is most times, I would take that correspondence, read it over, send it out to the appropriate deputy director who would then work with the warden and with the staff to develop a response to that. That response would then come back to the deputy director, be typed up in that office, and then brought down to me for review, and then I would make changes to that or sign off on that. [LR424]

SENATOR LATHROP: If an inmate directs something directly to you...you're the director... [LR424]

ROBERT HOUSTON: Yes. [LR424]

SENATOR LATHROP: ...during this period of time. If an inmate is sending you one of these requests for an interview or whatever they're called, or a grievance,... [LR424]

ROBERT HOUSTON: Interview request form. [LR424]

SENATOR LATHROP: ...you're responding to each one of them through that process? [LR424]

ROBERT HOUSTON: Yes. [LR424]

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SENATOR LATHROP: How many of those you get a day? [LR424]

ROBERT HOUSTON: Lots. (Laughter) [LR424]

SENATOR LATHROP: I'll bet, I'll bet. [LR424]

ROBERT HOUSTON: Lots. [LR424]

SENATOR LATHROP: So did you...did the volume of complaints, grievances, or requests for an interview from Jenkins, did that alone put him on your radar? [LR424]

ROBERT HOUSTON: No. [LR424]

SENATOR LATHROP: As he was sending these to you, did you start to get a sense of who he was and what his issues were? [LR424]

ROBERT HOUSTON: Well, I was getting a sense of who he was with my...through my staff who were talking to me about Nikko Jenkins. [LR424]

SENATOR LATHROP: And when did they begin talking to you about Nikko Jenkins? [LR424]

ROBERT HOUSTON: Well, I don't know if you have the...when he came, really, onto my radar screen, Senator Chambers had a concern with Nikko Jenkins, the Ombudsman's Office had a concern with Nikko Jenkins. They were in contact with the department concerning that. [LR424]

SENATOR LATHROP: Was that in 2013? [LR424]

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ROBERT HOUSTON: Two thousand thirteen, yes. [LR424]

SENATOR LATHROP: Okay. Before 2013, he's on your radar screen, is your staff talking to you about it? [LR424]

ROBERT HOUSTON: No. [LR424]

SENATOR LATHROP: Do you know what his issues are? [LR424]

ROBERT HOUSTON: No. [LR424]

SENATOR LATHROP: Do you know what he got for mental health treatment or evaluation before he went to the funeral of his grandmother in 2009? [LR424]

ROBERT HOUSTON: No, I couldn't tell you that. [LR424]

SENATOR LATHROP: When he was charged with assaulting one of your corrections officers in 2009 he was confined at the Douglas County Corrections Center. Would that be true? [LR424]

ROBERT HOUSTON: Yes. [LR424]

SENATOR LATHROP: That would be your understanding. [LR424]

ROBERT HOUSTON: Yes, my understanding, because the assault happened, I believe, in Douglas County. [LR424]

SENATOR LATHROP: Right. And when he was confined at Douglas County Corrections Center, he was seen by a psychiatrist, Oliveto. [LR424]



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ROBERT HOUSTON: Yes. [LR424]

SENATOR LATHROP: Have you seen what Dr. Oliveto has written regarding his evaluation of Mr. Jenkins? [LR424]

ROBERT HOUSTON: I've read the Ombudsman's report... [LR424]

SENATOR LATHROP: Okay. [LR424]

ROBERT HOUSTON: ...and to the extent that it's covered in this report. [LR424]

SENATOR LATHROP: Okay. But you...did you ever look at this guy's folder? [LR424]

ROBERT HOUSTON: No. [LR424]

SENATOR LATHROP: Do inmates have a folder? Do I have that right? Is there a computer file or how is that...? [LR424]

ROBERT HOUSTON: Well, they have several folders. The first thing is an electronic folder that reflects what's in the written folder, and that would have things such as misconduct reports, correspondence, classification, good time losses, good time restorations, and so forth. Then there would be another folder that a substance abuse counselor would have on that individual, and then another folder that mental health would have, and those are kept in the respective areas. [LR424]

SENATOR LATHROP: Is the mental health folder also available to you on-line? [LR424]

ROBERT HOUSTON: No, not to me. I (inaudible)... [LR424]

SENATOR LATHROP: You'd have to get a...it's really, literally, in paper still. [LR424]

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ROBERT HOUSTON: I believe so. [LR424]

SENATOR LATHROP: Okay. When he was sentenced and transferred back to Corrections,... [LR424]

ROBERT HOUSTON: Um-hum. [LR424]

SENATOR LATHROP: ...would the evaluation done by Dr. Oliveto in Douglas County follow him down to the Department of Corrections? [LR424]

ROBERT HOUSTON: Yes. [LR424]

SENATOR LATHROP: And I was hoping that was going to be your answer because I think when we subpoenaed records from the Department of Corrections we got the evaluation done by Dr. Oliveto as part of that information request... [LR424]

ROBERT HOUSTON: Um-hum. [LR424]

SENATOR LATHROP: ...which would suggest to me that Oliveto's evaluation followed him down to the Department of Corrections. [LR424]

ROBERT HOUSTON: Yes. [LR424]

SENATOR LATHROP: And in addition to...in addition to the evaluation done by Dr. Oliveto, he was sentenced by Judge Randall, I think. [LR424]

ROBERT HOUSTON: Um-hum, yes. [LR424]

SENATOR LATHROP: You're...did...you've seen that sentence... [LR424]

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ROBERT HOUSTON: No. [LR424]

SENATOR LATHROP: ...or the order of...? [LR424]

ROBERT HOUSTON: No, I don't doubt what you say. [LR424]

SENATOR LATHROP: Okay. You've at least seen secondhand in the Ombudsman's report what Judge Randall suggested... [LR424]

ROBERT HOUSTON: Yes. [LR424]

SENATOR LATHROP: ...when he sentenced him,... [LR424]

ROBERT HOUSTON: Yes. [LR424]

SENATOR LATHROP: ...that he needed mental health treatment. [LR424]

ROBERT HOUSTON: Yes. [LR424]

SENATOR LATHROP: When he came back to the department after being sentenced in the Douglas County District Court, were you involved in the circumstances of his confinement after that? [LR424]

ROBERT HOUSTON: No. [LR424]

SENATOR LATHROP: What were the circumstances of his confinement? [LR424]

ROBERT HOUSTON: I believe, from reading the report, he was on administrative confinement. [LR424]

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SENATOR LATHROP: So after being sentenced...and do you know why that is? Was that, you assaulted a guard so the first stop is going to be administrative confinement? [LR424]

ROBERT HOUSTON: That would be a very serious offense, yes. [LR424]

SENATOR LATHROP: Okay. By the way, how much good time did he lose on account of assaulting one of your guys? [LR424]

ROBERT HOUSTON: That I couldn't tell you. [LR424]

SENATOR LATHROP: Ninety days sound right? [LR424]

ROBERT HOUSTON: That sounds about right. I know he picked up two more sentences during his incarceration, and one of them was for the assault on the correction officer. [LR424]

SENATOR LATHROP: Okay, so he had 90 days added to his time or good time taken away. Can you tell me, do you... [LR424]

ROBERT HOUSTON: Well, plus the criminal offense. [LR424]

SENATOR LATHROP: Plus the criminal offense. [LR424]

ROBERT HOUSTON: Um-hum. [LR424]

SENATOR LATHROP: So were you involved in taking away the good time? [LR424]

ROBERT HOUSTON: No. [LR424]

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SENATOR LATHROP: How's that happen? [LR424]

ROBERT HOUSTON: Well, I don't want to give you too much history. But Wolff v. McDonnell arose out of Nebraska in 1974. And in Wolff v. McDonnell it established due process rights for inmates nationwide. It's a landmark Supreme Court decision. And it established a due process, a hearing that an inmate would go to. They would be given notice of a misconduct report. They would be allowed to have a representative, which is usually another inmate, and they would have a hearing before a board. That board would then make a determination of either finding of guilt on one or maybe several charges that are on the report. And the inmate, if it once goes to what's called IDC, or institutional disciplinary committee, has appeal rights. And they could appeal it to the appeals board. The appeals board was a separate body at central office. They could then appeal that, if they wanted, into district court. And so it's through that process that good time credits are deducted. [LR424]

SENATOR LATHROP: So presumably he went through that process. [LR424]

ROBERT HOUSTON: Yes. [LR424]

SENATOR LATHROP: And the conclusion was to take not all of his good time but 90 days. [LR424]

ROBERT HOUSTON: Yes. [LR424]

SENATOR LATHROP: Why didn't they take all of his good time? [LR424]

ROBERT HOUSTON: Well, he got more... [LR424]

SENATOR LATHROP: That's somebody's discretion, right? [LR424]

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ROBERT HOUSTON: Yeah. I think I need to have a little bit broader discussion on that to establish an understanding and, if I could, make it in a general sense rather than specific to Nikko Jenkins. Nikko Jenkins... [LR424]

SENATOR LATHROP: Let's start with the general and then maybe I do want to drill down, because I was reading through the things that he had good time taken away for. [LR424]

ROBERT HOUSTON: Yeah. [LR424]

SENATOR LATHROP: Thirty days goes away for tattooing his own face. [LR424]

ROBERT HOUSTON: Yeah. [LR424]

SENATOR LATHROP: And, you know, a month and a half for saying assaultive things to a guard, not hitting one but just being abusive. [LR424]

ROBERT HOUSTON: Yeah. [LR424]

SENATOR LATHROP: And then I see 90 days for the assault that he carried out, I mean, hitting one of your guards while you have him at a funeral. [LR424]

ROBERT HOUSTON: Correct. [LR424]

SENATOR LATHROP: And it seemed too little. [LR424]

ROBERT HOUSTON: Well, he also got two to four years. [LR424]

SENATOR LATHROP: Well, I understand that. I understand that. But as a matter of...

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[LR424]

ROBERT HOUSTON: Well, let me see if I can (inaudible)... [LR424]

SENATOR LATHROP: Please, because I think that's one of the questions people have about... [LR424]

ROBERT HOUSTON: You know, and... [LR424]

SENATOR LATHROP: ...this guys is in there and he assaults a guard while he is being taken to his grandmother's funeral and only 90 days and not all of his time is deducted. [LR424]

ROBERT HOUSTON: Yeah. Yeah. You know, and I know it's been a topic on talk radio and other places and so forth, but let me see if I can put it into a broader context as to how that happens. First of all, when you have an inmate that misbehaves, a lot of things happen to that person. They get a misconduct report and they go through that process if it's a serious misconduct report. And in this case here, he had, I believe, two to four years added to his sentence. In addition to that, inmates that assault staff or assault each other or do other types of things, that misconduct is also reviewed by the Parole Board and they're not paroled. And so when behaviors like that happen, you've got an inmate who is getting two to four more years; they're going through the disciplinary process and getting 90 days deducted. They'll go through an administrative hearing and be placed in administrative confinement and they won't get paroled. And so it really comes down to, you know, in a general sense, how much you expect to take away from an inmate. I mean, how much of a hole do you want to put them in? And by "hole" I don't mean a confinement place but just...that's a lot. That's a lot to lose. And so when we think of good time credits, we have to think in the totality of the prison experience. Living in prison is not easy for these guys. They're around lots of other people and things get tense and they do things that they shouldn't be doing. And we have to be very

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measured in how we discipline the inmates because, you know, we're keepers, we're not catchers--we keep them and we have to keep them safe. But at the same time, we have to realize that it's very difficult to be incarcerated, and they can get time added on in...you know, through criminal offenses. And so it's a judgment. It's a big judgment that... [LR424]

SENATOR LATHROP: Who makes that judgment? [LR424]

ROBERT HOUSTON: Well, I think the judgment is the total effect of being in prison. [LR424]

SENATOR LATHROP: No. Who is the person? You told us about the due process rights an inmate has when they're having good time taken away... [LR424]

ROBERT HOUSTON: Um-hum. [LR424]

SENATOR LATHROP: ...and the landmark case and I understand the concept of due process and having a hearing to make sure the whole thing is fair and you did what you're accused of doing. And then somebody makes a judgment to pull 90 days and not the balance, every last day of his good time. [LR424]

ROBERT HOUSTON: Yeah. [LR424]

SENATOR LATHROP: Who does that inside of Corrections? [LR424]

ROBERT HOUSTON: A hearing officer. [LR424]

SENATOR LATHROP: And who are the hearing officers? They're employees? [LR424]

ROBERT HOUSTON: Yes. [LR424]



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SENATOR LATHROP: They're not contractors or anything like that. [LR424]

ROBERT HOUSTON: No. [LR424]

SENATOR LATHROP: Were these hearing officers ever instructed to not pull a lot of good time so that we can keep the prisoners moving through an overcrowded system? [LR424]

ROBERT HOUSTON: Well, we have guidelines both in policy and the inmate rule book as...that gives general guidelines as to a particular offense, how much good time would be subtracted. [LR424]

SENATOR LATHROP: Is 90 days what the policy provides for if you assault a corrections officer? [LR424]

ROBERT HOUSTON: Yes. That would be not for a correction officer; it would be assault on another person. [LR424]

SENATOR LATHROP: So it doesn't distinguish between a corrections officer and another inmate? [LR424]

ROBERT HOUSTON: No, it just says assault. Now assault with injury, a person could lose a year of nonrestorable good time and they would not get that good time back. [LR424]

SENATOR LATHROP: Well, did this guard get injured, the security officer? [LR424]

ROBERT HOUSTON: I don't recall what injuries, if any. [LR424]

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SENATOR LATHROP: Okay. That's how he ended up losing 90 days and not all of his time. [LR424]

ROBERT HOUSTON: Yes. [LR424]

SENATOR LATHROP: It would appear to me as I read through the file that he is in administrative confinement until the very end of his sentence. [LR424]

ROBERT HOUSTON: Yes. [LR424]

SENATOR LATHROP: And during the period of his administrative confinement, someone would come by and talk to him generally in response to some kind of a grievance or a note that he would send out to the warden or to you. [LR424]

ROBERT HOUSTON: Well, it would...it could be for that reason or it could just be normal rounds that the mental health staff would do in the control unit at Tecumseh. [LR424]

SENATOR LATHROP: And how often, if you are where he was in restrictive housing, how often would that person in the normal course of events be seen by a mental health professional? [LR424]

ROBERT HOUSTON: Well, they're on the unit. They'd be talking to inmates every day. [LR424]

SENATOR LATHROP: Well, are they making notes every time they talk to them? [LR424]

ROBERT HOUSTON: Not every time they talk to them. [LR424]

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SENATOR LATHROP: Okay. Before let's say January of 2013, did you have any idea what he was telling people or what he was saying to the folks down in the mental health...the mental health people that work for you? [LR424]

ROBERT HOUSTON: No, no. [LR424]

SENATOR LATHROP: Do these people work for you or are they contractors? [LR424]

ROBERT HOUSTON: The vast majority work...are Department of Corrections employees. At Tecumseh we have a private contract with Correctional (sic--Correct) Care Solutions, and Dr. Natalie Baker, the psychiatrist, would work for CCS. But all the mental health workers and clinical psychologists assigned to that institution would be Department of Corrections employees. [LR424]

SENATOR LATHROP: Okay. As we approach this guy's release date, or January, we begin to have some concern about the fact that he's going to get released, and that's when he shows up on your radar. [LR424]

ROBERT HOUSTON: More specifically, in February. [LR424]

SENATOR LATHROP: February, okay. It looks like there's a lot of other people that might have started getting concerned before you did. [LR424]

ROBERT HOUSTON: Um-hum. [LR424]

SENATOR LATHROP: There is a...Doug. There is a memorandum dated June 12, 2013, from Larry Wayne to you. [LR424]

ROBERT HOUSTON: Um-hum. Thank you. [LR424]

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SENATOR LATHROP: And it talks about administrative confinement and the concerns about three different inmates. [LR424]

ROBERT HOUSTON: Um-hum. [LR424]

SENATOR LATHROP: You remember seeing this? [LR424]

ROBERT HOUSTON: No, but I don't doubt I saw it. [LR424]

SENATOR LATHROP: This, when it comes to Jenkins, there's a sentence in here that says: More recently, external stakeholders have identified Jenkins' upcoming July 30 mandatory discharge date as a concern. [LR424]

ROBERT HOUSTON: Um-hum. [LR424]

SENATOR LATHROP: Who are those man...who are those external stakeholders being referred to in there? [LR424]

ROBERT HOUSTON: Probably the Ombudsman's Office. [LR424]

SENATOR LATHROP: They would have been an external stakeholder? [LR424]

ROBERT HOUSTON: Yes. [LR424]

SENATOR LATHROP: That would not refer to somebody inside of Corrections?  
[LR424]

ROBERT HOUSTON: Let me see...where are you? Are you on the first page? [LR424]

SENATOR LATHROP: First page, second sentence, under Nikko Jenkins. [LR424]

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ROBERT HOUSTON: Second sentence? External stakeholders have identified Jenkins' upcoming...sorry...as a concern. I think that would probably be a reference to Public Counsel. [LR424]

SENATOR LATHROP: Okay. Not the police, not the county attorney? [LR424]

ROBERT HOUSTON: No. I mean he was certainly on a lot of people's radar screen, but I don't know if that was referring specifically to Public Counsel or just people outside the department. [LR424]

SENATOR LATHROP: And let me see if I can get us to how he showed up on your radar screen. [LR424]

ROBERT HOUSTON: Okay. [LR424]

SENATOR LATHROP: I think Senator Chambers contacts the Ombudsman, and the Ombudsman starts talking to people at Corrections and now he shows up on your radar. [LR424]

ROBERT HOUSTON: Yes. [LR424]

SENATOR LATHROP: Okay. And when he shows up on your radar, there is a concern because of the things he's saying but also because he's going straight from administrative or restrictive housing to society. [LR424]

ROBERT HOUSTON: Yes. [LR424]

SENATOR LATHROP: I think Senator Chambers expressed concern about him returning to the community without anything happening between his restrictive housing.

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[LR424]

ROBERT HOUSTON: Yes. [LR424]

SENATOR LATHROP: And so you get involved. [LR424]

ROBERT HOUSTON: Yes. [LR424]

SENATOR LATHROP: When you got involved, did you look at his file? [LR424]

ROBERT HOUSTON: No. [LR424]

SENATOR LATHROP: Did you look at his mental health records? [LR424]

ROBERT HOUSTON: No. [LR424]

SENATOR LATHROP: Did you talk to somebody who had? [LR424]

ROBERT HOUSTON: Yes. [LR424]

SENATOR LATHROP: Who did you talk to? [LR424]

ROBERT HOUSTON: I talked to Larry Wayne. [LR424]

SENATOR LATHROP: And what's Larry Wayne's job at the Department of Corrections?  
[LR424]

ROBERT HOUSTON: Deputy director, and I don't know if he had looked at...specifically  
what he looked at. [LR424]

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SENATOR LATHROP: What does he do for you, or what did he do for you when you were director and he was the deputy? What was his job? [LR424]

ROBERT HOUSTON: He was over community services, so he would be over the community facilities, over parole, would be two of his...his major responsibilities. [LR424]

SENATOR LATHROP: But if Jenkins jams out, which he was fixing to do... [LR424]

ROBERT HOUSTON: Um-hum. [LR424]

SENATOR LATHROP: ...on July 30, 2013, you guys don't have any tail on him once he leaves, do you? [LR424]

ROBERT HOUSTON: No. No, he was not being paroled. He was discharging. [LR424]

SENATOR LATHROP: So he's not looking at him because he's going into community services but maybe that's...he's going to get out and so that's Larry Wayne's job. [LR424]

ROBERT HOUSTON: Yes. [LR424]

SENATOR LATHROP: Okay. Did Larry Wayne talk to you about the things this guy was saying in his letters? [LR424]

ROBERT HOUSTON: No. [LR424]

SENATOR LATHROP: So before he was released, Bob, did anybody tell you what he was writing? [LR424]

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ROBERT HOUSTON: No. [LR424]

SENATOR LATHROP: Did anybody tell you that he was promising when he got out to kill people? [LR424]

ROBERT HOUSTON: No. [LR424]

SENATOR LATHROP: That he had written a letter, and I think it may even have been directed to you, that he said he was going to get out and assassinate people and eat people, and you never knew that before his discharge? [LR424]

ROBERT HOUSTON: No. [LR424]

SENATOR LATHROP: Did anybody suggest to you, maybe not the particulars, but this guy is saying some really, really strange stuff down there? [LR424]

ROBERT HOUSTON: No. [LR424]

SENATOR LATHROP: Did Larry Wayne or anybody...I assume you never looked at his record. [LR424]

ROBERT HOUSTON: No. [LR424]

SENATOR LATHROP: Okay, I have one...make sure I got a copy of this. Now I can't find it. I'm thinking I don't have a copy of this, so I'm going to have to read it, okay? [LR424]

ROBERT HOUSTON: Okay. [LR424]

SENATOR LATHROP: There is a concern. Larry Wayne is involved; you're involved.



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And on March 15, 2013, you sent an e-mail to Larry Wayne, Cameron White, and Kathy Foster, and it's...the subject is Nikko Jenkins. I don't know if you have this in front of you. And before you answer, if you want to read this, I'll let you, because this isn't a test on your memory. [LR424]

ROBERT HOUSTON: Okay. And this is dated March, you say? [LR424]

SENATOR LATHROP: March 15, 2013. [LR424]

ROBERT HOUSTON: Okay. [LR424]

SENATOR LATHROP: Larry, thank you. Frank (phonetic) and myself can review this plan with Cameron and Kathy Foster. So there's...must be some kind of a plan for this guy getting out. [LR424]

ROBERT HOUSTON: Um-hum. [LR424]

SENATOR LATHROP: I agree with Cameron, especially considering the Jenkins case arose out of a written public document from Jerall--an ombudsman, right? [LR424]

ROBERT HOUSTON: Um-hum, yes. [LR424]

SENATOR LATHROP: The informal discussion opportunity was on the front end of this case, not the back end. If we have a carefully crafted discharge plan and follow it, we are meeting and exceeding our obligation to public safety. Thanks, Bob. [LR424]

ROBERT HOUSTON: Um-hum. [LR424]

SENATOR LATHROP: Did you write that or do you remember writing that? [LR424]

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ROBERT HOUSTON: Yes, and... [LR424]

SENATOR LATHROP: That e-mail would suggest that you were involved in making the plan. [LR424]

ROBERT HOUSTON: Yes, and I have an e-mail that I wrote previous to that, which you may not have,... [LR424]

SENATOR LATHROP: Well, I should. [LR424]

ROBERT HOUSTON: ...that's dated February 26. [LR424]

SENATOR LATHROP: I'm not sure...yes, I have that too. [LR424]

ROBERT HOUSTON: Okay. [LR424]

SENATOR LATHROP: You are involved, and the concern that is addressed in your back-and-forth is this guy is going to go from administrative segregation to... [LR424]

ROBERT HOUSTON: Yes. [LR424]

SENATOR LATHROP: ....Senator Chambers' district... [LR424]

ROBERT HOUSTON: Yes. [LR424]

SENATOR LATHROP: ...without any restrictions, and that's a problem for us. My question is, when you were developing a plan for Nikko Jenkins,... [LR424]

ROBERT HOUSTON: Um-hum. [LR424]

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SENATOR LATHROP: ...did somebody talk to you about the stuff he was saying and what the mental health people were saying? [LR424]

ROBERT HOUSTON: No. [LR424]

SENATOR LATHROP: Who is Cameron White? [LR424]

ROBERT HOUSTON: Cameron White is the head of behavioral services. [LR424]

SENATOR LATHROP: That's mental health, isn't it? [LR424]

ROBERT HOUSTON: That's mental health. [LR424]

SENATOR LATHROP: So Cameron White is involved in developing the plan for Jenkins' movement from Corrections to society. [LR424]

ROBERT HOUSTON: He and Kathy Foster. [LR424]

SENATOR LATHROP: What's Kathy Foster's job? [LR424]

ROBERT HOUSTON: She's the head of social work. [LR424]

SENATOR LATHROP: Okay. But Cameron, this Cameron person, is a mental health professional. [LR424]

ROBERT HOUSTON: Yes. [LR424]

SENATOR LATHROP: And they're involved in making the plan that you're involved in making. [LR424]

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ROBERT HOUSTON: Um-hum. [LR424]

SENATOR LATHROP: Yes? [LR424]

ROBERT HOUSTON: Yes. [LR424]

SENATOR LATHROP: And no one tells you that he has mental health issues? [LR424]

ROBERT HOUSTON: Yeah. My job, as you will see on the February 26 memo, is to set in motion an effort to transition Nikko Jenkins back into the community. We discharge and parole 2,000 people a year. And so he did come onto my radar screen. And the February 26 e-mail says: Thanks, folks. Kathy and Cameron, would you two mind taking the lead in gathering information on how we care for Mr. Jenkins? Thanks. This will help us do two things: first, we can help others understand what assistance we can provide for inmate Jenkins; but secondly, we can draft policy and best practices for future cases. This multidisciplinary team you're assembling is not only awesome but would be a model we can be proud of as we continually strive to protect the public one inmate at a time. [LR424]

SENATOR LATHROP: And that's...so you're setting in motion the plan. And the plan, none of it involves mental health; none of it involves a consideration about whether he should be sent to the regional center or committed. True? [LR424]

ROBERT HOUSTON: Well, that's not my determination. [LR424]

SENATOR LATHROP: I have to say, when I'm reading this stuff... [LR424]

ROBERT HOUSTON: Yes. [LR424]

SENATOR LATHROP: ...he's sending letters to...hand-written letters that he's sending

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to...I can't tell who these things are being sent to. They're obviously being sent to somebody like the warden,... [LR424]

ROBERT HOUSTON: Um-hum. [LR424]

SENATOR LATHROP: ...if not directly to you. [LR424]

ROBERT HOUSTON: Um-hum. [LR424]

SENATOR LATHROP: They don't have an address on them, but they were returned to him. He's telling people...and as long as he was in administrative confinement...you now know this, right? [LR424]

ROBERT HOUSTON: Yes. [LR424]

SENATOR LATHROP: You've read the Ombudsman's report. [LR424]

ROBERT HOUSTON: Yes. [LR424]

SENATOR LATHROP: While he's in administrative confinement he's telling people that he needs mental healthcare. [LR424]

ROBERT HOUSTON: Yes. [LR424]

SENATOR LATHROP: Right? He's telling people he wants to go and be committed to the regional center, right? [LR424]

ROBERT HOUSTON: Yes. [LR424]

SENATOR LATHROP: And he's telling people that he's going to get out and murder,

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right? [LR424]

ROBERT HOUSTON: Yes. [LR424]

SENATOR LATHROP: And he's telling people that he's listening to the Egyptian god of war, right? And people have done mental health evaluations on him. Dr. Oliveto, in particular, sees him and says, this guy is (a) mentally ill and (b) dangerous,... [LR424]

ROBERT HOUSTON: Um-hum. [LR424]

SENATOR LATHROP: ...which are the two elements for a commitment. Nothing changed after he came back, in terms of his mental healthcare, even though the judge ordered it. Did you notice that too? [LR424]

ROBERT HOUSTON: I noticed that in the report. [LR424]

SENATOR LATHROP: Can you tell us why? If Judge Randall thought the guy had a mental illness after reviewing, perhaps, what Oliveto said while he was incarcerated at Douglas County Correctional Center, why didn't he get mental healthcare as directed by the court consistent with the diagnosis by Oliveto? [LR424]

ROBERT HOUSTON: Senator, I would like to give you a detailed response to that. But the mental health professionals will be coming to this committee. And as you read through the report and the things that he was saying, the mental health people were paying attention to him. Now it may not be the type of attention that everybody would agree is the right attention to pay, but they were paying attention to Nikko Jenkins. [LR424]

SENATOR LATHROP: I see that they were seeing him. [LR424]

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ROBERT HOUSTON: Um-hum. [LR424]

SENATOR LATHROP: I see that they were evaluating him. [LR424]

ROBERT HOUSTON: Um-hum. [LR424]

SENATOR LATHROP: They were actually giving him drugs for a mental illness, right? [LR424]

ROBERT HOUSTON: Um-hum. [LR424]

SENATOR LATHROP: So...and I'm reading through the medical records and I'm...I do that from time to time in my other life, so I can...I'm a little conversant with it. [LR424]

ROBERT HOUSTON: Yes. [LR424]

SENATOR LATHROP: There is some question with some of the evaluations, not with Oliveto, whose records were in your files, that this guy has a mental illness and that he's dangerous and needs to be committed. Some of your people are saying, well, this guy has a mental illness, he's got a whole lot of behavioral stuff. And then they prescribe him medication for a mental illness. And so my question is, as you developed the plan, how is it that his mental...his desire to be committed, his mental illness was not presented to you? How was that... [LR424]

ROBERT HOUSTON: It's... [LR424]

SENATOR LATHROP: I mean, in hindsight, tell us how you didn't know this guy, who you were involved in developing a plan for his discharge, how you didn't know that he was diagnosed as mentally ill by Oliveto, diagnosed with mental illness by some of the people in your own Corrections facilities who saw him, and he was clearly dangerous,

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with the threats he had made to kill when he got out. How did you not know? In hindsight...give us your hindsight. [LR424]

ROBERT HOUSTON: Yeah, my...I mean my job was to set in motion a transition for this person out to the community. Again, we had 2,000 inmates released that year. I wrote a memo on one, and that's Nikko Jenkins. And so there's no doubt that he was on our radar screen. At that point it goes over to the mental health professionals. He was confined in administrative confinement. He was moving towards his July release date. We had...the mental health staff were alerted to him. He... [LR424]

SENATOR LATHROP: They'd been working with him, Bob. [LR424]

ROBERT HOUSTON: Yeah. [LR424]

SENATOR LATHROP: They'd been working with him, and then they'd been prescribing him medication for mental illness. [LR424]

ROBERT HOUSTON: Um-hum, yes, and he was also, if I recall in the report, he was sometimes refusing to take those drugs. [LR424]

SENATOR LATHROP: True, and I suspect that that happens with people that have mental illness from time to time. I mean, I'm not a psychiatrist, but... [LR424]

ROBERT HOUSTON: You know,... [LR424]

SENATOR LATHROP: But my question though was how it didn't come to your attention when you were involved in developing the plan as he was on his way out the door. [LR424]

ROBERT HOUSTON: Yeah. No, this...I mean what you see is the extent of my



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involvement. [LR424]

SENATOR LATHROP: And just to be clear, no one told you that he had a mental illness or that he was a...that he had mental illness or that he was dangerous and threatening to kill people as you were developing the plan or at any time before his discharge? [LR424]

ROBERT HOUSTON: No. After I set it in motion, it was up to the professionals at that point. [LR424]

SENATOR LATHROP: And what you set in motion was a process so that he'd at least spend some time in general population before he went to the street. [LR424]

ROBERT HOUSTON: That would have been desirable. [LR424]

SENATOR LATHROP: It didn't happen, did it? [LR424]

ROBERT HOUSTON: No, it didn't happen. [LR424]

SENATOR LATHROP: You send him over to the prison and what happens when he gets there? He's in administrative confinement, isn't he? [LR424]

ROBERT HOUSTON: Yes. [LR424]

SENATOR LATHROP: And he gets out for a short period of time and they put him back until the day he leaves. [LR424]

ROBERT HOUSTON: Yes. [LR424]

SENATOR LATHROP: Did you ever have a discussion with anybody in the Governor's

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Office about Nikko Jenkins? [LR424]

ROBERT HOUSTON: I'd have to see if I did. I don't recall. [LR424]

SENATOR LATHROP: What do you mean, "I'd have to see if I did"? [LR424]

ROBERT HOUSTON: I'd mean if there was a correspondence. [LR424]

SENATOR LATHROP: Do you remember ever meeting with...so who would that be, Robert Bell, Larry Bare, or Dave Heineman? [LR424]

ROBERT HOUSTON: Yeah, I don't recall talking. [LR424]

SENATOR LATHROP: Do you remember having a conversation with them at all? [LR424]

ROBERT HOUSTON: No. [LR424]

SENATOR LATHROP: At all? [LR424]

ROBERT HOUSTON: At all. [LR424]

SENATOR LATHROP: Never came up? At no point? [LR424]

ROBERT HOUSTON: At no point that I'm aware of. [LR424]

SENATOR LATHROP: Well, you'd be aware of it if you participated in a conversation with any of those people, wouldn't you? [LR424]

ROBERT HOUSTON: Yeah. No, I... [LR424]

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SENATOR LATHROP: Okay. [LR424]

ROBERT HOUSTON: Yeah, I just don't recall ever discussing that with them. [LR424]

SENATOR LATHROP: How many patients or how many inmates at the correctional facility that...during the time you managed? And let's say the last two years that you were there. How many of those people ever ended up at the Lincoln Regional Center on a commitment? [LR424]

ROBERT HOUSTON: Well, I know from the reading of this report I believe 11 people were referred. And if I recall, reading this report correctly, there were about 11. [LR424]

SENATOR LATHROP: Eleven people had been committed to the regional center... [LR424]

ROBERT HOUSTON: Yes. [LR424]

SENATOR LATHROP: ...during the time you were director? [LR424]

ROBERT HOUSTON: Yeah, or I don't know if they were...went to the regional center, if they were referred for a Mental Health Board review. [LR424]

SENATOR LATHROP: Did you ever have any conversation with the folks over at the regional center about sending inmates over? [LR424]

ROBERT HOUSTON: No, not that I recall. [LR424]

SENATOR LATHROP: If you're familiar with this, Bob, was there a time when one of the psychiatrists was killed by an inmate or a person at the regional center? [LR424]

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ROBERT HOUSTON: Dr. Martin. [LR424]

SENATOR LATHROP: Dr. Martin? [LR424]

ROBERT HOUSTON: Yes. [LR424]

SENATOR LATHROP: And I apologize if he's a friend of yours. I did not know Dr. Martin. When approximately did that take place? [LR424]

ROBERT HOUSTON: It was during my time. It would have been the late 2006, '07, '08, '09, somewhere in there. [LR424]

SENATOR LATHROP: Okay. After Dr. Martin was killed at the Lincoln Regional Center, did the regional center begin to be more discriminating about who they would take? [LR424]

ROBERT HOUSTON: Well, they...I mean, that I can't tell you, if they became more involved (inaudible)... [LR424]

SENATOR LATHROP: Did you have more trouble getting people from the penitentiary or from Corrections to the regional center for care after Dr. Martin's death? [LR424]

ROBERT HOUSTON: I don't recall. I...that's...that just was not on my radar screen. I do not know. [LR424]

SENATOR LATHROP: Okay. Is there a...or was there a process at the Department of Corrections for committing...a civil commitment for inmates who were believed to be suffering from a mental illness and dangerous to themselves or another person? [LR424]

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ROBERT HOUSTON: Yes. [LR424]

SENATOR LATHROP: What's that process? [LR424]

ROBERT HOUSTON: What you're referring...that process would be that the mental health staff would refer them to a county mental health board, and then a due process hearing would be held and a decision made by that committee. [LR424]

SENATOR LATHROP: You told us that you have a mental health wing or housing unit. [LR424]

ROBERT HOUSTON: Yes. [LR424]

SENATOR LATHROP: So once you put a mental health housing unit together, did you ever have reason to refer somebody for a civil commitment? [LR424]

ROBERT HOUSTON: I'm sure they did. [LR424]

SENATOR LATHROP: And is there a reason they wouldn't just care for him? I'm just trying to understand why... [LR424]

ROBERT HOUSTON: Well, the civil commitment would be to follow incarceration, not in lieu of. [LR424]

SENATOR LATHROP: So you wouldn't do a civil commitment on an inmate while they still have time to serve. [LR424]

ROBERT HOUSTON: I don't recall us doing that. I think in years past we may have, but I don't recall during my time as director that we sent people over there. Normally it was

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sex offenders and normally it was to follow their incarceration. [LR424]

SENATOR LATHROP: Okay. So if somebody had a mental illness that one of your folks identified and was dangerous to themselves or somebody else, you'd send them over to the mental health unit for care and treatment. [LR424]

ROBERT HOUSTON: Yes. [LR424]

SENATOR LATHROP: And then, if they are about to be discharged, can you think in the last five years you were there whether you had an inmate who was about to be discharged that you did a civil commitment on and they ended up in the regional center? [LR424]

ROBERT HOUSTON: That I don't know. I'm sure we had. [LR424]

SENATOR LATHROP: I have to tell you,... [LR424]

ROBERT HOUSTON: Yeah. [LR424]

SENATOR LATHROP: ...I looked at the facts and the circumstances in this, I looked at the mental health record, I'm familiar with the civil commitment process because I've litigated around that area,... [LR424]

ROBERT HOUSTON: Um-hum. [LR424]

SENATOR LATHROP: ...and you've got to be dangerous to yourself or somebody else and have a mental illness,... [LR424]

ROBERT HOUSTON: Um-hum. [LR424]

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SENATOR LATHROP: ...not criminally insane... [LR424]

ROBERT HOUSTON: Um-hum. [LR424]

SENATOR LATHROP: ...not know the difference between right and wrong, but have a mental illness and be dangerous to yourself or somebody else. [LR424]

ROBERT HOUSTON: Um-hum. [LR424]

SENATOR LATHROP: And when I look at it I'm like, this guy wants to be committed in lieu of his freedom. [LR424]

ROBERT HOUSTON: Um-hum. [LR424]

SENATOR LATHROP: On his way out the door he's asking to be committed. [LR424]

ROBERT HOUSTON: Um-hum. [LR424]

SENATOR LATHROP: And that's not even part of the conversation that's going on. It's about putting him out in general population for a month before he leaves. How come, Bob? How come no one considered whether this guy should be committed to the regional center under a civil commitment? He was writing the Douglas County Attorney trying to get himself committed. [LR424]

ROBERT HOUSTON: Yes. [LR424]

SENATOR LATHROP: How did that not happen? Tell us. [LR424]

ROBERT HOUSTON: I think we need to think back to before July of 2013 and know what was known about Nikko Jenkins at that point in time. We know what happened

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upon his release. We didn't know it then. I think we also have to look at the other nearly 5,000 inmates that we have confined, 2,000 of them discharging every year. And I have to tell you that that is a tremendous burden and task by our mental health staff to sift through 2,000 people and determine which ones of those rise to the level, according to their professional decision making, that needs to be referred to a mental health board. That's a very difficult task and, again, we have to think of it before July of 2013 to understand how Nikko Jenkins was viewed in light of other individuals. Now what we don't have in this report, and what we haven't talked about, is the propensity of other inmates who discharged that year or had mental health counseling notes and so forth. Those are things that the mental health professionals have and look at and when they come in they'll talk to you about it. But in hindsight it looks a lot different than it did in early 2013 when they're looking at these 5,000 inmates and 2,000 discharging as to how they make those determinations. [LR424]

SENATOR LATHROP: What I look at this, though, this one is different than the 5,000 because he's the only guy you got involved in, in setting a discharge plan. And you can tell me that a lot of these inmates are saying this stuff, but this guy is telling people he's going to get out and kill. [LR424]

ROBERT HOUSTON: Um-hum. [LR424]

SENATOR LATHROP: He's telling people he's going to get out and kill. Now if you tell me that that's not an infrequent occurrence in the Department of Corrections, then I'll take that testimony. But I've got to think that somebody who says, I need mental healthcare, I need to go to the regional center because I'm going to get out and kill people and I don't think I can control myself...now do you have a number of those people or is his circumstance unique in that respect? [LR424]

ROBERT HOUSTON: That I don't know. [LR424]



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SENATOR LATHROP: Okay. I want to ask you some good time questions next, okay?  
[LR424]

ROBERT HOUSTON: Um-hum. [LR424]

SENATOR LATHROP: Now obviously these guys are all going to have a chance to ask you more questions about any one of the subjects that we've talked about. But I have two sort of angles on the good time, if you will. And the first one was something that you brought up earlier, which was LB191. [LR424]

ROBERT HOUSTON: Yes. [LR424]

SENATOR LATHROP: That was part of the no-cost approach to diminishing the population or rightsizing the population, if you will. [LR424]

ROBERT HOUSTON: Yes, I mean, a very small contribution but a contribution nonetheless. [LR424]

SENATOR LATHROP: Okay. And this came from the administration, LB191? [LR424]

ROBERT HOUSTON: Oh, okay, the bill. [LR424]

SENATOR LATHROP: Yeah. Yeah, this was the administration's idea, and they took the idea and brought it to Senator Council who introduced it and got it passed. [LR424]

ROBERT HOUSTON: Yes. [LR424]

SENATOR LATHROP: And that was a bill...you actually testified in front of the Judiciary Committee in support of that bill. [LR424]

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ROBERT HOUSTON: Yes. [LR424]

SENATOR LATHROP: And it was on behalf of Corrections and the administration.  
[LR424]

ROBERT HOUSTON: Yes. [LR424]

SENATOR LATHROP: It is the latest bill or the most recent legislation regarding good time. [LR424]

ROBERT HOUSTON: Yes. [LR424]

SENATOR LATHROP: And while it may improve things at the prison, people have to behave to get it, it did allow for more good time. [LR424]

ROBERT HOUSTON: Yes. [LR424]

SENATOR LATHROP: Okay. The other thing I wanted to talk about with respect to good time is this miscalculation of good time for those who were on a mandatory minimum sentence. And in...I think the first decision from the Nebraska Supreme Court came in 2002. Am I right? [LR424]

ROBERT HOUSTON: I... [LR424]

SENATOR LATHROP: Looks like 2002. [LR424]

ROBERT HOUSTON: That I don't... [LR424]

SENATOR LATHROP: December 20, 2002. [LR424]

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ROBERT HOUSTON: That I don't know. Was that a lawsuit or...was that the Kenney lawsuit? [LR424]

SENATOR LATHROP: Yeah, the first decision. That's Johnson v. Kenney, 2002,... [LR424]

ROBERT HOUSTON: Okay. [LR424]

SENATOR LATHROP: ...which would have been the Supreme Court's first decision regarding the good time statute. [LR424]

ROBERT HOUSTON: Okay. [LR424]

SENATOR LATHROP: Right? [LR424]

ROBERT HOUSTON: Yes. [LR424]

SENATOR LATHROP: And then the second one was done February 8, 2013. [LR424]

ROBERT HOUSTON: Well, I think, if I recall, the law was first written in 1995. Yes? [LR424]

SENATOR LATHROP: Right. [LR424]

ROBERT HOUSTON: And... [LR424]

SENATOR LATHROP: I was just going to ask you, in 2002 were you working at the Department of Corrections or were you somewhere else? [LR424]

ROBERT HOUSTON: I was...well, part of that I was warden of the youth facility.

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[LR424]

SENATOR LATHROP: Which is where? [LR424]

ROBERT HOUSTON: In Omaha. [LR424]

SENATOR LATHROP: Oh, the Douglas County Youth Center. [LR424]

ROBERT HOUSTON: No, not Douglas County, Nebraska Correctional Youth Facility,...  
[LR424]

SENATOR LATHROP: Okay. [LR424]

ROBERT HOUSTON: ...the state facility. [LR424]

SENATOR LATHROP: Okay. Did anybody alert you to the 2002 decision? [LR424]

ROBERT HOUSTON: No, no. [LR424]

SENATOR LATHROP: Would you have had contact with any of the lawyers at the  
Department of Corrections at the time? [LR424]

ROBERT HOUSTON: Not concerning...oh, yeah, I would have had contact with them  
but not about that. [LR424]

SENATOR LATHROP: Okay, never got on the phone, never had anybody tell you, boy,  
the Supreme Court just ruled on this? [LR424]

ROBERT HOUSTON: Right. No. [LR424]

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SENATOR LATHROP: Didn't hear about it in any way? [LR424]

ROBERT HOUSTON: No. I wasn't the director. [LR424]

SENATOR LATHROP: Do you know anything about what happened after that decision in terms of how it was communicated to anybody over at the Department of Corrections? [LR424]

ROBERT HOUSTON: No. [LR424]

SENATOR LATHROP: Not on your...not in your wheelhouse at the time. [LR424]

ROBERT HOUSTON: Right. [LR424]

SENATOR LATHROP: Okay. Then we have in 2013, which is the decision of State v. Castillas. [LR424]

ROBERT HOUSTON: Yes. [LR424]

SENATOR LATHROP: And that was a second Opinion on the subject of computing good time when mandatory minimum sentences are involved. [LR424]

ROBERT HOUSTON: That's what I understand. [LR424]

SENATOR LATHROP: So you told us you have three lawyers that work for you at the time. [LR424]

ROBERT HOUSTON: Yes. [LR424]

SENATOR LATHROP: What at the time was your relationship with the Attorney

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General's Office? [LR424]

ROBERT HOUSTON: They handled litigation that came to the department. [LR424]

SENATOR LATHROP: So if the Department of Corrections got sued for some reason, and that probably happens a lot,... [LR424]

ROBERT HOUSTON: Yes. [LR424]

SENATOR LATHROP: ...then the Attorney General's Office represents... [LR424]

ROBERT HOUSTON: ...on those things related to inmates. The lawyers within the Department of Corrections would handle personnel issues. [LR424]

SENATOR LATHROP: Okay. It would appear that the Attorney General's Office actually was representing the state of Nebraska in the case of State v. Castillas. [LR424]

ROBERT HOUSTON: Yeah, I don't doubt that. [LR424]

SENATOR LATHROP: You don't know anything about it, do you? [LR424]

ROBERT HOUSTON: No. [LR424]

SENATOR LATHROP: Or you're going to tell me you don't know anything about it. [LR424]

ROBERT HOUSTON: (Laugh) No. I mean in preparing for today I looked at the sentencing phases of Castillas. [LR424]

SENATOR LATHROP: Okay. So you're familiar with the fact that the Supreme Court for

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the second time clarified what...the application of the good time statute to mandatory minimum sentences. [LR424]

ROBERT HOUSTON: Yes. [LR424]

SENATOR LATHROP: Have you had other cases that came down that dealt with sentencing in any respect during the time that you were director? [LR424]

ROBERT HOUSTON: I don't recall. I am sure there were. [LR424]

SENATOR LATHROP: Okay. So tell me how that works. If the Attorney General's Office represents the state, they get an Opinion that says, you need to do something different with the way you are calculating someone's period of incarceration, what happens to that, if you know? From the time the Attorney General gets an Opinion from the Supreme Court on Friday morning, what happens? [LR424]

ROBERT HOUSTON: Well, they would interact with the lawyers at the department and see if there's some change that needs to be made. [LR424]

SENATOR LATHROP: Has that happened before? [LR424]

ROBERT HOUSTON: Not that I know, as far as sentencing is concerned. But we've had... [LR424]

SENATOR LATHROP: Give me another example. [LR424]

ROBERT HOUSTON: Well, it could be another issue. It could be something concerning property or other conditions of confinement for inmates that an inmate...or a decision is made that we do something differently. I... [LR424]

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SENATOR LATHROP: Okay. So maybe not a sentencing thing, but this is an uncommon occurrence where the Attorney General represents the state and then they have to come over and...or maybe not come over but somehow communicate with people that work in the Department of Corrections about a decision from the Supreme Court. [LR424]

ROBERT HOUSTON: No, it wouldn't be unusual. [LR424]

SENATOR LATHROP: Okay, and enough so that you would be comfortable today telling us the way it usually happens. [LR424]

ROBERT HOUSTON: Yes. [LR424]

SENATOR LATHROP: All right, so tell us the way it usually happens. Supreme Court decides a case. It affects the way people are confined at the Department of Corrections in some way or another. [LR424]

ROBERT HOUSTON: Um-hum. [LR424]

SENATOR LATHROP: What happens? What's the typical steps that happen from the time of the decision to implementation? [LR424]

ROBERT HOUSTON: Okay. The...you know, and I can't tell you of all the communications that happened between the two offices. But the Attorney General's Office and the attorneys for the department are in constant communication on different cases. We have cases that arise and I don't know how many hundreds of lawsuits that we get each year. I know I get served as many as five at a time. But there's a lot of litigation that goes through the Department of Corrections, so we need to put it in that realm. When we receive an inmate lawsuit, the attorneys then work with the Attorney General's Office, and there is documents that need to be gathered. Let's say the person



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is at the penitentiary. So there is an administrative assistant at the penitentiary who would then work with the Attorney General's Office and with the, if need be, with the attorneys for the department and gather the documents, whether they be misconduct reports, appeals, incident reports, property forms, those types of things. And they would then provide the supporting documentation for whatever the issue might be. The Attorney General's Office then would take that case and take it through the litigation process. I imagine most of those are dismissed. But those that do go to court, the Attorney General's Office represents us. Myself or other people could be called as witnesses for the department, and then a decision would be rendered. If out of that decision we need to change policy, then those communications would take place. [LR424]

SENATOR LATHROP: And how does that communication take place? Whether it's a decision of the Federal District Court, a district court, in state court, or the Supreme Court or the Court of Appeals, something happens and the result is you guys are doing it wrong. [LR424]

ROBERT HOUSTON: Yeah. [LR424]

SENATOR LATHROP: What happens next? [LR424]

ROBERT HOUSTON: Yeah, that I can't tell you. I just don't know. I can't think of a time that we got a direction to change our operations. I don't doubt that it's happened, but that communication would happen between the Attorney General's Office and our counsel. [LR424]

SENATOR LATHROP: Earlier you told me that your responsibilities as director include making policy. [LR424]

ROBERT HOUSTON: Yes. [LR424]

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SENATOR LATHROP: And if the Supreme Court tells you your policy is wrong and you need to do something different with your policy,... [LR424]

ROBERT HOUSTON: Um-hum. [LR424]

SENATOR LATHROP: ...after a decision, isn't somebody going to say, I know you're the policy guy, you're the director,... [LR424]

ROBERT HOUSTON: Yes. [LR424]

SENATOR LATHROP: ...but we're doing something wrong. [LR424]

ROBERT HOUSTON: Yes. [LR424]

SENATOR LATHROP: Okay. [LR424]

ROBERT HOUSTON: And if...you don't have to go through too many of our policies to read in some of the policies the decisions that caused a change in policy. In other words, in some of our policies, I don't know if it's today's policies, but in past policies have articulated in there the lawsuit or the decision that came out of the Supreme Court or out of the court that then changes the policy. [LR424]

SENATOR LATHROP: Okay, but did...so when this decision was rendered, the Castillas decision was rendered in February of 2013, you would still have been director. [LR424]

ROBERT HOUSTON: Yes. [LR424]

SENATOR LATHROP: Okay. [LR424]

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ROBERT HOUSTON: What month was it? [LR424]

SENATOR LATHROP: It says February 8, 2013. [LR424]

ROBERT HOUSTON: February, yeah. [LR424]

SENATOR LATHROP: I'm reading it from the decision in front of me. [LR424]

ROBERT HOUSTON: Um-hum. [LR424]

SENATOR LATHROP: So did anybody bring this to your attention? [LR424]

ROBERT HOUSTON: No. [LR424]

SENATOR LATHROP: Should it have been brought to your attention? [LR424]

ROBERT HOUSTON: Well,... [LR424]

SENATOR LATHROP: Is that the kind of thing that you as the director should be made aware of? [LR424]

ROBERT HOUSTON: I think right now the Jackson Lewis investigation has been completed and those results have been sent to Director Kenney. Director Kenney is now going through the due process with the individuals that were involved in that in one way or another. And I think that if I go too much into the answering of those questions at this time that that may have some adverse effect on those due process proceedings. [LR424]

SENATOR LATHROP: Well, I think we're entitled to ask those questions, to be very honest with you, Bob, and not to be argumentative with you, and I appreciate and my

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sense is that you've been candid with me through the course of the morning,... [LR424]

ROBERT HOUSTON: Um-hum. [LR424]

SENATOR LATHROP: ...and so this isn't intended to be, you know, the Chair admonishing the witness, but I think I'm entitled to have the answers. We're a branch of government providing legislative oversight, and my question to you--and I would like you answer it--is whether or not that's the kind of a decision or a policy pronouncement by the Supreme Court that should have been brought to your attention. [LR424]

ROBERT HOUSTON: Well,... [LR424]

SENATOR LATHROP: And maybe you won't answer the next question, which is, who should have brought it to your attention? But let me ask you first of all, do you think, as the Director of the Department of Corrections, somebody should have brought it to your attention? [LR424]

ROBERT HOUSTON: Okay. As I understand the Castillas case was that was a decision decided by the Supreme Court. [LR424]

SENATOR LATHROP: Right. [LR424]

ROBERT HOUSTON: And in that case Judge Randall had made a determination on what Castillas' sentence should be. The decision that was rendered was a restructuring of that decision. I'm saying this and I'm not an attorney, so I'm stating these in terms that work for me but may not work in the legal environment. And so really what it was, was a difference between how Judge Randall, I believe was the judge, how he calculated the sentence and the guidelines that were set forth by the Supreme Court. [LR424]

SENATOR LATHROP: Right. There was...Judge Randall said, I'm going to do...I'm

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going to provide this sentence and I expect him to be eligible on...after this many years. And then he gave a sentence, and he wasn't eligible within that many years. [LR424]

ROBERT HOUSTON: Yes. I believe... [LR424]

SENATOR LATHROP: He was off by five years... [LR424]

ROBERT HOUSTON: Yeah. [LR424]

SENATOR LATHROP: ...in the decision. [LR424]

ROBERT HOUSTON: I think it was two and a half years. [LR424]

SENATOR LATHROP: Okay. And then the court basically said you don't get good time for the mandatory minimum sentence, five years on each of four different charges that carried a five-year minimum. [LR424]

ROBERT HOUSTON: I believe five. I believe there were five. [LR424]

SENATOR LATHROP: He got convicted on a fifth thing, which he got good time credit for. [LR424]

ROBERT HOUSTON: Uh-huh. Uh-huh. [LR424]

SENATOR LATHROP: So you might be right. It might have been 5 mandatory minimums plus another 5 years, got him to 30. Anyway, the Supreme Court did clarify, to the extent a district court judge was unsure of how to apply the good time law to mandatory minimums. The Supreme Court clarified that it doesn't apply to the mandatory minimums. My question was whether or not that's information that should have been provided to you after the decision. [LR424]

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ROBERT HOUSTON: If it... [LR424]

SENATOR LATHROP: And that's kind of a yes or no. [LR424]

ROBERT HOUSTON: Okay. I don't think I can answer that with a yes or no. [LR424]

SENATOR LATHROP: So even looking back...well, okay. Then if you won't answer it in a yes or a no, then what keeps you from telling us that you should have been advised of that? Why should you have not have been advised of a decision by the Supreme Court that affected the calculation of good time for mandatory minimum sentences? [LR424]

ROBERT HOUSTON: Yeah. If the attorneys, in their review and their discussion with the Attorney General's Office, felt that there was something that had to change in policy or calculation, then that should have been brought to me. [LR424]

SENATOR LATHROP: Okay. So the reason, if there was a reason not to tell you, the director, it would be this doesn't look like a change at all. [LR424]

ROBERT HOUSTON: I don't know if I'd put it exactly like that, but I think you're in the realm of how I would put it. [LR424]

SENATOR LATHROP: Who, over at the Department of Corrections, would have been the person that interfaced with the Attorney General's Office when an Opinion like this comes down? [LR424]

ROBERT HOUSTON: Well, we have three attorneys there and each one of them communicates with the Attorney General's Office. [LR424]

SENATOR LATHROP: So who would be assigned something like this? [LR424]

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ROBERT HOUSTON: Well, the general counsel for the department, who's the supervisor of that office, is George Green. [LR424]

SENATOR LATHROP: Okay. Earlier you told us that you met with Mr. Green every week; that you would have a meeting where you would have your deputy directors and different people, depending on the issues, present for a meeting and that Green would participate in that meeting. [LR424]

ROBERT HOUSTON: Yes. [LR424]

SENATOR LATHROP: Did he ever talk to you at any one of those meetings? [LR424]

ROBERT HOUSTON: Yes. [LR424]

SENATOR LATHROP: Well, I'm sure he talked to you. Did he ever talk to you about (laughter) about the Castillas decision? [LR424]

ROBERT HOUSTON: No. [LR424]

SENATOR LATHROP: If someone thought this was different than the way Corrections was calculating good time and they needed to bring it to you, who would that have been? [LR424]

ROBERT HOUSTON: It would have been somebody from that office. [LR424]

SENATOR LATHROP: Green. [LR424]

ROBERT HOUSTON: He'd be the supervisor. He's the person that comes to the executive staff meetings. [LR424]

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SENATOR LATHROP: Okay. [LR424]

ROBERT HOUSTON: I say that because I communicate directly with the other attorneys as well. [LR424]

SENATOR LATHROP: Okay. The newspaper had an editor...or not an editorial, an e-mail from a lady in the records department who apparently this decision was forwarded to her. Do you know that person? [LR424]

ROBERT HOUSTON: Yes. [LR424]

SENATOR LATHROP: What's that person's name? Help me out, if you would. [LR424]

ROBERT HOUSTON: Jeannene Douglass. [LR424]

SENATOR LATHROP: Douglass? [LR424]

ROBERT HOUSTON: Yes. [LR424]

SENATOR LATHROP: How long did she work for the Department of Corrections? [LR424]

ROBERT HOUSTON: Well, she worked for the state for 42...I think 42 years and...but I think all but a few of those years was with the department. [LR424]

SENATOR LATHROP: I looked at the e-mails that she's...that are in the World-Herald article, because we've not gotten those. As a committee, we've not received those,... [LR424]



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ROBERT HOUSTON: Uh-huh. [LR424]

SENATOR LATHROP: ...copies of those e-mails. So all what I know about the exchange is what I've read in the paper, as they say. [LR424]

ROBERT HOUSTON: Yes. [LR424]

SENATOR LATHROP: In the exchange, she says something to the effect: Well, we'll keep on doing it this way because that will also...you know, the inmates aren't going to complain. I'm paraphrasing and maybe mixing up a couple of e-mails, but this is the message I took from the exchange: We'll keep doing it the old way; I think that's right; the inmates aren't going to complain and this is consistent with what Director Houston wants or some goal of Director Houston. [LR424]

ROBERT HOUSTON: It's...if I recall... [LR424]

SENATOR LATHROP: You're familiar with the e-mail exchange? [LR424]

ROBERT HOUSTON: From the newspaper, yes. [LR424]

SENATOR LATHROP: Okay. So we're talking about the same thing. And she does make reference to your wishes or your policy or something of that nature. [LR424]

ROBERT HOUSTON: My interest to not grow the population... [LR424]

SENATOR LATHROP: There you go. [LR424]

ROBERT HOUSTON: ...beyond where it needs to grow. [LR424]

SENATOR LATHROP: Okay. So to what extent have you communicated that interest to

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her or other members or other staff at the Department of Corrections? [LR424]

ROBERT HOUSTON: Everybody is worried about crowding. I mean it's a...it's an every day, every hour concern by the people that work in the Department of Correctional Services the level of inmate crowding that we have in the facilities and the issues related to that. [LR424]

SENATOR LATHROP: Did you ever send an e-mail out to staff about whatever you do, err on the side of moving people through here? [LR424]

ROBERT HOUSTON: No. [LR424]

SENATOR LATHROP: And I'm...not literally but do you get the idea,... [LR424]

ROBERT HOUSTON: Uh-huh. [LR424]

SENATOR LATHROP: ...communicating to the staff that it's important that we keep people moving through this place because we're not going to build more beds? [LR424]

ROBERT HOUSTON: Everybody, everybody knew that part of protecting the public was that we gradually move people to the lowest custody level possible. That's the philosophical basis of our classification system. It's been part of our classification system since 1982. And so the whole way that the department is managed is in that interest that you move people to the lowest custody level possible while protecting the public. And so everybody is concerned. And you probably noticed, as you look at the count sheets, that we kept the count down at the Tecumseh facility because we have...that's a high-security facility and it was built as a double-bunk facility. I know I'm taking a long way around to get to your answer, but it's just an everyday understanding in the department that we've got crowding issues and we need to deal with those effectively. [LR424]

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SENATOR LATHROP: You're confident everybody knew that and that it became the philosophy at the Corrections? How do you know that? Did you communicate that to the folks at Corrections? [LR424]

ROBERT HOUSTON: That...? [LR424]

SENATOR LATHROP: That the body count or the overcrowding was an issue all the time. We need to find people... [LR424]

ROBERT HOUSTON: Not... [LR424]

SENATOR LATHROP: ...we need to find ways that don't cost money to move people from inside here to outside of here. [LR424]

ROBERT HOUSTON: We would talk about that at executive staff meetings. We'd talk about that at...we had the executive steering council, which is made up of the 35 top administrators in the department, would meet every other month. We'd have different... [LR424]

SENATOR LATHROP: So this lady that wrote the e-mail, this 41-year employee who wrote the e-mail and talked about your interest in keeping inmates moving through the system, that would have been a fair understanding of your philosophy. [LR424]

ROBERT HOUSTON: That would be, yes. [LR424]

SENATOR LATHROP: Okay. I think that's all the questions I have, Bob. [LR424]

ROBERT HOUSTON: Wow! [LR424]

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SENATOR LATHROP: And I appreciate your candor. [LR424]

ROBERT HOUSTON: Uh-huh. [LR424]

SENATOR LATHROP: That's not it for you, however. [LR424]

ROBERT HOUSTON: I know. (Laugh) [LR424]

SENATOR LATHROP: Okay. Everybody here has an opportunity to ask questions, and the first question I'm going to have is whether you want to take a quick break for... [LR424]

SENATOR SEILER: Lunch. [LR424]

SENATOR LATHROP: ...quick break for lunch and then come back? [LR424]

SENATOR SEILER: I have one question of Dave, though. On our...we had a packet on our... [LR424]

SENATOR LATHROP: And by "Dave," you meed Cookson? [LR424]

SENATOR SEILER: Cookson, excuse me. We had a packet on our desks this morning addressed to Steve and it's an application for leave to file petition for writ of habeas corpus by attorney Jerry Soucie. [LR424]

DAVID COOKSON: Uh-huh. [LR424]

SENATOR SEILER: Do you know if that's been filed? [LR424]

DAVID COOKSON: I believe it's been filed with the Supreme Court. [LR424]

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SENATOR SEILER: Okay. That's all. [LR424]

DAVID COOKSON: I think we were served yesterday. [LR424]

SENATOR SEILER: That's all I wanted to know was whether or not it was filed. [LR424]

DAVID COOKSON: Yeah. Yeah. [LR424]

SENATOR SEILER: Thank you. [LR424]

DAVID COOKSON: What time would you like the witness back? [LR424]

SENATOR LATHROP: Pardon me? [LR424]

DAVID COOKSON: When would you like the witness back? [LR424]

SENATOR LATHROP: Oh, did you answer the question? I was talking to Molly. [LR424]

DAVID COOKSON: Yeah. [LR424]

SENATOR SEILER: Yeah. No, we got it. [LR424]

SENATOR LATHROP: Okay. What's the committee feel, an hour or an hour an a half or what's your pleasure? [LR424]

SENATOR CHAMBERS: It doesn't matter to me. I come down here every day and stay all day earning my \$5.76 an hour. (Laughter) [LR424]

SENATOR LATHROP: And we're grateful. [LR424]

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SENATOR CHAMBERS: Oh, thank you. [LR424]

SENATOR LATHROP: Let's make it 1:30. We'll be back at 1:30 and we'll continue until completed. Thank you. [LR424]

BREAK

SENATOR LATHROP: All right, if we can, back on the record. Dan, are we good to go? Okay. It's now 1:35. We're back on the record and we're resuming the hearing of the LR424 Committee. I finished my questions this morning and other members of the committee have questions for you. You remain under oath. [LR424]

ROBERT HOUSTON: Yes, sir. [LR424]

SENATOR LATHROP: All right, very well. Then we'll start to my left with Senator Krist and we'll work our way to my right. [LR424]

SENATOR KRIST: Bob, how are you? [LR424]

ROBERT HOUSTON: Good, Senator. [LR424]

SENATOR KRIST: First of all, just let me thank you for your years of service and it's obvious, from visiting the University of Nebraska at Omaha, that you're going to be a member of that staff and a member of the future in terms of making decisions that have to do with juvenile justice as well as corrections. So thank you for coming. [LR424]

ROBERT HOUSTON: Thank you. [LR424]

SENATOR KRIST: I also note that I believe that you're fiercely...a fiercely loyal person

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to the people you work for. So my question has very little to do, I think, with the actual subject matter but it has to do with a frustration on my part and on the senators' part about the availability of the cabinet and the people in the executive branch. I've been denied an opportunity to talk to a cabinet member and simply ask questions of them. [LR424]

ROBERT HOUSTON: Uh-huh. [LR424]

SENATOR KRIST: Had to go through them and then the question be asked to the Governor of whether you could come talk to us. Have you ever, in your time as a cabinet member, been told that they would prefer you not talk to a member of the Legislature and/or have a "baby-sitter" accompany you while you were talking to a member of the Legislature? [LR424]

ROBERT HOUSTON: Well, the probably best way to explain that is, is that I interact with other directors from around the country and the protocols that they go through in situations such as that, and what we do here is about the same as the experience of other Corrections directors and agency heads that I've interacted with around the country. We are expected to be open and honest with senators when they ask questions. I would notify the Governor's Policy and Research Office, if I'm contacted by a legislator, as to what the issues are. And then I'm told at the end of it: Give us a call, let us know how it went. [LR424]

SENATOR KRIST: Okay. And I appreciate your honesty. You said several times and made mention to Mr. Bare, the Governor's exec. Is it your feeling or was it your experience that Mr. Bare would answer your questions immediately and, in so doing, may be making executive decisions from his chair? Or was there a pause? Did he go talk to the Governor and come back with an answer from the Governor when you consulted him? [LR424]

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ROBERT HOUSTON: The combination thereof. [LR424]

SENATOR KRIST: Okay. [LR424]

ROBERT HOUSTON: Yes. [LR424]

SENATOR KRIST: All right. That's all I have. Thank you, Chair. [LR424]

SENATOR LATHROP: Thank you. Senator Mello. [LR424]

SENATOR MELLO: Thank you, Chairman Lathrop. And thank you, Bob, for spending some time with us. [LR424]

ROBERT HOUSTON: Uh-huh. [LR424]

SENATOR MELLO: I'd like to take a step back, if I could, to talk about an incident that kind of predated the Nikko Jenkins case that really, I think, started a lot of interest in our branch of government regarding the Department of Corrections,... [LR424]

ROBERT HOUSTON: Yes. [LR424]

SENATOR MELLO: ...which was the Jeremy Dobbe case... [LR424]

ROBERT HOUSTON: Yes. [LR424]

SENATOR MELLO: ...involving the Inmate Driving Program. When myself, other senators, and the media started to investigate and ask questions, it was discovered, not just by my office but many others, that the program itself was not governed or formulated by the Administrative Procedures Act but, instead, was done by an operational memorandum for the department. I would say, and I have the statute here



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and I can give you a copy just to make sure, the copy of the memorandum just to make sure that you know what I'm talking about. [LR424]

ROBERT HOUSTON: Uh-huh. [LR424]

SENATOR MELLO: The definition is fairly clear in the statute 84-901 in regards to the Administrative Procedures Act of what a definition of a rule or regulation is. I'm curious, I think, as much as anything else in trying to get information from the department, is how does the department operate utilizing these operation memorandums in the sense that why does the department, instead, choose to create programs like the Inmate Driving Program, like the Reentry Furlough Program through an internal process that is not open to the public, does not take public testimony,... [LR424]

ROBERT HOUSTON: Uh-huh. [LR424]

SENATOR MELLO: ...and instead I would say questionably violates the Administrative Procedures Act which would require the creation of these programs to fall under that rule and regulatory process? [LR424]

ROBERT HOUSTON: Okay. Well, I think the first thing I guess I want to say is that I'm not going to sit in judgment and say it's a good thing or a bad thing or whatever it is. What I'd prefer to do is just tell you how we develop policies and procedures. And there are some policies that go through the Administrative Procedures Act and there are other things that are formed through administrative regulations. There's probably at any one time about 225-235 administrative regulations. Those regulations are reviewed each year, in line with accreditation by the American Correctional Association. They go out to the institutions. The institutions have, I believe, 90 days in which to write an operational memorandum, to change their operational memorandum, and to put the policy into place. So the operational memorandums will take articulation in administrative confinement...or administrative confinement, administrative regulations and expand

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upon those. So as you can tell from this operational memorandum from the community center that this operational memorandum would not be at Tecumseh or at the penitentiary. It would be in a community center. And so each institution is unique and develops operational memorandums. Now from there, we also have what's called post orders and post orders are directives that are drafted and are at each post that security and unit management staff work. And what the post offers, what those post orders do is they specify even in greater detail things that are in the operational memorandum and in the administrative regulations. And the officers, when they assume a post, sign off on that post order. Those post orders are reviewed every year as well, and we have a committee of security administrators from around the institutions who meet on a routine basis and they go over policies and procedures that are appropriate at their level of decision making, and they make recommendations for post orders. Those post orders, of course, are reviewed by the administrative staff at the institutions. So those are basically the three levels of policy that govern the department. [LR424]

SENATOR MELLO: I may come back to that at a later point. I'll wait and see if anyone else has any questions about that. I've got an e-mail here from a Doug Hanson dated March 29, 2010, to yourself, Larry Wayne, Robert Bell, and a number of others in regards to a meeting with Larry Bare and the Governor's Office to discuss the Department of Corrections' inmate population. And the page behind that e-mail I have is a copy of an estimated capital construction time line for an estimated 612 minimum community facility beds. [LR424]

ROBERT HOUSTON: Uh-huh. [LR424]

SENATOR MELLO: I know Senator Lathrop earlier this morning talked about the Carter Goble plan in regards to the new potential beds that were being discussed in a variety of different options. [LR424]

ROBERT HOUSTON: Yes. [LR424]

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SENATOR MELLO: This document was essentially created and dated April 1, 2010.  
[LR424]

ROBERT HOUSTON: Yes. [LR424]

SENATOR MELLO: Did you essentially...did you share this information with Larry Bare and the Governor's Office for the meeting that was scheduled to be held on April 16, 2010? [LR424]

ROBERT HOUSTON: Well, let's see. Yes. And this is what... [LR424]

SENATOR MELLO: I think the last document I have there is a document entitled "Strategic Planning, Population Growth, and Facility Capacity." It's an overview meeting, it looks like, from your meeting with Larry Bare and the Governor's Office regarding that April 16 meeting where one point that sticks out there more so than anything else on the three-page letter is an old letter who's major point--avoid construction. [LR424]

ROBERT HOUSTON: Uh-huh. [LR424]

SENATOR MELLO: Was...I guess after looking at these meeting minutes, so to speak, is it safe to say that that meeting on April 16 in 2010 that essentially Larry Bare had said that that was not going to be an option moving forward, and the 2011-13 biennium was to request funding for capital construction instead? Your major point was to have to avoid construction and look at the other alternatives that were listed here? [LR424]

ROBERT HOUSTON: No. I think...I work, you know, in step with the Governor's Office, as you might expect. And when I discuss things, I could be candid about that. And I had no mandates that we're not going to do construction no matter what, none. Everybody had the hope. We need to go back to 2010. I think we're still at around 140 percent in

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2010. Everybody had the hope that there were going to be front-end options there. We had increased the community centers, as I talked about earlier. And so there wasn't anybody anxious anywhere in government that I knew that was anxious to do any type of construction whatsoever. I, as you know, have been with the department for 38 years. Well, I went through two construction phases, one with the Omaha Correctional Center and the Lincoln Correctional Center being built in the mid-1980s. Also, when I started in 2005 we had to close the Hastings Correctional Facility. That was being used as a facility for the INS. And I also went through and was on the design committee for the Tecumseh facility. Harold Clarke was the director. And our department went through a couple years of criticism about why do you need this prison, why are you putting in for a maximum-security prison, where are you going to locate the prison, and can't you reduce the prison population? So to put it mildly, it gets into your DNA that you really need to, by "you" meaning all of us and other Corrections directors, you really have to look hard and long before you start proposing construction. [LR424]

SENATOR MELLO: So at no time, I guess...so the document that you shared with the Governor's Office on April 16 that shows this was your recommendation from your staff, and I know I didn't provide copies of the multiple e-mails between Doug Hanson, Dawn Renee Smith, and others... [LR424]

ROBERT HOUSTON: Uh-huh. [LR424]

SENATOR MELLO: ...in regards to the preparing of this document to present... [LR424]

ROBERT HOUSTON: Uh-huh. [LR424]

SENATOR MELLO: ...at your meeting,... [LR424]

ROBERT HOUSTON: Yeah. [LR424]

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SENATOR MELLO: ...this essentially had a time frame that was to start in that upcoming biennial budget process, which that document, in theory, would have been made available September 2010 when budget submissions are due. [LR424]

ROBERT HOUSTON: Uh-huh. [LR424]

SENATOR MELLO: This obviously was not something that came forward. Was there a point in time between that April 16 meeting and your budget submission in 2010, September 2010, that any new facility construction was taken off the table? Because I know in reviewing your 2011-13 budget requests, there was no new capital facility requests. [LR424]

ROBERT HOUSTON: We, you know, we submitted our budget and it wasn't until 2012 budget that we put in for the strategic plan programming money. [LR424]

SENATOR MELLO: Uh-huh. [LR424]

ROBERT HOUSTON: I was not told at any point not to put in for construction. It was one of those things that I didn't need to be told. I understood, not in relationship understood with the Governor but understood in general, that Nebraska has really kind of bucked the trend around the country. We're one of the few departments that's actually growing it's population. When I talk to directors in other states, they're closing facilities, yet our population is growing. There has always been a hope that the Nebraska trend would be reversed either through some type of legislation or some change in the demographics, by having the inmates in the community so they're better prepared for parole. And so that's really what our focus is and was. And again, Nebraska is out of character, as I understand from other Corrections directors, in growing its population. [LR424]

SENATOR MELLO: I want to take us back to some questions that Senator Lathrop

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mentioned, and if you look on the back page there, Mr. Houston, there is the last page, says "Talking Points" for that April 16 meeting where it looks like they were your talking points for the meeting in the Governor's Office that says, starts off: Stay consistent with the 2006 Carter Goble plan. Senator Lathrop today asked a little bit about that capital facilities plan, the Carter Goble plan,... [LR424]

ROBERT HOUSTON: Uh-huh. [LR424]

SENATOR MELLO: ...where it's at least the first plan in regards to reviewing previous capital facility plans which the state did not take action on in regards to funding the suggested recommendations as it relates to facility expansions. We heard also this morning a little bit generally about the issue of overcrowding and looking to other options that you were looking and considering along the way. That 2011-13 budget process in which Senator Lathrop walked you through the no-cost options in regards to reducing the prison population,... [LR424]

ROBERT HOUSTON: Yes. [LR424]

SENATOR MELLO: ...you're telling me that this meeting where you have prepared or your staff have prepared a full time line here walking the Legislature and the state through a funding process, bid process, program development statement process, that somehow this just disappeared in between that April 16 meeting and when you're budget submission was given to the Legislature in September of 2010? [LR424]

ROBERT HOUSTON: Yeah, I don't know if I...I'm not following you on that. I'm sorry. What? [LR424]

SENATOR MELLO: This document here, the estimated,... [LR424]

ROBERT HOUSTON: Yes. [LR424]

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SENATOR MELLO: ...the estimated capital construction time line,... [LR424]

ROBERT HOUSTON: Yes. [LR424]

SENATOR MELLO: ...which is based off of the Carter Goble plan... [LR424]

ROBERT HOUSTON: Yes. [LR424]

SENATOR MELLO: ...that was updated, as you mentioned in multiple e-mails and Senator Lathrop mentioned it today, that was presented to the administration during the 2009-2010 time frame. [LR424]

ROBERT HOUSTON: Yes. [LR424]

SENATOR MELLO: After this meeting, where there's a documented meeting that was arranged to discuss this, there's a document that shows what was given at the meeting and meeting notes following that said major construction was to be avoided,... [LR424]

ROBERT HOUSTON: Uh-huh. [LR424]

SENATOR MELLO: ...what happened after that meeting then in regards to this proposed plan that your department had put time and energy into in regards to building or proposing to want to build 612 new beds? [LR424]

ROBERT HOUSTON: Well, we put lots of plans together over lots of issues, but that doesn't mean that it's something that's going to be implemented. It's not...doesn't mean it's going to be something submitted with the budget. It's put together to keep track of what we're doing, and if we need to build, here's some things that come from the 2006 plan. But this was not...I guess what I found confusing, I'm sorry, is that we weren't

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rolling down the hill towards construction during the 2011 to '13 budget cycle. [LR424]

SENATOR MELLO: I don't have the e-mails. They are in my office. I'll do what I can do to make sure that I share them with you or get Senator Lathrop's... [LR424]

ROBERT HOUSTON: Sure. [LR424]

SENATOR MELLO: ...permission to be able to share them with you. The e-mails from your staff in regards to preparing for this meeting I think shares a different perspective, I would say, in their interpretation of... [LR424]

ROBERT HOUSTON: Oh. [LR424]

SENATOR MELLO: ...this was going to happen or needed to happen and move at a rapid speed to make this project specifically occur in that upcoming biennial budget process... [LR424]

ROBERT HOUSTON: Got it. [LR424]

SENATOR MELLO: ...where after this meeting there's very little documentation of any capital construction being discussed after April 16. [LR424]

ROBERT HOUSTON: Thank you. [LR424]

SENATOR MELLO: Kind of my next issue, and it's generally, as you've been able to come in front of the Appropriations Committee three times in my six years in the Legislature, and now that you're no longer a department director and you're able to be more candid and free in regards to sometimes the fiscal policies and issues facing the department, a question that always comes up, and you've heard me ask this amongst many other members ask, is how much constraint are you really under in regards to



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talking about your budget requests as a department director to the Legislature in comparison to how your budget process gets formulated? You discussed a little bit of that this morning with Senator Lathrop of how you go about internally developing your budget, how you get information from different wardens, different staff. How does that process ultimately funnel through a spin cycle, so to speak, that once you come up with what you think you need as an agency then goes through the Policy Research Office, the DAS Budget Office, signed off by the Governor, in a sense that for three years or three, I should say, three times you've testified in front of my committee, not once... [LR424]

ROBERT HOUSTON: Yeah, I think... [LR424]

SENATOR MELLO: ...not once, not once have you ever said you did not disagree or did not support the Governor's budget recommendation in comparison to sometimes what your initial budget request document showed. [LR424]

ROBERT HOUSTON: Yes. [LR424]

SENATOR MELLO: So how does that process work? Is it more just...is that...I mean I don't want to make it sound very elementary and just because you work for someone you've got to fall in line if this is what they want you to do, request, and support when it comes in front of us for budget requests. But that's something that we've heard from all code agencies directors. It's not new to you. It's HHS, Environmental Quality. They all come in, in support of the Governor's budget recommendation regardless of what they requested as an agency back in September of the year before. [LR424]

ROBERT HOUSTON: Yes. [LR424]

SENATOR MELLO: Does that have a limitation of really how candid you can be in regards to what the real fiscal needs are for your agency? [LR424]

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ROBERT HOUSTON: Well, that's a fairly loaded question, wouldn't you say? (Laughter)  
[LR424]

SENATOR MELLO: Knowing that you do not...knowing that you no longer work for state government in that respect and no longer have, I think, those constraints... [LR424]

ROBERT HOUSTON: Yes. [LR424]

SENATOR MELLO: ...as a code agency director, it's something that legislators know this happens. [LR424]

ROBERT HOUSTON: Yes. [LR424]

SENATOR MELLO: We've had conversations plenty of times where there's an understanding that obviously you have a supervisor that you report to. But the question is, how can the Legislature really know what an agency's real needs are if an agency director has to stay on script to what the Governor tells them they've got to stay on script when it comes to budget submissions? [LR424]

ROBERT HOUSTON: Okay. Well, let me preface it by saying I retired from state government. I didn't retire from being a professional. Okay? And when I went to the Governor's Office and had meetings with Gerry Oligmueller, Joe Wilcox, and with people from the department, they could not have been more receptive each time we went. Joe Wilcox is outstanding. He worked with us all the time on budget issues. He knows our budget, knows it well. Gerry Oligmueller knows the budget, knows it well. And I think what question you're asking is, is how do I feel about things that I asked for and didn't get. And I think really I need to say that my wardens and my program heads asked for multiple times more things than we asked for of the Governor. Let me give you an example, while we have Senator Bolz here. Senator Bolz, you remember the

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request for a quarter of a million dollars for the Christian group. That went through our budget process and was eliminated from our budget process and never got to the Governor's Office. I told you we categorize things high, medium, and low. And if you took a list of those, and you can get the document, and saw out of the internal budget hearings that that would be multiple pages of requests by the institutions. If you then compared it with what we went to the Governor's Office with, it would be a much, much more modest list. And the best way I can explain it is that Joe Wilcox knew our budget so well, his interactions were so good and so frequent, and the same with my relationship with Gerry Oligmueller, that it just never really came to a rub. And if I didn't get everything that I asked for, that's just the way it is. It was true of every agency. It was certainly true of our agency. [LR424]

SENATOR MELLO: I guess as a brief follow-up, a discussion we've had since you have retired from state government was the issue of the adequacy of programming in the Department of Corrections. Senator Lathrop this morning asked roughly a somewhat similar question in regards to touching upon the fiscal needs of the agency as it relates to additional programming needs and/or mental health treatment, and you kind of gave an answer this morning which is, look, all agencies would love to have more, be able to come in and request more if they could. [LR424]

ROBERT HOUSTON: Yes. [LR424]

SENATOR MELLO: I pose that question back to you, as with what you just said, knowing that we have documented evidence from the Ombudsman's Office as well as thousands of documents that we're all trying to sort through now regarding the internal operations of the department, why was there not more requests made for programming dollars? Why was there not more requests made for mental health programs or treatment for inmates as we've started to see some of the issues that have come out, not just with Nikko Jenkins but other documents that we see that involve other inmates that were...that had significant challenges and still have significant challenges... [LR424]

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ROBERT HOUSTON: Uh-huh. [LR424]

SENATOR MELLO: ...that have been coming to light? Why was that not a bigger priority, I guess, in your budget requests? Even if you were able to make those requests, you may not know...I mean you may not have received them by the Governor or the Legislature,... [LR424]

ROBERT HOUSTON: Uh-huh. [LR424]

SENATOR MELLO: ...but those requests just really weren't made. [LR424]

ROBERT HOUSTON: Well, we had a downturn in the economy in 2008 and when I'd go to director's meetings and meet with the other directors, the conversation would go like this: I'm having to close facilities; I'm having to reduce my budget by millions and I have to do it in six months; I not only cannot ask for more staff, I'm reducing existing staff that we have; I don't know what I'm going to do. Those were some comments by other directors of Corrections. Other states took correction officer positions and gave high priority to them, so when they had to cut staff they were cutting programming staff. They were cutting teachers' positions, so forth. We didn't do that in Nebraska. We had a very modest reduction in our programming staff. I think I can count it maybe on one hand--a couple teachers--and we did that for vacancy savings. We held on dearly to the staff we had, the mental health staff, the substance abuse. And so while other states were having huge and severe reductions in their budget, we were holding on to what we had. We changed our education program and reduced some overhead costs, got certified teachers, doubled the number of people that were getting GED. We took from a modest number up to over 400 of the people in residential substance abuse treatment. We started the mental health unit. We started the mental health unit at NCCW. And so while other agencies around the country were shrinking their program resources, we were holding fast to what we had. And it's a point of pride for the agency that we look at

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programming staff the same as we look at security staff, that they're essential to the court order of the institution, that the social benefits and the mental health benefits to the inmates are of utmost importance. And so I guess in summation I would say that Nebraska didn't do what other states did in those reductions. [LR424]

SENATOR MELLO: There's two sides of that story, I think, Bob. We know that other states have also employed Justice Reinvestment models that have also lowered their prison populations, been able for them to close down prisons and reduce their corrections staffing because of changes in their process as it relates to sentencing, parole, and a variety of other things. [LR424]

ROBERT HOUSTON: Uh-huh. [LR424]

SENATOR MELLO: So it wasn't purely that states were cutting budgets and closing prisons down because of the recession. They were employing other models as well to try to reduce their population to be able to do that. But the catch though and the follow-up question I have is from that time frame of 2009 to 2012,... [LR424]

ROBERT HOUSTON: Uh-huh. [LR424]

SENATOR MELLO: ...we saw an increase in our prison population to the point of 2012-2013 becoming close to 150 percent by the time you left. [LR424]

ROBERT HOUSTON: Uh-huh. [LR424]

SENATOR MELLO: Did our programming and our mental health treatment, programs and treatment programs, did they increase the same rate that our population increased? [LR424]

ROBERT HOUSTON: Oh, no. [LR424]

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SENATOR MELLO: Or did they remain stagnant or were they diminished? [LR424]

ROBERT HOUSTON: I wouldn't say they remained stagnant, but they remained static. Now, we didn't get a marked increase in staffing to match with the growth in the population. [LR424]

SENATOR MELLO: Does that have an...did you...in hindsight, do you see that as part of the problem in regards to some of the issues that we have in front of us in regards to Nikko Jenkins like cases in regards to inmates that... [LR424]

ROBERT HOUSTON: You know, at all times we not only remained within the context of the constitution and state law but also in 2007 we were only the tenth system in the nation to receive the Eagle Award from the American Correctional Association for having all aspects accredited. When the auditors come in every three years and then we have internal audits we do each year, we received good marks. It's incumbent upon us that are agency directors to be modest in how we spend taxpayer dollars. I'll give you an example. We have sex offenders and we try to transition them with our social workers into programs when they discharge or when they parole. Not too many years ago, if you went west of Grand Island, there weren't counselors out there for these individuals. The counseling and the resources for programs that we have in greater Nebraska are very modest. And so it's not that we're in competition. It's more that we have to recognize when we're running agencies that we really have a responsibility to the taxpayers that we apply our professional judgment as best we can and ask for the resources we need but knowing that we're not going to get all that we want. [LR424]

SENATOR MELLO: I can appreciate that, Bob, because that's, I think, a general view that probably most state government agency directors would share. The one caveat is, as we heard this morning, as the documentation I've reviewed shows, that in this particular case with Nikko Jenkins and/or anyone else in segregation, there wasn't

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programming available to inmates in segregation. And in this particular case with Nikko Jenkins, he was released from segregation. And in e-mails from staff who said he doesn't need any programming and, anyway, we're not going to give him any programming because it's...because we don't think he deserves it or doesn't need it, and so we're going to release him directly into the public. And you mentioned earlier this morning that it would be cost-prohibitive to provide programming for all inmates in administrative segregation. [LR424]

ROBERT HOUSTON: Uh-huh. [LR424]

SENATOR MELLO: But in this particular case, someone in that particular administrative segregation was released directly into society with no programming. [LR424]

ROBERT HOUSTON: Uh-huh. [LR424]

SENATOR MELLO: And the question is, why didn't he have programming then? Why didn't the department, if it was not a fiscal issue--and that's what you're saying--if it's not a fiscal issue of why you couldn't provide him programming, why wouldn't you just provide programming then to these individuals? [LR424]

ROBERT HOUSTON: Yeah. Well, I read Marshall Lux's report, and I appreciate the remarks of Marshall Lux's report. One of the recommendations he has in there is for that programming, and I mentioned this morning it's not just the mental health. There's other things that they are isolated from, very unfortunately. When you apply your mental health resources in general population, they'll have groups where they'll have 10 to 12 inmates in a mental health group and the facilitator will be there. In segregation, it's one by one, until the recent innovation by the department at TSCI. There's not another state I could point to that does it any better than Nebraska, but that doesn't mean that the inmates in administrative confinement don't need mental health services; they do. They need it desperately. And so that's why we assign mental health staff to actually be

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officed and housed and interact on that housing unit. This last year the department did a four-day crisis intervention training course for all 2,200 staff, and in that is a component on identifying mental health issues. So we don't expect our officers to be mental health professionals, but we expect for them to be able to identify that if you've got somebody who's showing particular signs, you need to bring that to the attention of the mental health staff. I don't know any Department of Corrections in the country that's given that good of training to that many people when it comes to general signs of mental illness. And the mental health staff in Marshall's report did in-front-of-cell interviews with the inmates. And when you look at that, you think, goldarn, why didn't they take that person into an office and sit down and talk with them? Well, the reason for that is, is that when you have somebody in administrative segregation it takes two to sometimes three to four officers to search that person, to cuff them up, to bring them out of the cell to take them to an office, to sit there in the office during the entire time, because of the security concerns, and then to take that person back. So we're talking not only about the cost of mental health professionals but also very costly in addition of correction officers to make that move in a safe way. And so when you start putting pencil to paper on the recommendations, it becomes very, very expensive and disproportionate to anything I've seen around the country. The inmates, the first line that we're trying to do as a nation with restrictive housing is to reduce these populations. And as we get them reduced, now see if we can focus, maybe do some congregate things to have more interactions. If two people can get along on the yard together, give them two hours, not just one hour each, you know, do things like that. And so it...and being in administrative confinement is tough. It's tough on these individuals. And so we really want to make certain we also shorten the length of stay on administrative confinement to the degree that we can. And so it...I think you're asking a very fair question and I don't want to take it light by saying I wish I could run my budget through Marshall Lux's office before it got to the Appropriations Committee, but (laugh) it would have been very helpful in that regard. Thank you. [LR424]

SENATOR MELLO: I've got one question--and I want to leave plenty of time for other



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people to ask questions--and it deals a little bit with the issue of administrative good time and the loss of good time through the Administrative Procedures Act. There was a story, the World-Herald published a story on September 24, 2013, where an indicator over the past five years--I'm reading from the story, Bob, so you know--over the past five years, inmates have been punished for 92,000 infractions, yet good time credit was taken away in less than 5 percent of those cases. I had to step out a little bit this morning, and I know Senator Lathrop asked a question a little bit about good time and the administrative process around it. I guess, and maybe I didn't hear him directly ask the question, but was the department, knowing that that number is fairly, a fairly wide...it's a fairly eye dropping number of 92,000 infractions and only 5 percent of those infractions took away good time. Did the department, through the wardens, through however the administrative process worked, did they just not choose to take away good time in regards to help ease prison overcrowding? [LR424]

ROBERT HOUSTON: Well, first of all, you have to start out at the lowest end of the misconduct reports. I'm working a housing unit and I come by your cell and I expect you to have your bed made, expect you to have your shoes lined up under, under the bed. I expect for you to fold your clothes up, and if you don't, I'll be back to see you. I go back and you haven't taken care of it, so I give you a warning. I go back the next day, give you another warning. Then I write a misconduct report on you. And so you've got a lot of misconduct reports that are written for pretty minor things. The taking of good time is something that we don't do lightly, and the reason for that is, is that you're really extending a person's stay in prison for something they never would have gone to prison for. For example, let's say we have somebody who's in a restricted area and we take 30 days of good time from them. He was in a restricted area. He didn't commit a crime. Why are you going to put him prison for 30 days? I mean why would you do that? And so that's what the vast majority of the misconduct reports are about. Very few of them--I'm not surprised by the 5 percent--very few of them are ones where you take the misconduct...or you take the good time. Let me take that a step further as well. So you have to look at it from a warden's perspective as well. When we motivate the inmates,

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we motivate them better by giving them positive feedback instead of negative feedback. The other thing is, is that if I'm an inmate and I'm serving a life sentence or I'm serving 50 years and I come before you and you take 30 days, 60 days, 90 days of my good time, I really don't care. I really don't, because either I'm serving out the rest of my life in prison or I'll start behaving about five years before my release date and try to get some of that good time restored to me. But don't take my phone call. Don't take my visit with my children. Those are the things that they hold important. So from a motivation perspective, why would we extend people's prison stay through the loss of good time for things that they'd never go to prison for? [LR424]

SENATOR MELLO: My question I guess still involved in regards to didn't the department purposely shy away from taking away good time to ease prison overcrowding. [LR424]

ROBERT HOUSTON: You know, that would be a fair statement, yeah, but I think it's more driven, less by that and more by what the real motivation is for an inmate. [LR424]

SENATOR MELLO: Okay. Thank you, Bob. [LR424]

ROBERT HOUSTON: You bet. [LR424]

SENATOR LATHROP: Senator Seiler. [LR424]

SENATOR SEILER: I have just a couple things. I'd like to take you back to March 11, 2013, on Nikko Jenkins. He was in Tecumseh at that time and Deputy...Johnson County Deputy Attorney Richard Smith was preparing the EPC papers. And then nowhere in the records do I see how he...who authorized he be moved from Tecumseh, Johnson County, to Lancaster County. [LR424]

ROBERT HOUSTON: Oh. [LR424]

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SENATOR SEILER: And when they did that, Deputy County Attorney Smith lost his jurisdiction for EPC. [LR424]

ROBERT HOUSTON: Uh-huh. [LR424]

SENATOR SEILER: And then he, Nikko, was saying, I want to be committed, I want to be committed. Do you know who signed that order or who authorized that order to move him? [LR424]

ROBERT HOUSTON: To move Nikko? [LR424]

SENATOR SEILER: Nikko from Tecumseh back to Lincoln in the last few months as his...before his jam out. [LR424]

ROBERT HOUSTON: That was my decision. [LR424]

SENATOR SEILER: Yours? [LR424]

ROBERT HOUSTON: Yes. [LR424]

SENATOR SEILER: Did you... [LR424]

ROBERT HOUSTON: Yes, it was... [LR424]

SENATOR SEILER: ...were you aware of the EPC proceedings? [LR424]

ROBERT HOUSTON: Not till I read this report. [LR424]

SENATOR SEILER: Okay. Nobody called you up and said, hey,... [LR424]

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ROBERT HOUSTON: Hey. [LR424]

SENATOR SEILER: ...wait a minute. [LR424]

ROBERT HOUSTON: No. No. [LR424]

SENATOR SEILER: Okay. So you're the one that's left out of the reports. Okay. The other thing that bothered me, not so much about Nikko, but in the prison when the psychological, whether they're a psychiatrist, psychologist, or mental health person visited some of the really...people that really need the training, they were talking through a cell for 15-20 minutes and then moving on. [LR424]

ROBERT HOUSTON: Yes. [LR424]

SENATOR SEILER: I want you to keep that in mind for this next subject. The next subject I have is, what about...do we need legislation in the area of who are these people under? Should they be under the Department of Corrections and stay under Department of Corrections, or should the mental health...Health and Human Services have a mental health facility? And what's your thoughts on that to take those people, say in the last two years or less... [LR424]

ROBERT HOUSTON: Yeah. [LR424]

SENATOR SEILER: ...on their term, and provide mental health and substance abuse training? [LR424]

ROBERT HOUSTON: Well, that is...not that I have a whole lot of expertise, but that's way out of my...that's way out of my area of expertise. [LR424]

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SENATOR SEILER: Well, I was...okay, let me narrow it a little bit that may be in your area. [LR424]

ROBERT HOUSTON: Uh-huh. [LR424]

SENATOR SEILER: Is there a funding problem by moving people back and forth between those two departments? [LR424]

ROBERT HOUSTON: Between the regional center and the Department of Correctional Services? [LR424]

SENATOR SEILER: Right. [LR424]

ROBERT HOUSTON: Well, you know, I can't speak to other people's budget. I can't speak to other agencies' costs. But I know that having a person under...at the regional center is much more costly than having somebody in a correctional institution. [LR424]

SENATOR SEILER: Okay. [LR424]

ROBERT HOUSTON: And... [LR424]

SENATOR SEILER: But any federal funding or anything like that, does that affect any of that, do you know? [LR424]

ROBERT HOUSTON: Yeah. No. No. [LR424]

SENATOR SEILER: Okay. [LR424]

ROBERT HOUSTON: Yeah. [LR424]

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SENATOR SEILER: The next thing, you know that I've, with Brad Ashford, sponsored LB999 to do that mental health out at Hastings and they're moving along fairly well on that right now. [LR424]

ROBERT HOUSTON: Oh, good. [LR424]

SENATOR SEILER: But the question that was asked me the other day, are we going to design a mental health facility or are we designing a correction facility? And my answer was corrections because they're still prisoners... [LR424]

ROBERT HOUSTON: Uh-huh. [LR424]

SENATOR SEILER: ...under your old jurisdiction. [LR424]

ROBERT HOUSTON: Sure. [LR424]

SENATOR SEILER: But they said there was considerable amount of design work difference. Are you familiar with any of that, having served on all these international and national bodies? [LR424]

ROBERT HOUSTON: (Laugh) Oh, thank you. Yes, my area is in respect to corrections. I am not familiar with the design, the staffing, the planning... [LR424]

SENATOR SEILER: Okay. [LR424]

ROBERT HOUSTON: ...of mental health institutions. [LR424]

SENATOR SEILER: From your observations in that, is that a feasible program to give these people mental health training and substance abuse training in the last few years of their stay? [LR424]

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ROBERT HOUSTON: Well, I've been gone for 11 months and so I haven't been...you know, I'm not familiar with the actions they're taking in that regard other than hearsay. [LR424]

SENATOR SEILER: Nobody has taken any actions yet. [LR424]

ROBERT HOUSTON: Oh, okay. Well, I think anything that helps with the mental health of inmates is a good thing to do. [LR424]

SENATOR SEILER: If you think of any recommended legislation, let me know. [LR424]

ROBERT HOUSTON: I'd be happy to. [LR424]

SENATOR SEILER: Thank you. [LR424]

ROBERT HOUSTON: Thank you. [LR424]

SENATOR SEILER: I have nothing. [LR424]

SENATOR LATHROP: Thanks. Senator Schumacher. [LR424]

SENATOR SCHUMACHER: Thank you, Senator Lathrop. As we went through this morning's testimony and just now, I've been taking notes. And every time I had a question, I put a star down. [LR424]

ROBERT HOUSTON: Okay. [LR424]

SENATOR SCHUMACHER: And now it looks like I've got a galaxy. (Laughter) But before we start on... [LR424]

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ROBERT HOUSTON: I have to be home by midnight, if that's of any concern to you.  
[LR424]

SENATOR SCHUMACHER: Well, we quiet... [LR424]

SENATOR LATHROP: And we should be able to help you out there. [LR424]

ROBERT HOUSTON: (Laugh) [LR424]

SENATOR SCHUMACHER: We will get into work drive at a certain point here. But nothing seems to exist in isolation. This particular problem at the penitentiary is reflective of a whole larger environment. We've heard flavors today of maybe funding issues, maybe policy issues, of not wanting to have budget increases. Those don't happen in isolation. Voters don't want government to grow. [LR424]

ROBERT HOUSTON: Yes. [LR424]

SENATOR SCHUMACHER: They'd like to see taxes go away. I think the word of the day or yesterday was a virtuous cycle of decreasing taxes. [LR424]

ROBERT HOUSTON: Uh-huh. [LR424]

SENATOR SCHUMACHER: Legislators come down here and I've been down here four years now and I don't think we've ever reduced the penalty on a crime. [LR424]

ROBERT HOUSTON: Yes. [LR424]

SENATOR SCHUMACHER: We seem to have increased them,... [LR424]



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ROBERT HOUSTON: Yes. [LR424]

SENATOR SCHUMACHER: ...restricted some judges' ability. And we're all struggling with the same kind of issue. And so let's just spend a very short period of time, but tell me about a program called RFP. Are you aware of that? [LR424]

ROBERT HOUSTON: Yes, the Reentry Furlough Program? [LR424]

SENATOR SCHUMACHER: Well, how does that work and what's its function? [LR424]

ROBERT HOUSTON: Okay. What the Reentry Furlough Program is I think I indicated earlier, and I'm going to give you a rough number. About 600 to 700 inmates come to our department every year that they're going to serve less than 12 calendar months, and a bigger number than that are going to serve 18 months or so. Whether they're eligible for parole or not at that point eligible for parole, the Reentry Furlough Program is to place that person in the community on an intense caseload with a parole officer. So they would basically...house arrest would probably not be the right term but that could be loosely used to describe it. And it's to help them get adjusted in the residence they're going to go to, get them established in a job, and we work with the county attorneys on that. And we do that for two reasons. Myself and the chair of the Parole Board went to the Omaha district judges years ago and talked to them about this program before we started. We also talked to Lancaster County. And every county is consulted before we start in their county the Reentry Furlough Program. The county attorneys like it because they can add conditions, such as if they owe Mrs. Jones \$100, they'll make it part of the condition, pay Mrs. Jones the \$100. [LR424]

SENATOR SCHUMACHER: Do these people serve any time or is this kind of almost a bypass program then? [LR424]

ROBERT HOUSTON: No, they come to the department. They go through the

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Diagnostic and Evaluation Center. [LR424]

SENATOR SCHUMACHER: So and then they're... [LR424]

ROBERT HOUSTON: And then the go to... [LR424]

SENATOR SCHUMACHER: ...they're shunted off into this... [LR424]

ROBERT HOUSTON: No. [LR424]

SENATOR SCHUMACHER: No? [LR424]

ROBERT HOUSTON: Then they go to a community center. And then from there, they're placed in the program. [LR424]

SENATOR SCHUMACHER: Okay. Now the people in this program, you know, they're sentenced down there. It almost sounds like they don't belong in that, in a sentence to the penitentiary to begin with. [LR424]

ROBERT HOUSTON: Yeah. [LR424]

SENATOR SCHUMACHER: Is that wrong, right? [LR424]

ROBERT HOUSTON: Well, I guess I've been watching this for four decades and I think Nebraska has extremely good decision making in its courts. It's not perfect, but, you know, they make those decisions. And so I can't say that they shouldn't be in prison. [LR424]

SENATOR SCHUMACHER: But at any rate, there's a very short period of time that they're actually, in response to all these forces. [LR424]

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ROBERT HOUSTON: Yes. Yeah, they're on the Reentry Furlough Program until they get paroled, basically is the whole idea. [LR424]

SENATOR SCHUMACHER: You used a word before, "front-end options." [LR424]

ROBERT HOUSTON: Yes. [LR424]

SENATOR SCHUMACHER: What's a...am I correct in interpreting that to be something to keep them out of getting in there in the first place? [LR424]

ROBERT HOUSTON: That would be...I think a good example of that would be day reporting centers that's operated by Probation where they would, the judges, where they have the day reporting centers, instead of sending somebody to prison, they could put them at the...at one of the day reporting centers, put structure around them, provide some programs. They stay at home. It's far less costly than sending somebody to prison. [LR424]

SENATOR SCHUMACHER: Does that require any action on our part or is that something administratively done? Or if that's a good idea, how do we have more front-end options? [LR424]

ROBERT HOUSTON: Hello, Mr. Mello. (Laugh) I would say the Chair of the Parole...or the Chair of the Parole Board, the Chair of the Appropriations Committee is here so I think Heath is listening in, so. [LR424]

SENATOR SCHUMACHER: Okay. Anyway, this is something that really takes more money, like everything else, to get done. [LR424]

ROBERT HOUSTON: Yes. [LR424]

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SENATOR SCHUMACHER: Okay. You mentioned in your testimony that you met with the Governor individually about 12 times in eight years and that you were preparing for a meeting that would take...would have taken place about a week after your resignation. [LR424]

ROBERT HOUSTON: Uh-huh. [LR424]

SENATOR SCHUMACHER: What would you have told the Governor at that meeting? [LR424]

ROBERT HOUSTON: Well, that was going to be on crowding and it was for the Friday after September 16. And the meeting was just being called, so there wasn't any agenda for it or anything such as that. But I had talked to Larry Bare about, you know, crowding issues and so forth and that, you know, at some point we should sit down and talk about it. And that was the meeting that he was setting up. [LR424]

SENATOR SCHUMACHER: Okay. Now, you know, you're obviously not talking to the Governor now; you're talking to this committee. But, you know, I'd be interested in knowing what...I mean you obviously took some initiative to call one of these rare meetings and must have wanted to talk about something. What would...I mean what can you tell us that you would have told the Governor that we should be doing? [LR424]

ROBERT HOUSTON: Well, I think...I think what you should be doing has been put in place with the strategic plan that's being drafted, the programming statements for the various options for construction, if construction is to be considered. The...as part of the program statement, as part of the strategic plan, the people in the department that are on that committee and the planners for that look at the custody level of the inmates--again, our philosophy--getting them to the lowest custody level possible. And I think they're going to give you a very good look at if there's a construction option, what it

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should be and how it can be done at the lowest cost possible. And I think also they'll give you options that can be put into place all at one time or over several years. And I haven't been involved with that for the last 11 months, but that's how those plans are put together and they're always put together to precede construction. [LR424]

SENATOR SCHUMACHER: In any of these council meetings or these conversations, you mentioned that when it came to overcrowding we talked about the need to move people through every meeting, every month. Everybody knew, as a part of protecting the public, we have to move people to the lowest level. Everybody worried about overcrowding. At any of these, I mean, did...was this passed on, up the food chain into the system? And if it wasn't, if that was in fact what's going on there, if it wasn't being received for budgetary reasons in the executive branch, to come over to the Legislature and say: Hey, guys, you know, I trust I won't be fired for saying this; we've got a real overcrowding problem;... [LR424]

ROBERT HOUSTON: Well, we... [LR424]

SENATOR SCHUMACHER: ...we need a bigger building; we need something? [LR424]

ROBERT HOUSTON: Well, I remember...I remember we were struggling with the 500 inmates we had at the penitentiary back in the 1970s. Before Tecumseh opened its doors, the department was at 162 percent of its prison population. [LR424]

SENATOR SCHUMACHER: Let's just, you know,... [LR424]

ROBERT HOUSTON: Yeah. [LR424]

SENATOR SCHUMACHER: ...talk about in recent times, as we saw these numbers jump from 125 up to whatever, 160-some percent. [LR424]

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ROBERT HOUSTON: Uh-huh. [LR424]

SENATOR SCHUMACHER: I mean what stopped you from giving a call to Senator Mello or any one of us and say: Hey, we have a genuine problem; we're talking about it all the time, every meeting, every month? [LR424]

ROBERT HOUSTON: Well, I must...I must tell you that I also read the newspaper and I saw the efforts being done in the Legislature to have sentencing options for judges. There's been an expansion of the day reporting centers. There's... [LR424]

SENATOR SCHUMACHER: But...and that's fine, but why not tell us? [LR424]

ROBERT HOUSTON: Well,... [LR424]

SENATOR SCHUMACHER: ...(inaudible) we're worried about this at every...you know, appear before the Judiciary Committee: We're talking about this all the time; we've got this terrific problem; you know, I just want somebody who could write a check to know? [LR424]

ROBERT HOUSTON: Yeah. I don't... [LR424]

SENATOR SCHUMACHER: Okay. [LR424]

ROBERT HOUSTON: ...I don't know how to answer that. [LR424]

SENATOR SCHUMACHER: During the time period when population was moving from 125 up to 160-some percent, what was the increase in full-time employees there? [LR424]

ROBERT HOUSTON: There was no increase. [LR424]

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SENATOR SCHUMACHER: So we had a 30 percent increase in load with no increase in FTEs. [LR424]

ROBERT HOUSTON: That's correct. [LR424]

SENATOR SCHUMACHER: Did the administrative staff increase during that period of time? [LR424]

ROBERT HOUSTON: No, actually we reduced central office by, I believe, 20 percent. [LR424]

SENATOR SCHUMACHER: So the parties on this thing called an executive steering council, that actually was reduced by 20 percent? [LR424]

ROBERT HOUSTON: No. [LR424]

SENATOR SCHUMACHER: No? Did they go up or down? [LR424]

ROBERT HOUSTON: No, I think...let me see if I can give you a general approach as to how we did that. [LR424]

SENATOR SCHUMACHER: Well, did the number of people on the executive steering council go up or down during that period of time? [LR424]

ROBERT HOUSTON: Well, that wouldn't...I mean it's...those are wardens and program heads you can't do without. [LR424]

SENATOR SCHUMACHER: Right. Did they up or down though? That's a simple enough question. [LR424]

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ROBERT HOUSTON: Stayed... [LR424]

SENATOR SCHUMACHER: Stayed the same? [LR424]

ROBERT HOUSTON: Stayed the same or went down. [LR424]

SENATOR SCHUMACHER: Okay. All right. [LR424]

ROBERT HOUSTON: What we did, I think I need to give you a little bit fuller picture there. We knew we had a responsibility that I had talked about earlier. We had, when we needed to create a psychiatrist position, we vacated two positions in central office and a position in the institutions to get the money to have a psychiatrist position. We had people, when they either resigned or retired from administrative professional positions, they would be vacated. At the same time, we maintained the custody force in the institutions. We have on all of our rosters mandatory minimums, so we always made certain we had that minimum number. [LR424]

SENATOR SCHUMACHER: So...but what you're describing is a fiscal problem. You're describing a shortage of money. That's nothing to be ashamed of, I mean,... [LR424]

ROBERT HOUSTON: Well,... [LR424]

SENATOR SCHUMACHER: ...but that's what you were doing, right? You were struggling. [LR424]

ROBERT HOUSTON: ...yeah. I mean you're making the best with what you have, yeah. [LR424]

SENATOR SCHUMACHER: Right. Okay. Let's move on here because I know other



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people have got questions and the clock is still rolling. You talked in terms at one point that the guidelines for hearing officers, there are guidelines for how much good time to pull for an assault or for this or that, and there's apparently a little book or something of guidelines. During your time there, were those guidelines changed? [LR424]

ROBERT HOUSTON: Not significantly. [LR424]

SENATOR SCHUMACHER: So there... [LR424]

ROBERT HOUSTON: You mean as far as 90 days, 60 days loss of good time? [LR424]

SENATOR SCHUMACHER: Yeah. I mean was good time easier to get under those guidelines; longer periods of good time granted; longest? You know, were there any material change in those guidelines? [LR424]

ROBERT HOUSTON: No. I think we made an effort to take less good time. I think we made an effort to, for those inmates who were eligible, to restore good time. [LR424]

SENATOR SCHUMACHER: And the net result of that would be people moving through the system a little faster. [LR424]

ROBERT HOUSTON: Well, moving through at the pace that they should be moving through. [LR424]

SENATOR SCHUMACHER: Well, but nevertheless that pace was a little faster than it would have been without those changes. [LR424]

ROBERT HOUSTON: Well, the rapid pace of people moving through is because the average inmate only does two and a half years. [LR424]

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SENATOR SCHUMACHER: Okay. But they would have accelerated a tad by those processes. [LR424]

ROBERT HOUSTON: Well, they would have been accelerated by what I talked about this morning, and that is we doubled the capacity at the community centers. [LR424]

SENATOR SCHUMACHER: Okay. Now the...was Jenkins, was he at Tecumseh or was he at the old penitentiary? [LR424]

ROBERT HOUSTON: He was at Tecumseh and then moved to the penitentiary. [LR424]

SENATOR SCHUMACHER: Okay. And when was the first time that we came up on your radar screen? [LR424]

ROBERT HOUSTON: Well, I think I talked about that this morning, when he had the attempted escape and assault on our correction officer. [LR424]

SENATOR SCHUMACHER: That would have been when he was up at Douglas County, ended up at Douglas County for a while awaiting trial or... [LR424]

ROBERT HOUSTON: Yes. Right. [LR424]

SENATOR SCHUMACHER: Okay. You had not heard of him before. [LR424]

ROBERT HOUSTON: I may have when he was at the youth facility. [LR424]

SENATOR SCHUMACHER: At the youth facility. Do you recall showing a movie at various...of a...of...I guess it would have been a fight on the premises and showing it at various professional meetings and staff meetings? [LR424]

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ROBERT HOUSTON: Was that the fight at the youth facility? [LR424]

SENATOR SCHUMACHER: I really don't know where it was, but it...do you recall such a movie? [LR424]

ROBERT HOUSTON: Yes, we had a...well, the one I'm thinking of is an assault we had at the Nebraska Correctional Youth Facility that was picked up by two of our cameras. [LR424]

SENATOR SCHUMACHER: Okay. And who were the stars of the movie? [LR424]

ROBERT HOUSTON: I don't know. It was...I had read in the report here that he was accused of kicking someone in the head. Is that your recollection? [LR424]

SENATOR SCHUMACHER: No, I'm just talking about the movie that you said that you've shown to various meetings and organizations. And I'm asking whether--it involved inmates in an altercation--if you knew who the inmates were. [LR424]

ROBERT HOUSTON: No, not...I mean, I did at the time. I don't recall who they were. [LR424]

SENATOR SCHUMACHER: And it wasn't Nikko Jenkins. [LR424]

ROBERT HOUSTON: Could have been. [LR424]

SENATOR SCHUMACHER: Okay. [LR424]

ROBERT HOUSTON: Yeah. [LR424]

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SENATOR SCHUMACHER: He mentioned three, and I'm a little confused on this: We would talk about solitary confinement, administrative confinement, and this restrictive housing. Are those all the same things? [LR424]

ROBERT HOUSTON: Well, the first one, what did you say the first one was? [LR424]

SENATOR SCHUMACHER: Solitary confinement. [LR424]

ROBERT HOUSTON: We don't have solitary confinement in Nebraska. [LR424]

SENATOR SCHUMACHER: You don't have it, okay. I mean but, in reality--whatever you call it you call it--but how do these, in reality, differ one from another, if you could briefly walk me through that? [LR424]

ROBERT HOUSTON: Well, it would be the difference between administrative confinement and restrictive confinement, restrictive housing. [LR424]

SENATOR SCHUMACHER: And solitary confinement. I mean what's the difference? [LR424]

ROBERT HOUSTON: Well, the difference is in solitary confinement--we did away with that in the 1970s--that was where inmates were isolated in a cell and there was a steel door over that. They didn't...they couldn't communicate very well. We did away with that. What we have is administrative confinement and the reason that "restrictive confinement" as supplanted that as the term... [LR424]

SENATOR SCHUMACHER: No, what is...let's...what is now administrative confinement? [LR424]

ROBERT HOUSTON: It's... [LR424]

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SENATOR SCHUMACHER: No more little cell, no more little thing in the door? [LR424]

ROBERT HOUSTON: Yeah. No, they're in a single cell... [LR424]

SENATOR SCHUMACHER: Okay. [LR424]

ROBERT HOUSTON: ...and they are there throughout the day. They get time out for exercise, time out for exercise,... [LR424]

SENATOR SCHUMACHER: Is that that one hour? [LR424]

ROBERT HOUSTON: ...to visit. Yes. [LR424]

SENATOR SCHUMACHER: One hour and they're in a little fenced-in area by themselves that they run back and forth in. [LR424]

ROBERT HOUSTON: Yes. [LR424]

SENATOR SCHUMACHER: Okay. And that's the difference between administrative confinement and solitary confinement,... [LR424]

ROBERT HOUSTON: Yeah. [LR424]

SENATOR SCHUMACHER: ...the little walk back and forth? [LR424]

ROBERT HOUSTON: Well, I'm sorry, we just don't use the term "solitary confinement." [LR424]

SENATOR SCHUMACHER: Well, yeah, what I'm trying to get at, are we talking

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semantics here? [LR424]

ROBERT HOUSTON: Well, no. I mean isolated confinement is a little bit different where you can't talk to anyone, and the inmates, albeit strained,... [LR424]

SENATOR SCHUMACHER: Okay. [LR424]

ROBERT HOUSTON: ...can talk back and forth. [LR424]

SENATOR SCHUMACHER: So...but these are basically a small cell, at least between the two. [LR424]

ROBERT HOUSTON: Yes. [LR424]

SENATOR SCHUMACHER: And now is this restrictive housing, is that a bigger cell? Is there a gymnasium? Is there any difference then when we add...change the words to those? [LR424]

ROBERT HOUSTON: No. [LR424]

SENATOR SCHUMACHER: Okay, so they're all the same thing. [LR424]

ROBERT HOUSTON: Yes. [LR424]

SENATOR SCHUMACHER: Okay, so all right. You talk in terms of mental health staff and you talk in terms of the need to juggle things around so you can hire a Ph.D. How many people on the mental health staff? [LR424]

ROBERT HOUSTON: I'm going to have to guess. [LR424]

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SENATOR SCHUMACHER: Guesstimate. [LR424]

ROBERT HOUSTON: And again, I'm reaching back. Between psychiatrists, mental health professionals, we would have 2 to 3 psychiatrists, we would have 13 clinical psychologists. [LR424]

SENATOR SCHUMACHER: That would be master's degree people, basically. [LR424]

ROBERT HOUSTON: Ph.D. [LR424]

SENATOR SCHUMACHER: Ph.D. [LR424]

ROBERT HOUSTON: And then I'm not sure of the number of mental health workers that we would have, and the balance would be substance abuse counselors. [LR424]

SENATOR SCHUMACHER: Okay. [LR424]

ROBERT HOUSTON: So about 140... [LR424]

SENATOR SCHUMACHER: Okay. [LR424]

ROBERT HOUSTON: ...would be a ballpark. [LR424]

SENATOR SCHUMACHER: One thing in looking through Marshall's report was it appeared that I think he spent like...Nikko Jenkins spent about 60 percent of his time in confinement or of his time in confinement, but when...in this restrictive area, whatever you call it. But when he was up in Douglas County, he didn't seem to have nearly as hard a time and didn't need to be nearly as restricted as he was when he got back down to Lincoln. Any idea why the two environments caused him to behave differently?  
[LR424]

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ROBERT HOUSTON: Well, I was the director of Corrections of Douglas County as well, so I'm very familiar with... [LR424]

SENATOR SCHUMACHER: Okay. [LR424]

ROBERT HOUSTON: ...with that facility. And that facility has approximately 30 housing units for a population usually around 1,100 to 1,200. And so you can, by having that many ways you can divide the population, you can...your classification system has...can sort them out a little bit better. And so he'd be in a housing unit. It would turn over with other inmates and so forth. But a jail setting is markedly different from a prison setting. [LR424]

SENATOR SCHUMACHER: Okay. So, basically, they had more room and more ways to juggle people around to make it as nonadverse to each other as possible. [LR424]

ROBERT HOUSTON: Yeah. They...well, you had housing units that run from 36 to 62 and they recreated together, visited together. They were together. [LR424]

SENATOR SCHUMACHER: And it... [LR424]

ROBERT HOUSTON: They didn't mix with the other populations. [LR424]

SENATOR SCHUMACHER: And it must have worked to a certain degree with Mr. Jenkins because he...I mean, they didn't have nearly the issue with him. [LR424]

ROBERT HOUSTON: Yeah, I've read that in the report as well. [LR424]

SENATOR SCHUMACHER: Okay. Now so again we're getting down to this function of a crowded situation, of trying to do too much with too little? [LR424]



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ROBERT HOUSTON: Well, we're trying to do a lot with the resources allocated to us. [LR424]

SENATOR SCHUMACHER: Too much with too little. (Laughter) Okay. And again, the same theme seems to appear throughout your testimony: This is a tremendous burden for our mental health people to sift through the 2,000 people a year. Again, sounds to me like shortage of help. [LR424]

ROBERT HOUSTON: You know, I couldn't imagine trying to do their job. They have a very difficult job because... [LR424]

SENATOR SCHUMACHER: Do you...you know, you're the CEO or were the CEO of this operation. Do you ever walk the factory floor, go down into these solitary confinement areas, walk back and forth, talk to the people inside? [LR424]

ROBERT HOUSTON: That's my responsibility. [LR424]

SENATOR SCHUMACHER: Did you do that? [LR424]

ROBERT HOUSTON: And that's where I started my career. [LR424]

SENATOR SCHUMACHER: Did you do that? (Laugh) [LR424]

ROBERT HOUSTON: Yes, I did. [LR424]

SENATOR SCHUMACHER: When you were in your director position. [LR424]

ROBERT HOUSTON: Yes. Yes. [LR424]

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SENATOR SCHUMACHER: So it would not be unusual for you to be walking the floor, talking to these Nikko Jenkins type through their cell doors. [LR424]

ROBERT HOUSTON: No, it would not be unusual. [LR424]

SENATOR SCHUMACHER: Okay. [LR424]

ROBERT HOUSTON: It would be routine. [LR424]

SENATOR SCHUMACHER: Any memos, notes that you made? Did somebody walk with you to take notes as to, hey, let's look at this guy, he's having a hard time, or...? [LR424]

ROBERT HOUSTON: I tried not to take people with me. I just...I'd talk to inmates on my own. Sometimes I'd have other staff with me that would make note of something, but generally I'd talk to the inmates and mostly they wanted to let me know how they're doing and what their hopes were. [LR424]

SENATOR SCHUMACHER: I mean if something struck you out of the ordinary, did you make note, issue an order saying, hey, there's something wrong in cell 32B? [LR424]

ROBERT HOUSTON: Sure. [LR424]

SENATOR SCHUMACHER: Okay. All right. [LR424]

ROBERT HOUSTON: Oh, yeah. Uh-huh. [LR424]

SENATOR SCHUMACHER: Is there a problem with being played by inmates where they'll pretend to be crazy, for lack of a better word, in order to get moved or a trip to the regional center? I mean is that an issue? Do they play the system just out of boredom?

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[LR424]

ROBERT HOUSTON: Well, you know, in traditional...in the traditional sense, there's that thought is somebody mad or are they bad? And the department changed its philosophy several years ago, and you've heard me use the term "behavioral health." Our interest is in the behavioral health of an inmate. Whether that inmate is mentally ill or whether they are a behavioral problem, in my world it really doesn't make a difference. I don't try to judge inmates as to whether or not they're faking it. I don't try to judge inmates on whether it's sincere. We're dealing with behaviors and whatever that behavior is born out of, we have people that try to address that. [LR424]

SENATOR SCHUMACHER: Okay. Now that being the case, there was quite a lot made, at least if I was interpreting Marshall's report correctly, about is this a behavioral problem or is this a psychiatric problem. And there was a lot of tension and stress in there like there was a huge debate that it made a difference... [LR424]

ROBERT HOUSTON: Yeah. [LR424]

SENATOR SCHUMACHER: ...whether you put them in A category or B category. [LR424]

ROBERT HOUSTON: Well, I think what we have is we have some pretty talented, smart people who have a difference in their diagnosis. And in fact, in my readings of the newspaper, that still hasn't been figured out. [LR424]

SENATOR SCHUMACHER: Well, and we (inaudible). I ran some of these facts from...by some very high-powered shrinks and they basically told me what you said just not...just a minute ago--it really doesn't make a difference. [LR424]

ROBERT HOUSTON: That's right. [LR424]

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SENATOR SCHUMACHER: All right. You got to treat the situation. [LR424]

ROBERT HOUSTON: Yes. [LR424]

SENATOR SCHUMACHER: And yet we had this debate back and forth instead of treating the situation. [LR424]

ROBERT HOUSTON: Yes. [LR424]

SENATOR SCHUMACHER: Okay. Were there any housing units closed during your time in charge? [LR424]

ROBERT HOUSTON: We closed one housing unit. That was at the Omaha Correctional Center and that had to be closed. The reason we closed it there is because there were some maintenance issues with that, that unit, and had to be closed anyhow. That also became a budget reduction item for us. We were able to reduce the budget a little bit for the year that it was closed. [LR424]

SENATOR SCHUMACHER: How many cells, beds, whatever did you lose by closing that? [LR424]

ROBERT HOUSTON: 160. [LR424]

SENATOR SCHUMACHER: And were they replaced someplace? [LR424]

ROBERT HOUSTON: Well, once the repair was done, it was opened back up. [LR424]

SENATOR SCHUMACHER: Okay. So there...I mean this was a temporary closing then. [LR424]

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ROBERT HOUSTON: Was temporary closing. [LR424]

SENATOR SCHUMACHER: Okay. [LR424]

ROBERT HOUSTON: Yes. [LR424]

SENATOR SCHUMACHER: If you were to tell us right now three things that we need to do, what would you tell us? [LR424]

ROBERT HOUSTON: Well, is this an open checkbook? (Laugh) [LR424]

SENATOR SCHUMACHER: Well, I mean, you know, some people are dead here. We're clearly marching down the road of, you know, by gosh, we've got to lock up people. And yet we clearly can't handle it because we've got to create a back door for letting people out. And society has got tough decisions to make. So let's pretend that we have the money to do what needs to be done. What would it be? [LR424]

ROBERT HOUSTON: Well, the business that I spent my career in is not an exact science. It's anything from that. [LR424]

SENATOR SCHUMACHER: It's kind of what they call life, isn't it? (Laugh) [LR424]

ROBERT HOUSTON: (Laugh) And we have, you know, if I were still with the department, I'd be looking towards that strategic plan and those recommendations being made and hopefully funding. [LR424]

SENATOR SCHUMACHER: And we kind of know what that's going to be. That's going to be... [LR424]

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ROBERT HOUSTON: Yes. [LR424]

SENATOR SCHUMACHER: ...you need more space. [LR424]

ROBERT HOUSTON: Yes. [LR424]

SENATOR SCHUMACHER: Okay. [LR424]

ROBERT HOUSTON: Well, very likely. I would be looking at laws that hold people into prison or put people in prison. You know, are there alternatives? I'd be increasing community resources. You know, it's interesting that I spent nearly my entire career working inside of state prisons and jails, but I'm a very strong advocate for community, community placement. Don't build expensive prisons if you don't have to; have other options; have people go through reentry. Because if you build it, they will come. But you do get to the saturation point where you have to build something unless something markedly changes. And so I think the state of Nebraska is far ahead of other states and I think it's on a good course, at least 11 months ago when I left. [LR424]

SENATOR SCHUMACHER: But yet you said we've got a higher rate of incarceration than most other people. [LR424]

ROBERT HOUSTON: No, we...okay, let me see if I can rephrase that. We're about 44th or 45th in the nation as far as incarceration rate. Nebraska incarcerates fewer of its citizens than 43 other states. And so you're starting with a low incarceration rate to begin with in Nebraska. [LR424]

SENATOR SCHUMACHER: So we're just catching up with where everybody else went before? [LR424]

ROBERT HOUSTON: I don't think we're...I don't think we're catching up. I think

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Nebraska has a good quality of living and I don't see that there's going to be a spike up in crime. [LR424]

SENATOR SCHUMACHER: Okay. I may have a couple more questions later on, but I can feel Senator Chambers (laughter)... [LR424]

SENATOR CHAMBERS: No. No, no. [LR424]

SENATOR SCHUMACHER: ...so I'll move on now. [LR424]

SENATOR LATHROP: Who, Senator Chambers, has offered to bat cleanup. And so, Senator Bolz, if you have questions, we'll recognize you next. [LR424]

ROBERT HOUSTON: Yes. [LR424]

SENATOR BOLZ: I have just one issue that hasn't been covered yet today. In our Appropriations hearing this year, Director Kenney noted that one of the concerns that's been most consistently expressed is that there are people being delayed from parole or eligibility for parole because they're on waiting lists. And these waiting lists just seem very inconsistent with your philosophy of providing treatment when appropriate and trying to reduce the population... [LR424]

ROBERT HOUSTON: Uh-huh. [LR424]

SENATOR BOLZ: ...and get folks out the back door. [LR424]

ROBERT HOUSTON: Uh-huh. [LR424]

SENATOR BOLZ: So can you describe to me in a little bit more detail what your process and practice is relating to these waiting lists, why we have waiting lists, and

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what the delay is? [LR424]

ROBERT HOUSTON: Okay, good. Well, I guess roughly dividing waiting lists, you have people who are waiting to get into services that may have a decade more to do on their sentence. So in other words, you might have...you're going to have people waiting for sex offender treatment, for example. Some of them aren't eligible for parole for a long time, but they're on they waiting list. Then you have other people... [LR424]

SENATOR BOLZ: And I don't mean to interrupt you here but Director Kenney seems to be directly speaking to those who are being delayed from parole or eligibility for parole, so. [LR424]

ROBERT HOUSTON: Yes, and that's the second group. So the second group are those individuals who are eligible for parole or soon will be eligible for parole. And there--and again, I've been gone for 11 months--but when I was there it was closest to the door, closest into treatment. So you're going to have a waiting list. But what we try to do are those people that are closest to parole or closest to release get into the program sooner. But that's a real broad paintbrush look at it. Is it a concern? Yes, it's a concern, people waiting for services, because if they're being held, if for all other reasons they could be paroled but they don't have their programming done--I think that's what Director Kenney was addressing with you--that's a concern. [LR424]

SENATOR BOLZ: And yet in the budget that we heard this day, February 11, 2014, and we heard the budget request that came before your departure--those were submitted before you left--there were no requests for additional programming to address these waiting lists. I just don't understand why that didn't reach a level of priority. [LR424]

ROBERT HOUSTON: Well, it is a priority. And I think I talked earlier about we have to be modest in our request and, you know, it's tough. I mean, it's tough. You got 2,350 staff. How do you allocate them, how do you allocate your resources to the best you



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possibly can? And so when it comes to budget time with Corrections, as it would be with any other state agency, you're having to make some decisions. Are we properly staffed with custody staff, unit management staff? We have just under 200 classifications of staff in the Department of Corrections. And so how do you allocate that 2,350 staff, or whatever the number is, into those positions? So I really can't give you a definitive answer as to why that wouldn't have been in the budget request. [LR424]

SENATOR BOLZ: I appreciate your patience. It's towards the end of the day and I do appreciate your... [LR424]

ROBERT HOUSTON: I'm good. (Laugh) [LR424]

SENATOR BOLZ: Good. Then you won't mind me continuing to question... [LR424]

ROBERT HOUSTON: Yes. [LR424]

SENATOR BOLZ: ...why it was that we did get a budget request for about 150 people to be otherwise placed or placed in the counties and we did get a request for those additional beds that were needed, but we didn't get a request for the waiting lists, which according to Director Kenney represents about 15 percent of the population that we're not getting out the door. I guess I still don't understand why that wasn't prioritized. [LR424]

ROBERT HOUSTON: Well, I'm not Director Kenney. (Laugh) I mean, I don't mean to be curt about that, but I'm not Director Kenney. [LR424]

SENATOR BOLZ: Uh-huh. Uh-huh. But the budget request that we debated on February 11, 2014, that submission occurred before you left as director. [LR424]

ROBERT HOUSTON: Well, yeah. [LR424]

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SENATOR BOLZ: Let me just ask you one final question. Do you have any knowledge of whether or not Mr. Jenkins was on any waiting lists for any programs prior to his release? [LR424]

ROBERT HOUSTON: No. I think he...in reading the Ombudsman's report, I believe he was on a waiting list to go to the transition unit. [LR424]

SENATOR BOLZ: Okay. And that's the only one you're aware of? [LR424]

ROBERT HOUSTON: Yeah. That...and the reason for that is, is that what they found with the transition unit that by having taken a group of inmates and putting them there for four months generally and working together was better than bringing them in one at a time, does that make sense,... [LR424]

SENATOR BOLZ: Sure. [LR424]

ROBERT HOUSTON: ...to try to take advantage of the dynamics of the interaction between the inmates, so. [LR424]

SENATOR BOLZ: Well, I find it concerning that someone at the level of Mr. Jenkins was on a waiting list for that program that should have been of help to him and that he didn't get to first in line before he was released. [LR424]

ROBERT HOUSTON: I appreciate that. [LR424]

SENATOR BOLZ: Thank you. [LR424]

SENATOR LATHROP: Senator Chambers, you are recognized. [LR424]

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SENATOR CHAMBERS: Thank you, Mr. Chairman. I would like read a brief piece from a newspaper item. It was in the World-Herald on Saturday, June 7 of this year, "New law limits solitary confinement in Colorado: Inmates with serious mental illnesses won't be placed in solitary confinement in Colorado under a new law. A bill that Governor John Hickenlooper signed Friday prohibits the state Department of Corrections from putting mentally ill inmates in long-term solitary confinement, unless there are exigent circumstances. The mental health impacts of the punishment received more attention in Colorado after last year's slaying of former state corrections Director Tom Clements. The suspect in his killing spent much of his eight years in prison in solitary confinement before being released." Are you aware, Mr. Houston, that the UN has defined solitary confinement as torture? [LR424]

ROBERT HOUSTON: Uh-huh. I know that the...there was testimony in front of the U.S. Senate that I believe included testimony in that regard. [LR424]

SENATOR CHAMBERS: Now are you aware of the fact that when Mr. Jenkins was found...well, I want to phrase this question in a way that it won't put you in a position of trying to answer something about what you don't have knowledge. He was returned to solitary confinement. There was a nonstate employed psychiatrist who reviewed his situation, because after he was allowed to plead no contest, there was a question as to whether or not, first of all, he was competent to represent himself at the sentencing hearing. And the judge said, no, he's not competent to represent himself. [LR424]

ROBERT HOUSTON: Um-hum. [LR424]

SENATOR CHAMBERS: So then the question became, is he competent to attend such a hearing and be sentenced? Will he understand and comprehend what he needs to in order to attend that sentence and his presence meet constitutional requirements? So a hearing was convened, and between the time that he was allowed to plead no contest and he's awaiting sentencing, he was kept in solitary. It was determined that his

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condition deteriorated to such an extent during that period of solitary confinement that he now is not competent to attend that hearing. So we don't have to look at a long period of time. We don't have to look at a lot of testimony, although all over the country institutions are determining that solitary, or whatever they want to call it, is not the way to go when you deal with somebody who has mental illness. Now here's the question that I'm going to ask and you might have to speculate. Are you aware that there are officials, including the Governor, who don't want Nikko Jenkins housed at the Lincoln Regional Center? You're not aware of it? I'm not trying to argue with you. [LR424]

ROBERT HOUSTON: I saw in the newspaper that...I saw in the newspaper that they didn't take him over at the Regional Center. But that's... [LR424]

SENATOR CHAMBERS: They don't want him, right, and they've made it clear. And they had somebody from the Attorney General's Office write a letter to the judge, after he entered an order to transport Jenkins to the Regional Center to be housed and treated and restored to competency. [LR424]

ROBERT HOUSTON: Um-hum. [LR424]

SENATOR CHAMBERS: The Regional Center notified the judge, by way of a letter from the Attorney General's Office, that they were not able to take him. Well, the judge, instead of doing what judges have the power to do, which is to invoke their contempt authority to enforce an order, the judge was lenient and he had a hearing. [LR424]

ROBERT HOUSTON: Um-hum. [LR424]

SENATOR CHAMBERS: Now had Mr. Jenkins been found mentally ill before he went to trial and was allowed to plead guilty, no contest and the judge found him guilty, had he been found mentally ill, then he would have had to go to the Regional Center. It was in the interest of those doctors who work with the Regional Center to say that he's

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competent because then the Regional Center is not where he should go; he should stay in prison. Isn't that correct? If they had diagnosed him as being competent, the Regional Center would not have been in the equation at all, would it? [LR424]

ROBERT HOUSTON: Yeah, you know, you're talking about things I am not aware of other than what I see in the newspaper. [LR424]

SENATOR CHAMBERS: Let me try to...I'm trying to give you...let me state it. There are state-employed psychiatrists, whether as employees of HHS or as so-called contractors. One of them is Klaus Hartmann, one of them is...he quacks like a duck, Scott Moore. Scott Moore doesn't want him at the Regional Center. Scott... [LR424]

SENATOR LATHROP: Do you mean Stan? Do you mean Stan? [LR424]

SENATOR CHAMBERS: Say it again. [LR424]

SENATOR LATHROP: Is it Stan Moore? [LR424]

SENATOR CHAMBERS: Scott Y. Moore. [LR424]

SENATOR LATHROP: Y. Scott. Pardon me. [LR424]

SENATOR CHAMBERS: Y. Scott Moore. I believe he misdiagnosed Nikko Jenkins from the beginning by saying he is not mentally ill. Something was definitely wrong with him because he had severely, seriously, and dangerously mutilated himself. He needed stitches to close very serious cuts to his face. And Y. Scott Moore said, well, that was just faking it. Yet there are other times when they say you can tell somebody wasn't trying to really hurt himself because it was just a superficial wound of some kind. Now for Scott Moore to keep Nikko Jenkins away from the Regional Center, he had to say, well, this is a behavioral problem that he has; he's got a behavioral disorder so, prison

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officials, if he misbehaves, put him in the hole. And that's how they could keep him in the hole because he'll constantly engage in this kind of self-destructive conduct and maybe hurt others, although that's a definition of mental illness. But Scott Moore would never say that he was mentally ill. That's to keep him out of the Regional Center, keep him in the prison where they could keep him in solitary confinement where he continued to deteriorate. At Tecumseh, he was kept in solitary for more than three years. Now if we have this situation that I've described and the judge now is in a situation himself where he has independent, and by that I meant psychiatrists who are not on the state's payroll, saying that Nikko Jenkins does have mental illness. Then they go back through the years and look at earlier diagnoses which indicate mental illness. And I was at a hearing where one of the psychiatrists who dealt with him when he was a child said that in those days the standards of psychiatry would not allow you to diagnose a child as having schizophrenia or certain other types of mental conditions because they were confined to adults as having that illness. But she said times change, the rules change, and the very same condition that she diagnosed then and put a different name on it would have a different name today... [LR424]

ROBERT HOUSTON: Um-hum. [LR424]

SENATOR CHAMBERS: ...simply because now she could properly name it. Scott Moore had put himself in such a ridiculous position by saying Nikko Jenkins was faking it, he had to say on the stand in front of the judge that he was faking these symptoms since he was eight years old in the courtroom. And I was observing and people in the courtroom reacted to that statement by this doctor. Now to cut through some of that so I can get to what I want to ask you that you might know something about, when we went back to the last hearing, not the other day, the judge listened to the testimony and when he wrote his order he said that these two doctors, "Laurel" and "Hardy," that would be Moore and Hartmann, and I say that Moore was like the Svengoolie as the dominate one in the pair and Hartmann followed along. The judge said in effect five against two always wins. These five have indicated that there is mental illness; these two, he didn't

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say hired by the state but he said the state doctors, said there's not. I will go by what the majority of these psychiatrists said and I will find that he is not competent. There was another hearing and a discussion because the Department of HHS, which is over the Regional Center, the Governor, all these people said they didn't want him at the Regional Center. So a point was reached where, since these two guys are at the Regional Center, Hartmann and Moore, having determined that he has no mental problem, could not be the ones to treat him, because how can a doctor treat a condition which he denies exists? But the judge acknowledged that since they're down there, they'll probably play some part in it. If a point is reached when a declaration is made that Nikko Jenkins is competent, there will be another hearing. And if these two doctors said that he was competent, the judge said he would rely more on what Dr. Gutnik said, the independent psychiatrist, and what that one said will trump what these two said. He saw what was going on. Now I'm coming to zero in on you. And I said all that so you'd get an idea of what my orientation is. [LR424]

ROBERT HOUSTON: Um-hum. [LR424]

SENATOR CHAMBERS: You said earlier that Nikko Jenkins at some point showed up on your radar screen and you wrote something, if I understood correctly, in connection with Nikko Jenkins. [LR424]

ROBERT HOUSTON: Yes. [LR424]

SENATOR CHAMBERS: What was it that you wrote? And I don't mean word for word. What kind of document or communication was it? [LR424]

ROBERT HOUSTON: It was a e-mail. It was an e-mail dated February 26, 2013. [LR424]

SENATOR CHAMBERS: Just generally, what was the gist of it? [LR424]

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ROBERT HOUSTON: What I did was I wrote to Kathy Foster and Cameron White and asked them to take the lead on gathering information concerning Mr. Jenkins. And we wanted to make certain that we could explain this, that we provided resources for Mr. Jenkins, and they were charged to put together a multidisciplinary team to lead that effort. [LR424]

SENATOR CHAMBERS: And that's the only inmate for whom you wrote such a communication. Isn't that true? [LR424]

ROBERT HOUSTON: That's correct. [LR424]

SENATOR CHAMBERS: Would they have understood that you wanted them to report back to you to let you know they did what you told them to do? Would you expect that to happen? [LR424]

ROBERT HOUSTON: Oh, I would say in the course of business that they would give me something back. [LR424]

SENATOR CHAMBERS: But they didn't, based on what you said. Isn't that correct? [LR424]

ROBERT HOUSTON: No, I...no. [LR424]

SENATOR CHAMBERS: They never came back to you. [LR424]

ROBERT HOUSTON: Well, no. I knew that at that point Nikko was either being transferred from Tecumseh to the penitentiary or already had been. [LR424]

SENATOR CHAMBERS: Did they let you know that he had severely mutilated himself,



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cut himself? [LR424]

ROBERT HOUSTON: No. [LR424]

SENATOR CHAMBERS: They didn't tell you that. [LR424]

ROBERT HOUSTON: No. [LR424]

SENATOR CHAMBERS: So you had no reason to be aware of him after you submitted that e-mail. And that's how you came to be out of the loop, so to speak, on all of these other things that occurred with reference to him after you wrote that e-mail. [LR424]

ROBERT HOUSTON: I would say that's generally true. [LR424]

SENATOR CHAMBERS: When I called you, when I...you and I had our discussion, and I don't remember every word of it, but I am not misrepresenting our interaction when I say that I was left with the understanding that Nikko Jenkins was going to receive some kind of treatment before he was returned to my community, because just a few months remain before he would jam out... [LR424]

ROBERT HOUSTON: Yes. [LR424]

SENATOR CHAMBERS: ...not parole; he'd be out. [LR424]

ROBERT HOUSTON: Right. [LR424]

SENATOR CHAMBERS: And I got the impression from you that he was going to be given appropriate treatment during the time he remained. Am I correctly representing our situation? [LR424]

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ROBERT HOUSTON: Yes. Yes, and that...the e-mail that I refer to was in follow up to an inquiry by the Ombudsman's Office. And I think that your recalling of that conversation is accurate. [LR424]

SENATOR CHAMBERS: And I would be entitled to believe that I need not continue pursuing you once I got the assurance from you that something was going to be done as far as treatment. [LR424]

ROBERT HOUSTON: That's correct. [LR424]

SENATOR CHAMBERS: And now you know after the fact there in fact was no treatment and he was kept in solitary until he was actually released. [LR424]

ROBERT HOUSTON: Yes. [LR424]

SENATOR CHAMBERS: Had you known that they were going to just keep him in solitary, would you have notified whoever you were dealing with that that is not what you had in mind when you sent them that e-mail? [LR424]

ROBERT HOUSTON: Well, I had in mind that they...I think the best way I can describe it is, is what we were setting in motion, and that's why Kathy Foster is copied on this. It was not just the services inside the walls and fences of the prison. But Kathy Foster was involved so that she could look at Nikko's situation and see if there was resources in the community that she could hook him up with. [LR424]

SENATOR CHAMBERS: How could she do that when once he's out of the prison...? He wasn't on parole. [LR424]

ROBERT HOUSTON: No. [LR424]

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SENATOR CHAMBERS: There was nothing the prison had to do with him anymore.  
[LR424]

ROBERT HOUSTON: That's correct. [LR424]

SENATOR CHAMBERS: So that possibility didn't even make sense, in my opinion.  
[LR424]

ROBERT HOUSTON: Yeah. I understand that. We did not have him under parole  
supervision. [LR424]

SENATOR CHAMBERS: When Nikko Jenkins was in Tecumseh, not only had Nikko  
asked to be committed, his mother had filed papers to have him committed. Are you  
aware of that now? [LR424]

ROBERT HOUSTON: No. [LR424]

SENATOR CHAMBERS: She did. And the Johnson County Attorney was having  
communication with the authorities at Tecumseh to get a statement from them as to his  
mental condition. Are you aware of that having happened? [LR424]

ROBERT HOUSTON: No. [LR424]

SENATOR CHAMBERS: Instead of going through with this, Tecumseh transferred him  
to Lancaster County to the prison. You said you made that decision to transfer him.  
[LR424]

ROBERT HOUSTON: It was recommended to me. [LR424]

SENATOR CHAMBERS: By Tecumseh, wasn't it? [LR424]

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ROBERT HOUSTON: I don't recall if it was by Tecumseh. [LR424]

SENATOR CHAMBERS: Who would have made the recommendation other than the people at Tecumseh because that's where he was housed? [LR424]

ROBERT HOUSTON: Well, it would have been a classification decision at Tecumseh to...they are the ones that would originate a transfer. [LR424]

SENATOR CHAMBERS: Right. They made the request and at Tecumseh they knew that he, meaning Nikko Jenkins, and his family were dealing with the Johnson County Attorney to have him appear before a mental health board. And the Johnson County Attorney stated that he needed a statement from Tecumseh. And rather than give that statement, they talked to you, the director, and said transfer him to the penitentiary in Lincoln. When they did that, and you made the decision relying on them, why did not that paperwork follow him so that it could be submitted to the Lancaster County Attorney? Because it could have been done in Lancaster County, too, couldn't it? [LR424]

ROBERT HOUSTON: Yes. [LR424]

SENATOR CHAMBERS: Why do you think they did not send that paperwork with him? [LR424]

ROBERT HOUSTON: I do not know, Senator. [LR424]

SENATOR CHAMBERS: Would it raise a question in your mind if you were as skeptical and suspicious as I am? [LR424]

ROBERT HOUSTON: Yes, sir. [LR424]

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SENATOR CHAMBERS: And I'm doing it this way because I don't want to make you responsible for anything more than what you did. You responded to a request from the officials of Tecumseh who knew what they were doing. Then the Attorney General's Office is going to say that he sees where nothing in the way of criminal activity occurred, where it's crystal-clear that the law was violated. I know he's not going to do anything about what I'm talking about. They want to cover up everything they did that was inappropriate, in my opinion. Now when you were the director, you knew that there were going to have to be doubling up of inmates in cells, didn't you? [LR424]

ROBERT HOUSTON: Yes. [LR424]

SENATOR CHAMBERS: And you knew that a federal judge had entered an order, more than 50 pages long, directing that there not be just a random coupling or pairing of inmates but there had to be a process to establish compatibility. You knew about that when you were there, didn't you? [LR424]

ROBERT HOUSTON: Yes. That was several years ago. [LR424]

SENATOR CHAMBERS: Did you write a policy that governed the determination or the screening of inmates for compatibility to be cellmates? [LR424]

ROBERT HOUSTON: No. That was under Director Clarke. [LR424]

SENATOR CHAMBERS: That was under who? [LR424]

ROBERT HOUSTON: Director Clarke. [LR424]

SENATOR CHAMBERS: And it continued to exist while you were there, is that true? [LR424]

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ROBERT HOUSTON: Yes. [LR424]

SENATOR CHAMBERS: What was the process of screening while you were there?  
How was that done? [LR424]

ROBERT HOUSTON: I can't tell you what the process is. It's... [LR424]

SENATOR CHAMBERS: While you were there? [LR424]

ROBERT HOUSTON: Yeah. [LR424]

SENATOR CHAMBERS: You don't know what... [LR424]

ROBERT HOUSTON: Yeah, while I was there. I can't tell you all of the mechanics of it.  
[LR424]

SENATOR CHAMBERS: Well, just in general. How...what would they do? [LR424]

ROBERT HOUSTON: In general what they would look at is the length of time that a  
person is doing, the size of the individual, the crime that's committed and so forth. They  
have some general categories that they followed in putting people in the same cell.  
[LR424]

SENATOR CHAMBERS: Were you were aware that recently an inmate, 59 years old or  
so with a cane, beat and killed an 80-year-old cellmate that he had. You read about  
that, didn't you, or you didn't? [LR424]

ROBERT HOUSTON: No. No, I know that there was a death in the department, but I  
don't have the details of it. [LR424]

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SENATOR CHAMBERS: Well, that happened. [LR424]

ROBERT HOUSTON: Okay. [LR424]

SENATOR CHAMBERS: And I've written Mr. Kenney a letter to explain his process to me because he said in the newspaper in response to a comment I made that the prison officials were responsible because they did not do the screening they should have. He said that their decision is never based on space or capacity. After that happened, I received a letter from an inmate who thought he was going to have to be transferred back to the facility where he'd have to have a roommate. And he expressed a preference. The response to him, and it's in writing, was whichever HU has a bed, that's where you're going to go. That's not screening. Just wherever there's a bed, that's where you're going to go. Is that your concept of screening as I laid it out if what I said is accurate? [LR424]

ROBERT HOUSTON: Yes. No, that's not screening. [LR424]

SENATOR CHAMBERS: Okay. Wasn't there a community corrections program after Speaker Brashear left the Legislature and he was the, I don't know if you'd call him the chairman of this organization... [LR424]

ROBERT HOUSTON: He was the chair. [LR424]

SENATOR CHAMBERS: Okay. And Governor Heineman disbanded that operation, didn't he? [LR424]

ROBERT HOUSTON: Yes. [LR424]

SENATOR CHAMBERS: Are you aware that Governor Heineman had some distaste for

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former Speaker Brashear? Okay. That... [LR424]

ROBERT HOUSTON: No. [LR424]

SENATOR CHAMBERS: You answered. Did you recommend the dismantling of that program? [LR424]

ROBERT HOUSTON: I was not in a position to recommend for or against it. The...a lot of the efforts that were undertaken by the Community Corrections Council, such as the day reporting centers and Probation receiving funds to do that, had been or were being accomplished. [LR424]

SENATOR CHAMBERS: But here's what I'm getting to. Your advice was not sought as to whether this should be done, not that you would make the decision. [LR424]

ROBERT HOUSTON: Right. [LR424]

SENATOR CHAMBERS: But just to get your advice as the director of Corrections, you were not consulted. [LR424]

ROBERT HOUSTON: No, I was not formally consulted. No. [LR424]

SENATOR CHAMBERS: And you said there were things that were to be done that were of value that in fact were being done. [LR424]

ROBERT HOUSTON: That were being done, yes. [LR424]

SENATOR CHAMBERS: Okay. And it was dismantled anyway. That's what I'm saying. You mentioned a Rape Elimination Act. [LR424]



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ROBERT HOUSTON: Yes. [LR424]

SENATOR CHAMBERS: What is that? [LR424]

ROBERT HOUSTON: The Prison Rape Elimination Act is a federal law that was signed in by President Bush. And it has now over the years come into fruition where standards concerning prison and jail operations have been put into place and broadcast across the country. What the Prison Rape Elimination Act is now doing is training auditors nationwide to go into prisons and jails and to conduct audits. And those standards include how sexual contact is reported, how it's investigated. [LR424]

SENATOR CHAMBERS: Now is a part of that law, does a part of the law address a certain percentage of federal money that comes to a state which will not come to that state if the Governor does not agree to go along with that program? [LR424]

ROBERT HOUSTON: Okay. I don't know the details of that, but what you say is correct. There's a certain percentage of discretionary federal money that comes to the states and it applies to state correctional facilities and that if they do not come into compliance with that, a certain percent, which I believe is 5 percent... [LR424]

SENATOR CHAMBERS: Yes. [LR424]

ROBERT HOUSTON: ...yes, is deducted from that grant. [LR424]

SENATOR CHAMBERS: And doesn't there have to be or does there have to be a declaration by the state through its Governor that the state is going to do that and consent and go along with it? [LR424]

ROBERT HOUSTON: Yeah. That, when I left, had not been completed and I don't know what the status of that is. [LR424]

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SENATOR CHAMBERS: Okay, but if it were not done, then the 5 percent would be deducted... [LR424]

ROBERT HOUSTON: Yes, that's... [LR424]

SENATOR CHAMBERS: ...based on the law. [LR424]

ROBERT HOUSTON: ...that's how the law is, yes. [LR424]

SENATOR CHAMBERS: Okay. Now you can see I'm just asking you easy questions to answer because I don't want to take way too much time. Senator Schumacher touched on this about the different words that are applied or the different terms for what amounts to solitary confinement. And believe it or not, that originated among one of the most gentle groups in society. They thought that if a person had committed crimes and were put in a solitary setting, he would have time to contemplate his misconduct, repent, and change his ways. And that's why they call it the penitentiary. [LR424]

ROBERT HOUSTON: That's correct. [LR424]

SENATOR CHAMBERS: You do penance there. [LR424]

ROBERT HOUSTON: I've been to that prison, the eastern Pennsylvania prison. [LR424]

SENATOR CHAMBERS: Were you there? [LR424]

ROBERT HOUSTON: Yes. [LR424]

SENATOR CHAMBERS: I'm just kidding. (Laughter) [LR424]

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ROBERT HOUSTON: You know, I only go back 39 years. [LR424]

SENATOR CHAMBERS Right. Okay. You might have visited there... [LR424]

ROBERT HOUSTON: I did. [LR424]

SENATOR CHAMBERS: ...but I was there at its inception, so. And I thought it might have been a good idea. But now practically everybody, as we have discussed, has gone away from that notion. [LR424]

ROBERT HOUSTON: Yes. [LR424]

SENATOR CHAMBERS: So now it's what I think Senator Schumacher pointed out, we're dealing with semantics now. It moved from being the hole, which is what it was called when I was...first came to the Legislature. It then became solitary. It then became administrative confinement. And now it's restrictive housing. But dress a monkey as you will, a monkey is a monkey still. But here's what they want us to say about this. It looks like a duck, it walks like a duck, it quacks like a duck, therefore it's a chicken. That's what they want us to conclude. And it reminds me of the way those who discard human remains, the evolution they went to. First they were grave diggers. Then they became undertakers. Then they became morticians. Then they became funeral directors. And they always try to prettify the term to conceal as much as they can what it is they actually do. But when you come to the final analysis, what they actually do is still what they've always done. What is the maximum amount of time you think that a person who is known to be mentally ill...I won't ask you that. Let me ask you something you might be aware of. You are aware of the services, if you want to call them that, available at the D&E. Is that right? [LR424]

ROBERT HOUSTON: Yes. [LR424]

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SENATOR CHAMBERS: Is it equipped to deal with somebody who is mentally ill to treat that person? [LR424]

ROBERT HOUSTON: If we have somebody at DEC who needs to be in the mental health unit, that's at the Lincoln Correctional Center, they'd be transferred there. [LR424]

SENATOR CHAMBERS: I'm talking about the development and the Diagnostic... [LR424]

ROBERT HOUSTON: Yes. [LR424]

SENATOR CHAMBERS: ...and Evaluation Center. Is that place equipped to treat somebody who has mental illness? [LR424]

ROBERT HOUSTON: We, the department, has both clinical psychologists and mental health workers that are employed at DEC. [LR424]

SENATOR CHAMBERS: You're call...what did you call it? The DEC? [LR424]

ROBERT HOUSTON: DEC, Diagnostic and Evaluation Center. [LR424]

SENATOR CHAMBERS: Okay. D&C? [LR424]

ROBERT HOUSTON: DEC. [LR424]

SENATOR CHAMBERS: DEC. [LR424]

ROBERT HOUSTON: It's had a couple of different terms over the years. [LR424]

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SENATOR CHAMBERS: Okay. Could these psychiatrists treat somebody who is mentally incompetent and considered too dangerous to be kept at the Lincoln Regional Center? [LR424]

ROBERT HOUSTON: It's the...okay. [LR424]

SENATOR CHAMBERS: How would that person be housed? What kind of room would that person be kept in? [LR424]

ROBERT HOUSTON: It depends. I mean, we have people that have...that are suffering from mental illness that do not need to be in the mental health unit. So it's such a broad spectrum when we're talking about people... [LR424]

SENATOR CHAMBERS: Well, let's say this person is mentally ill and dangerous, too dangerous to be at the Lincoln Regional Center, although mentally ill to such a degree that hospitalization is what's needed. Is the Diagnostic and Evaluation Center equipped to treat such a person? [LR424]

ROBERT HOUSTON: It depends on what their behavior is. [LR424]

SENATOR CHAMBERS: Would that person be kept in solitary, in a solitary cell? [LR424]

ROBERT HOUSTON: Not necessarily. [LR424]

SENATOR CHAMBERS: What kind of cell would be available? [LR424]

ROBERT HOUSTON: They would either be in a double bunk cell or they would be in one of the housing units. [LR424]

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SENATOR CHAMBERS: Well, if this person has taken metal pieces and cut himself, if he has banged his face against a metal shelf, anything in the cell that might be a part of a bunk could be used by him to hurt himself, would they put him in such a place knowing his history? Would you say we want him here? [LR424]

ROBERT HOUSTON: You know, that...I mean, we have inmates that we have to put under observation and we don't do that in the general areas of DEC. We have a hospital unit there and that hospital unit can be used for some inmates. [LR424]

SENATOR CHAMBERS: And what does a hospital room look like in that unit? [LR424]

ROBERT HOUSTON: It's a little bit larger. I think it's probably eight by ten. [LR424]

SENATOR CHAMBERS: Wow! Very commodious. Okay. [LR424]

ROBERT HOUSTON: Ten more square feet, Senator. And it has a bed. It has 24-hour medical staff on duty. [LR424]

SENATOR CHAMBERS: Is the person put in restraints? [LR424]

ROBERT HOUSTON: It depends. [LR424]

SENATOR CHAMBERS: Is the person made to be naked? [LR424]

ROBERT HOUSTON: No. [LR424]

SENATOR CHAMBERS: I'll leave that area and go to something else. There are some questions I really want to engage you on but I won't. When budget cuts are to be made by the Governor and a directive is given to all the departments, including Corrections, to specify where cuts could be made, have you gotten such a notice from the Governor's

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Office? [LR424]

ROBERT HOUSTON: Yes. [LR424]

SENATOR CHAMBERS: Did you comply? [LR424]

ROBERT HOUSTON: Yes. [LR424]

SENATOR CHAMBERS: But at the time you were asked to have cuts made, it would not have been your recommendation, based on the one who has to run the prison system, to cut anything but to ask for additional money if you were free to do so. Isn't that true? I've listened to you carefully what you said this morning and this afternoon. You would not have ever asked for a cut in your budget, would you? [LR424]

ROBERT HOUSTON: No. I mean, it's...we have a... [LR424]

SENATOR CHAMBERS: That's an honest answer. I know the answer. [LR424]

ROBERT HOUSTON: We have an agency to run. Yes. [LR424]

SENATOR CHAMBERS: We weren't born yesterday. And as they say, we were born at night but not last night. (Laughter) Good Lord. Now Corrections is an easy place really to cut because it's kind of out of sight, the public doesn't know what's done there, they're not sympathetic. So if inmates are going to be put in a difficult situation, the public doesn't care. The legislators respond every time there's an outcry about a particular kind of crime like methamphetamine. We heard it discussed as the Chair was talking to you, and about mandatory minimums being put in place, the greater number of beds that would have to be brought into existence. And now that's not even being discussed because something else has replaced methamphetamine now. Before that it was crack cocaine. And it was a means by which they could imprison a lot of black people

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because they said crack was the drug of choice of black people. But statistics show that over 90 percent of the crack users were white, but the heavy sentences were given to black people. And I know it because I was in the Legislature and I fought against that being done. And former Senator Abboud was the one who brought the legislation. I fought hard against that. We know, and you can get it statistically, that black youngsters are treated as criminals in a way that white youngsters are not. I know people who work in those facilities and police officers who will say that a white kid who committed the same offense or was alleged to will be released to his or her parents in west Omaha, but the black kid is sent to the detention center. And there are white kids who have committed crimes when they will be adjudicated and it doesn't come out the same way as the black kid. There are white kids who are not treated as adults and black kids who are. There are some white kids who are treated as adults as the black kids are treated as adults. But the conviction occurs and the sentence is not the same. There is racism in this system and there is no way, without racism being the explanation, that there can be such a disproportionately high percentage of imprisoned people who are black in a country where we make up such a small percentage of the population. And here's what needs to be understood I think by some people and it's why I will not let Corrections be blamed for everything. The legislators playing politics, lengthening sentences, creating new crimes, my colleague did it. Put me through heaven toward the end of the session saying that some people are worth more than others so you sentence these people more harshly and put more people in prison. Then we're going to sit up here and talk about the overcrowding when we seek legislation that contributes to the overcrowding. We will talk about what prior legislators have done that created problems that we're dealing with now and then we aggravate the problems. Now, as the director of Corrections, you don't have a vote in the Legislature, do you? [LR424]

ROBERT HOUSTON: No, I don't. [LR424]

SENATOR CHAMBERS: And when the Legislature passes a bill, it can be as "screwy" as Elmer Fudd would say it is. But if people are sent to your facility as a result, you can't



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do like the Regional Center and say we're not going to accept them, can you? [LR424]

ROBERT HOUSTON: No. We take anybody that is brought to us. [LR424]

SENATOR CHAMBERS: Right. And even the Attorney General, as nonlawyerish as he is, would not write a letter to the judge and say, well, Director Houston told me that they're overcrowded so we're not going to accept this guy. The Attorney General wouldn't do that, would he? [LR424]

ROBERT HOUSTON: I haven't seen it in my years. [LR424]

SENATOR CHAMBERS: I just happened to see something here: Bruning fined for exploratory committee. Fed says he violated intent. "The Federal Election Commission has slapped Nebraska Attorney General Jon Bruning with a \$19,000 fine, saying he violated the rules and the intent of an exploratory committee. The FEC ruled that Bruning knew he was going to run for U.S. Senate when he filed an 'exploratory committee' in 2010. Bruning agreed to a settlement with the FEC last month. David Cookson, his chief of staff in the Attorney General's Office, downplayed the settlement, saying such fines happen all the time. 'It's really a technical, timing issue,' Cookson said." That's from the World-Herald May 14, 2013, page 1B for the record. So they downplayed that. The Attorney General agreed that he's going to pay the fine. Now how in the world am I going to believe that that office can be trusted to investigate in effect itself and an entity that the Attorney General's Office was giving advice to? Now if you are overcrowded in your facilities on a three-to-one basis, what can you as the director of Corrections do about it? [LR424]

ROBERT HOUSTON: Well,... [LR424]

SENATOR CHAMBERS: Nothing really, can you? [LR424]

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ROBERT HOUSTON: ...it's, you know, the...we have... [LR424]

SENATOR CHAMBERS: Here's what I'm asking you. [LR424]

ROBERT HOUSTON: Yeah. [LR424]

SENATOR CHAMBERS: Can you say every third person we're going to unlock the door and let that person out of here? Can you do that? [LR424]

ROBERT HOUSTON: No, I cannot do that. [LR424]

SENATOR CHAMBERS: Can you go to the Parole Board and say, I need you to release 30 people this month, and they release 30 people? Will that be done? [LR424]

ROBERT HOUSTON: No. [LR424]

SENATOR CHAMBERS: Are you aware that there are people who are eligible and ready to be paroled but for the fact they haven't finished programming that the Parole Board requires? Are you aware of some inmates in that set of circumstances? [LR424]

ROBERT HOUSTON: Yes. [LR424]

SENATOR CHAMBERS: And the Parole Board knows and has been told that the programming is not available, but they still won't parole these people. Now this might be a difficult question for you to answer. Presume or assume for the purpose of this question that you and I are correct that there are people who meet every requirement to be paroled but for the fact they did not take a certain kind of programming that is not available. Do you think those people would be safe, could be safely paroled? [LR424]

ROBERT HOUSTON: It depends on what that program is, but generally I would say if

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that program can be made available to them in the community, they can be paroled to that program. [LR424]

SENATOR CHAMBERS: So we don't have to focus only on the Department of Corrections when we're...now I'm forgetting all that miscalculation. I'm not talking about that. I'm talking about the world view. The Parole Board could do something about releasing that overcrowding without compromising the public safety or any principle governing parole. Would you agree with that? [LR424]

ROBERT HOUSTON: I would agree. [LR424]

SENATOR CHAMBERS: And you can tell I'm winding it down now because I'm becoming less combative. [LR424]

SENATOR LATHROP: And I just want to say this, Bob. If you can make sure, I know we're getting toward the end of the day, but make sure you're speaking loud enough so that we're picking it up if you don't mind. [LR424]

ROBERT HOUSTON: Okay. Will do. Thank you. [LR424]

SENATOR CHAMBERS: When I ask some questions that might put you on the spot, you're a grown man. When you were the director of Corrections, you were paid. [LR424]

ROBERT HOUSTON: Yes. [LR424]

SENATOR CHAMBERS: So you were paid to deal with what I'm asking you. There was a letter that my colleague Senator Mello wrote to the Governor in 2013 about the difficulties of overcrowding and so forth and pointed out to the Governor, well, let me read something. This is dated September 18, 2013. And this is not the entire letter but the pertinent parts: While multiple public statements asking for changes to Nebraska's

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current good time law have been made, the Department of Corrections under your management, meaning the Governor, has not announced any proposals to address the existing executive branch rules and regulations on the implementation of the good time law or the chronic prison overcrowding that may have contributed to these horrific incidents, meaning the Nikko Jenkins matter. And then he mentioned the problems in California of prisons being required by the federal government to take steps, even releasing inmates, and Nebraska might be on the verge of that. With the October 23rd deadline for agency mid-biennium budget requests approaching, I look forward to reviewing your budget recommendations--meaning the Governor, not you, Director Houston--to the Legislature this January which will I hope include: (1) an appropriations request for the Department of Corrections and the Supreme Court, and then gives the program dealing with probation services; (2) proposed legislation and/or major revisions to the Department of Corrections rules and regulations to help reduce the prison population back below 140 percent of capacity--that's that benchmark number. Without a long-term comprehensive solution to this pending crisis, I am concerned the state will be placed in a challenging fiscal and public safety situation next legislative session and beyond. Yours very truly, Heath Mello. The Governor responded. His first sentence sounds almost like a diplomat. Dear Senator Mello, Thank you for your September 18th letter requesting my leadership regarding the challenges facing the Department of Correctional Services. Then you can see a slight change. As Governor, I have been leading Nebraska forward for nine years and I will continue to lead Nebraska forward on all issues facing our great state for the remainder of my term. The challenges that we are facing are critical to public safety. Recent incidents have shed light that a renewed focus is needed on public safety. It is my hope that you and your other members of the Legislature will follow my lead. That's not bad. Then, first we need a renewed focus on the death penalty--nothing about overcrowding, nothing about program, but on the death penalty. And after mentioning that Nikko Jenkins is facing a four-count, first-degree murder charge along with Garcia the same, I ask you to reevaluate your position on the death penalty and join with the vast majority of Nebraskans who support this appropriate sentence. Now what the Governor did, he didn't just want to talk the

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talk; he wanted to walk the walk. So what he did was wrote the county attorney a letter and released it to the media saying that Nikko Jenkins should get the death penalty. This was before he was formally charged. It was before determination of his competency had been made. But that's what he did. But he didn't write such a letter with reference to Mr. Garcia whom he mentioned in this letter. Then not too long ago there was a guy out in the western part of Nebraska. He shot his ex-wife in Kearney. Then he waylaid his own lawyer in Grand Island, went home, changed cars and went and shot him dead too. And he shot both of them in the back with a high-powered rifle. Nikko Jenkins has used the equivalent of a high-powered rifle, from what we were told. Now this man pleaded guilty to his wife's murder, first degree, and was sentenced to life. Now here he is, a serial murderer that the Governor was so concerned about. He's serving life for murdering his wife. And the county attorney out in Grand Island said that if he would plead guilty the death penalty would be taken off the table. He pleaded guilty. Now two life sentences. The Governor not only did not write a letter. The Governor did not object to this serial murderer being treated in this way because he's white. Where's all that indignation he expressed toward my colleague Senator Mello? Where's all that righteousness that led him to write a letter to the county attorney saying make sure this black man gets the death penalty? But when the white man, who cannot say he has a mental illness, waylays his wife coming out of the house, near her house, and shot her in the back with a high-powered rifle, then went home, that's in Buffalo County, went to Grand Island in Hall County, I believe, and committed his second murder, was not that cold, calculating conduct? But he's white. That's the kind of Governor we have. And I'm mentioning it here because I am disgusted with what happens in this Legislature and with that Governor and with my colleagues who will roll over and go along with the program. Now I only have one or two more questions that I'm going to put to you. You're aware that a certain number of inmates by contract have been sent to the Hall County jail who were in the penitentiary. [LR424]

ROBERT HOUSTON: Yes. [LR424]

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SENATOR CHAMBERS: Do you believe it's constitutional for the state to take these people, who were sentenced pursuant to state law to the penitentiary, to be confined not in a state-run facility where there are fewer rights and privileges than there would have been in the state facility? Do you think that's constitutional? [LR424]

ROBERT HOUSTON: I can't answer that question. I don't know. [LR424]

SENATOR CHAMBERS: Does it seem like a question might be there as to whether it's appropriate? When you are sentenced to a certain facility where you're treated a certain way, then you're transferred, not by court order, to another facility where you're denied certain privileges that you had under the state, isn't that not treating all these inmates in a uniform, consistent manner? Aren't you treating similarly situated people differently? There will be punishments for things in a county jail which would not be a violation of the penitentiary rules. Do you think that should be appropriate? Is that where people should be sent where they're going to be treated like that? [LR424]

ROBERT HOUSTON: I can't answer that. Those decisions were made after I left office. [LR424]

SENATOR CHAMBERS: If there...I'm talking to you now as a citizen. You're a citizen. Should there be a difference in how somebody is treated in terms of their religious practices, a difference in how they're treated? They're restricted in the jail to a greater extent than they are in the penitentiary. Right now the President has said we're going to authorize air strikes if you do something about...if these...if the ISIS people take a hostile action against this religious minority in Iraq. I don't know how many thousands of miles Iraq is from here, but I'm sure it's a greater distance than from the penitentiary in Lincoln to the jail in Hall County. You're so concerned about the religious rights, and maybe you should be, of people in Iraq. And I think it was Ralph Waldo Emerson who said charity abroad is often tyranny at home. So abroad it's all right. Use the air strikes. At home, cut their religious privileges. And you probably don't see anything wrong with

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that because you're not the director of Corrections anymore, correct? [LR424]

ROBERT HOUSTON: Well, it's not that I don't see anything wrong or right with that. I'm not the director of Corrections. [LR424]

SENATOR CHAMBERS: And you're in a position to say I don't want to answer, in other words, and I don't blame you. [LR424]

ROBERT HOUSTON: Um-hum. [LR424]

SENATOR CHAMBERS: I'm winding it down. I didn't give the Governor credit for everything he said. Furthermore, violent criminals need to earn good time instead of automatically receiving it upon arrival in prison. I intend to pursue legislation to change the law on good time. I hope you and other members of the Legislature will support my efforts to reform Nebraska's good time law. I urge you to join other supporters, such as Mayor Jean Stothert and Omaha Police Union, county attorneys, the Attorney General, who violated federal election laws, and others in reforming Nebraska's good time law. Now I have a transcript of a hearing February 2, 2011, before the Judiciary Committee, and I was not there at that time. And I'm going to read from your testimony and if anything I read that seems incorrect, stop me. [LR424]

ROBERT HOUSTON: Okay. [LR424]

SENATOR CHAMBERS: I'd like to thank Senator Council. Thank you, Senator, for introducing the bill--and it's LB191--on behalf of the department. This bill was a department budget modification resulting in savings to the...and could result in the savings to the department of \$108,000 in the second year due to the population reduction. The savings have been incorporated into the Governor's recommended budget. As of December 2, 2010, 2,760 inmates have been incarcerated for more than a year. Of this number, 687, or approximately 25 percent, did not have a Class I or

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Class II or more than three Class III misconduct reports, which would have meant they'd been eligible to earn this additional good time. The current good time provision will remain the same. This legislative bill would add a component to the current good time law. The Governor wasn't interested in changing the good time law which we have right now. He wasn't interested in changing the good time law then, was he? [LR424]

ROBERT HOUSTON: No, not...that was not part of the bill. [LR424]

SENATOR CHAMBERS: But it could have been if he was concerned about the fact that you needed to change this good time law, the current law. It could have been attempted in this bill, couldn't it, instead of saying we're going to give you a way to earn additional good time? But he knew that with this bill it would reduce the amount of time that people would have to spend in prison and it would result in savings. And he was so sure of it that it could be a part, it could be incorporated into the Governor's recommended budget. Here's what I'm getting to. We have a Governor who is not candid. At this time in 2011, he didn't want to change the good time law to make it harder for an inmate to get good time. He did not want to change the good time law to make it easier for the department to take away good time. He did not want legislation to say that once an inmate loses good time it cannot be restored. He could have put all those in this bill if he chose to, couldn't he? [LR424]

ROBERT HOUSTON: Yes. [LR424]

SENATOR CHAMBERS: Okay. And I'm not asking you why he didn't. I just want to deal with the facts, sir. And I don't carry a badge as Joe Friday did. And yet when the public hue and cry came because there was a case where a white woman was killed by a black man, all these politicians jumped on good time. You know why? Because you don't have to think, you don't have to deal with programming, you don't have to talk about increasing the budget to deal with the overcrowding. You can just put that red meat in front of the public and say good time law did it. This man served every minute



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that he was required to under the law and he jammed out. He was not paroled. Part of that time that he was still in prison was because of good time he had lost. Isn't that true? [LR424]

ROBERT HOUSTON: That's true. [LR424]

SENATOR CHAMBERS: He was serving good time, otherwise he could have been released earlier. The Governor doesn't deal with that, none of them do. And that's why I said before and I say it now, as long as I'm in the Legislature, they're not going to change the good time law. I agree with LB191 and had I been here I would have offered it. Had I been here, I would have supported it. Had I been here, I might have said increase the amount of time a person can get because good time is really a management tool that the department needs that we in the Legislature don't care about the problems you have. Once we send those people there, we don't care if they get old and, because of mandatory good time or habitual criminal statutes, you have to build a geriatrics ward. We don't care. We won't do anything about it except make it worse. But despite all of that now getting back to what we're confronted with now, if you were the director and you knew that good time was being calculated in a way contrary to the way the Supreme Court said it should have been calculated, if you were the director and you knew that, would you have taken any action? [LR424]

ROBERT HOUSTON: Yes. [LR424]

SENATOR CHAMBERS: And what would your action have been? [LR424]

ROBERT HOUSTON: I would have contacted the Governor's Office and the Attorney General's Office and decisions would go from there. [LR424]

SENATOR CHAMBERS: But what would you believe ought to be done once the Supreme Court had announced what the law is? [LR424]

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ROBERT HOUSTON: Well,... [LR424]

SENATOR CHAMBERS: Let me ask it a different way. [LR424]

ROBERT HOUSTON: Yeah. [LR424]

SENATOR CHAMBERS: Would you have joined those who said no matter...would you join those who say regardless of what the Supreme Court said we're going to keep doing it our way even though it goes contrary to what the Supreme Court said? Would you have joined those people? [LR424]

ROBERT HOUSTON: No. [LR424]

SENATOR CHAMBERS: Okay. One other question. If the next Governor comes in and decides to undertake a search for a director of Corrections, and I think that ought to be done, who do you think ought to be given most consideration...more consideration, you or moi? (Laughter) You don't even have to answer. And, Mr. Houston, there are other questions but I don't have...I couldn't gain anything by asking you. But there's one thing I want to point out. I do have an article; the headline is "Three guards now ex-workers," and this is dated, it's from the Lincoln Journal Star, March 19, 2010. Do you remember that some guards posted some very inappropriate things on Facebook about how violence had been done to certain inmates? [LR424]

ROBERT HOUSTON: All too well. [LR424]

SENATOR CHAMBERS: And do you remember who brought that to your attention? [LR424]

ROBERT HOUSTON: Sir, you did, Senator. [LR424]

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SENATOR CHAMBERS: And when I brought it to your attention, was action taken to remedy that situation? [LR424]

ROBERT HOUSTON: Yes, it was. [LR424]

SENATOR CHAMBERS: Who took that action? [LR424]

ROBERT HOUSTON: Myself and the department. [LR424]

SENATOR CHAMBERS: But under you, as the director. So when something was brought to your attention and it was violative of what you thought the rules ought to be governing these workers, you went ahead and separated them from employment with the department. [LR424]

ROBERT HOUSTON: That's correct. [LR424]

SENATOR CHAMBERS: I want to end on a positive note after what I put you through, which really was gentle compared to what I had thought about doing when I first came here. But there are a lot of things you were not responsible for in terms of direct knowledge. But if you're the captain of a ship, everything that happens on that ship is your responsibility. [LR424]

ROBERT HOUSTON: That's correct. [LR424]

SENATOR CHAMBERS: And you can bear some culpability because you have the responsibility to select subordinates who are going to do the job the way it should be done. And if those subordinates have not done that job, you're put in the position that Harry Truman articulated when he said the buck stops here. If you're the director, the buck stops with you. Mr. Kenney said, and I think he may have been coached: I, as

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director, assume full responsibility for correcting this problem. No, he needs to assume responsibility for the problem. And he needs, in my opinion, before he leaves fire everybody that he has the authority to fire. Then he ought to tender his resignation. That's the only thing that can bring a clean thing out of an unclean thing. And I have absolutely no confidence in anything spearheaded by the Governor and the Attorney General's Office, who are now saying we've got to do something quickly. But they stalled and delayed as long as they did. It may have been three weeks ago that this first came to everybody's attention. Maybe they're looking at the notion that these are only misdemeanors and if we stall long enough maybe the statute of limitations will run out and then we can say there's no need to even consider criminal action because no sanction can be imposed. I am skeptical not only of the department. The Attorney General and the Governor said that they must make haste to try to restore the public's confidence. Well, the ones in whom the public have lost confidence are the Attorney General and the Governor, and so it should be. I wish either one of them or both of them were before this committee. But that won't happen. So you who no longer work for the department were called because there's information you could give, and I guess you did the best you could with...where...Cookson is not here... [LR424]

SENATOR LATHROP: Oh, yeah he is. [LR424]

SENATOR CHAMBERS: Oh, look at...oh, he went to the back of the room, but he's still looking over your shoulder. You could feel his presence, couldn't you, (laughter) even when not even seeing him? But that's all that I have. Thank you, Mr. Chairman. [LR424]

SENATOR LATHROP: Certainly. Senator Mello has some follow-up questions. [LR424]

SENATOR MELLO: Thank you, Chairman Lathrop. And, Bob, it's more of a follow-up a little bit to Senator Lathrop's questions before the lunch hour regarding the miscalculation of sentences and Jeannene Douglass. Jeannene Douglass, that position, the records manager is kind of the way it laid out in her e-mails or at least the

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information that became public through the World-Herald story. Where does that rank in regards to kind of a level of...a chain of command, so to speak, within the Department of Corrections? [LR424]

ROBERT HOUSTON: Well, let's see. The chain of command would go to the deputy director for programs. [LR424]

SENATOR MELLO: Which is? [LR424]

ROBERT HOUSTON: Which is Larry Wayne, who would then supervise Kyle Poppert, who's the records administrator, who would supervise Jeannene Douglass. [LR424]

SENATOR MELLO: And maybe I was...I didn't fully understand maybe the answer. I think the direct quote that was stated in one of the e-mails between your dialogue between Senator Lathrop, the direct quote is from Jeannene Douglass's e-mail, quote, it would serve the director's desires as well as not to increase our prison population any more than we must. [LR424]

ROBERT HOUSTON: Um-hum. [LR424]

SENATOR MELLO: You said that that's kind of a general culture of the Department of Corrections. It wasn't just your desire but everyone's desire to reduce prison population, not to increase the population. You said that you had no idea what happened with the Supreme Court in regards to the ruling. Was there any directive at all that you gave to Larry Wayne or any other deputy directors in regards to we've got to make sure we have to keep our population as low as possible? [LR424]

ROBERT HOUSTON: No. [LR424]

SENATOR MELLO: Any possibility that Larry Wayne or any deputy directors gave any

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directive to their "supervisees," we've got to follow the director's wishes overall, which is to reduce the prison population any way we can? [LR424]

ROBERT HOUSTON: Yeah. I have no knowledge of that, that any directive like that was given. [LR424]

SENATOR MELLO: Was there a general, I mean, within the chain of command, and Senator Lathrop asked this question earlier. In your relationship you had a weekly meeting with George Green, the legal counsel or chief legal counsel, deputy director, whatever title position it would be, was there any communication between Kyle Poppert, Larry Wayne, and George Green in regards to the Supreme Court's decision as part of the internal processes of the department? [LR424]

ROBERT HOUSTON: Not that I'm aware of. [LR424]

SENATOR MELLO: And maybe that's a question that this committee has to consider of whether or not that we look to bring in a Larry Wayne, a Kyle Poppert, or a Jeannene Douglass. How would Jeannene Douglass, which she is in theory four levels below you, how would she come up with this? How would she come up with this e-mail that seems so, I guess, so blatantly direct of saying we've got to follow Director Houston's desires to not increase the prison population so we're going to do what we want to do? [LR424]

ROBERT HOUSTON: The first time I saw that was in the newspaper. [LR424]

SENATOR MELLO: And it's quite possible she just came up with it on her own and took that kind of general Department of Corrections culture of reducing the population at all...at every chance we get not to increase the population? She took that, you think? I mean, how does someone...I guess that's the question that I've been wrestling with for the last month, as have other colleagues. How did something like this happen with a state employee that was below the leadership chain, so to speak, of the department?

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And yet nowhere along the lines there's any knowledge that, so far as we've been given, at least the public has been given,... [LR424]

ROBERT HOUSTON: Uh-huh. [LR424]

SENATOR MELLO: ...that the leadership chain of command knew anything about it and/or followed up with it. [LR424]

ROBERT HOUSTON: Uh-huh. [LR424]

SENATOR MELLO: I guess I'm just...and I kind of wanted to see if any other colleagues would raise that issue, which is, how did we...how would something like that happen operationally? And I guess the further point is in that e-mail specifically--it would serve director...the director's desires--does Jeannene Douglass report to the Legislature? [LR424]

ROBERT HOUSTON: No. [LR424]

SENATOR MELLO: Does she have any direct...do I as a senator or any of our colleagues have direct management supervision over her? [LR424]

ROBERT HOUSTON: No. [LR424]

SENATOR MELLO: So if, let's say, an elected official in the state was to say that somehow this is the Legislature's fault, that the Legislature is at blame for what Jeannene Douglass did, would that be kind of difficult to say that's credible in the sense that none of us on this committee or our other 42 colleagues had any direct say over what Jeannene Douglass did? [LR424]

ROBERT HOUSTON: Yeah. [LR424]

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SENATOR MELLO: Do we have control over what you did as director? I should say, did we manage you as the director of Department of Corrections? [LR424]

ROBERT HOUSTON: Well, insofar as you are Chair of the Appropriations Committee and have the final say in our budget. [LR424]

SENATOR MELLO: But did I actually...was I, as the Chair of the Appropriations Committee, or as any of my other 48 colleagues, were we able to go to you as the Department of Corrections director and say, Director Houston, this is the way we want to manage...we want to see the agency managed this way, we want to see these policies implemented, we want to see this chain of command fixed and changed? Did we have that authority in regards to the management and personnel structure within state government? [LR424]

ROBERT HOUSTON: I work for the Governor. [LR424]

SENATOR MELLO: Exactly. And I think that points I think maybe a broader picture or paints a broader picture in regards to some of the unanswered questions. And I know the question Senator Lathrop asked you earlier in regards to who should have informed you, which I will ask you the question again and give you the ability. Who in the Department of Corrections should have been informed of Jeannene Douglass's decision not to follow the Attorney General's Office recommendation? [LR424]

ROBERT HOUSTON: Well, the communication there would be to our legal office. [LR424]

SENATOR MELLO: So would it be safe to say then that the legal...your legal counsel and your three attorneys in the Department of Corrections should have raised this issue to you directly as the director? [LR424]



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ROBERT HOUSTON: Well, would it...that would be determined by what their assessment of it was, and that's what the personnel hearings, that are being conducted as we speak, are about. [LR424]

SENATOR MELLO: Is there any other information you feel comfortable sharing with us and/or the public in regards to...? I mean, Bob, there's a lot of issues that I know that this committee is wrestling with, the LB907 working group is trying to wrestle with in regards to the Justice Reinvestment process. But this particular issue, in the sense that this is within an executive branch agency where the Legislature has no management oversight over an employee that's four levels down from the Department of Corrections director and five levels down from the Governor of Nebraska, how did something like this happen in regards to just is it lack of personnel human resource documentation? Is it lack of internal processes? Is it someone just decided they wanted to just do what they wanted to do and no one really quite called them on it? How will we get to a point like this in regards to an agency where it wasn't ten levels down? It was four levels down. It was a person that, in theory, could talk to Larry Wayne, your deputy director, probably and probably could communicate with that individual very easily. It wasn't that they had to go through multiple levels to get to the leadership of the agency. [LR424]

ROBERT HOUSTON: I haven't seen the investigation. [LR424]

SENATOR MELLO: All right. Thank you, Bob. [LR424]

ROBERT HOUSTON: Okay. You bet. [LR424]

SENATOR CHAMBERS: I have a question for clarification. [LR424]

SENATOR LATHROP: Certainly. [LR424]

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SENATOR CHAMBERS: They keep mentioning three other lawyers. Are there three other lawyers beside George Green who are on a staff out there at the institution?  
[LR424]

ROBERT HOUSTON: There are...in the legal department there are three attorneys.  
[LR424]

SENATOR CHAMBERS: So when you say the legal department, you don't mean the Attorney General's department. You mean a department within the Department of Corrections. [LR424]

ROBERT HOUSTON: Yes. [LR424]

SENATOR CHAMBERS: So there are other lawyers who probably knew. [LR424]

ROBERT HOUSTON: There could be. I... [LR424]

SENATOR CHAMBERS: They're culpable, any lawyer. Are those the three lawyers?  
[LR424]

\_\_\_\_: Yeah, they're (inaudible) Attorney General's. [LR424]

ROBERT HOUSTON: No. [LR424]

SENATOR CHAMBERS: Oh. But any lawyer who knows what the Supreme Court has stated. You're not a lawyer, Mr. Houston, but I think you will accept the accuracy of what I am saying. When the Supreme...the Legislature writes a statute, if the Supreme Court finds it necessary to interpret, construe, or apply those words, the Supreme Court's determination of what those words mean is what actually constitutes the law. Isn't that correct? [LR424]

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ROBERT HOUSTON: Procedural law, yes. [LR424]

SENATOR CHAMBERS: Right. But that is the law, not just the words that the Legislature wrote but what the Supreme Court said they mean. And every lawyer is charged with that knowledge. And if there are other lawyers out there who knew it--I thought George Green was the only one--I want to find out who they are. And they would be charged with that knowledge. And I think that there are certain basic things that at least one person on this committee needs to find out in terms of who all was in a position to know, who should have known, who did not do what they ought to have done. And I thank Senator Mello for asking more questions because earlier I thought these lawyers were members of the Attorney General's Office that you were talking about. That's all that I have. [LR424]

SENATOR LATHROP: Any other questions? Senator Schumacher. [LR424]

SENATOR SEILER: Senator Chambers, I think they're listed in the Ombudsman's report. [LR424]

SENATOR CHAMBERS: I didn't hear you. [LR424]

SENATOR SEILER: They're in the Ombudsman's report, their names are. [LR424]

SENATOR CHAMBERS: Not all of them. [LR424]

SENATOR LATHROP: Senator Schumacher. [LR424]

SENATOR SCHUMACHER: Just one follow-up. When somebody is released on parole and they go out and they're bad and they're brought back in, is there a sentence recalculation that's done at that point? [LR424]

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ROBERT HOUSTON: When an inmate is on parole, he or she is serving their sentence. If they escaped or in this case absconded parole, the moment they abscond parole until they're captured by law enforcement and reincarcerated is what is called dead time. And that time that they're on absconded status does not credit towards them serving their sentence. [LR424]

SENATOR SCHUMACHER: Now if I were an inmate and I knew that I had lucked out because when I was sentenced my lawyer said I was going to do...my lawyer knew what he was talking about and read the Supreme Court decision and said I was going to be in there for X amount of time, and here it is three-quarters of X and they're turning me loose and I'm keeping my mouth shut. Would that be a...I mean, would some inmates have known that? [LR424]

ROBERT HOUSTON: I don't know. You mean that they're not serving their full sentence? [LR424]

SENATOR SCHUMACHER: Right. That somebody in-house was screwing up and turning them loose early. [LR424]

ROBERT HOUSTON: I don't know how they would. I don't know. [LR424]

SENATOR SCHUMACHER: They don't spend any time reading through the lawbooks and the Supreme Court decisions? And if they were aided and abetted in that escape by Corrections Department people, would that not be a felony? [LR424]

ROBERT HOUSTON: Well, yeah. I mean if somebody aids and abets somebody to commit a felony. [LR424]

SENATOR SCHUMACHER: Well, they're facilitating the knowing unlawful removal from

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custody. And would not they be also prosecutable by a Johnson County Attorney, not just the Attorney General and the Lancaster County Attorney? [LR424]

ROBERT HOUSTON: Yeah, I...that's... [LR424]

SENATOR SCHUMACHER: That's all. [LR424]

ROBERT HOUSTON: Okay. [LR424]

SENATOR LATHROP: You were a county attorney, weren't you? [LR424]

SENATOR SCHUMACHER: Um-hum. [LR424]

SENATOR LATHROP: In Platte County? [LR424]

SENATOR SCHUMACHER: Um-hum. [LR424]

SENATOR LATHROP: Okay. That just seems a little harsh. (Laughter) Somebody miscalculates something and you're going to charge them with...the guy with escape and everybody that... [LR424]

SENATOR SCHUMACHER: Well, you know, it's what they call plea bargaining power. (Laughter) [LR424]

SENATOR LATHROP: ...miscalculated with felonies. I don't see any other questions. Bob, I want to thank you for coming in today, for answering our questions, for your patience, and I believe being forthright with the committee. I think we've taken a big step forward in terms of trying to understand the big picture. And if everybody will stick around for a little bit on this end of the table, I just want to visit a little bit about where we want to go from here. But thank you all for your patience and your attendance. [LR424]

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