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LR424 Department of Correctional Services Special Investigative Committee
October 29, 2014

[LR424]

The Department of Correctional Services Special Investigative Committee of the Legislature met at 9:00 a.m. on Wednesday, October 29, 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: Welcome to everyone. It's 9:00 and we are going to begin our hearing for the day. This is the LR424 Committee. We're gathered here today for the purpose of taking testimony from the Governor. And before we begin the testimony from the Governor or have him take the oath, we'll have each of the members introduce themselves.

SENATOR BOLZ: Good morning. Senator Kate Bolz. I represent south-central Lincoln and District 29.

SENATOR SCHUMACHER: Senator Paul Schumacher. I represent District 22. That's Platte and parts of Colfax and Stanton County.

SENATOR CHAMBERS: Ernie Chambers, District 11 in Omaha.

MOLLY BURTON: Molly Burton, legal counsel.

SENATOR LATHROP: And I'm Steve Lathrop, State Senator from District 12.

SENATOR SEILER: Les Seiler from District 33 and that's all of Adams County and all of Hall except for Grand Island.

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SENATOR MELLO: Heath Mello, south Omaha, District 5.

SENATOR KRIST: And Bob Krist, District 10, northwest Omaha and Bennington.

DAN JENKINS: I'm Dan Jenkins. I'm the committee clerk.

SENATOR LATHROP: Very good. And with that, Governor, if you'll raise your right hand, we'll administer an oath and then let you have a seat. Do you solemnly swear that the testimony you're about to give this Special Investigative Committee will be the truth, the whole truth, and nothing but the truth? [LR424]

GOVERNOR DAVE HEINEMAN: I do. [LR424]

SENATOR LATHROP: Very good. If you'll have a seat, we'll begin. And the way this has been done, as you might know, is that I generally start out by asking some questions, and then other members of the committee will follow up with other questions that they may have. And I thought I would begin today with a little bit of background, Governor, to have you start by...you began your service as a Lieutenant Governor in the Office of Governor. Is that true? [LR424]

GOVERNOR DAVE HEINEMAN: That's correct. I believe that was about 2001. [LR424]

SENATOR LATHROP: That was during the Johanns administration? [LR424]

GOVERNOR DAVE HEINEMAN: Right. I was serving as State Treasurer; got elected in '94, again in '98. And as I recall, Dave Maurstad accepted another position and he asked me to be the Lieutenant Governor. [LR424]

SENATOR LATHROP: And subsequently, Governor Johanns left to become Ag Secretary. [LR424]

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GOVERNOR DAVE HEINEMAN: That's correct. [LR424]

SENATOR LATHROP: And what year was that? [LR424]

GOVERNOR DAVE HEINEMAN: Well, he got nominated, as you may recall, in December of 2004 and then he was confirmed on January 20, 2005. And I assumed the office January 21. [LR424]

SENATOR LATHROP: January 21, and that was of what year, sir? [LR424]

GOVERNOR DAVE HEINEMAN: 2005. [LR424]

SENATOR LATHROP: 2005. You were subsequently elected and then reelected, and now you are, like me, term limited. [LR424]

GOVERNOR DAVE HEINEMAN: That's correct. [LR424]

SENATOR LATHROP: Two months left. [LR424]

GOVERNOR DAVE HEINEMAN: Little more than that, but that's about right. [LR424]

SENATOR LATHROP: Right in there. Okay. You told us that you were...became Governor on January 21, 2005, and on that date you would have assumed responsibility for the agencies of state government. [LR424]

GOVERNOR DAVE HEINEMAN: Absolutely. [LR424]

SENATOR LATHROP: Okay. And that responsibility would include the duty to run and administer those agencies of government, including the Department of Corrections.

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GOVERNOR DAVE HEINEMAN: Including all the departments. It's a big organization. About 16,000 people total in state government work under the responsibility of the Governor. [LR424]

SENATOR LATHROP: Okay. You also are allowed to appoint your own cabinet. [LR424]

GOVERNOR DAVE HEINEMAN: That is correct, although there's sometimes some restrictions on that. [LR424]

SENATOR LATHROP: Okay. They have to be approved by the Legislature. [LR424]

GOVERNOR DAVE HEINEMAN: Not only that. You may recall in the case of the Department of Environmental Quality, for example, it has to go through that council. They recommend three or four people to the Governor and then he can either accept or reject those. Now my situation was a little bit different in the sense that I was taking over and that process had already been completed. [LR424]

SENATOR LATHROP: Did you, for lack of a better word, inherit Director Houston or did you appoint him? [LR424]

GOVERNOR DAVE HEINEMAN: No, I believe I appointed Director Houston. [LR424]

SENATOR LATHROP: And in what year would that have been? [LR424]

GOVERNOR DAVE HEINEMAN: In 2005. I'm going to say in the spring, roughly March, April time frame, as I recall. [LR424]

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SENATOR LATHROP: Was it Harold Clarke before him? [LR424]

GOVERNOR DAVE HEINEMAN: I think so. [LR424]

SENATOR LATHROP: Okay. I'm not sure either. In any case, did you appoint Director Houston because you wanted to have your own director or the person you wanted, or was there somebody that resigned and a vacancy opened up? [LR424]

GOVERNOR DAVE HEINEMAN: You know, I'm not so sure there wasn't already a vacancy. I don't recall. But anyway, clearly at some point there was a vacancy. I interviewed a number of people, sent Mr. Houston's name down to the Legislature for confirmation. [LR424]

SENATOR LATHROP: Okay. Can you tell us, in your administration, how...do you have cabinet meetings? Do you meet with these folks that you've appointed as directors? [LR424]

GOVERNOR DAVE HEINEMAN: You know, I try to do a number of things. You know, obviously, when you're the Governor of the state of Nebraska, you've got to operate at a very high level. You can't micromanage every agency. I try to give them broad direction and guidance. We have a directors meeting once a month. We may have other meetings individually with directors. I call them whenever I need to. It just depends on the issues on any given day. But again, I try to give them that broad direction and guidance where I'm trying to take the state. [LR424]

SENATOR LATHROP: Okay. And when you say you have monthly directors meetings, is that an individual meeting with each of the directors... [LR424]

GOVERNOR DAVE HEINEMAN: No, no. [LR424]

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SENATOR LATHROP: ...so that the head of HHS, for example, will come in? Or do you have this big meeting in a big room where you're all sitting around? [LR424]

GOVERNOR DAVE HEINEMAN: Actually, we have that big meeting in that big room in the Governor's residence in the basement, because we really don't have any room over here in the Capitol that will accommodate that many. And so once a month, starting about 7:30 in the morning, and we go through a variety of issues. And it's also a time where typically I may pull a director aside and say, hey, what's going on, on this issue; would you get back to me on something in particular. [LR424]

SENATOR LATHROP: So are these meetings, the big meetings in the big room in the basement or over in the Governor's Mansion, do they happen once a month, Governor? [LR424]

GOVERNOR DAVE HEINEMAN: Yes, they do. [LR424]

SENATOR LATHROP: Okay. [LR424]

GOVERNOR DAVE HEINEMAN: Now there could be one occasionally, if it got close to Christmas or something, we might cancel but very rarely. [LR424]

SENATOR LATHROP: Okay. And are they allowed...so at this meeting you would have the director of Corrections, for example, the head of HHS, the Commissioner of Labor. Those people would be gathered around the table to participate. [LR424]

GOVERNOR DAVE HEINEMAN: All of the agencies that report directly to the Governor. [LR424]

SENATOR LATHROP: Okay. And can you give us a sense of those meetings? I mean are they free to say, in one of these meetings, you know, I got a little problem over at

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my department or in my agency? [LR424]

GOVERNOR DAVE HEINEMAN: Absolutely. And typically we would have an agenda of certain things we want to cover. I'll just give you an example. We had one recently and at this particular meeting I asked Dr. Acierno to brief the entire cabinet on what was going on regarding the Ebola crisis. And then typically, you know, has anybody got any questions for him? And obviously, there were a number on that one. So that's how we would operate. Again, I try to use the director meetings to, if something was going on in an area that I thought the entire cabinet ought to know about, whether it's water policy, for example, or ag policy or economic development, we would ask that director to make a presentation at the directors meeting. [LR424]

SENATOR LATHROP: Okay. If a director, commissioner, somebody, the head of an agency that reports to you has an issue, can they bring it up there or is that something they typically do on a one-on-one basis? [LR424]

GOVERNOR DAVE HEINEMAN: I think it would probably depend upon the issue. They're certainly welcome to call and we would arrange a meeting. Many times, given the experience that we have in our operation with chief of staff, Budget, Policy Research Office, if it's an operational issue, they'll probably go there first. But they're...they feel free to call me at any time, feel free to bring up an issue at the directors meeting. My sense is normally, though, if it pertained just to them, they would probably want a separate meeting or a separate contact. [LR424]

SENATOR LATHROP: Okay. Obviously, if somebody is over at Health and Human Services with a concern about a problem that's unique to Health and Human Services, there's no point taking up the time of everyone in the room to discuss that. [LR424]

GOVERNOR DAVE HEINEMAN: Generally speaking, except, again, when we're involved in certain issues, Ebola as an example. I thought everybody in the cabinet

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ought to be aware of conversations we're having. Periodically, I've had the Department of Roads director, for example, update on highway construction going across the state because everybody gets asked about that. [LR424]

SENATOR LATHROP: Okay. So in terms of your administration, for those of us or for those people who may be watching that aren't familiar with how the Governor's Office works, you have a chief of staff? [LR424]

GOVERNOR DAVE HEINEMAN: Yes, I do, Larry Bare. [LR424]

SENATOR LATHROP: And that has been...during the entire time it's been Larry Bare. [LR424]

GOVERNOR DAVE HEINEMAN: That's right. [LR424]

SENATOR LATHROP: Okay. And in addition to that, you have other people that work for you. Is that true? [LR424]

GOVERNOR DAVE HEINEMAN: Yeah. I mean, you know, for example, Gerry Oligmueller, the Budget director, has been around a long period of time, I think over 30 years. Lauren Kintner, the head of the Policy Research Office, has been around for a significant amount of time. Those three together know a lot about state government and government in general. [LR424]

SENATOR LATHROP: Okay. And you mentioned Ms. Kintner. She's down in Policy Research and that's an entire office of people to assist you with policy. [LR424]

GOVERNOR DAVE HEINEMAN: Well, you say an entire office, I think six or seven people total. [LR424]

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SENATOR LATHROP: Okay. One of whom is devoted to corrections issues. Would that be true? [LR424]

GOVERNOR DAVE HEINEMAN: That's right. [LR424]

SENATOR LATHROP: Don't you have a fellow down there that's...whose job it is to stay on... [LR424]

GOVERNOR DAVE HEINEMAN: The director down there assigns issues to various policy analysts. [LR424]

SENATOR LATHROP: Okay. Are any of them lawyers? Do you have lawyers on your staff anywhere, Governor? [LR424]

GOVERNOR DAVE HEINEMAN: Yes, we do. [LR424]

SENATOR LATHROP: All right. Tell me about the lawyers that you have working for you in the Governor's Office. [LR424]

GOVERNOR DAVE HEINEMAN: Well, Lauren Kintner is a lawyer. She has several policy analysts who are lawyers. [LR424]

SENATOR LATHROP: Okay. And would the person that is involved in the Policy Research Office that deals with Corrections issues be a lawyer or no? [LR424]

GOVERNOR DAVE HEINEMAN: Well, depends on the circumstances. He was. He's no longer with Policy Research. As you can imagine as we wind down, a number of people are looking for their next job opportunity. [LR424]

SENATOR LATHROP: Sure. Who was that person? [LR424]

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GOVERNOR DAVE HEINEMAN: Robert Bell. He left at the end of May. [LR424]

SENATOR LATHROP: Okay. So down in the Policy Research Office is Robert Bell, who is a lawyer...or he is a lawyer and he was with Policy Research and he's moved on. [LR424]

GOVERNOR DAVE HEINEMAN: You know, I'm pretty sure he's a lawyer. I could double-check that. [LR424]

SENATOR LATHROP: Okay. [LR424]

GOVERNOR DAVE HEINEMAN: I generally don't ask them that question. The director obviously hires those individuals. [LR424]

SENATOR LATHROP: Okay. We have a number of issues to cover today and I do want to...I want to talk about Jenkins for a moment. [LR424]

GOVERNOR DAVE HEINEMAN: Okay. [LR424]

SENATOR LATHROP: And I almost...I feel obliged to put it into context, all right, because a lot of what we're going to do with respect to our questions today are going to be in some way framed by the testimony we've taken before you got here and the testimony we've taken on Jenkins. First of all, did you know anything about Nikko Jenkins before he was discharged? [LR424]

GOVERNOR DAVE HEINEMAN: No, I don't. I didn't know about any of the 5,000-plus prisoners down at the Department of Corrections. I mean there's no way a Governor is going to know that. [LR424]

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SENATOR LATHROP: Okay. So you had no idea what he was saying and doing or the circumstances of his confinement before his release. [LR424]

GOVERNOR DAVE HEINEMAN: No, I had no personal knowledge of that and I don't ever recall really hearing his name probably until after he got out and obviously what he did. [LR424]

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

GOVERNOR DAVE HEINEMAN: Like I said, again, after he was released and the fact that he killed four Nebraskans. [LR424]

SENATOR LATHROP: Okay. Had you ever had any conversation with anybody over at the Department of Corrections regarding Nikko Jenkins before he was...before he was involved in these murders up in Omaha? [LR424]

GOVERNOR DAVE HEINEMAN: Not that I ever recall. I just don't think that ever came up. [LR424]

SENATOR LATHROP: Nobody, nobody from the Department of Corrections nor your chief of staff ever brought him up before his homicides? [LR424]

GOVERNOR DAVE HEINEMAN: Not that I recall. I mean I suppose there could have been something, but I just don't recall it. [LR424]

SENATOR LATHROP: Okay. So he shows up on your radar after his rampage up in Omaha. And we've taken testimony...thank you...we've taken testimony concerning the circumstances of Mr. Jenkins' confinement and release. [LR424]

GOVERNOR DAVE HEINEMAN: Uh-huh. [LR424]

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SENATOR LATHROP: And I think it's a fair summary to say that there was concern expressed by Senator Chambers to the Ombudsman's Office, and I think the Department of Corrections generally began to be concerned that he had spent so much time in solitary confinement and that he was about to be released from the Department of Corrections. And there was a psychiatric report done in February of 2013, right at the same time as...or near in time to when the Ombudsman's Office began to express concern and the Johnson County Attorney began to inquire about whether the circumstances were suitable for a civil commitment. And we...the testimony that we've taken to this point in time, and you're probably aware of this, is that we had a psychiatric report, where a psychiatric report had been done by Dr. Baker, who had been involved in his care and treatment and assessment through the course of time that he was at Tecumseh, and that Dr. Baker had concluded in February that Jenkins was mentally ill, dangerous, and in all likelihood should be committed civilly. Obviously, I don't expect that you knew about that report. [LR424]

GOVERNOR DAVE HEINEMAN: No. No, I did not. [LR424]

SENATOR LATHROP: Okay. So what we have is the Johnson County Attorney and the Ombudsman are trying to meet with a representative from the Department of Corrections and they're now both interfacing with a guy named Mark Weilage. And you're familiar with that. [LR424]

GOVERNOR DAVE HEINEMAN: I'm not really familiar with Mr. Weilage, no. [LR424]

SENATOR LATHROP: Well, Dr. Weilage is a psychologist that works for the...he's the number two guy in mental health over at the Department of Corrections, is what we understood to be the case. And Weilage knew about Baker's report and he had been contacted by the Johnson County Attorney who was inquiring about whether there was evidence that would support a civil commitment, and he did not share Baker's

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psychiatric report. And at the same time, we have the Ombudsman meeting to decide what's Jenkins' transition plan going to look like. There was a great deal of concern, even at the department, about Jenkins going from a long stretch in solitary confinement to the community. And the Ombudsman, like the Johnson County Attorney, is now directed to Mark Weilage who does not share Baker's report with either the Johnson County Attorney or the Ombudsman. And I will just speak for the committee on this one. We were all taken aback by the fact that Weilage did not share Dr. Baker's psychiatric report which would have provided the basis for a civil commitment and it would have given the Ombudsman's Office something to work with, meaningful, in order to develop a transition plan or to assist in the civil commitment of Mr. Jenkins before his release. His testimony, I have to say as one of the members of the committee, was shocking. He admitted to withholding the report. And in the days that followed, I saw a press release that you put out where you said, I don't think he did anything wrong. [LR424]

GOVERNOR DAVE HEINEMAN: May I address that? [LR424]

SENATOR LATHROP: Yes, you may, because that's...that is a question. How is it that the guy that withheld the psychiatric report that would have got Mr. Jenkins committed, your judgment was that he didn't do anything wrong? [LR424]

GOVERNOR DAVE HEINEMAN: That wasn't exactly the context of the question. I was at a news conference and the implication from the reporter, the question they asked was of the nature that, well, if a mental health professional gave an opinion that had disagreed with someone else, they ought to be fired. And what I was trying to say, no, every mental health professional ought to have the opportunity to state their opinion freely, and if it's not one that everybody agrees with, that is not grounds for firing an individual. So I was talking at a very high level because the implication was, as I interpreted the question, was, well, if this mental health professional disagreed with someone, I ought to go fire them. And I didn't think that was fair at all. [LR424]

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SENATOR LATHROP: Okay. Fair enough. And we had that conversation with Dr. Weilage when he was here, which is to say you can have a psychiatrist that may disagree with a psychologist, and this panel is not critical of a disagreement among professionals. Our concern was that Weilage admitted that he withheld the report from both the Ombudsman's Office and the Johnson County Attorney, either of whom would have been instrumental in Jenkins having a civil commitment. That's the context of my question today. He didn't have to agree with Baker to release the report. As a psychologist, he certainly had to appreciate that he was sitting on something that the Johnson County Attorney wanted to see and the Ombudsman wanted to see in developing a transition plan. And so today the question, and I'll give it in context: Is this guy still working for the Department of Corrections? [LR424]

GOVERNOR DAVE HEINEMAN: I believe he is and that case is under review by Director Kenney. I also think it's worth noting, I know there were a number of internal disagreements regarding Mr. Jenkins, but ultimately the department made the judgment that he was not mentally ill. And then obviously a court has said that Nikko Jenkins is legally responsible for those four first-degree murders. [LR424]

SENATOR LATHROP: No question about...we're not going into whether he's competent or whether he was insane... [LR424]

GOVERNOR DAVE HEINEMAN: Uh-huh. [LR424]

SENATOR LATHROP: ...at the time or has a mental illness type defense. My question is about Weilage, who had a report from the psychiatrist that said he was mentally ill. And he can have a disagreement, but he is the number two man at mental health. He is the person the ombudsmen were directed to and he is the person that the Johnson County Attorney was directed to. And sitting in that chair, while under oath, he admitted that he withheld the report. Now I'll give you an opportunity. I just want to make sure I get my entire... [LR424]

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GOVERNOR DAVE HEINEMAN: Right. [LR424]

SENATOR LATHROP: ...point, and then we'll give you all the time you need, Governor. This was what...this is exactly the report. And I have to say, and I, as you may know, know a little bit about reading medical records, and when I looked at the medical records and the report of Dr. Baker, it was great detail. I mean this was not just sort of a stop by and talk through the cell wall kind of an evaluation. She had the observations. She had...and we can go through the...you and I can go through her observations if you like. It was some of the most bizarre behavior that even a layperson would recognize mental illness or at least it would support a difference of opinion sufficient that he should have turned that over even if he had a difference of opinion. And my question, and I appreciate that he's under review, but this has been some time ago and he's still there. Have you been involved or engaged in a determination about whether Dr. Weilage should remain employed at the Department of Corrections? [LR424]

GOVERNOR DAVE HEINEMAN: No, and let me explain why. [LR424]

SENATOR LATHROP: You may. [LR424]

GOVERNOR DAVE HEINEMAN: I think most people are aware, the way the personnel rules are in this state, the Governor can only hire or fire the directors. And then all the people who are in a given agency, they report to the director, and the director makes those determinations. And if I were to interfere in that process, you can imagine what would happen in terms of legal proceedings. So I don't try to interfere in those determinations. [LR424]

SENATOR LATHROP: Fair enough. [LR424]

GOVERNOR DAVE HEINEMAN: And, for example, the same thing with Mr. Green and

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all the rest. That's the director's decision to make. [LR424]

SENATOR LATHROP: Yeah, but in the case of Mr. Green, you were having press conferences and talking about it from your office. [LR424]

GOVERNOR DAVE HEINEMAN: Kind of after the fact. [LR424]

SENATOR LATHROP: You're saying you didn't do it before he was disciplined or before he left? [LR424]

GOVERNOR DAVE HEINEMAN: Absolutely not. [LR424]

SENATOR LATHROP: Okay. [LR424]

GOVERNOR DAVE HEINEMAN: I tried to be very careful with Director Kenney. In every news conference when I was asked, that was a decision for the director. [LR424]

SENATOR LATHROP: Okay. [LR424]

GOVERNOR DAVE HEINEMAN: I did not want to influence his decision because that's his responsibility. And again, I think I've been around here long enough to know that would have triggered some sort of litigation potentially. [LR424]

SENATOR LATHROP: Have you had any conversations with Director Kenney about Dr. Weilage and whether or not Kenney should institute some type of disciplinary proceeding? [LR424]

GOVERNOR DAVE HEINEMAN: The only conversation I've had with Director Kenney about that is he's told me that it's under review. [LR424]

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SENATOR LATHROP: When did you have that conversation? When did he start this review process? [LR424]

GOVERNOR DAVE HEINEMAN: You know, I don't know specifically when he started it, but I think he's going to take some time, given everything that's going on. [LR424]

SENATOR LATHROP: Okay. I appreciate that you don't have a specific recollection or a recollection of a specific time, but has it been since he...since Dr. Weilage was here and testified? [LR424]

GOVERNOR DAVE HEINEMAN: Yes. [LR424]

SENATOR LATHROP: Okay, so since Weilage has been here. Now did Kenney brief you on whatever disciplinary proceedings or process are being undertaken for Dr. Weilage? [LR424]

GOVERNOR DAVE HEINEMAN: No. [LR424]

SENATOR LATHROP: So you have, as you sit here today, you don't know whether he's begun a process, in the middle of a process, or near the end of a process of reviewing Dr. Weilage's performance and withholding of medical records from the Johnson County Attorney and the Ombudsman. [LR424]

GOVERNOR DAVE HEINEMAN: I know that the process has begun, but I don't know specifically where he's at in that process. And again, I try to be very, very careful there... [LR424]

SENATOR LATHROP: I appreciate that. What I want to know... [LR424]

GOVERNOR DAVE HEINEMAN: ...because you can imagine... [LR424]

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SENATOR LATHROP: Sure. [LR424]

GOVERNOR DAVE HEINEMAN: ...they'll say, well, the Governor told you to do that.
[LR424]

SENATOR LATHROP: Okay. And I appreciate that, but I am interested in when this process started. When did he tell you that he was...when did he tell you that he was undertaking some kind of review of Dr. Weilage's decision to withhold a report? [LR424]

GOVERNOR DAVE HEINEMAN: Sometime in the last couple weeks. [LR424]

SENATOR LATHROP: Okay. I want to visit with you next about the 2006 master study that was done or master plan study. And if it's helpful during the course of the day, there's another notebook. Looks like you brought your own, which is fine. There's another notebook in front of you that corresponds with notebooks we all have. [LR424]

GOVERNOR DAVE HEINEMAN: Okay. [LR424]

SENATOR LATHROP: There are documents in there and they are numbered in the lower right-hand corner, so if I ask you to refer to something, that's what we're talking about, Governor. Or you're welcome to ask me where it's at in the book and you're... [LR424]

GOVERNOR DAVE HEINEMAN: Okay. [LR424]

SENATOR LATHROP: ...we'll give you the time you need to review it. So in 2006 a master facilities plan was done by a vendor. I think it's Goble Carter, Carter Goble. [LR424]

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GOVERNOR DAVE HEINEMAN: You're probably right. I vaguely remember that.
[LR424]

SENATOR LATHROP: You vaguely remember the study? [LR424]

GOVERNOR DAVE HEINEMAN: The consultant. And I recall the study but not in any
great detail. [LR424]

SENATOR LATHROP: Okay. So we call it the 2006 study. Was it initiated before 2006
or do we call it the 2006 study because that's when the whole thing started? [LR424]

GOVERNOR DAVE HEINEMAN: I think we call it the 2006 study because that's when it
was released. [LR424]

SENATOR LATHROP: Okay. So somewhere...does that...it seems pretty exhaustive, so
I assume it took place, what, in 2005? [LR424]

GOVERNOR DAVE HEINEMAN: I would assume it started in 2005; could have started
in 2004. But again, typically when we get something this big it's probably been a work in
progress for a year or two. [LR424]

SENATOR LATHROP: Okay. And so in 2006 did you receive or meet with the folks that
conducted that study? [LR424]

GOVERNOR DAVE HEINEMAN: I don't recall that I met with the consultant. I remember
the study and we had conversations about it. [LR424]

SENATOR LATHROP: Was that done...was that study done at your request? [LR424]

GOVERNOR DAVE HEINEMAN: No, I think it was part of an ongoing process that

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periodically the Department of Corrections is required to do a facility master plan update, I'm going to say, every five or six years. [LR424]

SENATOR LATHROP: Okay. I think the last one had been done maybe in '97. [LR424]

GOVERNOR DAVE HEINEMAN: Okay, so took a little... [LR424]

SENATOR LATHROP: Okay, so...but it wasn't done at your request. [LR424]

GOVERNOR DAVE HEINEMAN: No, I believe it was already underway when I took over as Governor, but I'd have to double-check that. [LR424]

SENATOR LATHROP: Okay. In any case, did you have meetings concerning the report? [LR424]

GOVERNOR DAVE HEINEMAN: I remember having conversations with Director Houston about it. And of course later, I can't remember exactly when that report was released, but in June of 2006 was the first time I believe the state hit the 140 percent mark. And obviously, Director Houston notified me of that because the Governor may declare an emergency. [LR424]

SENATOR LATHROP: Right. [LR424]

GOVERNOR DAVE HEINEMAN: And I remember talking to him on more than one occasion, can you still manage the prison? And he told Senator Ashford and I on many occasions, yes, he could. [LR424]

SENATOR LATHROP: Well, how many meetings did you have with Director Houston concerning the proposal in 2006 by the Carter Goble Lee group? [LR424]

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GOVERNOR DAVE HEINEMAN: I don't recall a specific meeting as much as we had several conversations about it relative to what it meant: Do you think we need to build a new prison at this time or can you manage the prison population? And he indicated he could. [LR424]

SENATOR LATHROP: Okay. I appreciate that in the end Director Houston told you that he could manage the prison population. I want to talk a little bit about the report because the report...and I have the executive summary in there. You're welcome to look at it. It's like pages 1 through 20 if you need to refer to that, Governor. In the report, it projects the prison population going forward, does it not? [LR424]

GOVERNOR DAVE HEINEMAN: Typically, that's what a report does. [LR424]

SENATOR LATHROP: Well, do you remember this report, that it projected the prison population going forward? [LR424]

GOVERNOR DAVE HEINEMAN: Not to the specific number, but I'm sure that the report indicated there was going to be an increasing population. But I also remember that was a time frame when we were beginning a number of community corrections issues, working with Senator Brashear and then the last five or six years been working fairly closely with Senator Ashford. Council of State Governments just indicated in our last meeting, for example, I think if you go back to 2006 we were virtually spending no money on community corrections. Today we're spending over \$22 million on an annual basis. [LR424]

SENATOR LATHROP: Okay. These guys projected the population. You were sitting at 143 percent when the report was done; and it predicted that by this time, where we're at today, you'd be at 154 percent. And in fact we're above that today, are we not? [LR424]

GOVERNOR DAVE HEINEMAN: Well, if you look back, just to refresh everybody's

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memory because I went back and checked the percentages, you know, again, I got first notified in June of 2006 that we were above 140 percent, then again in May of 2009 we were at 140 percent. In June of 2010 we were at 140 percent. In January of 2011 we were at 140 percent. We really didn't spike over 150 percent until last July. [LR424]

SENATOR LATHROP: And now you're giving me information about the percentage of overpopulation... [LR424]

GOVERNOR DAVE HEINEMAN: Right. [LR424]

SENATOR LATHROP: ...and I appreciate that. My question was the study, and the study predicted that we would be at this point at 154 percent, and in fact we are well above that. Isn't that true? [LR424]

GOVERNOR DAVE HEINEMAN: I think we're sitting at about 157 percent. [LR424]

SENATOR LATHROP: Okay, which is a little bit higher than even the Goble...Carter Goble Lee study suggested that we would be at. And they made certain recommendations, did they not? [LR424]

GOVERNOR DAVE HEINEMAN: They always do. [LR424]

SENATOR LATHROP: Okay. And their recommendations, they actually went through two scenarios. One was the natural growth projections, and that study also projected the prison population based upon some legislation that had been passed dealing with certain drug offenses, which they expected would cause even more inmates and even more overcrowding. And that was in the study. You would agree with that. [LR424]

GOVERNOR DAVE HEINEMAN: I'd have to go back and double-check it, but I'll take your word for it. [LR424]

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SENATOR LATHROP: Okay. And in that study, the consultants...and by the way, they're independent vendors. Bob Houston told us that they do this all over the world. You don't have any argument with that either. [LR424]

GOVERNOR DAVE HEINEMAN: I'm sure they do. [LR424]

SENATOR LATHROP: Okay. [LR424]

GOVERNOR DAVE HEINEMAN: I am not familiar with this particular consultant group. [LR424]

SENATOR LATHROP: Okay. And they made certain projections and suggested as a recommendation that it would be necessary that you build 1,386 beds or room for 1,386 more inmates as a recommendation at a minimum, did it not? [LR424]

GOVERNOR DAVE HEINEMAN: Senator, what I'd like to share with everybody, I remember conversations at this time, there weren't a whole lot at the time, about...with members of the Legislature whether we needed a new prison or not. [LR424]

SENATOR LATHROP: Well,... [LR424]

GOVERNOR DAVE HEINEMAN: The Legislature never introduced a bill to do it, never put any money in the Appropriations Committee. [LR424]

SENATOR LATHROP: We'll talk about that in a second, Governor. Here's my question. This group, the independent consultants that you met with and who provided you with a report in 2006, suggested to you or recommended to you that at a minimum you build 1,386 beds, did they not? [LR424]

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GOVERNOR DAVE HEINEMAN: If that's what the report said. And again, we... [LR424]

SENATOR LATHROP: That's what the report says. [LR424]

GOVERNOR DAVE HEINEMAN: ...we had conversations about that particular issue. The director of the Department of Correctional Services said he could manage the population. [LR424]

SENATOR LATHROP: I'll get... [LR424]

GOVERNOR DAVE HEINEMAN: Everybody I talked to in the Legislature, the last thing we wanted to do was build a new prison, because that was going to cost, you know, \$150 million or \$200 million that would be taken away from other priorities, specifically, in my opinion, in all likelihood from the education of our children. [LR424]

SENATOR LATHROP: Well, that's fine. My question is about the report. It did make a recommendation, then suggested to you that it was necessary to provide, as they said, and I'm going to read from the... [LR424]

GOVERNOR DAVE HEINEMAN: Okay. [LR424]

SENATOR LATHROP: ...from their final conclusion for you, Governor: Clearly the state cannot expect to accommodate the level of growth expected even under the natural growth model without a significant expansion of bed spaces. For the past ten years, the ADP has increased on average 135 inmates per year. Simple math dictates that if you...that if the 862 fiscal year '07-09 bed space recommendation in this 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

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even if this trend was reversed overnight, the current facility is well beyond the ability to offer reasonable conditions of confinement, much less treatment-focused incarceration, and it goes on. The state has a history of implementing the master plans that NDCS develops. Implementation of the 2006 master plan hopefully will not be an exception. Was any of the beds recommended in this study ever built? [LR424]

GOVERNOR DAVE HEINEMAN: Not that I'm aware of, and again let me just share the conversation. We all talked about this. The Legislature sets policy in this state. We had conversation about how we could move to more community corrections alternatives. But my administration came to the conclusion, and I get a lot of recommendations from a lot of consultants, that we didn't need to build a new prison at that time. [LR424]

SENATOR LATHROP: Okay. Let me ask a question. [LR424]

GOVERNOR DAVE HEINEMAN: And no one in the Legislature ever introduced a bill or put money in an appropriations bill to do that. [LR424]

SENATOR LATHROP: I got that. Okay. You've mentioned that three times so we understand that, Governor. [LR424]

GOVERNOR DAVE HEINEMAN: Well, I just want to be clear because we got to work together. [LR424]

SENATOR LATHROP: My question is under the constitution, do we begin the budget process with a recommended budget from the Governor? [LR424]

GOVERNOR DAVE HEINEMAN: The process begins with a recommendation from the Governor. [LR424]

SENATOR LATHROP: Okay. [LR424]

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GOVERNOR DAVE HEINEMAN: But as the Legislature has reminded me frequently, they're in charge of policy, they're in charge of appropriations. And you send me a bill which you put together and then I can veto or sign it into law. [LR424]

SENATOR LATHROP: All right. Did you ever introduce a preliminary budget from your office that included the expansion of bed space in Corrections? [LR424]

GOVERNOR DAVE HEINEMAN: No, because it was our judgment it was not needed. [LR424]

SENATOR LATHROP: Okay. [LR424]

GOVERNOR DAVE HEINEMAN: The director... [LR424]

SENATOR LATHROP: Then your... [LR424]

GOVERNOR DAVE HEINEMAN: The director indicated to me he could manage the facility. We were in conversations with, for example, Senator Ashford, Chairman of Judiciary Committee. And again, we're all trying to pursue alternatives to building a new prison. [LR424]

SENATOR LATHROP: Fair enough. This study made recommendations and your budget, preliminary budget or the Governor's proposed budget, never included any of the recommendations for additional... [LR424]

GOVERNOR DAVE HEINEMAN: And neither did any... [LR424]

SENATOR LATHROP: Sir, let me finish my question, all right, because we want to have a good record... [LR424]

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GOVERNOR DAVE HEINEMAN: Okay. [LR424]

SENATOR LATHROP: ...and that's going to require that you let me finish my question. You did not at any time, as Governor, propose a budget to the Legislature that include building any of the bed space that this study recommended since the study came out right to today. Isn't that true? [LR424]

GOVERNOR DAVE HEINEMAN: My administration never recommended building a new prison. The Appropriations Committee and the Legislature never sent me an appropriations bill that included that funding. And my experience... [LR424]

SENATOR LATHROP: Governor,... [LR424]

GOVERNOR DAVE HEINEMAN: ...in working with the Legislature, whenever you wanted to disagree with me, you would put additional funding in or less funding. So this was... [LR424]

SENATOR LATHROP: When these vendors completed their report, who did they give it to? [LR424]

GOVERNOR DAVE HEINEMAN: I believe by law they're required to give it to the Legislative Fiscal Office, to the Building Division, and to the Budget... [LR424]

SENATOR LATHROP: What law would that be, Governor? [LR424]

GOVERNOR DAVE HEINEMAN: I don't know the specific number. [LR424]

SENATOR LATHROP: Okay, because I haven't heard one person in the legislative branch of government tell me that they ever saw this report... [LR424]

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GOVERNOR DAVE HEINEMAN: Well, I, as I recall, I remember... [LR424]

SENATOR LATHROP: ...until we subpoenaed it from your office. [LR424]

GOVERNOR DAVE HEINEMAN: Well, that's the 2014 report that just got done. [LR424]

SENATOR LATHROP: Two thousand six report is what I'm talking about. [LR424]

GOVERNOR DAVE HEINEMAN: The 2006 report, I think if you go back, Speaker Brashear, or maybe it was just Senator then, was dealing with community corrections and he talked about it a lot. [LR424]

SENATOR LATHROP: This study? [LR424]

GOVERNOR DAVE HEINEMAN: The 2006, yeah. [LR424]

SENATOR LATHROP: You think Speaker Brashear got a copy of this study. [LR424]

GOVERNOR DAVE HEINEMAN: I...all I... [LR424]

SENATOR LATHROP: Do you know that, because I don't want to sit here today and speculate. [LR424]

GOVERNOR DAVE HEINEMAN: You know, when we get a chance to take a break, I'll talk to my Budget Office, because... [LR424]

SENATOR LATHROP: Okay. [LR424]

GOVERNOR DAVE HEINEMAN: ...I believe there's a community corrections meeting

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where it identified he was talking about it. [LR424]

SENATOR LATHROP: All right. In any case, the vendors met with you to discuss the recommendations and you never proposed building a single bed recommended by this study. That is the case, true? [LR424]

GOVERNOR DAVE HEINEMAN: Again, I just want to be clear here. We never... [LR424]

SENATOR LATHROP: Oh, no. [LR424]

GOVERNOR DAVE HEINEMAN: ...we never proposed any. The Legislature never sent me any proposal indicating they wanted to build any of that bed space. [LR424]

SENATOR LATHROP: Did you ever have any...your director, anybody from your Budget Office appear before the Appropriations Committee and ask for money to build additional bed space recommended? [LR424]

GOVERNOR DAVE HEINEMAN: You know, I've answered that. No, we did not. [LR424]

SENATOR LATHROP: Okay. [LR424]

GOVERNOR DAVE HEINEMAN: We had conversations and, again, the director indicated that he thought he could manage the prison population. We were working with the Legislature to look at community corrections alternatives. [LR424]

SENATOR LATHROP: Okay. And as I look...and we went through this with Bob Houston, as I look through the years that followed, so this is proposed...you get the...you get the study in 2006, you meet with these folks, true, too, don't you? I mean I have e-mails... [LR424]

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GOVERNOR DAVE HEINEMAN: I just... [LR424]

SENATOR LATHROP: ...going back and forth where you're talking to them. [LR424]

GOVERNOR DAVE HEINEMAN: Okay. I just...well, I assume there may have been a meeting with the consultants where they briefed me, but... [LR424]

SENATOR LATHROP: Okay. So they brief you on the study, they tell you what the recommendations are, and the next budget that you propose would have been in 2007. [LR424]

GOVERNOR DAVE HEINEMAN: Correct. [LR424]

SENATOR LATHROP: Those recommendations aren't in there. And in the subsequent years I see communications, and we can go through them if you want, communications between Robert Bell, your Policy Research guy on Corrections,... [LR424]

GOVERNOR DAVE HEINEMAN: Uh-huh. [LR424]

SENATOR LATHROP: ...and Director Houston, where Bell is requesting updated figures related to the construction of those very beds. [LR424]

GOVERNOR DAVE HEINEMAN: Well,... [LR424]

SENATOR LATHROP: Do you disagree with that? [LR424]

GOVERNOR DAVE HEINEMAN: ...I hope he was trying to gain additional information because we would have those conversations,... [LR424]

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SENATOR LATHROP: Okay. [LR424]

GOVERNOR DAVE HEINEMAN: ...particularly as we were trying to prepare a budget. [LR424]

SENATOR LATHROP: All right. Did you ask Robert Bell to talk to Director Houston and get you updated numbers on building the beds recommended in the 2006 study? [LR424]

GOVERNOR DAVE HEINEMAN: Robert Bell probably did it on his own. I talked to Director Houston on numerous occasions about, can you still manage the prison population? [LR424]

SENATOR LATHROP: I got that part. My question was, did you tell Bell to inquire from Houston what it would cost to build the beds in, say, 2009, when Bell was writing to Houston? [LR424]

GOVERNOR DAVE HEINEMAN: I don't recall whether I did it or he was just acting on his own. He was a very good policy analyst and, you know, he would be certainly trying to find out that information. [LR424]

SENATOR LATHROP: Were you engaged in 2009 in an assessment about whether or not you had sufficient beds to deal with a population that you had and that had been projected? Were you engaged? [LR424]

GOVERNOR DAVE HEINEMAN: You know, Senator Ashford and I had frequent conversations with the director, who indicated to both of us, because I actually called Senator Ashford to make sure, did we miss something? No, no, Director Houston told us repeatedly he could manage the prison population. [LR424]

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SENATOR LATHROP: Oh, I know he did. I've seen the e-mails. And I've seen the e-mails where Director Houston is rallying the troops over at the Department of Corrections to make a presentation to you pitching more bed space and more capital construction. That's what I see in the e-mails that Director Houston was sending. Now he may have sat in your office and told you, okay, I'll manage. But I can tell you there are e-mails, and we can go through them today if you like, where Houston is preparing to pitch capital improvements and puts considerable effort into it. And I know in 2009 there was a great deal of work done to try to update the figures so that they could be presented to you. Do you remember having a meeting with Director Houston in 2009 about whether or not you needed more beds? [LR424]

GOVERNOR DAVE HEINEMAN: Not specifically in 2009 because they were...I probably did but they were ongoing conversations. And again, these are policy judgments we make all the time. [LR424]

SENATOR LATHROP: I get it. [LR424]

GOVERNOR DAVE HEINEMAN: If the Legislature disagreed with that, I am confident you would have introduced a bill to build a new prison, put it in the appropriations bill. That never occurred. [LR424]

SENATOR LATHROP: But in the...but here's the problem I have with that. Okay? You're the guy in charge of the Department of Corrections. [LR424]

GOVERNOR DAVE HEINEMAN: Right. [LR424]

SENATOR LATHROP: Right. And so if the Legislature is to know there is a problem, if the Legislature is to appropriate money, they need to have the guy in charge of the Department of Corrections say, jeez, we need some more beds,... [LR424]

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GOVERNOR DAVE HEINEMAN: If I'm not mistaken... [LR424]

SENATOR LATHROP: ...Appropriations Committee. You did not pitch once. You did not put into your budget, nor did you once send Director Houston or your Budget guy down to the Appropriations Committee to ask them for more money to build beds. Isn't that true? [LR424]

GOVERNOR DAVE HEINEMAN: Let me share a couple things with you. First of all, every ounce of budget information that we get goes to the Appropriations Committee. Secondly, Director Houston was down there to testify all the time. If, I assume, they ask him, just like I did, do you think we need to build a new prison... [LR424]

SENATOR LATHROP: Did you ever direct him to go down to the Appropriations Committee and ask for money to build beds? You're in charge of the department. Your director is down before the Appropriations Committee. Did you ever send him down there, yes or no, to ask for money for more bed space? [LR424]

GOVERNOR DAVE HEINEMAN: Senator Lathrop, my administration never requested money for a new prison because we didn't think we needed to do that. We were trying to avoid that. [LR424]

SENATOR LATHROP: Okay. And we're going to talk about whether that was...whether that turned out to be a... [LR424]

GOVERNOR DAVE HEINEMAN: And that's a policy judgment. [LR424]

SENATOR LATHROP: I get that it's a policy judgment and I get that it was clearly the policy of your office. We're just trying to get you to acknowledge it. In the first place, you never asked for more money to build more beds. You didn't. That was your policy judgment. That's fine. You don't have to...you don't have to...you don't have to...

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[LR424]

GOVERNOR DAVE HEINEMAN: And the Legislature's policy judgment was not to put it in the appropriations bill either. The Appropriations Committee knew everything we knew. [LR424]

SENATOR LATHROP: Well, now you say that. They didn't meet with the Carter Goble Lee group. They didn't sit down with the vendors who made... [LR424]

GOVERNOR DAVE HEINEMAN: I don't know why they didn't. [LR424]

SENATOR LATHROP: ...these projections. You have to let me finish, okay, so that we don't get a record that's garbled. They didn't sit down with the vendors; you did. These vendors that made these recommendations, made the projections sat down with you and members of your office to talk about what you could expect just from the natural growth. And they were right on the money. And here we are today at 157 percent, and it was your policy judgment, Governor--and it's okay if it was, all right--that you were not going to ask for more bed space or any capital construction over at the Department of Corrections. Isn't that true? [LR424]

GOVERNOR DAVE HEINEMAN: You know, again, we made the policy judgment that there were priorities in this state, particularly educating our children, trying to create more jobs. And again, I had conversations with the director. [LR424]

SENATOR LATHROP: I get that... [LR424]

GOVERNOR DAVE HEINEMAN: I don't try to micromanage an agency like that. And Director Houston indicated on more than one occasion he could manage that. [LR424]

SENATOR LATHROP: You seem to be having trouble today with answering questions

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that call for a yes or no. And I'm just going to say this will go a little bit quicker, if I'm asking you a question that calls for a yes or no, if you'd just answer it. This idea that you're going to bring it back to the Legislature and somehow the Appropriations Committee didn't do something, that's not my question. And you... [LR424]

GOVERNOR DAVE HEINEMAN: Well, I think... [LR424]

SENATOR LATHROP: It's important, okay, because we'll be here all day and it's going to go late into the night if every time... [LR424]

GOVERNOR DAVE HEINEMAN: I'm prepared for that. [LR424]

SENATOR LATHROP: ...we ask you a yes or no question we got to have a conversation about how you talked to...or the Appropriations Committee had information, which, by the way, they didn't have. I mean Senator Mello will have an opportunity to visit with you perhaps about what... [LR424]

GOVERNOR DAVE HEINEMAN: Uh-huh. [LR424]

SENATOR LATHROP: ...the folks over in Appropriations knew. The fact of the matter is, you made a policy decision not to build more beds. [LR424]

GOVERNOR DAVE HEINEMAN: Absolutely, we made a policy decision. [LR424]

SENATOR LATHROP: Okay. [LR424]

GOVERNOR DAVE HEINEMAN: And I guess if you want to look at it this way, the Legislature affirmed that because they didn't introduce any legislation to do something different. And my experience in working with the Legislature, any time you disagree with me, you don't have any reluctance to do something different. [LR424]

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SENATOR LATHROP: But you never asked for the money, true? [LR424]

GOVERNOR DAVE HEINEMAN: True, we never... [LR424]

SENATOR LATHROP: Okay. That's it. [LR424]

GOVERNOR DAVE HEINEMAN: ...asked for the money, sir, because that... [LR424]

SENATOR LATHROP: Okay. All right. [LR424]

GOVERNOR DAVE HEINEMAN: ...was the policy judgment we made based on all the advice we got. [LR424]

SENATOR LATHROP: You seem defensive about that. You... [LR424]

GOVERNOR DAVE HEINEMAN: Well, you're trying to put it all on us when there are three branches of government. [LR424]

SENATOR LATHROP: Exactly, and the constitution requires that you propose a budget and you never proposed one budget or sent one person down to Appropriations Committee to ask to build beds. That's the takeaway. [LR424]

GOVERNOR DAVE HEINEMAN: That... [LR424]

SENATOR LATHROP: It's okay if it is. You don't have to...you don't have to be defensive about it. [LR424]

GOVERNOR DAVE HEINEMAN: No, that's the policy decision we made because, again, our priorities were the education of our kids, trying to create jobs, and... [LR424]

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SENATOR LATHROP: Sure. Well, let's talk about the strategy. Once you decided not to build more beds, there were different times between 2006 and 2012 when you discussed building more beds. Isn't that true? You talked to Director Houston: Do we need more beds, Director? [LR424]

GOVERNOR DAVE HEINEMAN: Well, generally, the conversation would be, can you still manage the prison population? [LR424]

SENATOR LATHROP: Okay. And Director Houston was here and if you want to open that book to page 41, Governor, I want to talk to you about a specific date in time, and that would be March 14, 2012. [LR424]

GOVERNOR DAVE HEINEMAN: Page 41 you said? [LR424]

SENATOR LATHROP: Page 41. You see that down in the lower right-hand corner? [LR424]

GOVERNOR DAVE HEINEMAN: Yeah. [LR424]

SENATOR LATHROP: And the document you should be looking at, at the top, says Nebraska Department of Correctional Services. [LR424]

GOVERNOR DAVE HEINEMAN: Uh-huh. [LR424]

SENATOR LATHROP: Okay. Can you see that okay? [LR424]

GOVERNOR DAVE HEINEMAN: Yes. [LR424]

SENATOR LATHROP: The light isn't always great on that table. [LR424]

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GOVERNOR DAVE HEINEMAN: It's good enough. [LR424]

SENATOR LATHROP: Okay. Good. All right. Director Houston testified at some length about this date and these...and this particular document. And you'll see, under capacity, it says NDCS is at 143 percent of its capacity. Do you see that under capacity? [LR424]

GOVERNOR DAVE HEINEMAN: Okay. I got it now. [LR424]

SENATOR LATHROP: Okay. And then the last sentence says NDCS must reduce its population or increase its capacity. [LR424]

GOVERNOR DAVE HEINEMAN: Uh-huh. [LR424]

SENATOR LATHROP: Do you see that statement? [LR424]

GOVERNOR DAVE HEINEMAN: Yes, I do. [LR424]

SENATOR LATHROP: It might be the simplest, most true statement about a Department of Corrections that is in an overcrowded state. Wouldn't that be true? [LR424]

GOVERNOR DAVE HEINEMAN: Well, the... [LR424]

SENATOR LATHROP: If you're going to alleviate overcrowding, you either need to build capacity or reduce the numbers. [LR424]

GOVERNOR DAVE HEINEMAN: You know, when you're talking about prison capacity issues, when you talk about "reduce its population," I wouldn't put it quite in that context so much as, as we've learned from the Council of State Governments, we need to be

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looking at more community correction opportunities. The fact that we have a great number of nonviolent offenders that are in our prison system, could they be handled differently? We also learned from the Council of State Governments' study already, for example, for the same crime Omaha judges are giving prison time and other judges in the state are giving probation. So we're looking at all those issues. [LR424]

SENATOR LATHROP: And that's stuff you're looking at since the last legislative session,... [LR424]

GOVERNOR DAVE HEINEMAN: Uh-huh. [LR424]

SENATOR LATHROP: ...right? [LR424]

GOVERNOR DAVE HEINEMAN: Uh-huh. [LR424]

SENATOR LATHROP: So the Council of State Governments wasn't around in 2012 when this document was generated. Would you agree with that? [LR424]

GOVERNOR DAVE HEINEMAN: That's true. [LR424]

SENATOR LATHROP: And the truth is... [LR424]

GOVERNOR DAVE HEINEMAN: Well, they were around, but I don't think... [LR424]

SENATOR LATHROP: ...the truth is... [LR424]

GOVERNOR DAVE HEINEMAN: ...they were in our state. [LR424]

SENATOR LATHROP: Okay, the truth is, if you're going to alleviate overcrowding, you either build more space or you reduce the number of people you have incarcerated by

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whatever means. [LR424]

GOVERNOR DAVE HEINEMAN: Senator, could I also share with you, over the past few years it's interesting to me that crime in this state is down but the prison population is up, and I think we need to understand that. And obviously, if individual... [LR424]

SENATOR LATHROP: Do you think judges...do you think judges are sending too many people to prison? [LR424]

GOVERNOR DAVE HEINEMAN: What I was trying to get at was, first of all, you got...if individuals didn't commit these crimes, they wouldn't be here in the first place. [LR424]

SENATOR LATHROP: True. [LR424]

GOVERNOR DAVE HEINEMAN: Secondly, if we could look at--and I've had these conversations with Senator Ashford--more community corrections opportunities for nonviolent offenders. [LR424]

SENATOR LATHROP: Nonviolent offenders, we're going to talk about those guys. [LR424]

GOVERNOR DAVE HEINEMAN: And that's hard to define. [LR424]

SENATOR LATHROP: Well, it's not really that hard to define. In some cases, it's black and white, and there might be a gray area. And we'll get back to the nonviolent guys and have that conversation. On the second page of this document,... [LR424]

GOVERNOR DAVE HEINEMAN: It's page 42? [LR424]

SENATOR LATHROP: ...page 42, Governor, this is Bob Houston putting together a

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document, I believe was available to you or someone in your administration. And he testified that in this document he was presenting again what would it cost to build more capacity, right? So he's providing... [LR424]

GOVERNOR DAVE HEINEMAN: We had a conversation. [LR424]

SENATOR LATHROP: Yeah, he's providing you with information about, well, if we took the Carter Goble Lee study and we built some of the capacity, this is what it's going to cost, maybe not all of it. This is maybe a trimmed-down version, but it was going to be \$109 million with \$28.5 million in operating costs a year. Do you remember having... [LR424]

GOVERNOR DAVE HEINEMAN: Which... [LR424]

SENATOR LATHROP: ...Director Houston present this to you? [LR424]

GOVERNOR DAVE HEINEMAN: Which number are you talking? [LR424]

SENATOR LATHROP: We're at the bottom of page 42 under build capacity. [LR424]

GOVERNOR DAVE HEINEMAN: Oh, okay. [LR424]

SENATOR LATHROP: Do you see that? [LR424]

GOVERNOR DAVE HEINEMAN: Uh-huh. [LR424]

SENATOR LATHROP: It says, need approximately 1,300 beds to reduce current capacity to 100 percent, and then it goes through the various beds that they would build, where they would build them, and what it would cost. Do you remember him presenting this to you? [LR424]

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GOVERNOR DAVE HEINEMAN: I remember a conversation. We talked about all of this. I don't know that I've ever had a conversation with anybody who thought we'd get back to 100 percent given the various capacities of our... [LR424]

SENATOR LATHROP: But again... [LR424]

GOVERNOR DAVE HEINEMAN: ...various prisons out there. [LR424]

SENATOR LATHROP: But again, he presented you with, well, if we go back to that study done in 2006 and we build those 1,300 beds, this is updated on what it would cost. [LR424]

GOVERNOR DAVE HEINEMAN: We had that conversation, yes. [LR424]

SENATOR LATHROP: Okay. And on the front page,... [LR424]

GOVERNOR DAVE HEINEMAN: Which page are you talking about now? [LR424]

SENATOR LATHROP: 41. [LR424]

GOVERNOR DAVE HEINEMAN: Oh, going back. [LR424]

SENATOR LATHROP: He lays out some no-cost options. Do you see those? [LR424]

GOVERNOR DAVE HEINEMAN: Uh-huh. [LR424]

SENATOR LATHROP: Have you seen this document before today? [LR424]

GOVERNOR DAVE HEINEMAN: Yes. I remember when we had the conversation.

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[LR424]

SENATOR LATHROP: Okay, good. And Director Houston, when he testified, gosh, back in August or whenever he was in here in front of the committee, said that the election was made at that point to pursue no-cost options, which is to say to alleviate overcrowding in the prisons or in the Department of Corrections with options that did not cost money. Do you remember making an election to pursue no-cost options? [LR424]

GOVERNOR DAVE HEINEMAN: I think we had a conversation about that and, generally, I think our preference was, pursue that first to,... [LR424]

SENATOR LATHROP: Okay. [LR424]

GOVERNOR DAVE HEINEMAN: ...you know, because again, I wasn't having anybody--a citizen, Legislature, anybody--calling me up and say, hey, by the way, Governor, first priority ought to be to build a new prison. [LR424]

SENATOR LATHROP: Okay. So citizens weren't calling you for...to build a new prison or additional bed space. They might not have had a chance to look at that 2006 report like you did. But in any case, the election is made at this point to pursue no-cost options. And frankly, that had been the strategy from the beginning, wasn't it? If you're going to...if you're going to get ahead of the growing population, you needed to find ways to move people through. [LR424]

GOVERNOR DAVE HEINEMAN: But I wouldn't totally call it a no-cost option. If you go back to 2006, I don't think we were spending...practically zero in terms of community corrections. We moved forward with that, working with the Legislature. Now it's up to about \$22 million. So when you talk about no-cost, maybe it should say low-cost options. Again, everybody...we knew what the big cost option was--\$150 million, \$200 million to build a new prison. I don't...I just didn't have anybody who was recommending

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we did that or anybody who really wanted to do that, and so we looked at a variety of other options. [LR424]

SENATOR LATHROP: And they included moving more people through on parole, suitable candidates? [LR424]

GOVERNOR DAVE HEINEMAN: If they qualified for parole. [LR424]

SENATOR LATHROP: Okay. And then they involved moving people through something called the reentry furlough program? [LR424]

GOVERNOR DAVE HEINEMAN: I believe that was something that Director Houston was involved in too. [LR424]

SENATOR LATHROP: Yeah. And manipulating, making some changes to the good time law. That was also part of the no-cost option. You'll see that in the middle of the list of no-cost options that... [LR424]

GOVERNOR DAVE HEINEMAN: Uh-huh. [LR424]

SENATOR LATHROP: ...Director Houston said were going to be employed by the administration to alleviate overcrowding. Do you remember that conversation with Director Houston? [LR424]

GOVERNOR DAVE HEINEMAN: No, I really don't on the good time law. It was more about prison capacity and what the cost would be and how you work with the Parole Board and that. [LR424]

SENATOR LATHROP: All right. When this document has...lists the no-cost options, Governor, were you engaged and involved in developing the strategy? [LR424]

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GOVERNOR DAVE HEINEMAN: What do you mean? [LR424]

SENATOR LATHROP: Were you having meetings with your director where you said, how are we going to solve this problem? Or did he just bring a solution over to you and you gave it the okay? [LR424]

GOVERNOR DAVE HEINEMAN: No. No, we would have conversations. Those are more likely to be developed, though, in detail with the Budget Office. [LR424]

SENATOR LATHROP: Okay. [LR424]

GOVERNOR DAVE HEINEMAN: I mean I don't try to get in the level of detail at that, at the initial conversational level. They would try to put together what options would be and, ultimately, what they would cost. [LR424]

SENATOR LATHROP: Okay. But back on March 14 of 2012, was there a meeting that took place between you and Houston about...that led to this memo? [LR424]

GOVERNOR DAVE HEINEMAN: Right. I believe we did have a meeting that day. [LR424]

SENATOR LATHROP: Okay. So Houston sits down with you and we're going to decide, as a policy matter, how we're going to alleviate the overcrowding situation, because you are at 143 percent at the time. Am I right? [LR424]

GOVERNOR DAVE HEINEMAN: It was in the 140s at that time, but I would just share with you, normally, the way I operate, we wouldn't necessarily just have a briefing and make an immediate decision. I would want to think about it. I would want to consult with others. I'd want to talk with others. [LR424]

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SENATOR LATHROP: Okay. By the way, and maybe this is as good a time as any, there is statute, statutory authority for the proposition that when we get to 140 percent of capacity you may declare an emergency,... [LR424]

GOVERNOR DAVE HEINEMAN: That is accurate. [LR424]

SENATOR LATHROP: ...take control of the circumstances and direct that people begin to get paroled until you alleviate the overcrowding. [LR424]

GOVERNOR DAVE HEINEMAN: And... [LR424]

SENATOR LATHROP: There is a statute to that effect. [LR424]

GOVERNOR DAVE HEINEMAN: There is a statute to that effect. And again, that is a conversation I had repeatedly with Director Houston, talk... [LR424]

SENATOR LATHROP: Did you discuss that statute when you met with him on March 14, 2012, which is to say whether the Governor's Office should declare an emergency, as authorized by law? [LR424]

GOVERNOR DAVE HEINEMAN: When you say statute, I think we had the discussion generally about where we stood. And again, he was still telling me at that time, he was telling Senator Ashford--because I...we checked with him frequently--that he could manage the prison population. [LR424]

SENATOR LATHROP: Wait a minute. Were you around when he's talking to Senator Ashford or are you just testifying to hearsay today? [LR424]

GOVERNOR DAVE HEINEMAN: No, no, I actually called Senator Ashford several

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months ago... [LR424]

SENATOR LATHROP: How many times? [LR424]

GOVERNOR DAVE HEINEMAN: ...to confirm, hey, Brad, did we miss something here?
And he said, no, no. I asked him. You ask him. And... [LR424]

SENATOR LATHROP: When? [LR424]

GOVERNOR DAVE HEINEMAN: Huh? [LR424]

SENATOR LATHROP: You keep...when did you talk to Senator Ashford? [LR424]

GOVERNOR DAVE HEINEMAN: I don't remember the specific date but I called him in
the last several months... [LR424]

SENATOR LATHROP: Well,... [LR424]

GOVERNOR DAVE HEINEMAN: ...just to confirm that. [LR424]

SENATOR LATHROP: Okay. [LR424]

GOVERNOR DAVE HEINEMAN: And we had ongoing conversations with Senator
Ashford, my staff would, relative to what was going on. Senator Ashford... [LR424]

SENATOR LATHROP: So... [LR424]

GOVERNOR DAVE HEINEMAN: ...Senator Ashford liked to call us a lot. [LR424]

SENATOR LATHROP: Okay. March 14, 2012, you're meeting with the director to talk

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about what your policy decision... [LR424]

GOVERNOR DAVE HEINEMAN: Uh-huh. [LR424]

SENATOR LATHROP: ...is going to be going forward to alleviate the overcrowding. You elect at that point not to declare an emergency even though Section 83-962 allows you to declare an emergency and deal with the overcrowding in a straightforward and transparent fashion. And the election is made to pursue no-cost options. Would you agree with that? [LR424]

GOVERNOR DAVE HEINEMAN: What I would agree with, Senator, is the statute says I may... [LR424]

SENATOR LATHROP: Right. [LR424]

GOVERNOR DAVE HEINEMAN: ...declare an emergency if I want. [LR424]

SENATOR LATHROP: Yep. [LR424]

GOVERNOR DAVE HEINEMAN: Again, we continued to evaluate that we thought, based on what the director was telling us, that he could manage the prison population, we would continue to work with the Legislature on pursuing low-cost options, more community corrections options. And that's what we've been trying to do. [LR424]

SENATOR LATHROP: Okay. That strategy... [LR424]

GOVERNOR DAVE HEINEMAN: That was a policy judgment we made. [LR424]

SENATOR LATHROP: That was a policy judgment with you, and it was going to be no emergency, no beds, and we're going to pursue low-cost or no-cost options that involve

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community corrections, more people on parole, and this thing called the reentry furlough program. [LR424]

GOVERNOR DAVE HEINEMAN: I wouldn't... [LR424]

SENATOR LATHROP: Isn't that the case? [LR424]

GOVERNOR DAVE HEINEMAN: I wouldn't describe it exactly the way you did because the early part of your statement would seem to indicate that we weren't paying attention and I don't think... [LR424]

SENATOR LATHROP: I'm not suggesting you... [LR424]

GOVERNOR DAVE HEINEMAN: Okay. [LR424]

SENATOR LATHROP: ...weren't paying attention, Governor. I have to say--and maybe I'll...we can clear the air--you had to be engaged in the fact that you were well over 140 percent on different occasions. You're at 157 percent right now. And I have to believe your office was engaged. [LR424]

GOVERNOR DAVE HEINEMAN: We were well...we... [LR424]

SENATOR LATHROP: This had to be a daily concern for you. [LR424]

GOVERNOR DAVE HEINEMAN: I wouldn't say "daily." We were well aware of that percentage. And again, it didn't spike in the 150s until about 15-16 months ago. [LR424]

SENATOR LATHROP: Okay. So we can agree, just as a general proposition, that you were engaged in keeping an eye on the overcrowding situation at the Department of Corrections. [LR424]

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GOVERNOR DAVE HEINEMAN: I assume I was as engaged as the Legislature was.
[LR424]

SENATOR LATHROP: Well, you run the place, right? So you're getting briefings from your director as you want them and need them. You have a chief of staff who's talking to the director... [LR424]

GOVERNOR DAVE HEINEMAN: Uh-huh. [LR424]

SENATOR LATHROP: ...regularly. And you are being told, if not by the director, by your chief of staff, Larry Bare, the circumstances of the overcrowding at the Department of Corrections at least a couple of times a week. Wouldn't that be true? [LR424]

GOVERNOR DAVE HEINEMAN: Oh, I don't know if it was a couple times a week, but what I... [LR424]

SENATOR LATHROP: Well, why wasn't it? [LR424]

GOVERNOR DAVE HEINEMAN: ...what I would say is I was well aware of the prison capacity issues, where we were at. We talked to the director frequently. And again I'll repeat, he indicated to me he could manage that population. [LR424]

SENATOR LATHROP: Okay. And so it would be managed with... [LR424]

GOVERNOR DAVE HEINEMAN: And I respected his judgment. [LR424]

SENATOR LATHROP: ...it would be managed with parole, among other things. Isn't that true? [LR424]

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GOVERNOR DAVE HEINEMAN: Director Houston talked... [LR424]

SENATOR LATHROP: We're going to... [LR424]

GOVERNOR DAVE HEINEMAN: ...Director Houston talked to me... [LR424]

SENATOR LATHROP: ...we're going to increase the number of people on parole.
[LR424]

GOVERNOR DAVE HEINEMAN: ...about parole and working with the Parole Board,
where appropriate, could those individuals be put out on parole. [LR424]

SENATOR LATHROP: Are you familiar with the parole process? [LR424]

GOVERNOR DAVE HEINEMAN: Not in any great detail. [LR424]

SENATOR LATHROP: You appoint the board, do you not? [LR424]

GOVERNOR DAVE HEINEMAN: I appoint the board. [LR424]

SENATOR LATHROP: And they work with the Department of Corrections. [LR424]

GOVERNOR DAVE HEINEMAN: And I expect them to work very closely with them.
[LR424]

SENATOR LATHROP: Okay. And does that board serve at your pleasure? [LR424]

GOVERNOR DAVE HEINEMAN: Not exactly, given the way... [LR424]

SENATOR LATHROP: Okay. Tell us about that. [LR424]

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GOVERNOR DAVE HEINEMAN: I believe... [LR424]

SENATOR LATHROP: You appoint the board members, do you not? [LR424]

GOVERNOR DAVE HEINEMAN: I appoint the board members. Then they become very independent. And the way the Legislature has set it up, I believe I can only remove them for cause. They serve a term, whether it's four years or whatever. [LR424]

SENATOR LATHROP: Who's the chair of that board? [LR424]

GOVERNOR DAVE HEINEMAN: Esther Casmer. [LR424]

SENATOR LATHROP: When did you last appoint Ms. Casmer? [LR424]

GOVERNOR DAVE HEINEMAN: Oh, I don't recall, in the last couple of years. She's been the chair for some period of time. [LR424]

SENATOR LATHROP: And when does her term expire? [LR424]

GOVERNOR DAVE HEINEMAN: Another year, year and a half. I'd have to double-check that. [LR424]

SENATOR LATHROP: After you're out of office. [LR424]

GOVERNOR DAVE HEINEMAN: After I'm out of office, yes. [LR424]

SENATOR LATHROP: Will the next Governor, for lack of a better term, inherit Ms. Casmer and the members on that board until their terms expire? [LR424]

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GOVERNOR DAVE HEINEMAN: As with many boards, that would be the case. Now I believe the new Governor-elect could come in and determine a new chair if he wanted to. [LR424]

SENATOR LATHROP: Okay. So going back to the parole process, this involves individuals who have been sentenced to a period of incarceration and they have what's called a parole eligibility date. You understand that much about it? [LR424]

GOVERNOR DAVE HEINEMAN: I've heard the date. Again, I don't deal with a great deal of detail relative all these different dates that I hear, from parole eligibility to parole release to all the rest. [LR424]

SENATOR LATHROP: I would have thought after Castillas you'd be intimately familiar with parole eligibility date. [LR424]

GOVERNOR DAVE HEINEMAN: I'm trying to get that situation corrected and I'm sure we'll talk about it. (Laugh) [LR424]

SENATOR LATHROP: (Laugh) We'll talk about that. We'll talk about that. But the people who are placed on parole are recommended generally by the Department of Corrections and they have reached what's known as a parole eligibility date. Would that be true? [LR424]

GOVERNOR DAVE HEINEMAN: I think that's accurate. They go in front of the Parole Board,... [LR424]

SENATOR LATHROP: Okay. [LR424]

GOVERNOR DAVE HEINEMAN: ...because I've had conversation with individual members of the Parole Board where they try to make a judgment about the individual

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and how they want to proceed. [LR424]

SENATOR LATHROP: Well, are they talking to you about individuals over there? Are you getting involved in individual... [LR424]

GOVERNOR DAVE HEINEMAN: No. No, no. [LR424]

SENATOR LATHROP: ...inmate decisions? [LR424]

GOVERNOR DAVE HEINEMAN: Just, you know, occasionally. For example, and he's passed away but I remember Bob Boozer on more than one occasion--he really enjoyed doing it and I'm not sure it's something I would want to do--and Bob would just tell me. For example, usually about annually I'd take him to the Nebraska-Kansas State basketball game. He'd wear his purple; I'd be wearing red. And during the course of the conversation, he always told me how much he enjoyed that opportunity and how difficult it was, and he was trying to set these kids straight, as he described them, but not a specific individual case. [LR424]

SENATOR LATHROP: Okay. And a wonderful man. [LR424]

GOVERNOR DAVE HEINEMAN: An absolutely, incredibly wonderful man. [LR424]

SENATOR LATHROP: And I can't say enough nice things about Esther Casmer, too, and I've been involved in approving her for the Board of Parole... [LR424]

GOVERNOR DAVE HEINEMAN: Uh-huh. [LR424]

SENATOR LATHROP: ...over in Judiciary Committee, a wonderful, wonderful public servant. That aside, the process of one getting parole is set out in law. Would you agree with that much? [LR424]

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GOVERNOR DAVE HEINEMAN: I assume it is. And... [LR424]

SENATOR LATHROP: Right. [LR424]

GOVERNOR DAVE HEINEMAN: ...and again, I don't go to Parole Board meetings.
[LR424]

SENATOR LATHROP: I'm sure you don't. But you appoint the Parole Board... [LR424]

GOVERNOR DAVE HEINEMAN: I appoint them. [LR424]

SENATOR LATHROP: ...and you run the Department of Corrections. And parole
became part... [LR424]

GOVERNOR DAVE HEINEMAN: And I accept responsibility for that. [LR424]

SENATOR LATHROP: Sure. Sure, sure. We'll talk about that too. The idea that
someone is going to be placed on parole involves, first, their sentence and somebody,
like Kyle Poppert, over at the Department of Corrections is going to figure out what day
they jam out, or their mandatory release date, and what date they become eligible for
parole. And you understand that much. [LR424]

GOVERNOR DAVE HEINEMAN: And I understand he made a lot of mistakes, along
with Mr. Green,... [LR424]

SENATOR LATHROP: This isn't...this isn't... [LR424]

GOVERNOR DAVE HEINEMAN: ...and created a huge mess for us. [LR424]

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SENATOR LATHROP: We'll get to Kyle Poppert perhaps today. [LR424]

GOVERNOR DAVE HEINEMAN: Right. [LR424]

SENATOR LATHROP: But my point is that someone at the Department of Corrections establishes, for each inmate that's been sentenced, a parole eligibility date and then the law says, on this date you're eligible for parole. And if you, you know, they put a folder, a file together, and these guys go in front of the Parole Board and make their pitch. [LR424]

GOVERNOR DAVE HEINEMAN: Right, and they make a judgment about them. [LR424]

SENATOR LATHROP: And they make a judgment, and they're released. And they're not released on parole before their parole eligibility date, right? [LR424]

GOVERNOR DAVE HEINEMAN: That's the way it's supposed to work. [LR424]

SENATOR LATHROP: Just makes sense, right? [LR424]

GOVERNOR DAVE HEINEMAN: However, I think we know there were a lot of mistakes made on those parole eligibility dates. [LR424]

SENATOR LATHROP: Yeah, and we're not even on the mandatory... [LR424]

GOVERNOR DAVE HEINEMAN: Right. [LR424]

SENATOR LATHROP: ...good time circumstance, which we'll talk about in a little bit. So these people get paroled and part of the strategy was to begin to identify more people as prospects for parole. Would you agree with that? [LR424]

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GOVERNOR DAVE HEINEMAN: I think the director wanted to work with the Parole Board to see if there were more candidates that qualified for parole. [LR424]

SENATOR LATHROP: Okay. I want to direct you to another document,... [LR424]

GOVERNOR DAVE HEINEMAN: Okay. [LR424]

SENATOR LATHROP: ...Governor, in the folder, and that's page 43. Do you see this at the top? I want to make sure we're talking about the same document, as you read what you have in front of you. And it says at the top DCS executive staff meeting. [LR424]

GOVERNOR DAVE HEINEMAN: Okay. [LR424]

SENATOR LATHROP: Do you see that? You're on page 43? [LR424]

GOVERNOR DAVE HEINEMAN: Yes. [LR424]

SENATOR LATHROP: And then it says, meeting minutes, and for some reason, instead of a month, it says Tuesday, 19, 2011. [LR424]

GOVERNOR DAVE HEINEMAN: Oh, okay, up at the top, yes. [LR424]

SENATOR LATHROP: Yeah. And it says TSCI warden's conference room. So the Department of Correctional Services had an executive staff meeting over in Tecumseh in the warden's conference room and this is sort of a memorandum of what they talked about. Would you agree with that? [LR424]

GOVERNOR DAVE HEINEMAN: I've never seen the document before. But if that's what they said they talked about, I assume they did. [LR424]

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SENATOR LATHROP: Okay. And maybe we need to walk through it together... [LR424]

GOVERNOR DAVE HEINEMAN: Okay. [LR424]

SENATOR LATHROP: ...and then I'm going to have a question for you after we get through it. Under population updates, Kyle Poppert and Layne Gissler give an update. On behalf of Kyle Poppert and Layne Gissler today, Mr. Houston and Mr. Wayne shared that, due to yesterday's meeting at DORs, all information was discussed there and we will be moving forward. The copy kind of cuts off. It looks like they thank the staff and shared that they believe the meeting at DOR re reentry efforts decreasing population went very good and a lot of questions were answered. Did I read that correctly? [LR424]

GOVERNOR DAVE HEINEMAN: You did. But it's interesting, DOR, I'm not sure of the reference here because I would normally think of Department of Roads. [LR424]

SENATOR LATHROP: That's what I'm thinking too. I think these people from Corrections ran over to the Department of Roads for a meeting, not that there's anything... [LR424]

GOVERNOR DAVE HEINEMAN: Right. [LR424]

SENATOR LATHROP: ...unusual or maybe wrong with that. [LR424]

GOVERNOR DAVE HEINEMAN: I just don't know why they... [LR424]

SENATOR LATHROP: Is there more space over there or what's the...what might be the reason they'd go over to the Department of Roads? [LR424]

GOVERNOR DAVE HEINEMAN: I have absolutely no idea. [LR424]

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SENATOR LATHROP: Okay. Not important to me anyway. Let's flip over to the next page. There are three bullet points there at the very top. Do you see those? [LR424]

GOVERNOR DAVE HEINEMAN: The ones that are underlined? [LR424]

SENATOR LATHROP: No. [LR424]

GOVERNOR DAVE HEINEMAN: Okay. [LR424]

SENATOR LATHROP: You see the three bullet points at the very top? [LR424]

GOVERNOR DAVE HEINEMAN: He and Mr. McGovern? [LR424]

SENATOR LATHROP: Yeah, that's the first one. And then the second one, he would like to discuss. And the third one is the one I want to visit with you about, Governor. It says, as he mentioned earlier in the meeting, the reentry meeting at DOR yesterday went good and he is looking for the following to occur, slash, next steps. And this, by the way, is under, you'll see on the previous page, announcements by Bob Houston, your director. [LR424]

GOVERNOR DAVE HEINEMAN: Okay. [LR424]

SENATOR LATHROP: Okay. He says--and then there's a couple of bullet points below that--we need to be recommending at least 191 to 200 to BOP, which I assume is the Board of Parole,... [LR424]

GOVERNOR DAVE HEINEMAN: I'll assume you're accurate on that. [LR424]

SENATOR LATHROP: ...okay, each month. Look at utilizing alternate programming path for those to get on parole, due by parole eligibility date, giving them a plan and

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moving out. Did you have a meeting with the director about establishing a...this looks to me to be the director establishing a quota for the number of people that need to move through parole. Would you agree that that's what it looks like? [LR424]

GOVERNOR DAVE HEINEMAN: Well, I...you may say it looks like that. I think he's trying to figure out a number that, if they qualify, they'd like to recommend to the Board of Parole. [LR424]

SENATOR LATHROP: Right. And I'm not suggesting he's... [LR424]

GOVERNOR DAVE HEINEMAN: I don't exactly... [LR424]

SENATOR LATHROP: ...I'm not suggesting that this somehow says... [LR424]

GOVERNOR DAVE HEINEMAN: I don't know how he came up with the number but, yeah. [LR424]

SENATOR LATHROP: Right. I'm not suggesting that he's trying to, at this point, recommend people that aren't qualified. [LR424]

GOVERNOR DAVE HEINEMAN: Right. [LR424]

SENATOR LATHROP: But it looks to be that he's saying we need to get 191 to 200 people to the Board of Parole. [LR424]

GOVERNOR DAVE HEINEMAN: And I would probably describe it as a goal, maybe, as opposed to a quota. But I understand what you're saying. [LR424]

SENATOR LATHROP: Okay. Now before this meeting at the Department of Roads, where they set the goal or the quota, did you visit with Director Houston about setting

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some sort of a goal or quota for the Board of Parole... [LR424]

GOVERNOR DAVE HEINEMAN: I don't... [LR424]

SENATOR LATHROP: ...to evaluate and move that number of prisoners through the parole process? [LR424]

GOVERNOR DAVE HEINEMAN: I don't recall a specific number. I'm sure we had conversations about could you work with the Board of Parole more to find...you know, I remember him talking about finding more people who might qualify. [LR424]

SENATOR LATHROP: And this would have been part, you would agree, of a strategy to alleviate overcrowding. [LR424]

GOVERNOR DAVE HEINEMAN: What I would agree with, it was part of the overall strategy to look at prison capacity issues, and there are a number of issues involved in that. But again, at the end of the day, I tried to be very, very clear they got to qualify for parole. And the Parole Board makes that independent decision. [LR424]

SENATOR LATHROP: We don't want violent offenders and we don't want people who are there before their eligibility date. They need to be top...they need to be good candidates. [LR424]

GOVERNOR DAVE HEINEMAN: I assume so. And they've got more expertise on that than I would. [LR424]

SENATOR LATHROP: Okay. Yeah, that's their job. And your job is to run that office. So they're going to try to find 191 to 200 people a month to get before the Parole Board and move out on parole. And then an interesting thing happens, I think at least. We have, if you want to turn the next page, we have another memorandum and this one is from

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Frank Hopkins to Mario Peart. Do you know who Mario Peart is? [LR424]

GOVERNOR DAVE HEINEMAN: No, I don't, but mine says it was to Frank Hopkins, not... [LR424]

SENATOR LATHROP: Pardon me. You're right,... [LR424]

GOVERNOR DAVE HEINEMAN: Okay. [LR424]

SENATOR LATHROP: ...to Frank Hopkins from Mario Peart, and it says warden--LCC. Do you know what LCC is? [LR424]

GOVERNOR DAVE HEINEMAN: Yeah. [LR424]

SENATOR LATHROP: What is it? [LR424]

GOVERNOR DAVE HEINEMAN: The Lincoln Correctional Center. [LR424]

SENATOR LATHROP: All right. And... [LR424]

GOVERNOR DAVE HEINEMAN: I don't try to deal directly with the wardens because, again, that would be, I think, inappropriate for the Governor. [LR424]

SENATOR LATHROP: Okay. I want you to...so this would appear, so the people that don't have a copy of this in front of them can understand, the subject was a department meeting on June 11, 2012, and they list a number of people that were present, and then they list some people that were absent. And they go through a number of things, and I'm going to direct your attention to the third page, which is on page 47. [LR424]

GOVERNOR DAVE HEINEMAN: On 47 you said? [LR424]

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SENATOR LATHROP: 47. [LR424]

GOVERNOR DAVE HEINEMAN: Okay. [LR424]

SENATOR LATHROP: Do you see where it says Mr. Peart discussed the following issues? [LR424]

GOVERNOR DAVE HEINEMAN: Right. [LR424]

SENATOR LATHROP: And then there are bullet points. [LR424]

GOVERNOR DAVE HEINEMAN: Uh-huh. [LR424]

SENATOR LATHROP: Okay. The first bullet point says, we have some serious budget issues in the department. A meeting will be held tomorrow at the Department of Roads to discuss population reduction and reentry. Do you see that? [LR424]

GOVERNOR DAVE HEINEMAN: Yes. [LR424]

SENATOR LATHROP: Did you participate in that meeting over at the DOR? [LR424]

GOVERNOR DAVE HEINEMAN: No. [LR424]

SENATOR LATHROP: Did you know it was going to happen? [LR424]

GOVERNOR DAVE HEINEMAN: No. [LR424]

SENATOR LATHROP: Did you know they thought at...in June 11 of 2012 that they had serious budget issues? [LR424]

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GOVERNOR DAVE HEINEMAN: I don't recall on that particular date that anybody in my Budget department alerted me to that fact. [LR424]

SENATOR LATHROP: Okay. [LR424]

GOVERNOR DAVE HEINEMAN: And that's where I would hear it from. [LR424]

SENATOR LATHROP: Okay. So they're talking about it inside the Department of Corrections but no one is telling you they think they have serious budget problems. [LR424]

GOVERNOR DAVE HEINEMAN: I think at that stage that would be fairly accurate. [LR424]

SENATOR LATHROP: Okay. The third bullet point is the one I want to talk to you about, and I'm going to read it. [LR424]

GOVERNOR DAVE HEINEMAN: Okay. [LR424]

SENATOR LATHROP: A meeting was held with Director Houston, the Governor, and Esther Casmer, and they signed an agreement with regard to population reduction. Do you remember such a meeting? [LR424]

GOVERNOR DAVE HEINEMAN: I remember such a meeting but there was no signed agreement. We had general conversation about could the Board of Parole do more. And Director Houston was going to work... [LR424]

SENATOR LATHROP: I'll talk about... [LR424]

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GOVERNOR DAVE HEINEMAN: ...with Esther Casmer. [LR424]

SENATOR LATHROP: ...I'll talk about that in just a second, Governor. And I apologize for interrupting, but I wanted to ask this. You had a meeting with Houston, Esther Casmer, and yourself to discuss population reduction? [LR424]

GOVERNOR DAVE HEINEMAN: No. What I recall the meeting was about was are there other candidates who might be eligible for parole. [LR424]

SENATOR LATHROP: Okay. Did you discuss the reentry furlough program at that point too? [LR424]

GOVERNOR DAVE HEINEMAN: I really don't recall. What I...what I... [LR424]

SENATOR LATHROP: That's sort of...that's sort of an administrative parole, isn't it, that program? [LR424]

GOVERNOR DAVE HEINEMAN: It's certainly something the Department of Corrections uses, as I understand. [LR424]

SENATOR LATHROP: Did you discuss the... [LR424]

GOVERNOR DAVE HEINEMAN: But the convers... [LR424]

SENATOR LATHROP: ...did you discuss that program with Ms. Casmer and the director when you met in the meeting that is memorialized in these notes? [LR424]

GOVERNOR DAVE HEINEMAN: What I recall talking about more was both of them were discussing how they could work together to see if they could find more candidates who would be eligible for parole, and they both came to the conclusion that they could

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do that. And I said, well, that's great; I appreciate that. [LR424]

SENATOR LATHROP: Did you expect that Director Houston and Esther Casmer have conversations in their capacity as the director of Corrections as well as the chair of the...or the head of the Board of Parole; that they talk all the time? [LR424]

GOVERNOR DAVE HEINEMAN: It's my understanding they do and they should.
[LR424]

SENATOR LATHROP: Okay. So they didn't need a meeting with the Governor to have a conversation about what the two of them were going to do. You were involved in this one. [LR424]

GOVERNOR DAVE HEINEMAN: I think, you know, the reason they wanted to meet with me, they wanted to make sure that we were all on the same wavelength, that we're moving in the same direction. [LR424]

SENATOR LATHROP: Okay. [LR424]

GOVERNOR DAVE HEINEMAN: And I certainly indicated to them, if the two of them could work together and find eligible candidates, as I heard them talking, and they both seemed to think they could. But again, they were going to make independent decisions.
[LR424]

SENATOR LATHROP: And we have a goal of 191 to 200 inmates on parole. Did that come up as well? [LR424]

GOVERNOR DAVE HEINEMAN: I don't recall a...specifically, but I think that was Director Houston's goal. Whether he mentioned it at that meeting or not, I don't recall.
[LR424]

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SENATOR LATHROP: Okay. In any case, this bullet point says they came to a signed agreement. Okay? Now... [LR424]

GOVERNOR DAVE HEINEMAN: There...that is totally inaccurate there. [LR424]

SENATOR LATHROP: All right. Let me ask you this. Do you specifically remember this meeting? [LR424]

GOVERNOR DAVE HEINEMAN: I specifically remember the meeting. I don't remember every detail. [LR424]

SENATOR LATHROP: Where did it take place at? [LR424]

GOVERNOR DAVE HEINEMAN: Up in my chief of staff's office. [LR424]

SENATOR LATHROP: Okay. Did anybody besides Houston, yourself, and Casmer participate in that meeting? [LR424]

GOVERNOR DAVE HEINEMAN: I believe Larry Bare, my chief of staff, was there. [LR424]

SENATOR LATHROP: Anybody else? [LR424]

GOVERNOR DAVE HEINEMAN: There could have been someone from Policy Research Office, but I don't recall. [LR424]

SENATOR LATHROP: Okay. [LR424]

GOVERNOR DAVE HEINEMAN: It wouldn't have been uncommon for someone from

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Policy Research to be there... [LR424]

SENATOR LATHROP: Sure. [LR424]

GOVERNOR DAVE HEINEMAN: ...if they were available. But you're all...yeah, if they were available. [LR424]

SENATOR LATHROP: Did you ever have the three of you enter into some written agreement or oral agreement, for that matter, with regard to population reduction? [LR424]

GOVERNOR DAVE HEINEMAN: There was no written agreement. I think we walked out of the meeting that both directors were committed to the idea if...that Director Houston would recommend more eligible individuals for parole and Ms. Casmer indicated they would take a serious look at that. They would try to work together. [LR424]

SENATOR LATHROP: Were you applying pressure on Casmer and/or Houston to get more people out on parole? [LR424]

GOVERNOR DAVE HEINEMAN: No, I didn't view it that way at all. Again, they came to me with this idea and both of them indicated to me that they could move forward with it. [LR424]

SENATOR LATHROP: See, what I don't understand, Governor, about this explanation is these two talk to each other all the time. Bob Houston doesn't need the Governor in the room to go down and talk to Esther Casmer about how are we going to move people out. And Esther Casmer can call Bob Houston anytime she wants to talk about parole and say, Bob, this is what I'm doing; Bob, maybe you could do this and then I'll do this and I'll schedule more and we'll get more guys out. But they don't need the Governor in

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the room to do that. So what was the point in having a meeting with you in the room if it wasn't to exert some pressure, however slight, however strong, to start moving people out and get some people out on parole? [LR424]

GOVERNOR DAVE HEINEMAN: Well, my experience, Senator, in dealing with various agencies when they've got to cooperate, sometimes you need a meeting. And I've often said about the Learning Community, we had to pass a law to get 11 superintendents to meet monthly to discuss educational issues up in the Douglas-Sarpy County area. So I think this was just one that they all wanted to be clear and they wanted to do it with me present, the okay, everybody's comfortable, and we came to that. [LR424]

SENATOR LATHROP: Did, in this meeting, Governor, did anybody start to talk about the fact that we're beginning to parole people who are a high risk to commit crimes once released? [LR424]

GOVERNOR DAVE HEINEMAN: You know, I don't recall specifically, but I'm sure Mrs. Casmer would have said, I'm willing to look at every candidate but, you know, the board isn't going to parole what they would deem a high-risk individual. [LR424]

SENATOR LATHROP: Okay. [LR424]

GOVERNOR DAVE HEINEMAN: And I think Director Houston probably said, well, we'll try not to send you candidates like that. I mean I think that was the inference of what they were trying to achieve. [LR424]

SENATOR LATHROP: Okay. And so your testimony today is, I was not exerting pressure to have these people parole more folks. [LR424]

GOVERNOR DAVE HEINEMAN: Yeah, I don't feel like...I mean it was a casual conversation like we're having, and so I didn't feel like I was exerting pressure. [LR424]

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SENATOR LATHROP: You say a casual conversation, and somebody had taken the minutes at this warden's meeting, says there was a signed agreement, and that...what...you tell me there's no signed agreement. First thing I'd say is, I never got it when I subpoenaed stuff like that. And the second thing I'd say is, why would somebody put there was a signed agreement between the three if it didn't happen? [LR424]

GOVERNOR DAVE HEINEMAN: Well, Senator, let me try to answer that for you. In the ten years... [LR424]

SENATOR LATHROP: Go ahead and try. [LR424]

GOVERNOR DAVE HEINEMAN: ...that I've been Governor, I've been misquoted, misinterpreted, and misstated on many occasion. It happens routinely in this position. And so I don't know why that was in there, because there was no signed agreement. [LR424]

SENATOR LATHROP: Okay. The discussion also involved that reentry furlough program and moving people through that. [LR424]

GOVERNOR DAVE HEINEMAN: I don't recall. [LR424]

SENATOR LATHROP: That became one of the strategies, didn't it? [LR424]

GOVERNOR DAVE HEINEMAN: I don't recall specific details about that. It was this broader issue, well, particularly because Director Houston and others, myself included, had heard from Senator Ashford repeatedly that we have a lot of nonviolent offenders in the prison system that could be out on parole. So it was more at that level, that high level of how do they recommend more people, asking the Parole Board to take a look at those. [LR424]

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SENATOR LATHROP: Okay. Let's be clear about something. Under the constitution, you run the Department of Corrections and Ashford was never authorized under the constitution to run the Department of Corrections. Would you agree with that? [LR424]

GOVERNOR DAVE HEINEMAN: I agree with that. But, you know,... [LR424]

SENATOR LATHROP: Okay. [LR424]

GOVERNOR DAVE HEINEMAN: ...given he was Chairman of Judiciary Committee, and you know how Senator Ashford works, we had frequent conversations with him. [LR424]

SENATOR LATHROP: I'm pleased that you had frequent conversations. My question earlier was whether you discussed the fact that people were becoming high risk. I want you to turn the page to page 49. [LR424]

GOVERNOR DAVE HEINEMAN: Okay. [LR424]

SENATOR LATHROP: Do you see...and let me describe what we're talking about, which is a memorandum dated March 21, 2012, from Frank Hopkins, again, to Peart. And it's executive staff meeting in March of 2012. [LR424]

GOVERNOR DAVE HEINEMAN: Well, to Hopkins from Peart. [LR424]

SENATOR LATHROP: To Hopkins from Peart, right. [LR424]

GOVERNOR DAVE HEINEMAN: Right. Okay. [LR424]

SENATOR LATHROP: Okay? And at the bottom it says, notes from warden's meeting. Do you see that? [LR424]

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GOVERNOR DAVE HEINEMAN: Yes, I do. [LR424]

SENATOR LATHROP: And in there it says Larry Wayne--and Larry Wayne we got introduced to, okay, we know who Larry Wayne is,... [LR424]

GOVERNOR DAVE HEINEMAN: Uh-huh. [LR424]

SENATOR LATHROP: ...he's a deputy director over there--talked about RFP. The RFP is the reentry furlough program? [LR424]

GOVERNOR DAVE HEINEMAN: I assume that's what he's referring to. [LR424]

SENATOR LATHROP: Okay. And we'll talk about that program in a little bit and its role in reducing overcrowding. But he says, he stated that paroles are up and higher risk inmates are being looked at. Remember to use the appropriate wording. Now this memo would have predated your June 11 meeting with Esther Casmer and the director. And so my takeaway from that is we've gone through an awful lot of the easy guys or the guys that aren't violent or the guys that we can see maybe are suitable for parole, and we're reaching into some of the higher risk people. That's my takeaway from that. That's a fair reading of what Mr. Wayne said and was memorializing? [LR424]

GOVERNOR DAVE HEINEMAN: Well, I don't...I don't try to speculate on what others say. [LR424]

SENATOR LATHROP: Okay. Well, I'll tell you how I interpret that. [LR424]

GOVERNOR DAVE HEINEMAN: Okay. [LR424]

SENATOR LATHROP: Wayne is saying, we're starting to get to some of these guys that

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are a little riskier; hey, everybody, be sure to use the right language. This memo, that statement about getting to higher risk people happened before your meeting with Casmer and Houston, right? [LR424]

GOVERNOR DAVE HEINEMAN: According to the dates here. [LR424]

SENATOR LATHROP: Three months, yeah. Now my question is, did you discuss the fact that they were using or looking at and reviewing higher risk inmates when you met with Casmer and Houston in June? [LR424]

GOVERNOR DAVE HEINEMAN: I don't recall the terminology "high-risk inmates." I think Director Houston certainly indicated, based on what he knew, and he knew the prison population better than I did, obviously, that there were additional candidates to be considered. But it was also very clear, and I know Esther Casmer and that board fairly well, just conversations I've heard, they make their...an independent judgment. If they didn't agree they should be paroled, I doubt they would do it. [LR424]

SENATOR LATHROP: Did you have conversations with Esther Casmer about that? [LR424]

GOVERNOR DAVE HEINEMAN: We just talked... [LR424]

SENATOR LATHROP: Generally. Generally. [LR424]

GOVERNOR DAVE HEINEMAN: ...in that meeting and occasionally I would meet with Esther and she came to all our director meetings. You know, she indicated to me on more than one occasion, they make an independent judgment and they know it's very difficult. It's not easy. Those are tough judgment calls that, you know, that I would probably describe, you know, you could have 99 percent right, but the 1 percent you get wrong you can bet we're going to hear about it. [LR424]

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SENATOR LATHROP: Right. They're managing risk over there. [LR424]

GOVERNOR DAVE HEINEMAN: They certainly are. [LR424]

SENATOR LATHROP: Did you ever admonish her...pardon me. Did you ever admonister (sic) (laugh)...ever admonish Esther Casmer to make sure that this process doesn't start turning out violent people? [LR424]

GOVERNOR DAVE HEINEMAN: I think the conversation we had with Esther Casmer--I wouldn't quite maybe use the term you did there--would be, Esther, we got to make sure that only those who are appropriate to be put out on parole should be. [LR424]

SENATOR LATHROP: Okay. [LR424]

GOVERNOR DAVE HEINEMAN: And again can I just say the Parole Board has a lot more experience at that than any of us because they meet with these individuals all the time. And, you know, my sense is after you've done that for a couple of years you get a pretty good idea whether you think someone, based on your conversations and observations, is a good candidate or not. [LR424]

SENATOR LATHROP: Okay. But did you tell her, while we want to move a lot of people out, Esther, as part of our no-cost option, I want you to make sure that we're not cutting any corners or putting people out that don't qualify? Did you ever tell her that? [LR424]

GOVERNOR DAVE HEINEMAN: I probably didn't use the exact words that you did, but I think she understood exactly where I was coming from because I made... [LR424]

SENATOR LATHROP: And where you were coming from is you didn't want her putting people out... [LR424]

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GOVERNOR DAVE HEINEMAN: I don't want the bad guys out on the street. [LR424]

SENATOR LATHROP: Okay. [LR424]

GOVERNOR DAVE HEINEMAN: Now are there individuals in that gray area that you need to take a look at? Probably. [LR424]

SENATOR LATHROP: Okay. [LR424]

GOVERNOR DAVE HEINEMAN: But, no, I never called a member of the Parole Board and said, hey, you need to let this individual out. Again, I don't try to micromanage and get into that detail. [LR424]

SENATOR LATHROP: And you didn't tell Houston to go set the quota of 200 people a month. [LR424]

GOVERNOR DAVE HEINEMAN: No. That was something that he probably came up on his own. [LR424]

SENATOR LATHROP: Well, he might have interpreted some indication from your office that that was the only place he could go with as directed. Like you said, you're setting general policy which is we're going to resolve this problem by moving people out, who are qualified, through the parole process and the furlough reentry program or reentry furlough program. [LR424]

GOVERNOR DAVE HEINEMAN: Again, I think, you know, the entire conversation was--and I think Director Houston and Ms. Casmer were aware--we're only going to move people through the program that qualify. [LR424]

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SENATOR LATHROP: Okay. [LR424]

GOVERNOR DAVE HEINEMAN: And Bob's job was to give them a series of candidates and then... [LR424]

SENATOR LATHROP: Did you oversee any of that, Governor? Were you engaged in any of that to make sure that what they were doing is what you wanted to have happen? [LR424]

GOVERNOR DAVE HEINEMAN: No. That's a level of detail that a Governor is not normally going to get involved in. And again, because we have two separate agencies here. [LR424]

SENATOR LATHROP: Okay. [LR424]

GOVERNOR DAVE HEINEMAN: And my experience with the Parole Board, they make independent judgments. [LR424]

SENATOR LATHROP: All right. We have a slide and I just want to...put the one up there, Doug, that shows the number of people paroled and put on the RFP. How we doing, guys? Well, we might be working...we're the legislative branch of government, so we might be working with some old equipment here, Governor. Okay, it's coming to life. This is the...a slide that we put together. Can you read that okay? [LR424]

GOVERNOR DAVE HEINEMAN: It's a little difficult. [LR424]

SENATOR LATHROP: If you need to, I'll give you a chance to get closer if you need to. But generally, we put this together to show the growth of people put on parole and people put out on the RFP... [LR424]

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GOVERNOR DAVE HEINEMAN: Okay. [LR424]

SENATOR LATHROP: ...which is the reentry furlough program or what we might call administrative parole. Do you see that? [LR424]

GOVERNOR DAVE HEINEMAN: Um-hum. [LR424]

SENATOR LATHROP: And can you see the spike? [LR424]

GOVERNOR DAVE HEINEMAN: I can see the numbers grew it looks like, what, in 2011-12; dropped a little bit in 2013. [LR424]

SENATOR LATHROP: Okay. And those represent, depending on your point of view, some success in the effort to move people out on parole and into, what, the RFP program. Right? [LR424]

GOVERNOR DAVE HEINEMAN: Okay. [LR424]

SENATOR LATHROP: Yeah. So when we talk about the no-cost options to alleviate overcrowding, parole and the RFP being part of that solution or part of that strategy, this slide shows that that certainly was the case. And the RFP requires Parole Board approval, too, doesn't it? [LR424]

GOVERNOR DAVE HEINEMAN: I believe that's accurate. [LR424]

SENATOR LATHROP: Okay. So between the two, we're starting to move some people out and alleviate or at least help with the overcrowding circumstance. Would you agree with that? [LR424]

GOVERNOR DAVE HEINEMAN: What I agree with, we're trying to manage that prison

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population and Director Houston is trying to use all the available options that are available to him. [LR424]

SENATOR LATHROP: Okay. You're having meetings with him to talk about this process though, right? I mean... [LR424]

GOVERNOR DAVE HEINEMAN: We had this one meeting to... [LR424]

SENATOR LATHROP: Okay. [LR424]

GOVERNOR DAVE HEINEMAN: You know, and once we decide, I don't try to meet with them, you know, weekly or monthly. I assume they'll get the job done. [LR424]

SENATOR LATHROP: Okay. And you're keeping an eye on your prison population,... [LR424]

GOVERNOR DAVE HEINEMAN: We get that report I think once a month. [LR424]

SENATOR LATHROP: ...the percent of overcrowding, right? You're keeping an eye on the percent of overcrowding and this is one of the strategies to try to get ahead of that. [LR424]

GOVERNOR DAVE HEINEMAN: It's part of what Director Houston was doing. [LR424]

SENATOR LATHROP: Yeah. And he did it with your blessing, didn't he? I mean you were okay with the fact that we were now putting more people out on parole and reentry. [LR424]

GOVERNOR DAVE HEINEMAN: Yeah, I had the conversation with him that we ought to be talking about are there more parole eligible candidates they ought to be taking a

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look at. And again, the Parole Board would make that independent verification. [LR424]

SENATOR LATHROP: Okay. And in this particular slide the blue represents people out on parole and the orange...I can't read it from here and I don't know if you can and I don't know if it's really important other than the visual, you can see that the two programs combined are starting to get people outside of the penitentiary or outside of a correctional facility and into parole or back into the community. [LR424]

GOVERNOR DAVE HEINEMAN: Assuming they qualified for it. And obviously when they're on parole, I don't know all the details, but there's some sort of supervision there too. [LR424]

SENATOR LATHROP: Okay. So we had a little conversation before we started today and I told you I'd give you a break if you needed one and we're at 10:30. If you're good to go, I can keep going. If you want a break, we can... [LR424]

GOVERNOR DAVE HEINEMAN: I think I'm good to go. [LR424]

SENATOR LATHROP: Okay. [LR424]

GOVERNOR DAVE HEINEMAN: But kind of like Senator Seiler, there will be a moment where we may need a break. [LR424]

SENATOR LATHROP: All right. [LR424]

GOVERNOR DAVE HEINEMAN: I'll let you know when I'm ready to do that. [LR424]

SENATOR LATHROP: I don't know if I want you picking on my Vice Chair. (Laughter)
[LR424]

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SENATOR SEILER: That's okay. [LR424]

SENATOR LATHROP: Well, so I want to visit with you about the reentry furlough program. Okay? [LR424]

GOVERNOR DAVE HEINEMAN: Okay. [LR424]

SENATOR LATHROP: As we look at the chart, you see that that's part of what has allowed the Department of Corrections to move some people through. [LR424]

GOVERNOR DAVE HEINEMAN: Um-hum. [LR424]

SENATOR LATHROP: Right? In the slide you can see that between...in fact, it's a significant part of the effort to move people out of the prisons and into some community-type programs. [LR424]

GOVERNOR DAVE HEINEMAN: Some community-type program where they had supervision. [LR424]

SENATOR LATHROP: Okay. Okay. The reentry furlough program, as I understand it, was established in 2008. Is that your understanding, Governor? [LR424]

GOVERNOR DAVE HEINEMAN: I'll accept your word for that. [LR424]

SENATOR LATHROP: Okay. And that kind of makes me think you're not sure or you weren't involved. [LR424]

GOVERNOR DAVE HEINEMAN: I don't believe I was involved in the establishment of it. I don't remember the specific date. Again, those are administrative things that the director would be involved in. [LR424]

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SENATOR LATHROP: Okay. And at the risk of sounding like somebody that didn't just hear your last answer, I want to ask a couple of questions. [LR424]

GOVERNOR DAVE HEINEMAN: Okay. [LR424]

SENATOR LATHROP: Before the reentry furlough program was established, did you ever meet with Director Houston to talk about this idea? [LR424]

GOVERNOR DAVE HEINEMAN: I don't recall that I did. [LR424]

SENATOR LATHROP: And I appreciate that you're not going to micromanage. [LR424]

GOVERNOR DAVE HEINEMAN: Um-hum. [LR424]

SENATOR LATHROP: That's not your style. And maybe not... [LR424]

GOVERNOR DAVE HEINEMAN: I'll just never get everything done if I try to do that. [LR424]

SENATOR LATHROP: Okay. You're not going to micromanage, but now we're talking about setting up another program... [LR424]

GOVERNOR DAVE HEINEMAN: Um-hum. [LR424]

SENATOR LATHROP: ...that will involve moving prisoners into community. Right? I'm going to ask you again. Did you visit with Director Houston about this program? [LR424]

GOVERNOR DAVE HEINEMAN: I really don't recall that we had a conversation about that. [LR424]

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SENATOR LATHROP: Okay. And again, not to sound like the guy that isn't listening...
[LR424]

GOVERNOR DAVE HEINEMAN: We could...we could have. I mean that's 2008. That's
six or seven years ago. [LR424]

SENATOR LATHROP: Okay. [LR424]

GOVERNOR DAVE HEINEMAN: I mean... [LR424]

SENATOR LATHROP: Over the years you certainly had conversations with him about
the reentry furlough program, didn't you? [LR424]

GOVERNOR DAVE HEINEMAN: I don't recall a lot of conversations about it because,
again, you know, as I work with directors that, you know, they'll come in and say, hey,
we're doing this or whatever and you probably get the same thing, people brief you on
certain things, they send you paperwork. I get more paperwork than I care... [LR424]

SENATOR LATHROP: Yeah... [LR424]

GOVERNOR DAVE HEINEMAN: ...and you read that and you try to get an
understanding of what's going on. [LR424]

SENATOR LATHROP: Right, but this isn't where we're going to hold the Christmas
party. [LR424]

GOVERNOR DAVE HEINEMAN: That's true. [LR424]

SENATOR LATHROP: We're talking about establishing a program that's going to move

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prisoners from confinement out into the community, and you don't remember talking to him about establishment... [LR424]

GOVERNOR DAVE HEINEMAN: I just don't... [LR424]

SENATOR LATHROP: ...of this program? [LR424]

GOVERNOR DAVE HEINEMAN: I really don't. [LR424]

SENATOR LATHROP: Do you know if this began as an idea from your office or an idea from the Department of Corrections? [LR424]

GOVERNOR DAVE HEINEMAN: I really don't. It's probably more likely an idea from Director Houston, given his experience in Corrections. [LR424]

SENATOR LATHROP: Okay. I want to have you turn the page, if you will, to page 50. [LR424]

GOVERNOR DAVE HEINEMAN: Okay. [LR424]

SENATOR LATHROP: Can you see page 50? [LR424]

GOVERNOR DAVE HEINEMAN: Yes, I do. [LR424]

SENATOR LATHROP: And...you laughed. Are you having trouble reading it? [LR424]

GOVERNOR DAVE HEINEMAN: No, no, no. You're probably going to tell me it was a rule and regulation that I approved, and I approve a bunch of them but I just don't recall every one in detail. [LR424]

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SENATOR LATHROP: Okay. Well, it's certainly a regulation. [LR424]

GOVERNOR DAVE HEINEMAN: Um-hum. [LR424]

SENATOR LATHROP: And maybe we can spend a second talking about this, all right? [LR424]

GOVERNOR DAVE HEINEMAN: Okay. [LR424]

SENATOR LATHROP: This one happens to be an amendment to the reentry furlough program, but it is an example of the regulations that brought this reentry furlough program to life. Right? [LR424]

GOVERNOR DAVE HEINEMAN: Okay. [LR424]

SENATOR LATHROP: At the top of this document on page 50 it appears to be a form for...used specifically by the Department of Corrections for the establishment of a regulation. [LR424]

GOVERNOR DAVE HEINEMAN: It appears that way. [LR424]

SENATOR LATHROP: Okay. So at the top of it we have on the left a logo of the Department of Corrections. [LR424]

GOVERNOR DAVE HEINEMAN: Um-hum. [LR424]

SENATOR LATHROP: And in the middle it says: Administrative regulations, Department of Correctional Services, state of Nebraska. Right? [LR424]

GOVERNOR DAVE HEINEMAN: Yes. [LR424]

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SENATOR LATHROP: Says that. And then off to the right at the top it says number 201.12 and below that it says reentry furlough program. This would be an example of the administrative regulation that established the reentry furlough program. Would you agree with that? [LR424]

GOVERNOR DAVE HEINEMAN: At the Department of Corrections? [LR424]

SENATOR LATHROP: Yeah. [LR424]

GOVERNOR DAVE HEINEMAN: It appears that way. [LR424]

SENATOR LATHROP: Okay. And you might have got ahead of me on what you said because I did want to go there with you. [LR424]

GOVERNOR DAVE HEINEMAN: Okay. [LR424]

SENATOR LATHROP: So this would be my understanding, and I have to tell you these are regulations that I got by subpoena. [LR424]

GOVERNOR DAVE HEINEMAN: Okay. [LR424]

SENATOR LATHROP: So in the piles of documents in my office, we have pieced together some of the regulations that were involved in establishment of the reentry furlough program as well as the various amendments. I think that it was established in 2008 and there were seven amendments, the last one maybe in 2014. [LR424]

GOVERNOR DAVE HEINEMAN: Well, if I'm looking at the page you have in front of me, it looks like it was revised on... [LR424]

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SENATOR LATHROP: Yeah, this one is the... [LR424]

GOVERNOR DAVE HEINEMAN: ...five different... [LR424]

SENATOR LATHROP: Yeah, yeah, you're right. [LR424]

GOVERNOR DAVE HEINEMAN: Okay. [LR424]

SENATOR LATHROP: And this one is the revision in 2013. I think there might be one more. [LR424]

GOVERNOR DAVE HEINEMAN: Okay. [LR424]

SENATOR LATHROP: Not important at this point yet. So when it was set up in 2008 as an administrative regulation and you might have...you know, you were kind of getting ahead of me a little bit on this process, when the department establishes an administrative regulation, the law has certain requirements, does it not? [LR424]

GOVERNOR DAVE HEINEMAN: On administrative regulations I assume they do. I'm a little bit more familiar with the rules and regulations that come to my desk that there's got to be a public hearing and all that. [LR424]

SENATOR LATHROP: Right. Well, this is an example of... [LR424]

GOVERNOR DAVE HEINEMAN: And so this may be the same procedure at the department level. [LR424]

SENATOR LATHROP: It's, yeah. In other words, they're establishing a regulation that's subject to a process that's defined in state law. [LR424]

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GOVERNOR DAVE HEINEMAN: Um-hum. [LR424]

SENATOR LATHROP: Would you agree with that--what we understand to be the Administrative Procedures Act? [LR424]

GOVERNOR DAVE HEINEMAN: I'll take your word for it for the moment. [LR424]

SENATOR LATHROP: Okay, okay. So in 2008 through an administrative process that's subject to the Administrative Procedures Act, we set up the reentry furlough program. And that act or that law that's involved in making administrative regulations is governed by a statute that you're familiar with because you, like you say, you sign a bunch of regulations probably every day. [LR424]

GOVERNOR DAVE HEINEMAN: Fairly frequently. [LR424]

SENATOR LATHROP: Fairly frequently. So we'll just start with a hypothetical. When the Department of Health and Human Services establishes a regulation, for whatever purpose, the law prescribes that there will be a public hearing, right? [LR424]

GOVERNOR DAVE HEINEMAN: I believe that's correct. [LR424]

SENATOR LATHROP: And that once there's a public hearing the law also requires that that very regulation be submitted to the Attorney General's Office for approval. [LR424]

GOVERNOR DAVE HEINEMAN: Right. [LR424]

SENATOR LATHROP: You understand. [LR424]

GOVERNOR DAVE HEINEMAN: It goes to his office first and then down to our office. [LR424]

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SENATOR LATHROP: Okay. And that at the Attorney General's Office it is to be evaluated to determine whether there is statutory authority and whether the regulation itself was constitutional. [LR424]

GOVERNOR DAVE HEINEMAN: I assume you're accurate on that. [LR424]

SENATOR LATHROP: That's the AG's job, not yours... [LR424]

GOVERNOR DAVE HEINEMAN: Okay, right. [LR424]

SENATOR LATHROP: ...but it's supposed to stop there and you understand that to be the case. [LR424]

GOVERNOR DAVE HEINEMAN: It's supposed to what? [LR424]

SENATOR LATHROP: It's supposed to...the regulation established through the administrative process is to make a stop at the Attorney General's Office... [LR424]

GOVERNOR DAVE HEINEMAN: Yeah, right. I thought you were... [LR424]

SENATOR LATHROP: ...before it gets to you. [LR424]

GOVERNOR DAVE HEINEMAN: Right, exactly. [LR424]

SENATOR LATHROP: Okay. [LR424]

GOVERNOR DAVE HEINEMAN: It goes over to the Attorney General first. [LR424]

SENATOR LATHROP: Okay. And as I read the law on making these administrative

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regulations, there is a process that allows you to circumvent the public hearing. Are you familiar with that? [LR424]

GOVERNOR DAVE HEINEMAN: Occasionally I think I can waive that under certain circumstances. [LR424]

SENATOR LATHROP: Yeah, you can. The law says that... [LR424]

GOVERNOR DAVE HEINEMAN: I'm reluctant to do that but... [LR424]

SENATOR LATHROP: ...you'll have a public hearing, yeah, you'll have a public hearing and the Governor, after somebody asks you to... [LR424]

GOVERNOR DAVE HEINEMAN: Right. [LR424]

SENATOR LATHROP: ...and I assume somebody has along your ten years, come to you with some kind of a written request to waive a public hearing and proceed with the process of making regulations. But that waiver requires some exigent circumstance, does it not? [LR424]

GOVERNOR DAVE HEINEMAN: Right. There would have to be a reason why I would even consider that. [LR424]

SENATOR LATHROP: There has to be good reason. So if we didn't have a public hearing, you would have had to sign off on it. [LR424]

GOVERNOR DAVE HEINEMAN: You would have thought, on our normal rule and regulation process. [LR424]

SENATOR LATHROP: It's the law though. That's the law. When it comes to making

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regulations, either they have a public hearing or you sign off and say you don't have to. [LR424]

GOVERNOR DAVE HEINEMAN: Um-hum. [LR424]

SENATOR LATHROP: And now I'm going to do something lawyers do... [LR424]

GOVERNOR DAVE HEINEMAN: Okay. [LR424]

SENATOR LATHROP: ...which is in order to have a good record, if it's a yes, you got to say yes instead of an uh-huh or a huh-uh, okay? [LR424]

GOVERNOR DAVE HEINEMAN: Oh, from what you've said so far... [LR424]

SENATOR LATHROP: It sounded like an affirmative answer. I just want the transcribers to be able to understand it. [LR424]

GOVERNOR DAVE HEINEMAN: Right. My understanding is a rule and reg, to not have a public hearing, would require the Governor to grant an exception to that. [LR424]

SENATOR LATHROP: Okay. And that a rule and regulation, according to the law in this state, has to be signed off by the Governor, does it not? [LR424]

GOVERNOR DAVE HEINEMAN: First by the Attorney General and then the Governor. [LR424]

SENATOR LATHROP: And then it is required and it is not even law until it has been signed off by the Attorney General and signed off by the Governor and then filed with the Secretary of State, a certified copy. [LR424]

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GOVERNOR DAVE HEINEMAN: I know the procedure and I think there's some issue sometime if you've already passed a law, does it go into effect even though we don't have the rules and regulations done. And I think we've had lawsuits on that. [LR424]

SENATOR LATHROP: Right. But you know or you understand... [LR424]

GOVERNOR DAVE HEINEMAN: Meaning the Legislature passed the law, right. [LR424]

SENATOR LATHROP: We're just agreeing on the process right here that's set out in the law and it would be you set up the regulation, you have a public hearing or the Governor says you don't have to, the Governor...it then goes to the Attorney General... [LR424]

GOVERNOR DAVE HEINEMAN: Um-hum. [LR424]

SENATOR LATHROP: ...who signs off on it to say that they had statutory authority to do it in the first place and that the regulation isn't unconstitutional, and then it goes to the Governor for the Governor's signature, and finally a certified copy is filed with the Secretary of State; and that all has to happen before it has the force of law. [LR424]

GOVERNOR DAVE HEINEMAN: That is my understanding although I believe there are times, again, I just am aware of enough situations where the Legislature passed a law that the rule and regulation takes some time to get implemented. And I think agencies move forward. [LR424]

SENATOR LATHROP: Sure. Sure they do, but the law prescribes what has to happen in order for a regulation to become lawful. [LR424]

GOVERNOR DAVE HEINEMAN: Yes. [LR424]

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SENATOR LATHROP: And there are steps. And now I want to talk to you about the steps employed in this one. Okay? [LR424]

GOVERNOR DAVE HEINEMAN: Okay. [LR424]

SENATOR LATHROP: Because I see no evidence that there was ever a public hearing. Can you tell me whether or not the rule initially in 2008, this regulation or any of the amendments to this rule, were ever the subject of a public hearing? [LR424]

GOVERNOR DAVE HEINEMAN: I do not know the answer to that. [LR424]

SENATOR LATHROP: Okay. And do you know whether the original version of this regulation or any of the amendments were ever presented to you for the purpose of waiving a public hearing? [LR424]

GOVERNOR DAVE HEINEMAN: I don't know specifically without going back and reviewing that. [LR424]

SENATOR LATHROP: Okay. [LR424]

GOVERNOR DAVE HEINEMAN: But I'm not...it's not... [LR424]

SENATOR LATHROP: I'm just going to tell you I've not seen any evidence that... [LR424]

GOVERNOR DAVE HEINEMAN: Okay. [LR424]

SENATOR LATHROP: ...either a public hearing or the Governor waived the public hearing. [LR424]

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GOVERNOR DAVE HEINEMAN: And I don't know if this administrative regulation has a different situation or requirement where the director can do it differently than the procedure you just... [LR424]

SENATOR LATHROP: Well, I've read the law and the law is pretty clear that if they're regulating...if they're doing administrative regulations, they have to comply with the law. And you were never asked to waive a public hearing and no public hearing was ever conducted on the original regulations or any of the subsequent amendments. And that would be your recollection. You have no recollection of either waiving the public hearing... [LR424]

GOVERNOR DAVE HEINEMAN: I have no recollection of the waiving of the public hearing. [LR424]

SENATOR LATHROP: Okay. And once the regulation is promulgated, once they come up with what they're coming up with, do you know or have any reason to believe that these regulations, any iteration of these regulations was ever presented to the Attorney General for his Opinion on whether they had statutory authority or whether the regulation itself was even constitutional? [LR424]

GOVERNOR DAVE HEINEMAN: I have no knowledge of that. [LR424]

SENATOR LATHROP: And finally, Governor, do you have any recollection or can you tell this committee whether or not these regulations in their original form or in any of the amendments to that since 2008 were ever presented to you for your signature? [LR424]

GOVERNOR DAVE HEINEMAN: I'd have to go back and look. Again, as I tried to indicate earlier, I sign a lot of rules and regulations. I review the memo, talk to my staff about them. Once they're done, it's kind of... [LR424]

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SENATOR LATHROP: Okay. [LR424]

GOVERNOR DAVE HEINEMAN: I forget that so... [LR424]

SENATOR LATHROP: That's interesting process you employ. [LR424]

GOVERNOR DAVE HEINEMAN: It's not, it's not... [LR424]

SENATOR LATHROP: What you do because you're presented with a lot of rules and regulations that are established according to this process that's prescribed by the law, which is in 84-901 and the sections that follow, normally if somebody is going to ask you to sign it, the last step before it's filed with the Secretary of State, they'll give you an explanation of what's going on. [LR424]

GOVERNOR DAVE HEINEMAN: Um-hum. [LR424]

SENATOR LATHROP: That's a yes? [LR424]

GOVERNOR DAVE HEINEMAN: Yes. [LR424]

SENATOR LATHROP: Okay. And that's my habit and I apologize for it, but I do want to have a record that reflects your affirmative responses. [LR424]

GOVERNOR DAVE HEINEMAN: Sure. [LR424]

SENATOR LATHROP: And that regulation, you don't have any recollection of ever signing these. [LR424]

GOVERNOR DAVE HEINEMAN: I don't. But if you were to ask me did I ever sign another regulation for another department, I'd tell you my recollection, I don't have

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recollection of that simply because I sign so many and I deal with so many different issues. [LR424]

SENATOR LATHROP: Okay. [LR424]

GOVERNOR DAVE HEINEMAN: It's kind of like the budget. Once I submit it, it goes through so many different iterations I wouldn't know every detail without looking at it again. [LR424]

SENATOR LATHROP: Sure, sure, sure. And I'm not here to tell you that I've got a document in any of these other pages with your signature on it, which is sort of my point. You never signed any of these regulations. [LR424]

GOVERNOR DAVE HEINEMAN: Okay. [LR424]

SENATOR LATHROP: You agree with that. You don't have any recollection and I have no evidence. [LR424]

GOVERNOR DAVE HEINEMAN: I don't have a recollection and you don't have a copy of it. I'll assume that it's unlikely... [LR424]

SENATOR LATHROP: You never signed them. [LR424]

GOVERNOR DAVE HEINEMAN: ...or I'd have to go see the Secretary of State. [LR424]

SENATOR LATHROP: Well, here's the problem. And the last step in the process according to the law, and again... [LR424]

GOVERNOR DAVE HEINEMAN: Um-hum. [LR424]

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SENATOR LATHROP: ...this is the law that prescribes how your branch of government promulgates regulations, requires that a certified copy be provided to and filed with the Secretary of State. I'm going to tell you if you go up there to try to learn something, you're going to be disappointed, Governor, because they were never filed with the Secretary of State. [LR424]

GOVERNOR DAVE HEINEMAN: Okay. [LR424]

SENATOR LATHROP: Okay? And so according to our law, the law in this state when your branch of government makes regulations, there is a process. [LR424]

GOVERNOR DAVE HEINEMAN: There is a process. [LR424]

SENATOR LATHROP: The process requires a public hearing that never happened or a waiver from you that never happened. It requires that the regulations be provided to the Attorney General for their approval; that never happened. And then signed by you, which never happened. And finally, Governor, they need to be...a certified copy of them need to be filed with the Secretary of State. And, sir, that never happened. Did you know that the Department of Corrections was making up the reentry furlough program in a process that did not comport with the law? [LR424]

GOVERNOR DAVE HEINEMAN: I'm not aware of anything that you just described. [LR424]

SENATOR LATHROP: Does it trouble you that the Department of Corrections, and this would have been generally during Bob Houston's tenure, does it trouble you that this process was established outside of the law? [LR424]

GOVERNOR DAVE HEINEMAN: It troubles me, but then when I realize who the agency legal counsel, I guess I'm not surprised. [LR424]

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SENATOR LATHROP: Well, you don't have to be...see, here's the problem with that statement. They're over there making regulations all the time. And the parole...there are regulations that have been properly promulgated by the Department of Corrections for other things. [LR424]

GOVERNOR DAVE HEINEMAN: Um-hum. [LR424]

SENATOR LATHROP: They're not amateurs. It's not that they don't have experience with this process; they do. They have regulations that deal with, for example, parole. And they've gone through the administrative procedures process and done it correctly. And you can say legal counsel didn't know. The question is, why was Bob Houston promulgating administrative regulations outside of the law? [LR424]

GOVERNOR DAVE HEINEMAN: Well, that's a good question. We need to talk to him about it. [LR424]

SENATOR LATHROP: Okay. And we'll get to that. Now I want to talk to you about the program. Because in the program...and I have to tell you and maybe you can agree or disagree or tell me you don't know, Lathrop, and I'll accept any one of those three. Go ahead and take your water. No, I haven't asked you a question. [LR424]

GOVERNOR DAVE HEINEMAN: Oh, I thought you were... [LR424]

SENATOR LATHROP: I will in a second. I'll give you a second to drink your water. So did you ever discuss with Bob Houston what this reentry furlough program was all about? [LR424]

GOVERNOR DAVE HEINEMAN: Not in any great detail, no, that I recall. Again... [LR424]

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SENATOR LATHROP: The first observation I would make about the reentry furlough program, Governor, before we talk about who qualifies and who doesn't, is that it seems to be if you put it up against parole, it's kind of doing the same thing. We are choosing qualified people to return to the community to do whatever...obviously the program requires that they do certain things and keep their nose clean and not break laws and report and things like that. [LR424]

GOVERNOR DAVE HEINEMAN: If I'm not mistaken, I think you said or someone said it also requires the Board of Parole approval. [LR424]

SENATOR LATHROP: Right, right, and we'll talk about that in a minute too. But in a real sense, it mirrors the parole process in that we choose people, they're run by the Board of Parole, and then they're given certain parameters on their behavior and their activities and what they can and can't do while they're on this program. Would you agree with that? [LR424]

GOVERNOR DAVE HEINEMAN: I mean you're getting into a level of detail that I don't normally get into relative to the Department of Corrections on specific individual cases. [LR424]

SENATOR LATHROP: Okay. So when this program was originally established in 2008, there is a...maybe if you can look at page 56B if you would. [LR424]

GOVERNOR DAVE HEINEMAN: 56B? [LR424]

SENATOR LATHROP: 56B. [LR424]

GOVERNOR DAVE HEINEMAN: Okay. [LR424]

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SENATOR LATHROP: This would appear to be, to me, and I'll represent to you that it is, the very first example or the very first iteration, if you will, of the reentry furlough program, the administrative regulation. You'll see on 56A it's dated August 11, 2008. And I want to talk to you about eligibility for this program that your director set up. Do you see where it says procedure and then paragraph 1, eligibility? [LR424]

GOVERNOR DAVE HEINEMAN: Oh, okay, yes. [LR424]

SENATOR LATHROP: Okay, you following me? It says unit case managers assigned and two sentences later it says: Each inmate's...so about halfway through that paragraph, you following me...each inmate's criminal history... [LR424]

GOVERNOR DAVE HEINEMAN: Right. [LR424]

SENATOR LATHROP: ...and performance on community custody will be closely viewed. Inmates with violent criminal records, lengthy arrest records, or multiple incarcerations may not be considered for reentry furlough program. Do you see that? [LR424]

GOVERNOR DAVE HEINEMAN: Um-hum. [LR424]

SENATOR LATHROP: And can we agree that generally that is sort of a list of people excluded from consideration? [LR424]

GOVERNOR DAVE HEINEMAN: I think what they're trying to indicate there, that we obviously don't want violent individuals and criminals, inmates, involved in this program. [LR424]

SENATOR LATHROP: Right. Right. In fact, it's not just a guideline and it's not just a sort of a desire. These people are excluded from consideration under this regulation. Violent

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offenders, people with violent criminal records, lengthy arrest records, or multiple incarcerations may not be considered for the reentry furlough program. That would be the regulation that set this program up. And that would be the eligibility...it's the eligibility requirement to be considered. Would you agree with that? [LR424]

GOVERNOR DAVE HEINEMAN: And I would assume the department would have to make a judgment about whether they fit into that category or not, but they're trying to establish that they don't want violent criminals in this program. [LR424]

SENATOR LATHROP: In fact, they are excluded. People with violent criminal records, lengthy records, or multiple incarcerations may not be considered for the furlough program. So anybody with a violent past, multiple...a lengthy arrest record, or multiple incarcerations doesn't qualify. [LR424]

GOVERNOR DAVE HEINEMAN: Probably shouldn't end up on the list, right. [LR424]

SENATOR LATHROP: Okay. Did you ever talk to Houston about this? What are going to be the qualifications? Bob, if we're going to put people out in the community, what are going to be the qualifications of somebody to be on the reentry furlough program? [LR424]

GOVERNOR DAVE HEINEMAN: I don't ever remember a conversation in that kind of detail. Like I say, at best again, we at some point move forward to sentence miscalculations that, you know, what I remember is try to use the reentry furlough program or extend parole. But, no, I don't ever recall having a specific detailed discussion with Director Houston about this. [LR424]

SENATOR LATHROP: Okay. So we... [LR424]

GOVERNOR DAVE HEINEMAN: And I would just say you're now getting into the

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operational detail that as Governor... [LR424]

SENATOR LATHROP: You wouldn't be involved in operational detail. But what I do want to talk to you about is your thoughts on some of this. [LR424]

GOVERNOR DAVE HEINEMAN: Okay. [LR424]

SENATOR LATHROP: And if you tell me you weren't engaged with Director Houston on the creation of this program, I have no way to...I have nothing that says you were. [LR424]

GOVERNOR DAVE HEINEMAN: I don't ever recall it. [LR424]

SENATOR LATHROP: Might be concerned that you weren't. This kind of looks like a bigger deal than micromanaging to me. But let me take you to page 56H. [LR424]

GOVERNOR DAVE HEINEMAN: 56H. [LR424]

SENATOR LATHROP: Maybe we need to stop at 56G first. [LR424]

GOVERNOR DAVE HEINEMAN: Okay. [LR424]

SENATOR LATHROP: So do you see where it says June 29, 2011? So now we're revising... [LR424]

GOVERNOR DAVE HEINEMAN: Oh, okay. [LR424]

SENATOR LATHROP: We're revising this very regulation, by the way, not through the legal process but we're revising it. And this is a different...this is a differ... [LR424]

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GOVERNOR DAVE HEINEMAN: Ms. Casmer and Director Houston have to sign off on it. [LR424]

SENATOR LATHROP: Well, I think we agreed that the people that really need to sign off on it is you and the Attorney General and then file it with the Secretary of State. But there are signature lines there. [LR424]

GOVERNOR DAVE HEINEMAN: And, Senator, if I could, I'm going to assume for the moment that you're accurate on that, but I guess I'd like to go back and ask some people does the department have the ability to do some sort of regulation like this on its own. I'll assume for the moment it doesn't, but I'd like... [LR424]

SENATOR LATHROP: Yeah, I've read the Administrative Procedures Act and... [LR424]

GOVERNOR DAVE HEINEMAN: Right. [LR424]

SENATOR LATHROP: ...they needed to run this by you and the Attorney General and do it in a public way. But I want to direct your attention to 56H. [LR424]

GOVERNOR DAVE HEINEMAN: Okay. [LR424]

SENATOR LATHROP: Okay? On 56H we have...this is an amendment to the original terms that we talked about earlier, and it says: Inmates will be considered for participation in reentry furlough program if they are within 18 months of their parole eligibility date or mandatory discharge date. By the way, these guys are getting considered to be put out on sort of an administrative parole under this program before their parole eligibility date, right? [LR424]

GOVERNOR DAVE HEINEMAN: Again, you're getting into a level of detail when you start talking about all these things sometimes can be a little bit confusing. [LR424]

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SENATOR LATHROP: Okay. [LR424]

GOVERNOR DAVE HEINEMAN: And I try not to get into that level. [LR424]

SENATOR LATHROP: All right. Let me read the sentence over again... [LR424]

GOVERNOR DAVE HEINEMAN: Okay. [LR424]

SENATOR LATHROP: ...because I don't think you have to be intimately acquainted with this because I think I'm just pointing out something that's pretty evident just from this eligibility statement. [LR424]

GOVERNOR DAVE HEINEMAN: Um-hum. [LR424]

SENATOR LATHROP: Inmates will be considered for participation in the reentry furlough program if they are within 18 months of their parole eligibility date or their discharge date, mandatory discharge date. So this is a preparole administrative parole process. In other words... [LR424]

GOVERNOR DAVE HEINEMAN: It appears that way I guess. [LR424]

SENATOR LATHROP: Okay, all right. We're putting people out into the community before their parole eligibility date or before the date they would otherwise jam out. Right? That...those are the people that are eligible for this program. [LR424]

GOVERNOR DAVE HEINEMAN: Again, you're kind of getting into a level of detail that, you know, I have never gone through with the director. [LR424]

SENATOR LATHROP: You know...okay. But the one thing that I find curious, I'm just

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going to comment for a second about this whole program, this administrative parole, if you will, is that when a judge in any of the 93 counties in this state sentences somebody and their victims show up and they watch somebody get sentenced and they go, what does that mean? How long is the guy going to be down at the pen? And somebody says, well, his mandatory discharge date is this date and his parole eligibility date is this date so the soonest he could possibly be out is this. And then we got a program established with an administrative process outside of the law that's turning these people back to the community before the judges or the victims expected them to. [LR424]

GOVERNOR DAVE HEINEMAN: Well, Senator, if I could comment and maybe you... [LR424]

SENATOR LATHROP: You can comment because I'm curious about how you feel about the fact that this program was sending people back to the community before their parole eligibility date. [LR424]

GOVERNOR DAVE HEINEMAN: You know, let me comment in a general sense. [LR424]

SENATOR LATHROP: Sure. [LR424]

GOVERNOR DAVE HEINEMAN: Maybe you'll agree with me on this one. You know, I'd like to see more truth in sentencing. One of the big things I think for the average layperson like myself, we hear a judge say you're sentenced to 18 to 20 years in prison. We think that means 18 to 20 years in prison. But because of the good time law, it's really 9 to 10. And so all these issues come into play. [LR424]

SENATOR LATHROP: This is like...but this is like good time on steroids. Right? These guys... [LR424]

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GOVERNOR DAVE HEINEMAN: Well, I don't know if I'd describe it that way. [LR424]

SENATOR LATHROP: These guys are getting out before they're eligible for parole, before good time would let them be discharged, and we did it in an administrative process that didn't comply with the law. And you know what? You can't find these regulations. You can't find them. You know the other thing that happens, Governor? When you file the certified copy like the law requires before these can become effective, then the Secretary of State has a duty. The Secretary of State then has to send them out to law libraries so lawyers, people can find them. We like to read this stuff and we need to know about it. What's that regulation about? When it didn't get filed with the Secretary of State, guess what? The only people that have a copy of this is our friends over at the Department of Corrections who are running a program, releasing people on this sort of administrative parole process before their parole eligibility date. And does that trouble you? [LR424]

GOVERNOR DAVE HEINEMAN: Well, absolutely and that's again why I'd like to go back and find out more, particularly I'd talk to the Attorney General, is this permissible? [LR424]

SENATOR LATHROP: Well, I'm going to tell you I've been practicing law for 33 years and I read the statute yesterday and it's not. And I'm not so much concerned about what the Attorney General is going to say. Okay? It's a process outside of the law, Governor. [LR424]

GOVERNOR DAVE HEINEMAN: I appreciate that. [LR424]

SENATOR LATHROP: Okay. [LR424]

GOVERNOR DAVE HEINEMAN: But when I go for legal advice and guidance, I go to the Attorney General. [LR424]

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SENATOR LATHROP: Well,... [LR424]

GOVERNOR DAVE HEINEMAN: I can't imagine you would expect me to go anywhere else. [LR424]

SENATOR LATHROP: You got Lauren Kintner downstairs. [LR424]

GOVERNOR DAVE HEINEMAN: Huh? [LR424]

SENATOR LATHROP: You have other lawyers you can talk to, but that's beside the point. Let's talk about the... [LR424]

GOVERNOR DAVE HEINEMAN: The lawyer for the state is the Attorney General and he's the one we rely on. [LR424]

SENATOR LATHROP: Okay. So let's talk about how eligibility changed. Now people who aren't even at their parole eligibility date can be released under this program. And people who haven't reached their mandatory discharge date can be released under this program and something else changes here. I want to do the next sentence. [LR424]

GOVERNOR DAVE HEINEMAN: Okay. [LR424]

SENATOR LATHROP: Each inmate's criminal history and facility adjustment performance will be closely reviewed. Did you notice something about the difference between the two? The requirement that a person who is a violent offender be excluded from this program has been omitted from this version of the rules. So people who are violent offenders are now eligible as are people who have long criminal arrest records and multiple incarcerations. Do you see the difference? So now we're going to look at their record, but we're not going to exclude them. [LR424]

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GOVERNOR DAVE HEINEMAN: I see the difference, but is this just amending the previous one or? [LR424]

SENATOR LATHROP: No, it's changing the... [LR424]

GOVERNOR DAVE HEINEMAN: Okay. [LR424]

SENATOR LATHROP: It's changing the eligibility. I'm not trying to trick you. They changed...in 2011, they changed the criteria. Okay? And we can go through, but a year later they changed it back. Okay? So we have this program that the Department of Corrections set up and initially they said no violent offenders. [LR424]

GOVERNOR DAVE HEINEMAN: Um-hum. [LR424]

SENATOR LATHROP: And then for a year they suspended the no violent offenders and said we'll take a look at your record, and then a year after that they went back to no violent offenders. Okay? Can we accept that as the time line for the... [LR424]

GOVERNOR DAVE HEINEMAN: I'll assume what you're telling me is accurate, but... [LR424]

SENATOR LATHROP: Okay. And I'm not misleading you about it. [LR424]

GOVERNOR DAVE HEINEMAN: Yeah. [LR424]

SENATOR LATHROP: They're in there. We can go through them if you want. [LR424]

GOVERNOR DAVE HEINEMAN: Right. [LR424]

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SENATOR LATHROP: But if you can accept that as true... [LR424]

GOVERNOR DAVE HEINEMAN: But I also assume, again, the head of the Parole Board signed off on these. [LR424]

SENATOR LATHROP: That's true. [LR424]

GOVERNOR DAVE HEINEMAN: Right. [LR424]

SENATOR LATHROP: Okay. So we have a stretch where we have no violent offenders should be on this list and then we have a stretch where we'll look at it, look at the record, and then we go back to no violent offenders. And I want to talk to you about how this program is performed. You see that orange up there? [LR424]

GOVERNOR DAVE HEINEMAN: Um-hum. [LR424]

SENATOR LATHROP: That's people getting out. [LR424]

GOVERNOR DAVE HEINEMAN: That's what now? [LR424]

SENATOR LATHROP: That's people who are getting out under this program. Okay? [LR424]

GOVERNOR DAVE HEINEMAN: Under supervision. [LR424]

SENATOR LATHROP: Under supervision, which is sort of the whole point of this administrative parole that they set up. Okay? Now I want you to turn to page 56K. [LR424]

GOVERNOR DAVE HEINEMAN: Fifty-six what? [LR424]

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SENATOR LATHROP: K. You see that? [LR424]

GOVERNOR DAVE HEINEMAN: Yes. [LR424]

SENATOR LATHROP: You see at the top of 56K it says: Violent offenders released to RFP 2009 to 2014. Do you see that document? [LR424]

GOVERNOR DAVE HEINEMAN: Um-hum. [LR424]

SENATOR LATHROP: This document was prepared by the people in my office after they went through the list of folks who your Department of Corrections has placed on this administrative parole that the department calls the RFP program. Okay? I want to talk to you about some of these guys, Governor, because...and just so the record reflects, we're looking at four pages of people, are we not, 160...? [LR424]

GOVERNOR DAVE HEINEMAN: All the way through N you're saying? [LR424]

SENATOR LATHROP: Yes, sir. [LR424]

GOVERNOR DAVE HEINEMAN: Okay. [LR424]

SENATOR LATHROP: You can see there's 162 people on this list. [LR424]

GOVERNOR DAVE HEINEMAN: Um-hum. [LR424]

SENATOR LATHROP: That's a yes? [LR424]

GOVERNOR DAVE HEINEMAN: Yes. [LR424]

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SENATOR LATHROP: Okay. And I don't mean disrespect when I do that. I just want to make sure the record reflects an affirmative response. So there's a period in 2011 where we take the violent offender part out. But before two thousand...did I say 2011 or '12? Help me out, Molly. Let me get it straight because before we go through this list I want to have the... [LR424]

GOVERNOR DAVE HEINEMAN: Right. Because aren't...didn't you say 2011 or '12 there was this amendment change? [LR424]

SENATOR LATHROP: That's what I'm looking for. I think it was during 2011. [LR424]

GOVERNOR DAVE HEINEMAN: June 29... [LR424]

SENATOR LATHROP: So during 2011 we're going to look at them, but we're not going to exclude violent offenders. So before 2011 we have some people that are on the list... [LR424]

GOVERNOR DAVE HEINEMAN: There are some people on here... [LR424]

SENATOR LATHROP: Let's talk about them. We don't want violent offenders on this list. And this list has columns, and I want to go through the columns with you. [LR424]

GOVERNOR DAVE HEINEMAN: Okay. [LR424]

SENATOR LATHROP: First of all, on the column on the left we've numbered it, have we not? [LR424]

GOVERNOR DAVE HEINEMAN: Yes. [LR424]

SENATOR LATHROP: And in the column next to it that we have the year they're

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released, and for some reason it's reported in a fiscal year. I don't know why, but they are. We don't have the date of their release, but we do have the fiscal year. And then we have the last name of the inmate. [LR424]

GOVERNOR DAVE HEINEMAN: Um-hum. [LR424]

SENATOR LATHROP: The next column to the right of that is inmate numbers. And then we have the offense. [LR424]

GOVERNOR DAVE HEINEMAN: Right. [LR424]

SENATOR LATHROP: Do you see that? [LR424]

GOVERNOR DAVE HEINEMAN: I do. [LR424]

SENATOR LATHROP: And so I'm going to walk through some of these to see if you thought they qualified during the period of time. So in 2009 somebody named Elmshouser was released onto this program but had been possession of a stolen firearm, may or may not be violent offense. Maybe that's in the gray area. [LR424]

GOVERNOR DAVE HEINEMAN: Well, when you start talking about violent offense and nonviolent offense, I assume there's some legal definition and I'm not an expert on that. We were having a conversation the other day at CSG about that. [LR424]

SENATOR LATHROP: Okay. Well, let's move down to number 7. [LR424]

GOVERNOR DAVE HEINEMAN: Okay. [LR424]

SENATOR LATHROP: Mr. Gray, murder in the second degree; line 8, Mr. Green, murder in the second degree; line 9, Johnson, murder in the second degree; line 11,

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murder in the second degree; 14, Gomez, second-degree murder; line 16, child abuse and robbery. [LR424]

GOVERNOR DAVE HEINEMAN: Which line are you saying? [LR424]

SENATOR LATHROP: 16. [LR424]

GOVERNOR DAVE HEINEMAN: 16. Okay. [LR424]

SENATOR LATHROP: Line 21, terroristic threats, multiple firearm charges; lines 22, 23, and 24 all habitual criminals; line 26, assault in the second degree, habitual; 27, manslaughter; 29, assault in the second degree with a deadly weapon; 32...by the way, I'm skipping the robberies and the possession of a firearm because they seem to pale in comparison to the murders and the manslaughters. Line 33, Garcia, manslaughter; line 35, assault in the first degree--that requires serious bodily injury to have assault in the first degree; 36 and 37, robbery with a deadly weapon; line 39, Kelley, robbery assault in the first and second and third degrees; line 40 and 41, manslaughter, manslaughter; 45, assault in the first degree with a deadly weapon; 46, sexual assault, kidnapping, and terroristic threats. This guy was released on the RFP with a history of sexual assault...convictions for sexual assault, kidnapping, and terroristic threats; 47, assault in the first degree with a deadly weapon; 48, robbery, deadly weapon assault on a peace officer; lines 51-57, all assault in the first degree, two of them with a deadly weapon; 59, somebody named Butcher, false imprisonment, terroristic threats, deadly weapon, placed on this program; line 62, domestic assault in the third degree, assault on an officer in the third degree. It goes on for 162 entries during the program... [LR424]

GOVERNOR DAVE HEINEMAN: Um-hum. [LR424]

SENATOR LATHROP: ...162 entries, all...and this is just the people that my office could identify as having been convicted of a violent offense. And you would agree that these

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are violent offenses. [LR424]

GOVERNOR DAVE HEINEMAN: From what I know, again, I'm not a lawyer, but from what I know, many of them would qualify for a violent offense. And my reaction is, I'm surprised the Board of Parole would approve them. [LR424]

SENATOR LATHROP: Right. Right. I'm surprised we have a program that was developed outside of the law, had criteria that would exclude these people, and 162 people have been released to this program to make that number work. [LR424]

GOVERNOR DAVE HEINEMAN: And again... [LR424]

SENATOR LATHROP: What is your reaction, Governor? Tell me. [LR424]

GOVERNOR DAVE HEINEMAN: My react... [LR424]

SENATOR LATHROP: Are you as astonished and appalled and... [LR424]

GOVERNOR DAVE HEINEMAN: A couple of things that I could share with you. First of all, again, I'd like to check with the Attorney General relative did they have any legal authority to do what they did. Secondly, given the challenges we're having with Department of Corrections, this is just one more revelation that makes you wonder what's going on down there. And in particular, again, the two areas where we've had the most challenge, as you're well aware of because of the independent investigation, is the legal counsel area and the records area. [LR424]

SENATOR LATHROP: But the legal counsel wasn't recommending these people. [LR424]

GOVERNOR DAVE HEINEMAN: I don't know that. [LR424]

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SENATOR LATHROP: George Green, Sharon Lindgren, and Kathy Blum were not recommending these people. They didn't create this program. They didn't create this program. [LR424]

GOVERNOR DAVE HEINEMAN: They didn't have anything to do with the creation of the program? [LR424]

SENATOR LATHROP: Well, I don't know. Maybe somebody went down to them and said, this is what I'm thinking, will you draw it up. I don't know. I don't know the answer to that. [LR424]

GOVERNOR DAVE HEINEMAN: And I don't know either. [LR424]

SENATOR LATHROP: But what I can tell you is even if you thought that they had the authority to make this program, to set the program up, the very terms of the program exclude violent offenders. And look at this list. You don't need to be a lawyer to see that the pressure to move people out of this place and diminish the overcrowding led to 162...this list, we were on the conservative side when this list was created. This isn't we got a bunch of gray areas where somebody is involved in a, you know, a schoolyard scuffle. These people...first-degree assault, Governor, that requires... [LR424]

GOVERNOR DAVE HEINEMAN: Right. [LR424]

SENATOR LATHROP: ...that requires serious bodily injury to the victim. The victim who... [LR424]

GOVERNOR DAVE HEINEMAN: That's why I'd like to know what occurred. [LR424]

SENATOR LATHROP: Well, sure; well, sure. I'm sure you would because I'm

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astonished. I'm astonished. And you know what else? [LR424]

GOVERNOR DAVE HEINEMAN: You know what? I've been astonished by everything the Department of Corrections has been doing since about the middle of June to learn what happened. [LR424]

SENATOR LATHROP: What is the driving force that makes these people continue to do that? Because again, we started the day with this proposition: that you became Governor in 2005 and responsible for the Department of Corrections. These guys work for you. And tell me when did you think you had a problem? Because...is it after Castillas was discovered? Because you had a problem a long time ago. When did you think you had a problem? Because then my next question, Governor, is going to be when did you engage? When did you engage and say, you know what, I have delegated too much to these people and it's one screw-up after another? Tell me, when did you realize you had a problem over there and when did you engage and say, what in the world is going on at the Department of Corrections--162 people, violent offenses, released to a program established in secret and outside of the law? Go ahead. [LR424]

GOVERNOR DAVE HEINEMAN: Yeah. Let me share a few things. [LR424]

SENATOR LATHROP: I get a little wound up about this because... [LR424]

GOVERNOR DAVE HEINEMAN: Yes, you do. [LR424]

SENATOR LATHROP: ...I am...I have to tell you, Governor, this stuff, every time we have a hearing something comes up like this and I'm like, does anybody care what the law requires? And you set up an administrative process outside of the law and then you don't follow it. And I don't mean you, it's your department. These are your guys. You're responsible. Tell me, when did you get engaged? [LR424]

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GOVERNOR DAVE HEINEMAN: Well, let me share a couple things with you, okay? First of all, Director Houston was a well-respected corrections professional; and I think all of us had confidence in him. You know, it's easy to go back and do some Monday morning quarterbacking here and I don't like what's occurred and I want to find out more information. But also I believe members of the Judiciary Committee were aware, for example, the RFP program. We all should have been asking more questions in that regard. But I want to be very clear. I've said it from day one when we found out about some of these things, I accept full responsibility. I know where the buck stops--at my desk. And now we're about trying to correct what the mistakes that were made. And again, it's been very, very difficult because the two areas you ought to be able to rely on in this you would have thought would have been your legal department and your records department. And both of them are the most responsible for what occurred. And again, I need to go take a look at this and find out what occurred. Again, I'm a little surprised, knowing the Board of Parole, that they would agree to it if they didn't think it was legal. And secondly, why would they agree to put these individuals out in the reentry furlough program? [LR424]

SENATOR LATHROP: Right. You know every time...I'm just going to make this observation. When I hear you say I accept full responsibility, it's followed by, well, it was that Poppert guy and it was that Green guy. [LR424]

GOVERNOR DAVE HEINEMAN: Well, I'm just trying to be specific where the mistakes occurred, but we got to go correct them. [LR424]

SENATOR LATHROP: But here's the...here in the end...this is the thing I can't escape and I've sat through, this is my fifth hearing, and I can't tell you how much time I've spent reading all these e-mails and all the stuff that I've seen and there's no way I could bring it all before you and ask you questions about every one of them. I'd like to. But when I look at it I'm like, what pressure, what pressure, Governor, would bring people to ignore the law? What pressure brings these people that work for you to ignore the law?

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The pressure...I'll give you a chance to respond to this, okay? [LR424]

GOVERNOR DAVE HEINEMAN: Um-hum. [LR424]

SENATOR LATHROP: The pressure of overcrowding. You know, we had Jeannene Douglass in here who, by the way, got thrown under the bus in this whole thing--Jeannene Douglass is in here and she says, you know what, we could feel the pressure coming clear from the Governor's Office to move people out of here. This overcrowding thing, sir, this overcrowding thing is running the show. And for the life of me, Governor, the life of me there's some pressure on these people that say, I'm not going to do the Administrative Procedures Act. I'm setting up the furlough program. We got to get people out of here. And we can talk about Anderson and we can talk about the 306 people that were released mistakenly. There's more I'm not following the law. And here we have a program developed off the grid, off the grid, and it's supposed to be filed with the Secretary of State so people, victims, judges, lawyers, somebody can read it and say, you know, they're releasing people down there who aren't ready for parole under a program they developed outside of the Administrative Procedures Act. I can only think--and I'll give you a chance to respond, Governor--I can only think that the pressure from overcrowding was making people do things they shouldn't have been doing over there and it's a theme. And I know you've said no one in my administration is above the law. And, boy oh boy, was that a problem for Jeannene Douglass. Everybody else is doing fine, maybe George Green. Overcrowding was driving the bus. You're getting up to 150 percent and we need a program. And Director Houston came up with one and then didn't even follow his own regulations, and he's putting out people with murder, murder, manslaughter, first-degree assault, kidnapping, terroristic threats. Go ahead and tell me why you think it wasn't overcrowding because I've come to the place where I think it was driving the bus and good people started to think that there was something more important than following the law over there at the Department of Corrections. [LR424]

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GOVERNOR DAVE HEINEMAN: Well, if I can share a couple of things with you.
[LR424]

SENATOR LATHROP: You may. [LR424]

GOVERNOR DAVE HEINEMAN: I tried to make it clear to everybody throughout all state government we're going to follow the law. For me, the prison capacity issues are separate, a separate issue from some of the other things that occurred. I don't believe that my office was applying pressure on anybody to go outside the law; and if they did, they shouldn't have done it. I don't support that concept in any way, shape, or form. And I think I've made that abundantly clear. And so again, a lot of mistakes were made. We're trying to correct them. This is another one that we'll look into. Again, I'd like to talk to the Attorney General relative to exactly what occurred here and why it occurred.
[LR424]

SENATOR LATHROP: Well, even if the Attorney General--and I wouldn't be surprised if he came up with something like that thing I got two days ago and tries to say, well, really, you know, the law is this and--even if he said that you didn't have to sign off on these, that the Attorney General never needed to look at them, which, by the way, I'll tell you I've read that act and they needed to go through that procedure and this didn't. But even if he said it didn't, they set up regulations and then didn't follow them. And how bad was it, how bad was it, Governor, how strongly, what pressure did these people feel that they had a regulation that said no violent guys and they said, I don't care anymore? I got to get some people out the door... [LR424]

GOVERNOR DAVE HEINEMAN: I think you... [LR424]

SENATOR LATHROP: ...so 162 people under this program that was developed in secret are sent out the door and they're violent people. [LR424]

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GOVERNOR DAVE HEINEMAN: Again, you know, I want to go back to the Board of Parole. I think we definitely need to talk to them to see what occurred because, again, my sense in dealing with Esther and her board, they were very independent; and they were only going to release people that wouldn't commit crimes when they were out there on a program like this or parole. [LR424]

SENATOR LATHROP: Okay. What do you suppose Esther Casmer would tell us about the pressure she was experiencing to move people through? That's a... [LR424]

GOVERNOR DAVE HEINEMAN: I can tell you this about... [LR424]

SENATOR LATHROP: Maybe the hardest...yeah, go ahead. [LR424]

GOVERNOR DAVE HEINEMAN: I can tell you Esther Casmer is a very strong person and I have great respect for her. And my experience has been she would not violate the law. So that's why I say when you talk about that she was involved in this and she signed off on it, I guess I'd like to go back and find out where she thought she had the authority relative to that. But even beyond that, the Board of Parole has always been pretty tough relative to dealing with individuals they let out into society under any supervision. [LR424]

SENATOR LATHROP: You know, that used to be true. That used to be true. And the other thing that used to be true is that they got their programming in prison, they completed their programming, and then because they've done their programming they were discharged on parole. Good job, thank you for behaving, thanks for going out and...you're now released, you know, follow these rules. Even the Board of Parole and, you know when I asked Ms. Casmer during her last confirmation hearing in front of Judiciary Committee, I said, it looks to me, Ms. Casmer, like the model was you go to prison, you have an evaluation, and somebody gives you some programming. You need to maybe go through substance abuse or, you know, get over your violent tendencies or

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domestic assault, you know, stop beating up women or your wife or whatever those programs are that they get after they go through D&E, right? And now it looks like we're doing some of it, not all of it. We're releasing people on these two programs, the legal parole and this administrative parole, from the Department of Corrections. We're releasing them and they haven't even completed their programming. It's like, okay, you get out and we're going to have your report, behave yourself because we're taking a risk with you. And by the way, go see these people and get your substance abuse. And so now we also have this, which is the overcrowding has driven us or perhaps the absence of programming has taken this parole process to a place where the programming isn't all happening inside the place. These guys are being discharged without programming in some cases or with little programming and sent to a community provider to get their substance abuse, their violence reduction. There are so many things in this process, Governor Heineman, there are so many things in this process that are driven by the overcrowding. And you know what the thing that's most concerning to me that makes me feel the worst about it is it's driven good people to do things outside the law. You know, we sat here while people threw Jeannene Douglass under the bus, right? Jeannene Douglass should never have been called upon to make a judgment. The guy who should have been knowledgeable--and you saw the DOJ report that came out last week. [LR424]

GOVERNOR DAVE HEINEMAN: Yep. [LR424]

SENATOR LATHROP: The DOJ report said this Poppert should have known what he was doing. He didn't have...so we run Jeannene Douglass out and Poppert gets ten days' suspension and this guy, he should have known better, but he was so ill-equipped to do that job he didn't do anything about this decision in Castillas. And the list of people, good people I think, Governor, I think these people all took a job with the Department of Corrections to do good, to carry out the mission of the department. And the overcrowding and the pressure from the overcrowding Jeannene Douglass talked about leads people to do this kind of stuff... [LR424]

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GOVERNOR DAVE HEINEMAN: They shouldn't violate the law. [LR424]

SENATOR LATHROP: A hundred and sixty...I know, but they are. They are. A lot of people are. [LR424]

GOVERNOR DAVE HEINEMAN: And if they are, they should be held accountable. [LR424]

SENATOR LATHROP: Well, I don't think we can look past what brought them there. I excuse no one for breaking the law, okay? No one gets a pass with me for breaking the law. But as long as we're on that topic, we had Kenney in here with his TAP program. Okay? [LR424]

GOVERNOR DAVE HEINEMAN: Um-hum. [LR424]

SENATOR LATHROP: He's in here with his TAP program. Now George Green we make a public spectacle out of after he's in front of this committee. He did not read the Castillas case. And for the general counsel of the Department of Corrections not to read that or not to have responded to people calling him, that's a lawyer not practicing to the standard of care. [LR424]

GOVERNOR DAVE HEINEMAN: Right. [LR424]

SENATOR LATHROP: And you and I can agree on that. Mike Kenney, Mike Kenney develops a program and has three lawyers, essentially three lawyers express an opinion that that thing is outside of the law. Three lawyers tell him you can't do this; and he does it at the same time that you are doing a press conference that says, no one is above the law. In fact, if anybody in the Department of Corrections sees somebody breaking the law, I want to know about it. We have a hearing in here, we have a hearing

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in here and this guy is in here saying, well, I developed this all on my own. I made it up. Well, didn't you have George Green show you a memo where three lawyers told you, you couldn't? Yes, and I did it anyway. So what happens to Kenney? The press release that we see is, Mike made a mistake. Mike made a mistake. And so I'm going to suggest something to you and I'll give you the opportunity to respond, Governor. I'm going to suggest something to you. If Mike Kenney makes a mistake and we can excuse him setting up something that's outside of the law, why would somebody like Bob Houston not think he can put 162 violent people through a program when it violates the terms? In other words, the culture becomes, yeah, we got something else driving this. We've got the law of overcrowding and the law of overcrowding trumps. It's like a principle of physics. The law of overcrowding has two principles, Governor, near as I can tell. One is we need to get people out of here and the other principle of the law of overcrowding is once they're out, we got to find a way not to take them back. And that becomes more important than the law. It became more important to Mike Kenney, whose program outside of the law you excused as a mistake. And if that's a mistake, then the people can violate the law as long as they're in the circle. But when you have a Jeannene Douglass or some low-level person that does something that is...well, Weilage. This guy admitted to withholding a report, admitted to withholding a report and we sit here two, three, four weeks later, whatever it's been, and he's still working there. That's the culture that allows people to think that, you know what, I know what the regulation says, but I'm putting 162 violent guys out and we haven't even looked at the criteria for long criminal records. Okay? This was their program. This was their regulation. And somebody felt it was okay not to follow it because there's a cultural problem over there about following any law but the law of overcrowding. Go ahead. [LR424]

GOVERNOR DAVE HEINEMAN: I appreciate the time to respond. [LR424]

SENATOR LATHROP: Thanks for listening to me, yeah. [LR424]

GOVERNOR DAVE HEINEMAN: And I'm going to respectfully disagree in a couple of

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areas. Let me go to the... [LR424]

SENATOR LATHROP: Sure. [LR424]

GOVERNOR DAVE HEINEMAN: ...TAP program. Neither the Attorney General or I knew about that until Director Kenney's testimony. I called him on that Saturday and said, hey, what's going on here? Told him, you know, hey, that was a mistake not to take that memo and go right to the Attorney General and see what his advice and counsel was. But since then I also asked the Attorney General, is this legal or not? And the Attorney General has made it very clear that it's reasonable to assume that he's operating within his statutory discretionary authority. I know you're going to disagree with that, but that's what the Attorney General told me. And he is the chief legal officer of this state. He's the person I rely on for everything we're involved in, particularly regarding Department of Corrections. He's made it abundantly clear--and I'm sure we're going to get to sentence miscalculations--that we're not ignoring Supreme Court rulings, that we're following the law. So again, at least on that point I want to respectfully disagree based on the advice and counsel we received from the Attorney General. Do we need a culture change down there? Absolutely, I agree with you that and that's going to take a long period of time in a wide variety of areas. [LR424]

SENATOR LATHROP: I guess my response is I read the Attorney General's Opinion about the TAP program. I think it went something like eh-h-h-h-h-h. [LR424]

GOVERNOR DAVE HEINEMAN: Well, I don't know it was an Opinion. He just spoke out loud, but I asked him specifically, you know, relative to this because, again, I don't want anybody in state government, whether Department of Corrections or anywhere, violating the law. [LR424]

SENATOR LATHROP: It's 11:30. I'm just going to ask you if you feel like you need a break now. Do you want to break for lunch or do you want to keep going? I want to be

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respectful of your time. And if you need a short break, we can have a short break and come right back here. [LR424]

GOVERNOR DAVE HEINEMAN: I'd say if we could take a quick break for lunch, then I'll be back whenever you want. [LR424]

SENATOR LATHROP: Is the committee okay with that? Okay. Why don't we make it you need...how much time do you need for lunch--hour, hour and a half? What do you need? [LR424]

GOVERNOR DAVE HEINEMAN: Oh, I don't need an hour and a half. I never get that much time. [LR424]

SENATOR LATHROP: All right. We'll be back here at 12:30. [LR424]

GOVERNOR DAVE HEINEMAN: Okay. [LR424]

SENATOR LATHROP: All right. Thank you, Governor. [LR424]

BREAK

SENATOR LATHROP: Governor, we appreciate your patience. We're back. It's a little bit after 12:30 and... [LR424]

GOVERNOR DAVE HEINEMAN: Senator, could I ask a question? [LR424]

SENATOR LATHROP: Yes. [LR424]

GOVERNOR DAVE HEINEMAN: There are three technical corrections I'd like to make to what I said earlier if that were possible. [LR424]

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SENATOR LATHROP: Go ahead. [LR424]

GOVERNOR DAVE HEINEMAN: Number one, you had asked had I been briefed by the consultant on the 2006 study. We double-checked my records. I only reflect that I was briefed by the department, not by the consultants. Secondly, I have this October 11, 2006, letter that the Department of Corrections furnished to you I believe under the subpoena indicating that Michael Calvert, the director of Legislative Fiscal Office, received the 2006 master facility plan on October 11. The third thing, I think I know what you were getting at, but you asked if we had ever requested new prison beds. I think you were referring back to 2006, but technically we did make a proposal in 2014 for 210 beds; 150 were for county jail beds, 40 for Work Ethic Camp, and 20 we reclaimed from the federal government. The Legislature approved that so I just wanted to be technically accurate. [LR424]

SENATOR LATHROP: Those weren't new beds but you were recapturing or reutilizing space out of the Work Ethic Camp, asking the federal government to take back some federal prisoners. [LR424]

GOVERNOR DAVE HEINEMAN: And the 150 were county jails and we... [LR424]

SENATOR LATHROP: County jails, okay. [LR424]

GOVERNOR DAVE HEINEMAN: Yeah. And so I just kind of wanted to be technically accurate. [LR424]

SENATOR LATHROP: Okay. No, that's fine. Because first of all, just so the record reflects, you remain under oath, Governor. [LR424]

GOVERNOR DAVE HEINEMAN: Right. [LR424]

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SENATOR LATHROP: Not that I needed to remind you of that, but the record should reflect that. And on the use of the county beds, that was a bill that was passed sort of as an emergency, not...maybe not an emergency measure, but one more way of trying to deal with the overcrowding issue is to... [LR424]

GOVERNOR DAVE HEINEMAN: It was our way... [LR424]

SENATOR LATHROP: ...send some of those people, for example, to Hall County. [LR424]

GOVERNOR DAVE HEINEMAN: It was our way of dealing with the prison capacity issue. And again, that was part of a legislative proposal that went to the Appropriations Committee and ultimately the Legislature passed it. [LR424]

SENATOR LATHROP: Okay. [LR424]

GOVERNOR DAVE HEINEMAN: I just kind of wanted to be as technically accurate as I could. [LR424]

SENATOR LATHROP: Fair enough. I want to talk next...I'm changing the subject if I can... [LR424]

GOVERNOR DAVE HEINEMAN: Okay. [LR424]

SENATOR LATHROP: ...and visit a little bit about good time and sort of its history. The good time statute, as it's presently constituted with the exception of LB191, was the state of the law when you became responsible for the Department of Corrections. [LR424]

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GOVERNOR DAVE HEINEMAN: Yes. [LR424]

SENATOR LATHROP: Okay. And there was a point in time, in fact in 2011 when LB191 was introduced. [LR424]

GOVERNOR DAVE HEINEMAN: Um-hum. [LR424]

SENATOR LATHROP: You're familiar with LB191? [LR424]

GOVERNOR DAVE HEINEMAN: I know about it. [LR424]

SENATOR LATHROP: Okay. And that was a bill that was introduced by Senator Council at the request of the department. You were familiar with that? [LR424]

GOVERNOR DAVE HEINEMAN: Yes. [LR424]

SENATOR LATHROP: Okay. And so broadly speaking, the law from the time you became Governor until 2011, and I'm going to speak in very general terms, allowed for an inmate who is given a period of time to have half of that cut off, subject to having time added back for misbehavior. [LR424]

GOVERNOR DAVE HEINEMAN: Um-hum. [LR424]

SENATOR LATHROP: That's a fair way to describe the state of the law before LB191. [LR424]

GOVERNOR DAVE HEINEMAN: I think that's accurate that, you know, the automatic good time cuts a sentence in half. [LR424]

SENATOR LATHROP: Right. But it can to that sentence that's been halved by the good

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time law, they can add back time if an inmate misbehaves... [LR424]

GOVERNOR DAVE HEINEMAN: Yes. [LR424]

SENATOR LATHROP: ...for some infractions that happen while incarcerated. And then in 2011 LB191 is introduced and that's by (Senator) Council at the request of the department. You understood that was going to be introduced? [LR424]

GOVERNOR DAVE HEINEMAN: I knew the department had requested that, yes. [LR424]

SENATOR LATHROP: Okay. And the department can't make a request for legislation like that without the administration's at least signing off on it. [LR424]

GOVERNOR DAVE HEINEMAN: Not totally. I've seen more than once that it does get introduced. We might not have signed off on it. [LR424]

SENATOR LATHROP: Did you sign off on this? [LR424]

GOVERNOR DAVE HEINEMAN: We were aware of what was going on through Policy Research Office. [LR424]

SENATOR LATHROP: Okay. And LB191 did two things if I understand the bill correctly and it passed and you signed it, which was to...for prisoners who after they'd been there a year and they had behaved, they would get, in addition to having their time cut in half, they get three more days a month. You understood that that was... [LR424]

GOVERNOR DAVE HEINEMAN: The terminology I would use listed in the intent was they could earn additional good time for good behavior. [LR424]

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SENATOR LATHROP: Earn it for good behavior, yeah. [LR424]

GOVERNOR DAVE HEINEMAN: Right. That's the intent. [LR424]

SENATOR LATHROP: In other words, they get more time if they behave themselves. [LR424]

GOVERNOR DAVE HEINEMAN: Um-hum. [LR424]

SENATOR LATHROP: And like the underlying or the basic statute, if they misbehave they get time added to their sentence or they could. [LR424]

GOVERNOR DAVE HEINEMAN: If they violate prison rules, good time could be taken away. [LR424]

SENATOR LATHROP: Right. Okay. And the other component to that was that for people on parole, they were given ten days a month if they successfully did what their parole plan, for lack of a better term, what their parole plan required of them. You agree with that? [LR424]

GOVERNOR DAVE HEINEMAN: I think that was part of that bill. [LR424]

SENATOR LATHROP: Okay. So LB191 actually allowed for additional good time for both the incarcerated inmate and the inmate who was on parole. [LR424]

GOVERNOR DAVE HEINEMAN: And you had to earn it. That's the point I was trying to make. [LR424]

SENATOR LATHROP: Well, yeah, in the sense that like the underlying good time law, if you don't behave you don't get it or you have it taken away. That would be your

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understanding. [LR424]

GOVERNOR DAVE HEINEMAN: Well, I'm not exactly sure what you're referring to. The automatic good time law, the sentence is cut in half immediately upon entering the prison system. [LR424]

SENATOR LATHROP: And the only thing that can change that...so somebody who has a ten-year sentence ends up having a five when they walk in. But that can be...that five can be...those five years can have time added to them if they are not behaving while incarcerated. [LR424]

GOVERNOR DAVE HEINEMAN: Yes. [LR424]

SENATOR LATHROP: Okay. We had Bob Houston here and maybe I can sort of shortcut this conversation, and when Houston testified, he said a couple of things that I thought were interesting about the good time law and that was that when an offender commits an offense and they take them to some disciplinary proceeding or process, there is a guideline or a guidebook that tells the person sitting in judgment how much good time to add or how much time to add as a punishment to an inmate's sentence. You're familiar with that? [LR424]

GOVERNOR DAVE HEINEMAN: Well, I'm not familiar with it in any great detail, but I understand that's what the Department of Corrections does. They have a set of guidelines and follow some sort of due process. And I think even the inmate can, you know, grieve it or whatever the terminology would be. [LR424]

SENATOR LATHROP: Okay. So the hypothetical I'm going to use is if I'm sentenced to ten years I go in and I get...it's cut in half to five. And if I assault a guard, I'm going to go before some board where they're going to add time to that five years as punishment with the use of the good time statute. [LR424]

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GOVERNOR DAVE HEINEMAN: I'm not exactly familiar whether they go in front of a board or a review committee or one person, but I know what you're talking about. [LR424]

SENATOR LATHROP: They have some due process hearing. [LR424]

GOVERNOR DAVE HEINEMAN: Right. [LR424]

SENATOR LATHROP: Okay. And after that due process hearing, one of the things that they can do as a form of punishment is to add time back so they get half of it cut in half, but the half that is cut off can be added back for misbehavior. [LR424]

GOVERNOR DAVE HEINEMAN: And most of that as I understand is likely to be months as opposed to the automatic good time law that cuts it in half, as the example you used, five years. [LR424]

SENATOR LATHROP: So I show up and I've got five years to do and then I assault a guard. I go before this group and they're going to decide how much in addition to the five years I need to do as a punishment. [LR424]

GOVERNOR DAVE HEINEMAN: I believe that's accurate. [LR424]

SENATOR LATHROP: And in that sense, the good time statute as it's presently constituted becomes an incentive to follow the rules. [LR424]

GOVERNOR DAVE HEINEMAN: You would hope so. [LR424]

SENATOR LATHROP: Right. And Houston testified that there is some guideline at the Department of Corrections for the person that's the hearing officer to decide how much

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time to take away. Are you familiar with that? [LR424]

GOVERNOR DAVE HEINEMAN: I assume that's accurate, but I've never reviewed that kind of detail. I know there's a due process to this. [LR424]

SENATOR LATHROP: Due process and a guidebook. [LR424]

GOVERNOR DAVE HEINEMAN: Okay. [LR424]

SENATOR LATHROP: And what Houston testified to when he was here is that they have reduced the amount of good time that they have taken away as a form of punishment and they have restored good time to inmates whose good time had been taken away in an effort to alleviate overcrowding. Were you familiar with that? [LR424]

GOVERNOR DAVE HEINEMAN: I wouldn't describe it that way. It was my understanding that has to do with the management of the prison in how they're trying to obtain appropriate behavior. [LR424]

SENATOR LATHROP: Sure, sure. And to obtain appropriate behavior, one of the tools that they have, they can deny them use of the phone or they can take away their visiting privileges or they can give them a verbal or a written warning. But one of the things that they can do, you would agree, is to add time on to their sentence, in other words, take some of their good time away from them. [LR424]

GOVERNOR DAVE HEINEMAN: Yes, that's accurate. [LR424]

SENATOR LATHROP: And Houston testified that that's done according to some guidelines that they have, which they have liberalized, from the inmates' point of view, to help alleviate overcrowding. [LR424]

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GOVERNOR DAVE HEINEMAN: I wouldn't describe it that way but maybe he did.
[LR424]

SENATOR LATHROP: Okay. Well, it got more difficult to have your good time taken away, say, in the last ten years. [LR424]

GOVERNOR DAVE HEINEMAN: Like I say, I'm not aware of it and I wouldn't describe it that way because I've always tried to be very clear that, you know, the really bad guys need to be locked up. I know you're going to use the good time as a way to get them to behave while they're in prison. But that's not about prison capacity issues. [LR424]

SENATOR LATHROP: It's not... [LR424]

GOVERNOR DAVE HEINEMAN: Not in my opinion. [LR424]

SENATOR LATHROP: ...because Houston said it was. [LR424]

GOVERNOR DAVE HEINEMAN: Huh? [LR424]

SENATOR LATHROP: Bob Houston said it was. [LR424]

GOVERNOR DAVE HEINEMAN: Well, I guess I'll disagree with him. [LR424]

SENATOR LATHROP: Well, Houston admitted in his testimony that the movement away from taking good time was motivated in part by overcrowding. Did you hear him testify to that or did you watch his testimony? [LR424]

GOVERNOR DAVE HEINEMAN: I saw very little of his testimony. [LR424]

SENATOR LATHROP: Okay. Governor, it sounded to me as I listened to Bob Houston's

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testimony and reviewed it over the weekend that there is a guideline the hearing officer uses to determine how much good time is going to get taken away. So if I am incarcerated and I spit on a guard, there may be five days. If I assault a guard, it might be 90. If I assault another inmate, it might be 90. That there is a guideline book. And I know you've had an interest in the good time statute. And my question for you is in your time as Governor have you reviewed that guideline book? [LR424]

GOVERNOR DAVE HEINEMAN: I have not reviewed that guidetime (sic) book, I think what you're referring to. However, we did have a rule and regulation change in 2013, the end of the year about December, where I think we doubled the amount of good time that could be taken away when a prisoner violates prison rules. [LR424]

SENATOR LATHROP: But that's different than amending this book that they use, the hearing officer uses to decide how much time is taken away. [LR424]

GOVERNOR DAVE HEINEMAN: I'm not exactly sure of the correlation between what we do in rules and reg, what they were doing internally. But it's my understanding they had a set of guidelines that they try to follow so there would be some uniformity to what they're doing. [LR424]

SENATOR LATHROP: Do you see that document in front of you, Governor? [LR424]

GOVERNOR DAVE HEINEMAN: Yes. Yes, I do. [LR424]

SENATOR LATHROP: This we received by way of a subpoena and at the top it's entitled "Impact of good time loss for misconduct violations 2011-2013." Do you see that at the very top? [LR424]

GOVERNOR DAVE HEINEMAN: Oh, yes, yes, I do, Senator. [LR424]

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SENATOR LATHROP: Okay. I just want to make sure that the record reflects the document that we're actually looking at. And then below that in bigger print it says: The average number of good time days lost per inmate. [LR424]

GOVERNOR DAVE HEINEMAN: Um-hum. [LR424]

SENATOR LATHROP: Do you see that? [LR424]

GOVERNOR DAVE HEINEMAN: Yes, I do. [LR424]

SENATOR LATHROP: It's kind of expressed in the form of a graph and demonstrates what the amount of good time lost was. And so in 2007, for example, the average inmate lost 42 days of good time. Do you see that? [LR424]

GOVERNOR DAVE HEINEMAN: I see that. [LR424]

SENATOR LATHROP: And do you see the trend line? [LR424]

GOVERNOR DAVE HEINEMAN: I do. [LR424]

SENATOR LATHROP: Okay. And it says in 2012 the average amount of good time taken away from an inmate went from 42 in 2007 down to 6 days in 2012. Do you see that? [LR424]

GOVERNOR DAVE HEINEMAN: Yes, I do. [LR424]

SENATOR LATHROP: That would suggest that the Department of Corrections was using good time as a behavior modifier or adding good time to somebody's prison sentence far more infrequently between 2007 and 2012. [LR424]

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GOVERNOR DAVE HEINEMAN: I wouldn't necessarily rush to that judgment without knowing the individual cases and exactly what occurred. [LR424]

SENATOR LATHROP: Well, this is the average number so they've taken all the good time lost and divided it by the number... [LR424]

GOVERNOR DAVE HEINEMAN: I understand that, but, you know. [LR424]

SENATOR LATHROP: Okay. Well, let me ask you this. Do you know who Abby Vandenberg is? [LR424]

GOVERNOR DAVE HEINEMAN: No. [LR424]

SENATOR LATHROP: Do you see that she prepared this? [LR424]

GOVERNOR DAVE HEINEMAN: No, I don't. [LR424]

SENATOR LATHROP: Well, how about Hank Robinson? [LR424]

GOVERNOR DAVE HEINEMAN: I've heard... [LR424]

SENATOR LATHROP: You know Hank, don't you? [LR424]

GOVERNOR DAVE HEINEMAN: I don't know him personally. I've heard the name. [LR424]

SENATOR LATHROP: Okay. But he does a lot of research for the Department of Corrections, doesn't he? [LR424]

GOVERNOR DAVE HEINEMAN: I think he works up at UNO and does some work for

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the Department of Corrections. [LR424]

SENATOR LATHROP: Okay. And his chart would suggest that the average inmate loses six days of good time from their sentence as of 2012. [LR424]

GOVERNOR DAVE HEINEMAN: Again, not knowing all the details, how many inmates and the individual cases, I'm not necessarily going to speculate totally what it means. [LR424]

SENATOR LATHROP: Okay. Have you intervened into the administration of good time over at the Department of Corrections? [LR424]

GOVERNOR DAVE HEINEMAN: No, they continue to do it following the procedures they've always been following. [LR424]

SENATOR LATHROP: Okay. [LR424]

GOVERNOR DAVE HEINEMAN: I've made my views very well known on good time. [LR424]

SENATOR LATHROP: Well, but you run the place. And so if they're using guidelines and now the average guy only loses six days of good time and this is, you know, you have expressed your views and I've seen it expressed in various press conferences and in other circumstances, but you haven't gone over to the Department of Corrections and said, stop. You know, keep these guys in jail longer or keep them incarcerated longer as a form of punishment because I'm tough on crime. [LR424]

GOVERNOR DAVE HEINEMAN: The key for me, what I was trying to articulate was the automatic good time. Senator Lautenbaugh introduced a bill on our (inaudible). I'm sure you're very familiar with. It went through Judiciary Committee, didn't go anywhere last

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year. That's the law that I'd like to see changed. [LR424]

SENATOR LATHROP: Well, your folks over at the Department of Corrections looked at that, didn't they, the bill that you proposed that you had Senator Lautenbaugh introduce? And not to editorialize, okay? [LR424]

GOVERNOR DAVE HEINEMAN: Okay. [LR424]

SENATOR LATHROP: But you had somebody that doesn't serve on the committee introduce the bill, right, which you appreciate. I mean, you've been around for ten years. You appreciate that a bill has much better opportunity if it is introduced by someone who sits on the committee. [LR424]

GOVERNOR DAVE HEINEMAN: I think we had... [LR424]

SENATOR LATHROP: This was introduced by Lautenbaugh, am I right? [LR424]

GOVERNOR DAVE HEINEMAN: I understand where you're coming from. I think we had conversations with certain senators, particularly the Chair, who I suspect didn't feel comfortable introducing the bill. [LR424]

SENATOR LATHROP: Okay. Well, you don't know what he felt, but he did not introduce the bill; Lautenbaugh did. [LR424]

GOVERNOR DAVE HEINEMAN: Senator Lautenbaugh did. [LR424]

SENATOR LATHROP: Okay. And that bill basically would have had inmates earn good time. And the idea there is that when an inmate comes into the Department of Corrections, they go through the Diagnostic and Evaluation Center. You understand that to be the case? [LR424]

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GOVERNOR DAVE HEINEMAN: I understand that to be the case. [LR424]

SENATOR LATHROP: Okay. And in the Diagnostic and Evaluation Center they have a plan formulated for before you leave, this is what you need to do. [LR424]

GOVERNOR DAVE HEINEMAN: What you need to do and everything. [LR424]

SENATOR LATHROP: Okay. And your proposed legislation would have said that you have to complete that, whatever that programming is, in order to get the good time. [LR424]

GOVERNOR DAVE HEINEMAN: You have to earn it, yes. [LR424]

SENATOR LATHROP: You have to earn it. And did you...you did not attend that hearing. [LR424]

GOVERNOR DAVE HEINEMAN: No, I did not. [LR424]

SENATOR LATHROP: Okay. And that's not unusual. I'm not suggesting that... [LR424]

GOVERNOR DAVE HEINEMAN: That's not unusual at all. [LR424]

SENATOR LATHROP: Yeah, yeah. We have a lot of bills that we run through here. And notwithstanding your support for it, you didn't show, you didn't attend that hearing. Did you watch it? [LR424]

GOVERNOR DAVE HEINEMAN: No, I didn't, but just for the record and you're well aware of, I'm sure, we did a news conference with the Attorney General and Senator Lautenbaugh. There was wide coverage on the fact that we supported it and we

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encouraged the change. [LR424]

SENATOR LATHROP: Okay. But did you watch the testimony? [LR424]

GOVERNOR DAVE HEINEMAN: No, I did not. [LR424]

SENATOR LATHROP: Okay. So your then-Director Kenney appeared at that hearing. Did you remember that Director Kenney attended the hearing on that bill? [LR424]

GOVERNOR DAVE HEINEMAN: I don't know who all appeared at the hearing because I didn't watch it. [LR424]

SENATOR LATHROP: Well, let me ask you this. If you were making a change to the good time statute, did you anticipate or expect with that good time change that people would have spent more time in prison? [LR424]

GOVERNOR DAVE HEINEMAN: Not necessarily. Depends how the inmate behaves. [LR424]

SENATOR LATHROP: So if they behaved... [LR424]

GOVERNOR DAVE HEINEMAN: It's possible that could happen. [LR424]

SENATOR LATHROP: ...and they worked their program, they would have got out. They would have had their sentence cut in half. [LR424]

GOVERNOR DAVE HEINEMAN: It just depends on how they responded. But again, they'd earn it instead of automatically receiving it. [LR424]

SENATOR LATHROP: Okay. Okay. And so they earn it but they get half their sentence

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knocked off if they work their plan before they leave, right? That's the nature of your proposal. [LR424]

GOVERNOR DAVE HEINEMAN: If they did everything correctly, they could earn good time. Rather than the day they walk in, if it was a sentence 10 to 20 years and automatically the day they walk in it's now reduced 5 to 10, they'd start at 10 under that and have to earn their good time. [LR424]

SENATOR LATHROP: Okay. And to do that, they've got to work their plan. And here's a couple of the rubs. The first rub was that they had to work their plan but your director testified that the programming wasn't available when they came in, that you triage--he called it triage--programming so that the people that were actually getting programming under that proposal were folks who were near the door. Closer to the door, they got some programming. Some people didn't get any; they got it after they left. But that the inmate would get it while sitting on a waiting list. Did you know that? [LR424]

GOVERNOR DAVE HEINEMAN: I'm aware that, you know, we're all looking at additional programming. That was part of LB907. It's part of a continuing conversation. And again,... [LR424]

SENATOR LATHROP: Sure, sure, but it wasn't in place before the bill was introduced. [LR424]

GOVERNOR DAVE HEINEMAN: And again, I'd reiterate, when I started back in 2006, there was little or no community programming. Now we're at the \$22 million level. [LR424]

SENATOR LATHROP: Okay. Okay. But in terms of these people you expected to get programming and earn their good time, the programming, as Director Kenney explained it, is triaged. And so some guy with a 20-year sentence does his entire sentence getting

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credit, getting credit for working a program while on a waiting list and doing exactly no programming. And then he gets the programming right before he leaves. [LR424]

GOVERNOR DAVE HEINEMAN: You know, what I would indicate, I'm confident the department would have made adjustments to try to accommodate a new law if that had become the law of this state. [LR424]

SENATOR LATHROP: The problem with that, Governor--and I appreciate that, I appreciate what you're telling me and I'm hearing what you're saying--the problem is, is that that would require sufficient resources in the Department of Corrections to provide the programming. And that's not been the case or they wouldn't be triaging the programming. It would be happening when an inmate comes in instead of as they're on their way out or, in some cases--and I can tell you I've seen this--in some cases they go all the way through with no programming and then on their way out the door, when they're being in the RFP program or paroled, somebody hands them a referral to a provider out in the community. And so they get credit, they literally get credit under this program for sitting on a waiting list for services they never get and be discharged with their sentence cut in half for sitting on a waiting list and then told, now you need to go see this alcohol counselor and this person to get over your violent tendencies. So it's a...it's hard to argue with the idea that somebody should earn their good time except for the fact that the services and the programming was never there. And the other side of it, sir, is that if you thought it was going to make people stay in prison longer, you didn't have the capacity to accommodate them when that bill was introduced. You're somewhere in the 150s in terms of overcrowding. So if that bill had passed, those people would not have had the programming to earn their good time. Some of them would have gone all the way through doing nothing but sitting on a waiting list and then been told to get the programming after they left. And if the people wouldn't cooperate, if they wouldn't do what needed to be done to earn it, you didn't have the capacity to hold them. In fact--I'm just about done--in fact, what we learned today is we're running 162 violent people through a program that was made up by the director. [LR424]

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GOVERNOR DAVE HEINEMAN: I think the Attorney General will comment on that relative to that program. [LR424]

SENATOR LATHROP: No, no. He did and I'll talk about that next if you like because I did listen to him. [LR424]

GOVERNOR DAVE HEINEMAN: But on this, you know, my sense in working with the Legislature, as you pass laws, then we adjust accordingly. And if this law had been passed and we thought we needed additional programming, then we would have been down there requesting additional funds once it was passed into law. [LR424]

SENATOR LATHROP: Well, I think they have a little bit of a problem over there right now with programming. I mean, we're not even talking about what would have happened if your bill passed. You don't have the programming now, Governor. And maybe this is detail you are not at, okay, and that's not a...well, maybe it is a criticism. But I can accept that you don't know that you have people going through the Department of Corrections that don't get the programming the plan calls for. And they're released and somebody is giving them a referral to somebody out in the community. So they literally, they literally would sit on a waiting list--and who wouldn't sign up for that--sit on a waiting list to get their sentence cut in half and never have to do anything. [LR424]

GOVERNOR DAVE HEINEMAN: Well, if I could comment. [LR424]

SENATOR LATHROP: Yeah. [LR424]

GOVERNOR DAVE HEINEMAN: As you well know, we work with the Legislature all the time. And, you know, there are a lot of priorities in state government. We can only fund so many. Again, we make recommendations. You make the final call and you send bills

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to me. So again, if the Legislature wanted additional programming, they could have sent that over. We've been trying to work with you. We've gone from zero to \$22 million during the time that I've been here. My sense is, as a result of the CSG study, there may be recommendations next year to do more. But these are works in progress.

[LR424]

SENATOR LATHROP: Well, maybe Senator Mello will address some of that with you. He's more familiar with the appropriations process and the idea that the recommendations start in your office. And since I'm not in and have never sat on Appropriations Committee, maybe I'll defer to Senator Mello on that. Tell me when you became aware of the Castillas Opinion. [LR424]

GOVERNOR DAVE HEINEMAN: When all this controversy started. [LR424]

SENATOR LATHROP: That would be, by "all this controversy" you would be referring to an article the World-Herald did, or an investigation the Omaha World-Herald did in June of 2013? [LR424]

GOVERNOR DAVE HEINEMAN: That's when the controversy began or we all became aware of some very huge mistakes that were made by the Department of Corrections. [LR424]

SENATOR LATHROP: Okay. Let me ask as a preliminary matter, is there any process in place where the Attorney General's Office communicates with the Governor's Office regarding Opinions from the Supreme Court which are of consequence? [LR424]

GOVERNOR DAVE HEINEMAN: You know, if the Attorney General's Office thought there was an Opinion that we needed more detail or more information, he would probably contact us. I mean, what I can think of right off the bat is the entire water legislation, all that. He was always communicating with us. You know, interestingly

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enough, when this decision first hit, I asked a bunch of reporters, did you even cover it? I think it got very little news media coverage. It may have had more significance, but I'm not sure everybody fully appreciated it at the time. [LR424]

SENATOR LATHROP: Okay. My question though, Governor, was whether or not you have any system in place with the Attorney General, Jon Bruning, or his office for them to communicate with your office when they are involved in litigation and get a decision from the Supreme Court, which I'll just refer to as a decision of consequence. We can both agree Castillas was a decision of consequence. [LR424]

GOVERNOR DAVE HEINEMAN: What they would generally do, they're probably going to be working with a department, whether that's Department of Revenue, Department of Corrections, or whatever, relative to any decision whether...I mean, I guess I look at it, as Governor, any decision from the Supreme Court has consequences. And so they would probably be working more likely with the individual departments in that regard. [LR424]

SENATOR LATHROP: Well, they would. I can appreciate that, that when they get a decision dealing with HHS, they'll call somebody over at Health and Human Services. And when they get one dealing with the Department of Corrections, they'll call somebody over at Department of Corrections or otherwise communicate the decision or have some dialogue. But my question was whether you have anything in place between you and the Attorney General where he will notify you when there is a decision of consequence. [LR424]

GOVERNOR DAVE HEINEMAN: Not a written notification, but I think if he thought it was of that consequence or we did and we had questions, we would contact him. [LR424]

SENATOR LATHROP: Did the Attorney General's Office ever contact you after the

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Castillas Opinion was decided? [LR424]

GOVERNOR DAVE HEINEMAN: When it was first decided? [LR424]

SENATOR LATHROP: Yeah, after it was handed down by the Supreme Court. Did they call you up and say...or, and I should say not just you but, say, you got Robert Bell, lawyer down in... [LR424]

GOVERNOR DAVE HEINEMAN: I don't think there was any contact with our office at that time. [LR424]

SENATOR LATHROP: Okay. So you told me earlier that you thought Robert Bell was a lawyer, right? [LR424]

GOVERNOR DAVE HEINEMAN: Yeah, if I'm...I can double-check. [LR424]

SENATOR LATHROP: I don't know the answer to that. [LR424]

GOVERNOR DAVE HEINEMAN: Okay. [LR424]

SENATOR LATHROP: I'm not trying to trick you. You're the one that said you thought he was a lawyer. In any case, he was the guy down in Policy Research keeping track of what was going on at the Department of Corrections, your policy guy. [LR424]

GOVERNOR DAVE HEINEMAN: That's correct. [LR424]

SENATOR LATHROP: Did Robert Bell ever tell you or anybody in the administration about the Castillas Opinion... [LR424]

GOVERNOR DAVE HEINEMAN: Not that I recall. [LR424]

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SENATOR LATHROP: ...before the World-Herald broke it? [LR424]

GOVERNOR DAVE HEINEMAN: Not that I recall. Well, again, going back, you know, I forget the exact day when the Castillas decision was made, but I don't think it got much coverage at all at time when it was first released. [LR424]

SENATOR LATHROP: Well, here's the thing about those Opinions: some of them get coverage; some of them don't. But they all come out on Friday afternoon. [LR424]

GOVERNOR DAVE HEINEMAN: That's correct. [LR424]

SENATOR LATHROP: And every lawyer, every lawyer can sign up for Advance Sheets or get them electronically delivered right to your desktop. Would you expect Robert Bell down in the Policy Research Office to be reading the Advance Sheets relating to Corrections that are decided by the Supreme Court on Fridays? [LR424]

GOVERNOR DAVE HEINEMAN: Not necessarily. I would think that would be the responsibility of the Department of Corrections. They've got a legal department down there who obviously, we now know, didn't do their job. [LR424]

SENATOR LATHROP: Yeah. Well, you think Robert Bell, I mean, he didn't need to be reading Supreme Court Opinions even though he was your policy guy on Corrections? [LR424]

GOVERNOR DAVE HEINEMAN: Not necessarily. And again, we've got a legal department down at the Department of Corrections. I think it's a reasonable assumption that you would hope they'd do their job, and they didn't. [LR424]

SENATOR LATHROP: I get it. And you have a policy department on the first floor of this

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building with six or seven people in it trying to give you advice on, among other things, the Department of Corrections. That person, in turn, is a lawyer. And that lawyer, in turn, receives a copy of the Supreme Court Opinions. My question is... [LR424]

GOVERNOR DAVE HEINEMAN: I don't know whether he did or not. [LR424]

SENATOR LATHROP: Does that cause you any heartburn, that he wasn't reading the Advance Sheets? [LR424]

GOVERNOR DAVE HEINEMAN: Well, again, that's why, you know, there is a legal department down at the Department of Corrections and they're supposed to review those. We now find out Mr. Green didn't. [LR424]

SENATOR LATHROP: We did. [LR424]

GOVERNOR DAVE HEINEMAN: And they're the...that's where the responsibility lies. [LR424]

SENATOR LATHROP: Well, do you think that the Attorney General should be calling your Policy Research guy, Robert Bell, and telling him: Supreme Court just decided a case; you may need to check and make sure that it is consistent with your practice? [LR424]

GOVERNOR DAVE HEINEMAN: I believe the Attorney General's Office...there was communications between the Attorney General's Office and the Department of Corrections on that. [LR424]

SENATOR LATHROP: There was. And we are clear on that. [LR424]

GOVERNOR DAVE HEINEMAN: Right. [LR424]

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SENATOR LATHROP: Was there any communication between the Attorney General's Office and your Policy Research guys? [LR424]

GOVERNOR DAVE HEINEMAN: Not that I'm aware of because, again, they probably thought the appropriate communications was directly with the department. They deal with the legal departments out there in most agencies, or they are the legal department. [LR424]

SENATOR LATHROP: Okay. So you never heard about it. Your Policy Research guy never told you about it if he knew, maybe he didn't. And you didn't hear about it until the World-Herald makes a story out of it. [LR424]

GOVERNOR DAVE HEINEMAN: Well, that's when I began to get more acquainted with the decision, that's correct. [LR424]

SENATOR LATHROP: Could that be an understatement, that you got "more acquainted" with it? [LR424]

GOVERNOR DAVE HEINEMAN: I don't know how... [LR424]

SENATOR LATHROP: Kind of a big deal, wasn't it? [LR424]

GOVERNOR DAVE HEINEMAN: Well, it was a big deal. You know, I know this. Once that story hit, the following Monday I had Director Kenney in my office and I wanted to know exactly what was going on. It became evident in a hurry that this was a huge mess created by the legal department and the records department. And it became very clear it was going to be a very complicated legal situation. We made contact immediately with the Attorney General's Office and subsequently had meetings with them to talk about how do we move forward. And the entire time we sought legal advice

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and guidance from the Attorney General's Office, who has repeatedly told me we are not ignoring any Supreme Court Ruling, that we are following the law. [LR424]

SENATOR LATHROP: Okay. So after, you said that you had a meeting on Monday. Was this...did this World-Herald story break like over the weekend or...? [LR424]

GOVERNOR DAVE HEINEMAN: I think it was on Sunday. [LR424]

SENATOR LATHROP: Oh, okay. So the next day when you find out that the World-Herald is investigating the fact that the Castillas Opinion hasn't been incorporated into the Department of Corrections' process, you have a meeting on Monday. [LR424]

GOVERNOR DAVE HEINEMAN: That's correct. [LR424]

SENATOR LATHROP: And that meeting, is that in your office? [LR424]

GOVERNOR DAVE HEINEMAN: I think it might have been in the chief of staff's office. [LR424]

SENATOR LATHROP: Okay. And, Governor, who was in attendance at that meeting when you're trying to get to the bottom of what happened with Castillas? [LR424]

GOVERNOR DAVE HEINEMAN: As I recall, it was Director Kenney, my chief of staff, and Policy Research director. [LR424]

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

GOVERNOR DAVE HEINEMAN: Lauren Kintner. [LR424]

SENATOR LATHROP: ...Lauren Kintner? Okay. Had the article been written or

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was...did you just learn that the World-Herald was nosing around at that point? [LR424]

GOVERNOR DAVE HEINEMAN: Well, the article was written on Sunday. [LR424]

SENATOR LATHROP: Okay. And you said the Attorney General was there? [LR424]

GOVERNOR DAVE HEINEMAN: No, not at this meeting. [LR424]

SENATOR LATHROP: Okay. [LR424]

GOVERNOR DAVE HEINEMAN: This was an initial meeting with the director. I wanted to understand the scope of what had occurred. It became obvious quickly. I was shocked by the magnitude, almost disbelief, of what had occurred. And again, we immediately contacted the Attorney General's Office because, even though I'm not a lawyer, I could tell this one was going to have a lot of legal complications. [LR424]

SENATOR LATHROP: Okay. So do you have more meetings where the Attorney General is there? [LR424]

GOVERNOR DAVE HEINEMAN: Yes, we do. [LR424]

SENATOR LATHROP: Are you yourself meeting with the Attorney General after that point in time? [LR424]

GOVERNOR DAVE HEINEMAN: Not on that day, but later in the week we met with the Attorney General and his staff to try to inform them of everything that was going on. And then I would say about a week later we had a meeting with the Attorney General and his staff, Director Kenney, myself and my staff to plan, you know, how are we going to address this. [LR424]

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SENATOR LATHROP: Okay. [LR424]

GOVERNOR DAVE HEINEMAN: And...do you want me to go ahead? [LR424]

SENATOR LATHROP: Well, it sounds like...so how far out from the World-Herald story are we when you're meeting and trying to formulate a plan? [LR424]

GOVERNOR DAVE HEINEMAN: Well, we're trying to get all the details and understand the magnitude of it. I think our very first concern, obviously, was for public safety. And as you may recall, there were over 500, 550 current inmates who had their sentence miscalculated. We wanted to make sure none of them were released early. So that was the first priority, get those sentences corrected. And I think we announced the result of that in late June. [LR424]

SENATOR LATHROP: Okay. So who formulated sort of, if you will...at some point you learn from somebody in the room the number of people affected. Would that be true? [LR424]

GOVERNOR DAVE HEINEMAN: That's correct. [LR424]

SENATOR LATHROP: And you also learned the number of people that have been released early under the mistaken calculation. [LR424]

GOVERNOR DAVE HEINEMAN: That's correct. [LR424]

SENATOR LATHROP: When did you learn how many people were involved? [LR424]

GOVERNOR DAVE HEINEMAN: Oh, it was an ongoing process. You know, initially as I recall, we learned that, again, more than 550 current inmates had their sentence miscalculated. We went to correct those. [LR424]

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SENATOR LATHROP: That's an easy fix, right? [LR424]

GOVERNOR DAVE HEINEMAN: That...well,... [LR424]

SENATOR LATHROP: They're still there, they haven't gotten loose and... [LR424]

GOVERNOR DAVE HEINEMAN: Yeah, yeah. You don't want any more of those out and you had to notify them. Then about a week later, then we began to look in more detail, because it's been a work in progress, on another 300 or so that had been released early and how we were going to deal with them. And there were a number that obviously deserved credit for the time they were out. There were a number that involved a flat or a concurrent sentence. Then there were 20 that the Attorney General said we need to issue warrants. And then a number that was proposed they be part of the reentry furlough program. And then a number that would have their parole extended. Those were the categories we were looking at. [LR424]

SENATOR LATHROP: Okay. And I appreciate that. And I appreciate at some point somebody breaks it down for you and then you develop a plan. When did you develop a plan? I've read some press releases. There's one June 26. June 26, sounds like you have a plan. [LR424]

GOVERNOR DAVE HEINEMAN: I think the June 26, just to be clear, I think there was a typo. It was really June 27 when we issued that first release that was focused on the more than 550 that were current inmates in the prison system. And again, this has been a continue...a work in progress. Particularly as, again, working with the Attorney General we realize, you know, hey, early on my first reaction was that we need to bring all these individuals back into the system. [LR424]

SENATOR LATHROP: Okay. [LR424]

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GOVERNOR DAVE HEINEMAN: And I found out legally that probably wasn't just going to happen automatically, that we were going to... [LR424]

SENATOR LATHROP: Okay. You wanted to bring all 306 back? Was that what you wanted to do, Governor? [LR424]

GOVERNOR DAVE HEINEMAN: Well, you know, my first reaction was, certainly, unless they had a limited amount of time left, that we ought to try to bring them back. And again, as I was involved in these meetings and I learned from the Attorney General, it's not as simple as that. [LR424]

SENATOR LATHROP: Okay. But my question--and I apologize for restating it, but I don't feel like I got the answer...an answer--and that is, when did you develop a plan? I'm looking at a press release from you... [LR424]

GOVERNOR DAVE HEINEMAN: Which one? [LR424]

SENATOR LATHROP: ...and Attorney General. It looks like it's June 26, or right in there. [LR424]

GOVERNOR DAVE HEINEMAN: Okay. [LR424]

SENATOR LATHROP: Okay? You have a press release and you're talking about what you're going to do. So do you have a plan before June 26? [LR424]

GOVERNOR DAVE HEINEMAN: Well, in that time frame, we were developing a plan as we knew the various information that we knew at that time. And again, the June 26 release you're talking about--although I really think it was June 27--was really focused on, more specifically, the 567 current inmates who had to have their time recalculated.

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[LR424]

SENATOR LATHROP: Well, why don't you...you may have it in front of you and that's fine if you do. [LR424]

GOVERNOR DAVE HEINEMAN: And then down a little bit further the... [LR424]

SENATOR LATHROP: You can jump to page 91 in our book so that we're on the same...we're talking about the same thing. [LR424]

GOVERNOR DAVE HEINEMAN: Right. It's the same release. I know what you're talking about. [LR424]

SENATOR LATHROP: Okay. And so in this...let me make a record here so the record reflects what we're talking about. That is, on page 91 in this book that we're sharing, it says: For immediate release, June 26, 2014, 10:20 a.m. Central time, and contact Sue Roush or Shannon Kingery in the AG's Office. I assume those are some press person that you had. [LR424]

GOVERNOR DAVE HEINEMAN: Communication, right. [LR424]

SENATOR LATHROP: Yeah, okay. And the caption says, Governor Heineman and Attorney General Bruning provide an update on Department of Correctional Services. And then we have about halfway down, and you're looking at my copy or yours? [LR424]

GOVERNOR DAVE HEINEMAN: I'm looking at mine, but it's the same. [LR424]

SENATOR LATHROP: Okay, because I have some portions underlined. There's a paragraph halfway down that says, all mandatory minimum sentences imposed since

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1995 have been reviewed on an individual case-by-case basis. Let me ask you, you said this in a press release. By this date, whether it's 26 or 27, by this date in June of 2013, had you looked at or had somebody under your direction looked at all of the inmates' cases on a case-by-case basis as this appears to represent you did? [LR424]

GOVERNOR DAVE HEINEMAN: I believe the Department of Corrections had looked at those specifically regarding the miscalculation dates that would... [LR424]

SENATOR LATHROP: So they...by June 26, or 27, if it is a typo... [LR424]

GOVERNOR DAVE HEINEMAN: We're beginning to get information to act on. [LR424]

SENATOR LATHROP: But this suggests that you've been through a case-by-case study of each one of the people affected. [LR424]

GOVERNOR DAVE HEINEMAN: Again, my sense is what the Department of Corrections did was look at the sentence calculation on a case-by-case basis and, as part of that release on that day, I believe we made public all 567 names with their previous calculation date and their new date. [LR424]

SENATOR LATHROP: Okay. And it does say that, that you've looked at...you've reviewed on an individual, case-by-case basis all of the mandatory minimum sentences. And the next paragraph is, as of today, 567 current inmates had their sentences recalculated. [LR424]

GOVERNOR DAVE HEINEMAN: Right. [LR424]

SENATOR LATHROP: So the first order of business is don't let anybody out that shouldn't be. [LR424]

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GOVERNOR DAVE HEINEMAN: Don't let anybody else out the door. [LR424]

SENATOR LATHROP: Recalculate those. [LR424]

GOVERNOR DAVE HEINEMAN: Right. [LR424]

SENATOR LATHROP: And then we talk about the 306 that got loose. [LR424]

GOVERNOR DAVE HEINEMAN: That's right, in that next paragraph. [LR424]

SENATOR LATHROP: All right. Of the 306, 257 individuals have been back in his or her community longer than his or her recalculated release date. According to Anderson v. Houston, and there's the cite, any individual who was released early and who has not committed a crime since their release is entitled to be credited with time served in the community towards their release date. That was your press release. [LR424]

GOVERNOR DAVE HEINEMAN: That was a joint press release. [LR424]

SENATOR LATHROP: Okay. [LR424]

GOVERNOR DAVE HEINEMAN: And that was legal information we got from the Attorney General's Office. [LR424]

SENATOR LATHROP: Okay. Is it fair to understand that by the time this press release is released with your name on it, somebody had explained Anderson to you? [LR424]

GOVERNOR DAVE HEINEMAN: They'd explained it to me at a very high level. [LR424]

SENATOR LATHROP: You mean... [LR424]

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GOVERNOR DAVE HEINEMAN: I don't try to pretend to be a lawyer. [LR424]

SENATOR LATHROP: Okay, then it may make our argument today short, right?
(Laugh) [LR424]

GOVERNOR DAVE HEINEMAN: Okay. [LR424]

SENATOR LATHROP: It does say, however, in the press release that you and the Attorney General put out that people released early are entitled to credit in the event they haven't committed another crime in the meantime. [LR424]

GOVERNOR DAVE HEINEMAN: We talked about served in the community towards their release date. [LR424]

SENATOR LATHROP: Right. And you say, and who has not committed a crime since their release is entitled to be credited. So I assume that before you put this press release out, you and the Attorney General had some conversation about the Anderson decision, the fact that mistakenly released prisoners are entitled for day-for-day credit under the Anderson decision, provided they haven't broken the law in the meantime. [LR424]

GOVERNOR DAVE HEINEMAN: We had a general conversation about that. I relied on his advice. And again, I want to reiterate, throughout this entire process, because I kept asking, he's made it very clear that we are not ignoring any Supreme Court ruling, that we're following the law. I think he sent all of you a two-page letter the other day outlining some of the complexities in this. [LR424]

SENATOR LATHROP: Well, it's interesting that he would send that letter out. First of all, it didn't come from him. It came from one of his deputies. And second of all, turn the page because it seems to be complex now that this committee is looking into how many

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prisoners have been brought back to start their sentence where they left off. You see page 92? [LR424]

GOVERNOR DAVE HEINEMAN: Yes, I do. [LR424]

SENATOR LATHROP: This is Jon Bruning and he says in the press conference on June 26, and I think that was a joint press conference with the two of you, right? [LR424]

GOVERNOR DAVE HEINEMAN: That is correct. [LR424]

SENATOR LATHROP: And he says, the case law is clear. There's no talk of complexities in Anderson. There's no, well, there's three different theories. There's one, we're looking at it. We're waiting for a test case. Bruning says, the case law is clear and he's referring to Anderson in this, doesn't he? [LR424]

GOVERNOR DAVE HEINEMAN: That's what he says, but again, I think they continued to review that as we have. This has been a work in progress. We find... [LR424]

SENATOR LATHROP: Do you have lawyers? Do you have lawyers? [LR424]

GOVERNOR DAVE HEINEMAN: We find out new information all the time. [LR424]

SENATOR LATHROP: Yeah, but the Anderson Opinion doesn't change. The Anderson Opinion hasn't changed since 2008. That's not a moving target. The Supreme Court is... [LR424]

GOVERNOR DAVE HEINEMAN: No, it's the implementation, I think, of it is what the Attorney General was concerned about. [LR424]

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SENATOR LATHROP: Okay. If you tell me you're just following the Attorney General, then I'll accept that as an answer. [LR424]

GOVERNOR DAVE HEINEMAN: Sir, I want to be very, very clear. I'm not a lawyer, don't pretend to be a lawyer. And in this entire situation, I've made it clear to the Department of Corrections that we are going to follow the advice and counsel of the Attorney General of the state of Nebraska. [LR424]

SENATOR LATHROP: Okay. So we were here the other day with Director Kenney and he said that none of the people who broke the law while at liberty had been required to come back to the Department of Corrections to begin their sentence where they left off. Do you agree with that statement? [LR424]

GOVERNOR DAVE HEINEMAN: Say that again. [LR424]

SENATOR LATHROP: I will. Director Kenney testified before this committee and said that none of the inmates who were mistakenly released early had been required to return to the Department of Corrections to begin the sentence they were released early on at the point where they were released. In other words, these guys that broke the law while at liberty haven't been called upon to return to the Department of Corrections and resume their sentence where they left off. [LR424]

GOVERNOR DAVE HEINEMAN: Well, let me comment if I could. There are 20 that we went out and, with the Attorney General's help and local law enforcement, arrest warrants were issued. And those 20 were brought back into the system. Like I say, it's been an ongoing process and the Attorney General is now in the process of determining one or two test cases to figure out how to deal with the rest because of due process. [LR424]

SENATOR LATHROP: I'm not going to make you defend that letter that the Attorney

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General's Office put out two days ago because it can't be. I can tell you that I've read Anderson. Anderson is simple. The Supreme Court has adopted just one theory for prisoners who have been released by mistake. It was a theory that was obvious and clear to Jon Bruning when he was giving press conferences on June 26. It has only grown more complicated and more complex, and nothing has happened, because the World-Herald did a story on September 29. And that's the testimony of your Director Kenney who said nothing was happening with these guys that broke the law until the World-Herald did their story. And I have to tell you, I haven't seen any indication that people that broke the law while at liberty have been brought back. What I've heard is the Attorney General say, now that this committee is following up on it, the Attorney General say, well, this is pretty complicated. Now, four and a half months later we're looking around for a test case. And I'm going to tell you something, Governor. I'm not your lawyer, but I'm going to help you out with Anderson. Anderson was a test case. Anderson told any lawyer who wanted to know what to do with this circumstance how to deal with it and what to do with it. And the idea in that letter that the AG's Office put out just two days ago--and I'm going to say that again, just two days ago, four and a half months after this mess started--that suddenly it's become complex and suddenly there's different interpretations of Anderson, some of which won't make the department bring back guys that offended. And that, Governor, is one theory that Judge Heavican talked about but didn't adopt. But even if he adopted it, even if he adopted it, it would first require an admission by you or the department that they were grossly negligent in turning these guys loose. Now, have you had any conversations with the Attorney General's Office to suggest or lead you to conclude that you're prepared to admit these people were all released inadvertently because of the administration's gross negligence? [LR424]

GOVERNOR DAVE HEINEMAN: You know, I wouldn't want to speculate on the kind of legal ramifications you're suggesting right now. But I will say, I think I kind of respectfully disagree with what you said about the Attorney General. He is the state's lawyer. He is the Governor's lawyer. And I have great respect and trust in what they've done. And

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they have indicated to me repeatedly that we are not ignoring a Supreme Court ruling. We are following the law of the land. [LR424]

SENATOR LATHROP: I'm sure they've told you that repeatedly. [LR424]

GOVERNOR DAVE HEINEMAN: They have. [LR424]

SENATOR LATHROP: No, I believe that. Of all the things that I've heard today, that's one thing I believe they're telling you. It's not true, because Anderson would have these guys that are breaking the law come back and start where they left off, and that's clear. [LR424]

GOVERNOR DAVE HEINEMAN: I believe the Attorney General believes differently. [LR424]

SENATOR LATHROP: Well, you know what, that's interesting. Because on page 92, and now we're talking about your June 26, 2014, press conference, and in that, it's directly in the middle of the page, right below where it says, excerpt from the Governor's press conference, it says, Governor Heineman: The recalculation shows that 306 inmates were released early. Two hundred fifty-seven inmates of the three hundred and six released early have been back in his or her community longer than his or her recalculated release date. This is you talking. [LR424]

GOVERNOR DAVE HEINEMAN: Right. [LR424]

SENATOR LATHROP: According to Anderson v. Houston, any individual who was released early and who has not committed a crime since his release date is entitled to be credited with time served in the community towards his release date. Sounds to me, these are your words... [LR424]

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GOVERNOR DAVE HEINEMAN: And I got that from my lawyer. [LR424]

SENATOR LATHROP: (Laugh) Okay, but somebody is talking to you about Anderson and they're saying, this is pretty straightforward. They get the time... [LR424]

GOVERNOR DAVE HEINEMAN: I don't know that they were saying it was fairly straightforward because, again, there were some considerations, you know, and we've had these conversations before. Someone is out during that time frame. Does a speeding ticket disqualify them or does it have to be a felony? [LR424]

SENATOR LATHROP: Right, okay. So there what you're telling me is we did have some...we understood Anderson to say that you have to come back if you've broken the law while you're mistakenly at liberty. [LR424]

GOVERNOR DAVE HEINEMAN: Talked about if... [LR424]

SENATOR LATHROP: The question that you were trying to resolve is, what's break the law mean, right? [LR424]

GOVERNOR DAVE HEINEMAN: And...well, I wouldn't say... [LR424]

SENATOR LATHROP: What's break the law? Is it a traffic offense? [LR424]

GOVERNOR DAVE HEINEMAN: I wouldn't say, break the law. I think the word was "misbehavior" or whatever and what constitute that. [LR424]

SENATOR LATHROP: Sure. [LR424]

GOVERNOR DAVE HEINEMAN: And again, that's where, again, we relied on the advice of the Attorney General. [LR424]

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SENATOR LATHROP: Okay. I think the Anderson case talks about committing a crime, okay? And this isn't maybe the point. The point is you're not trying to figure out what theory that Judge Heavican talked about in the Anderson Opinion is applicable. You already knew. The issue is, what does break the law mean as Judge Heavican used it? Does it mean the guy that runs the stop sign has to come back? Or are we talking about the guy that commits a felony? [LR424]

GOVERNOR DAVE HEINEMAN: Those were issues that were discussed and we relied on the Attorney General. [LR424]

SENATOR LATHROP: Okay. Here's the problem with that, and I appreciate your relying on Attorney General Bruning, okay. And if he's the guy responsible for this, that's fine too. I'll accept that as an answer if he's the guy running the show. The problem with this "we didn't know what broke the law meant" is, by anybody's measure, it meant a felony. And you had a bunch of guys that committed felonies and none of them, with maybe one exception Kenney said, none of them have been brought back to prison to start their sentence where they left off. And that's Director Kenney here just a week and a half ago or two. [LR424]

GOVERNOR DAVE HEINEMAN: Let me comment on that if I could. [LR424]

SENATOR LATHROP: Sure. [LR424]

GOVERNOR DAVE HEINEMAN: Those are the very issues that are being reviewed by the Attorney General right now. And he's trying to determine, he and his staff, which one, two, three cases that they could go to court on to get a better clarification on that issue. [LR424]

SENATOR LATHROP: I'm going to tell you that that is...you're getting spin from the

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Attorney General. If nothing is happening, Governor, it's not because they're waiting for a test case. They could have filed a test case four months ago. And they didn't need a test case because the procedure is also set out in Anderson. Anderson started out with a guy that was released from the Department of Corrections improperly. They bring him back before the court on a motion. Everything you need to know about how to handle these guys is right in the Anderson Opinion. Now, I'm a little suspicious, I'm a little suspicious if we're starting to get letters from the AG, not published Opinions that become precedence but just letters, two days before our hearing with you that say, wow, this is really complex. There's a lot of moving parts to this. We're waiting for a proper test case. Listen, you don't need a test case. Anderson was a test case. And I know you're not a lawyer. And I don't want you to think I'm lecturing you, because maybe I am. But I'm going to tell you, you don't need a test case. Anderson told you everything you needed to know. And Attorney General Bruning and you guys stood up on June 26 and said, this is simple. [LR424]

GOVERNOR DAVE HEINEMAN: You know,... [LR424]

SENATOR LATHROP: Anderson says these guys get credit as long as they don't break the law. And if you and Jon Bruning had to struggle with, boy, here's a list of the violations, this guy was driving under suspension, I give you that and say, probably don't need to bring him back for driving under suspension. The World-Herald reported there's like 33 felonies in here. [LR424]

GOVERNOR DAVE HEINEMAN: You know,... [LR424]

SENATOR LATHROP: That's black and white. [LR424]

GOVERNOR DAVE HEINEMAN: ...could I almost... [LR424]

SENATOR LATHROP: Yeah, now you can go. [LR424]

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GOVERNOR DAVE HEINEMAN: Can I comment on that World-Herald story? [LR424]

SENATOR LATHROP: Yeah, yeah. [LR424]

GOVERNOR DAVE HEINEMAN: That World-Herald story said, for example, that there are two dead people, that we ought go back and get the time they owe us. And I told the World-Herald, how do you propose we do that? They're dead, case closed. But yet they use ten years in one case to add to the number of years that are owed the state of Nebraska. I'm just going to... [LR424]

SENATOR LATHROP: Okay, that's just their cumulative, like, this is a big number. [LR424]

GOVERNOR DAVE HEINEMAN: Right. But I mean... [LR424]

SENATOR LATHROP: Okay. We'll subtract the two dead guys, Governor. [LR424]

GOVERNOR DAVE HEINEMAN: Well, I know. But I mean...what they were doing. Secondly, I'm just going to respectfully disagree. I can't imagine what you would think if I decided I want go out and get some lawyer who's not the Attorney General, and I didn't take the advice of the state's lawyer. [LR424]

SENATOR LATHROP: Okay. So the decision not to make... [LR424]

GOVERNOR DAVE HEINEMAN: That's unfair. [LR424]

SENATOR LATHROP: Pardon me. The decision to not make the felons come back and start their sentence where they left off, because they're out committing crimes while mistakenly at liberty, that wasn't your decision; it was the Attorney General's. Is that

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what you're saying? [LR424]

GOVERNOR DAVE HEINEMAN: What I'm saying, the Attorney General is reviewing all these cases with the Department of Corrections on an individual basis trying to look at, I'll say, there are probably 30 to 50 cases left yet that are in that indeterminate range that they're looking for some test cases as I understand it. [LR424]

SENATOR LATHROP: Well, here's the thing. I read this story in the paper the other day. Sometimes, you know what, I've got to tell you, chairing... [LR424]

GOVERNOR DAVE HEINEMAN: You can't believe everything...you can't believe everything you read in the paper. [LR424]

SENATOR LATHROP: ...chairing this committee, Governor, is exciting stuff. Every day I get up and I'm like, well, what's the World-Herald got on Corrections today? And then I look at the Lincoln Journal Star, and maybe I look at Watchdog. I'm not sure if I want to admit that or not. And I open the paper. I'm like, what's the next thing that's... [LR424]

GOVERNOR DAVE HEINEMAN: Could I comment on that? [LR424]

SENATOR LATHROP: (Laugh) I'm sure you're doing the same thing. But if you're telling me that this, that the decision...here's the thing. This is...we've known about this since June. If they're doing a case-by-case study...and I'm thinking it's been four months. This thing has been going on for four and a half...four and a half months, we'll call it. If they were doing a case-by-case deal, this is the AG's Office, trying to figure out what to do with these guys, they could have spent two days on each one of these 50 people. That's enough time. My guess is... [LR424]

GOVERNOR DAVE HEINEMAN: Well, they have a lot of other things they've got to deal with too. [LR424]

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SENATOR LATHROP: Your press release suggested that you'd been through a case-by-case study of each one of these people. And by the way, I have a memo in here about Larry Bare wanting the time and the crime for each one of these guys like the day this thing broke. So I know that you guys have been looking at not only the time they owed but the crimes that they committed. [LR424]

GOVERNOR DAVE HEINEMAN: Uh-huh. [LR424]

SENATOR LATHROP: True? [LR424]

GOVERNOR DAVE HEINEMAN: Correct. [LR424]

SENATOR LATHROP: Okay. [LR424]

GOVERNOR DAVE HEINEMAN: We were trying to look at all those situations. [LR424]

SENATOR LATHROP: Okay. And so the idea that we're waiting four and a half months and that that's the explanation. We're waiting for a test case, and that's the explanation for the felons not being brought back to the Department of Corrections, I'm going to tell you, if you tell me that that's what the Attorney General told you and it wasn't your decision, then I'm off the subject. [LR424]

GOVERNOR DAVE HEINEMAN: Well, you might as well... [LR424]

SENATOR LATHROP: But I want to talk to him. [LR424]

GOVERNOR DAVE HEINEMAN: Okay. Well, you know, I... [LR424]

SENATOR LATHROP: I want to talk to him after you waive the attorney-client privilege.

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[LR424]

GOVERNOR DAVE HEINEMAN: I, you know, really would suggest that, you know, both of you are lawyers. I wish you'd get together and have a cup of coffee and talk about it. I think that would be... [LR424]

SENATOR LATHROP: Well, I just listened to his little lunch hour thing. I'm not sure... [LR424]

GOVERNOR DAVE HEINEMAN: That would be appropriate. But also, I want to share with you, you talked, what else are you going to learn? You know, during the summer, a recent story, you know, Director Kenney and I talked. I said and we both agreed, if there were sentence miscalculations on this group of individuals, what about sentence miscalculations on good time credits for parolees and that? [LR424]

SENATOR LATHROP: Oh, yeah. You got a problem with that, too, don't you? [LR424]

GOVERNOR DAVE HEINEMAN: Right. But that is one that, you know, I think I'll at least give the Department of Corrections credit, they did the internal audit. They recognized it. And that's another issue that we're trying to correct. So again, this has been a huge mess. [LR424]

SENATOR LATHROP: You brought up something, and I don't want to go too far into it other than maybe you can agree with me that it went something like this: For years, guys that were violating their parole were given good time credit for the time they spent at liberty. They'd yank them back for breaking their parole, put them in the prison again, and still give them credit for good time for the time that they were free and breaking their parole. [LR424]

GOVERNOR DAVE HEINEMAN: And the Attorney General, again, the Department of

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Corrections asked for his legal advice. And he told us once parole was revoked, they lost that good time. That's why they're going back to recalculate that good time...

[LR424]

SENATOR LATHROP: Right. [LR424]

GOVERNOR DAVE HEINEMAN: ...and what it means to the sentence. [LR424]

SENATOR LATHROP: And I've seen an e-mail here. We can look at it if you want. But there's something where Kyle Poppert, Kyle Poppert and others are saying, yeah, we're going to get these guys good time for the time they spent on parole even though they violate it and we bring them back. [LR424]

GOVERNOR DAVE HEINEMAN: Well, Kyle Poppert, as we know, is part of the problem. [LR424]

SENATOR LATHROP: Well, he's not the only guy that was involved in this. [LR424]

GOVERNOR DAVE HEINEMAN: He's not the only guy. [LR424]

SENATOR LATHROP: Because I think I've seen Bob Houston's name on this stuff too. But in August of 2014, the Attorney General does an unpublished Opinion that says, yeah, this isn't legal. [LR424]

GOVERNOR DAVE HEINEMAN: Right, said that when parole is revoked, you need to recapture that good time. [LR424]

SENATOR LATHROP: Right. So that went on for years until August of 2014, when the Attorney General issues an unpublished Opinion and says, you can't do that. [LR424]

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GOVERNOR DAVE HEINEMAN: Well, I think they were just asking for his legal advice and guidance and he spelled that out in a letter to them. [LR424]

SENATOR LATHROP: Okay. And two of those guys became recipients of the TAP program, right? [LR424]

GOVERNOR DAVE HEINEMAN: Which two? [LR424]

SENATOR LATHROP: We had seven or eight guys. Two guys... [LR424]

GOVERNOR DAVE HEINEMAN: Which two are you talking about? [LR424]

SENATOR LATHROP: ...two guys who had been given credit for good time while on parole and they violated their parole, then you realized in a separate... [LR424]

GOVERNOR DAVE HEINEMAN: Director Kenney realized, right. [LR424]

SENATOR LATHROP: ...yeah, this is a separate mess, that these guys owed you time. And instead of making them come back and do the time because they violated the parole, you put them, two of them, into the TAP program, didn't we, Director Kenney's TAP...? [LR424]

GOVERNOR DAVE HEINEMAN: Director Kenney did and we didn't know about that program until the October 10 testimony. And then, again, I asked the Attorney General about that situation and he's indicated that that was probably within his discretionary authority. But I mentioned to Directory Kenney, and I think the Attorney General has said, soon as he received that memo from Green, even though we know all the difficulties there, he should have been down to the Attorney General's Office. [LR424]

SENATOR LATHROP: Agreed. Here's my point, though, with those two guys. See,

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when we were told about the TAP program or when we discovered it and we were asking Director Kenney about the TAP program, he said, they're people that are generally behaving themselves and assimilating back into the community. Then we find out two of them are actually parole violators. So I don't know the criteria for this TAP program. I guess maybe we've come to a place where the standard for letting somebody out is so low that two parole violators now are eligible for the TAP program created by the director, created by the director to move people, who were assimilating and law-abiding, into the community. Seems to me like the parole violators probably aren't really fitting the definition of or the criteria for the program. [LR424]

GOVERNOR DAVE HEINEMAN: Well, that program is no longer in existence. [LR424]

SENATOR LATHROP: It was also illegal. [LR424]

GOVERNOR DAVE HEINEMAN: And again, you know, the Attorney General differs with you on that. [LR424]

SENATOR LATHROP: Well, you know what, he did have a little press conference here over lunch. And he brings a piece of paper in here and he waves it around while he's talking about the Administrative Procedures Act. And I looked at what he was waving around. It's right here. It's the Attorney General Opinion that George Green was trying to get Larry Wayne and the director to read to tell them you can't do this. There's a certain irony to that, that Jon Bruning would come down here over the lunch hour, have a little press conference, try to say that, yeah, the Department of Corrections can do one of these administrative rule-making process outside of the Administrative Procedures Act because here's a '91 Opinion from Bob Spire. And it's the same Opinion George Green was waving around to tell Kenney that he was breaking the law setting up the TAP program. Do you see any irony in all this? [LR424]

GOVERNOR DAVE HEINEMAN: What I would say, Senator Lathrop, with all due

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respect, is I wish the two lawyers, you and Attorney General Bruning, would sit down and have a cup of coffee and get these issues... [LR424]

SENATOR LATHROP: Oh, I'm not running that place. I'm not getting involved in that place, honestly, honestly, [LR424]

GOVERNOR DAVE HEINEMAN: I mean... [LR424]

SENATOR LATHROP: ...because...well, I'm just not. [LR424]

GOVERNOR DAVE HEINEMAN: Right. [LR424]

SENATOR LATHROP: That's a different branch of government. My job is in the Legislature for the next couple of months. [LR424]

GOVERNOR DAVE HEINEMAN: Well, and he is in the executive branch of government. [LR424]

SENATOR LATHROP: He is. [LR424]

GOVERNOR DAVE HEINEMAN: And I think it is expected that the Governor...can you imagine the outcry from the Legislature and probably every lawyer in this state if I chose to follow someone's legal advice other than the Attorney General? I mean, he is the state's lawyer. I respect him. I trust him. He's given me different opinions than some of the ones you've shared. [LR424]

SENATOR LATHROP: So I can take from this, I can take from this that the felons haven't been rounded up because Bruning has told you he's still looking at it, he's still trying to develop a test case. Would that be true? [LR424]

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GOVERNOR DAVE HEINEMAN: I don't think that's totally accurate because, remember, there are 20 arrest warrants that were issued. And those were particularly individuals who...a recalculated release date was beyond January of 2015. And I'm sure they committed felonies. [LR424]

SENATOR LATHROP: Have they taken away their Anderson time and made them start, not their new felony sentence, but the old felony sentence from where they left off? [LR424]

GOVERNOR DAVE HEINEMAN: They're in the process of reviewing those. And I've told our Department of Corrections, you don't make any changes until you get the Attorney General to sign off. We're doing it accurately this time. I don't want more mistakes. So again, we've got them back in custody. Let's make sure we get it done properly. [LR424]

SENATOR LATHROP: Okay, let me tell you what I just heard you say: No, we haven't done that and here's my explanation. [LR424]

GOVERNOR DAVE HEINEMAN: No, I think some have. [LR424]

SENATOR LATHROP: The AG is still looking at. [LR424]

GOVERNOR DAVE HEINEMAN: Some have been, I think, Senator, but I suspect not all. [LR424]

SENATOR LATHROP: Has somebody told you they have, because it sounds like you said, I suspect that some of them? [LR424]

GOVERNOR DAVE HEINEMAN: Just my general conversations of what I understand as people have been brought back in, they have been trying to work with the Attorney

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General's Office and a couple may have been changed. I'm reluctant to say the whole list because I don't think that's accurate yet. But that's in process. [LR424]

SENATOR LATHROP: Okay. Well, I'm sure somebody will look into that. You don't know who they are and I don't know their names either. Governor, I think that's all the questions I have for now. [LR424]

GOVERNOR DAVE HEINEMAN: All right. [LR424]

SENATOR LATHROP: And so I think Senator Krist has about four hours of questions for you. (Laughter) [LR424]

GOVERNOR DAVE HEINEMAN: Okay. Whatever you'd like. [LR424]

SENATOR LATHROP: No. In our tradition, we begin to my left. [LR424]

GOVERNOR DAVE HEINEMAN: To your left, okay. [LR424]

SENATOR LATHROP: And Senator Krist will have questions for you. [LR424]

SENATOR KRIST: Welcome, Governor. I want to start, I had some things that I wanted to talk to you, but I guess I have just a couple of quick questions. You've referred several times and we have talked about several times CSG, the Council of State Governments. [LR424]

GOVERNOR DAVE HEINEMAN: Council of State Governments. [LR424]

SENATOR KRIST: We collectively, the executive branch, the legislative branch, and the judicial branch, invited them to come in on our turf and take a look and tell us, make recommendations. You're one of the chairs, the tri-chair with the Chief Justice and the

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Speaker of the Legislature. So I guess ongoing, I mean you can't fix everything in one day because this is a horrible mess at different levels. So my question is this: Have you taken anything away, particularly in the last few meetings, or the things that have just shocked you about what CSG has said? [LR424]

GOVERNOR DAVE HEINEMAN: You know, a couple things if I could share with you. I mentioned earlier I was very surprised to learn that for the same crime, Omaha judges were giving prison sentences and most of the other judges in the state were sentencing them to probation, which obviously increases the number of prisoners in the system. I also appreciate the fact that they showed us that probably more than 50 percent of the people in prisons appear to be of a nonviolent nature and that we might be able to look at additional community corrections programs to assist in that regard. And throughout the next 30 to 60 days, I think they'll share additional things with us. They're certainly going to come back in conjunction working with the Legislature, our branch, and the judicial branch with a whole series of recommendations. [LR424]

SENATOR KRIST: So I'd like just to give you a couple of mine, my takeaways the last few times. I sit right next to a very well-known judge. And his question to CSG was very simple: Why would someone forgo an opportunity to go to parole and sit in prison longer? And do you recall the answer that was given? [LR424]

GOVERNOR DAVE HEINEMAN: Basically, they want their freedom without any supervision, as I recall. [LR424]

SENATOR KRIST: So they want to serve their sentence and they don't want to be supervised. And I think that's an important point for the record. And I'll come back to that later. We also heard last time that the judges who were surveyed, about 70 percent of those judges returned their survey. And a good portion of them said that they take good time into account when sentencing and occasionally--more than occasionally--add time to that. And I just, for the record, I just wanted to put that out there in relationship to this

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hearing. So are we ready to go with these others? It's very important, I think, for the folks who are listening and for us who have gone through this process--painful process, I might add--for several months, this committee very early on decided to look at Mr. Jenkins, Nikko Jenkins, as a case study, not as an individual or to prosecute him even further or to judge him for what he has done. And let me say right up-front, he's the guy who pulled the trigger. He's the person who had the... [LR424]

GOVERNOR DAVE HEINEMAN: Four times. [LR424]

SENATOR KRIST: He's the person who had the issues. He's the person who is accountable for everything that has happened. However, I think it's important for us...in my military background and I know in yours, what we learned very clearly was, if you're not going to repeat those mistakes, you need to understand history. And you need to make sure you know history so you keep from repeating it. This charter, if you will, of looking at the record of Nikko Jenkins for this committee led us to many inconsistent, if not illegal and misguided conduct on the part of the Department of Corrections. So I think it's important that we establish for the record the case study as we know it. Next slide, please. This is, if you will, Nikko Jenkins in a time line starting in about 2003. I'll remind you that NYCF in 2003 is the Youth Corrections Facility. It's for offenders up to age of 19. In 2006, transferred to LCC; that stands for the Lincoln Correctional Center, which is a maximum security facility. And then, of course, the Omaha corrections facility, the OCC; the Tecumseh State Correctional instillation, which is also maximum security. And for some time, he was transferred to the Douglas County Corrections facility. And I'm going to talk about that a little later. And then he jammed out. Next slide, please. So just to emphasize, '03 he enters the Youth Correctional Facility. And even at the Youth Correctional Facility, he's put in segregation--administrative segregation, which means, in any layman's terms, solitary confinement. In my military history, I was trained how not to be interrogated or give information away in special training. And the one thing that they did to set up the opportunity was lock us in a box and deprive us of any kind of contact with anybody else. Now, Bob Houston sat right in that chair and told

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us that is probably the worst custom culturally that we do to our prisoners across the United States. And he was involved with a group that was trying to change that. December 2005, five days in segregation again. He was transferred to LCC. Next slide, please. LCC, immediately into segregation. Douglas County Court proceedings, and again, LCC on May 9, segregation. The word you'll see more than any others in these slides is "segregation," "segregation," "segregation." Transferred back to LCC, transferred to OCC--next slide--and on. And each time we see segregation, segregation, segregation. Next slide. And released from prison. Released from prison with no supervision because he jammed out. Now, what I hope to do in the next few years is spend a lot of time in the juvenile justice system, which I have in the last few years. I believe that if we spend more time in the playpen trying to solve the situation early on, we will spend less time and money in the state pen. I believe that we need more mental institutions or mental care facilities so that we head off some of these problems that we're having and that we're building for ourself. I believe, honestly, that these problems can be avoided, in some cases at least altered. And if you look at this time line, at age seven, at age seven, we recognized that he had a gun in his hand with the intent to do bodily harm and we had him mentally evaluated. And you can follow that time line through until eventually he graduates. He graduates from our youth facility and goes straight into the penitentiary. Last slide. Nikko Jenkins had ten different housing placements between January 25, 1999, and April 4, 2001, including four days...four stays in Douglas County Correctional Facility, three placements with his mother, and one each at Cooper Village, Youth Emergency Services, Pembroke (phonetic). And in November of 2003, he entered the Youth Corrections Facility. I think that we helped build the character, or lack thereof, of Mr. Jenkins. And I want to try to, with the information that we get from CSG in the time remaining in my legislative career, try to effect some changes. Let me refer you to...could you hand these to the Governor, please? And my colleagues also have a copy of these too. I would refer you to a piece of paper that's entitled, "state of Nebraska, attachment two." I'm going back to him as an adult now. And I'd refer you to this date on this document, if you see at the top, Governor... [LR424]

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GOVERNOR DAVE HEINEMAN: September 25, that's what you're talking about?
[LR424]

SENATOR KRIST: Yes, sir. [LR424]

GOVERNOR DAVE HEINEMAN: Okay. [LR424]

SENATOR KRIST: September 25, 2013, and it was in response to how much good time was taken away and the status of Mr. Jenkins. The last entry from the Department of Corrections was at the bottom of this first page, 5/11/12, loss of good time. Now, sir, I believe that this correlates very closely with what Senator Lathrop was talking about earlier. It's consistent with the culture to get people out. I think with the kind of character and behavior that we were seeing in the penitentiary, for good time not to have been deducted from this man after this date with all of his...and I know you're not aware of these, that you can't watch out all 5,000 people. But they knew that. Department of Corrections knew what he was doing in defacing property and doing what he did to himself. So I'll refer you to the second page on that. And it says, this was a good time, about two-thirds of the way down the page, on 3/10/2009, the use of threatening language or gestures. And they took away 45 days of good time for the use of threatening language and gestures. On the next page about a quarter of the way down, they took away one and one-half months for tattoo activities. And yet at the end of the time when he was incarcerated, I don't even want to repeat the testimony that was given--drinking his own urine, snorting his own semen. I mean, it is the kind of behavior...yet there was no good time taken away. So if you'll refer to the next page and that's the Nikko Jenkins sentence structure. This is from the Ombudsman's Office. And I trust the Ombudsman's Office to do the math as you would probably have trusted, up until this event, the Department of Corrections to do the math. And you can read when he was sentenced initially, what his second assault would have been, and etcetera. But had all of the things been applied that could have been applied to take away his good

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time, which is a hypothetical, I understand, but if all of them would have been taken away, his discharge roughly would have been the middle of February 2024. So this man would still have been in prison if... [LR424]

GOVERNOR DAVE HEINEMAN: May I make a point? [LR424]

SENATOR KRIST: Sure. [LR424]

GOVERNOR DAVE HEINEMAN: It's reflected there that his sentence was supposed to be 18 to 21 years--2003 plus 18 is 2021. If he didn't receive automatic good time, he'd still be there today too. So I think both of us make points. I understand there may be a disagreement on that. But I appreciate where you're coming from. I just hope you appreciate and respect where I'm coming from that, because of automatic good time, that sentence was cut in half too. [LR424]

SENATOR KRIST: And I don't disagree with that. But I'm not sure that your piece of legislation, as proposed through Senator Lautenbaugh last year, is any better than what we have. And I would purport to you that we'll look forward with the CSG plan...or the CSG findings. And if the good time law needs to be changed, I'll be here for the next four years to try to make sure that that happens. [LR424]

GOVERNOR DAVE HEINEMAN: I suspect you're going to have a conversation on it next year. I won't be here. Senator Lathrop won't be here. So we'll wish you good luck. [LR424]

SENATOR KRIST: Well, I would hope you'd let your predecessor (sic) know it'll be on his list of priorities. I relate to what's happening here in my life as, some would call it a train wreck, I'd call it an accident investigation. And the only thing that chronology I hope will display to any of us is that we have an obligation to break the chain of events that got us to the point where Jorge Cajjiga-Ruiz, Juan Uribe-Pena, Curtis Bradford, Andrea

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Kruger were taken out of this world. If we would have broken any of those chain of events that we talked about, if the psychiatrist who treated the child would have been able to treat the child, if the psychiatrist would have been able to keep Mr. Jenkins in prison or to commit him, we would not be having this conversation on behalf of those four who were brutally murdered. I also believe that some of my findings and conclusions so far--and I would hope you would relay these; they'll probably be in our report but also to your predecessor...or to your successor--there was an awful lot of psychology applied. And people were not paying attention to the psychiatrists. He was diagnosed at least three times during his life as having issues. And I don't think he's an anomaly. I think there are others out there that are having the same thing happen. There were no trained MDs, psychiatrists, in the Department of Corrections who could have intervened and said, Dr. Weilage, you're wrong; there is a biochemical issue; there is a reason why we need to do something. I think it's important that we realize, both with the CSG investigation and here, jamming out is not good. It's not good for public safety. It's not good to send somebody without supervision in some way. And I think you agree with that with the comments that you've made within CSG, if you'd like to comment with that. [LR424]

GOVERNOR DAVE HEINEMAN: You know, I just would like to say that, again, during the time that I've been Governor, we've initiated, working with the Legislature, a number of community corrections programs. We're up to \$22 million on an annual basis. I suspect more needs to be done in the future and will be. [LR424]

SENATOR KRIST: And that \$22 million should also include children, which we have looked over in terms of juvenile justice system and we'll pay some attention to again with the help of Appropriations. I also have come to another conclusion. And Senator Seiler and Senator Mello, who are also on our CSG committee, but Senator Seiler brought this to our attention early on. There's been an evolutionary process that has taken lawyers out from underneath the Attorney General and has put them in the individual agencies. And I think we see an example--and I have no disagreement with

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you--of how one lawyer could have changed the face of this as well. He could have changed. He could have removed the link. [LR424]

GOVERNOR DAVE HEINEMAN: If he had done his job right. [LR424]

SENATOR KRIST: Absolutely. So it's all about lessons learned. It's all about moving forward. It's all about making the changes we need to. I think we're beyond sitting down and having coffee because Senator Lathrop would resent. But I think there's light at the end of the tunnel. It's not a freight train coming the other way. But I do think that we need to pay attention, as Senator Seiler said several hearings ago, to where those lawyers are placed and under whose control they are and what legal obligation they have to advise both the Legislature and the Governor of the state of Nebraska. And I just want to ask you one curiosity question in closing. I know and I would be first one to stand up and say, you went and asked Lathrop his opinion and you didn't ask the Attorney General. I agree with you. But I have on occasion, even at my level, had a conversation with the Chief Justice where there was a question about an interpretation, which again, I don't think it's an interpretive value. I think it's clear. Do you...would you advise the next Governor to have more conversations with the Chief Justice regarding those findings? [LR424]

GOVERNOR DAVE HEINEMAN: Again, I am not a lawyer, but I'm very respectful of the fact that we have three separate branches of government. And I would never ask a judge, particularly the Chief Justice of this state, about a particular ruling because I don't think that would be appropriate that he could comment on it. Now, Chief Justice Heavican, I think, has been very good working with us on the Eyes of the Child project. He's been very, very good working on this CSG project. But given previous conversations I've had with him, when we start to get into policy or a particular case, it's probably not appropriate for us to ask him for his opinion. [LR424]

SENATOR KRIST: Well, if he was the man who wrote the decision, I guess I would find

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myself more comfortable asking him for his opinion after he'd written the decision--not obviously before. But I hope you understand my chronology today is to emphasize the fact that there's a lot of blame to go around. [LR424]

GOVERNOR DAVE HEINEMAN: A lot of blame. [LR424]

SENATOR KRIST: And there are a lot of links in this chain that led us to four people losing their lives tragically. Only one man pulled the trigger, but we could have broken this chain probably 20 or 30 times in the last 12, 14 years. And I'll do whatever I can and I know my legislative colleagues will to make sure that the oversight, the oversight, which is one of our responsibilities in the Legislature, tries to correct these issues in the future. Thank you for appearing before our committee. [LR424]

SENATOR LATHROP: Senator Mello, you're recognized. [LR424]

SENATOR MELLO: Thank you, Chairman Lathrop. And good afternoon, Governor. I hate to disappoint you, but I don't have a lot barn-burning questions. Senator Lathrop asked a considerable number of the... [LR424]

GOVERNOR DAVE HEINEMAN: I'm surprised. [LR424]

SENATOR MELLO: ...points that I was going to ask you about. But the first one is kind of maybe more just giving you an opportunity to clarify a statement you started off the hearing with. Senator Lathrop mentioned Dr. Weilage, who's a psychologist in the Department of Corrections, and asked why hasn't there been any action taken against Dr. Weilage in respects to him? I think in the eyes of this committee, knowingly and willingly withholding information regarding an inmate that led to the travesties that were associated with Nikko Jenkins. I want to give you an opportunity to clarify what you said earlier, which is that there's a process, a personnel process and everything else that goes, that's involved in this and that you as the Governor have no direct authority or

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ability to weigh in, in regards to the future of Dr. Weilage, because Section 81-1316 regarding the State Personnel System specifically exempts his position from the State Personnel System. Which means he falls in the same view as Director Kenney, Deputy Director Wayne that has the ability to be an at-will employee and essentially can be fired and not go through the Personnel System and/or have that due process that's associated with the State Personnel System. I just want to give you an opportunity to clarify if you'd like. [LR424]

GOVERNOR DAVE HEINEMAN: What I was trying to suggest, and you may be accurate on the position, but that's a decision for the director who has direct supervision, direct oversight. I don't have any of that. And again, we just want to be careful that we're following our personnel rules so, you know, if the Governor tries to interfere, you'll get a grievance procedure that it was politically motivated or whatever. And when you go to personnel actions, I try to be very, very careful. I was trying to be very, very careful during the time frame, for example, we were undergoing that independent personnel review involving the department, not to comment regarding Mr. Green because obviously that was a decision for the director. So again, the director can make that decision. It's under review. [LR424]

SENATOR MELLO: And just to clarify, there's three by...essentially, if you're not within the state personnel system, there's three exempted classifications that you can fall under. You can be appointed by the Governor, which is a classification. You can be a discretionary position, which means you can be hired outside of the personnel policy system. Most people would consider that to be, quote unquote, political patronage positions that don't have to go through an open hiring process. And then you have the third, which is just flat-out exempted by statute, which there is a considerable number of people within code agencies that are exempted by statute. But the difference is, is that even though Director Kenney has the ability, or what you're saying is that you're not involved, the reality is you could talk to Director Kenney about your concerns regarding Dr. Weilage and say, this individual is an at-will employee of the department; I've got

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concerns; I'd like these concerns addressed, Director Kenney. You have the ability to do so, is all I'm suggesting. [LR424]

GOVERNOR DAVE HEINEMAN: And all I'm suggesting, if I suggest to the director what he ought to do regarding any personnel, that's more than likely to result in litigation as opposed to, he has the direct supervisory authority, did the review himself and made that decision. [LR424]

SENATOR MELLO: A couple I guess just points of clarification regarding some of the appropriations related. I know there was a lot of stuff that was thrown out in the Q&A. And something just as a general point of clarification, I just heard you answer Senator Krist, the Council of State Governments mentioned at our last LB907 working group meeting that we have \$22 million of funding that's going into community corrections. You are under the understanding, as I am, which is \$15 million of that \$22 million was passed this year through LB907, which they clarified it at that last meeting that prior to the signing of Senator Ashford's LB907 by yourself, we were only appropriating roughly \$7 million for community corrections. [LR424]

GOVERNOR DAVE HEINEMAN: I understand exactly what you're saying. [LR424]

SENATOR MELLO: Okay. [LR424]

GOVERNOR DAVE HEINEMAN: And again, my sense is we will continue to make progress in that area. But as you know as well as I do, when you start dealing with the budgets, it's about a lot of different priorities. [LR424]

SENATOR MELLO: Sometimes very conflicting priorities. I don't... [LR424]

GOVERNOR DAVE HEINEMAN: Very difficult priorities. [LR424]

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SENATOR MELLO: I do not disagree, Governor. I just want to make sure to clarify that in a sense that it's not...the state has not been putting \$22 million a year for a number of years. This is a recent addition of \$15 million that brought that \$7 million up to \$22 million. [LR424]

GOVERNOR DAVE HEINEMAN: I think it's fairly significant. [LR424]

SENATOR MELLO: And to some extent, that kind of leads me I guess to my second kind of point of clarification. And as Senator Lathrop mentioned, I don't expect...Governor, I don't expect you to be, in regards to the, quote unquote, in the weeds in regards to the exact programming that goes on in different state agencies that you ultimately oversee and ultimately are responsible for. But there was a question that Senator Lathrop asked you regarding programming in respects to the Department of Corrections in respects to your earned time concept in which there was some dialogue between you and Senator Lathrop where you made it sound like there's been requests for programming and it's always a challenge in regards to prioritizing different investments in state government. And it's maybe just more of a clarification. I've been on the Appropriations Committee for six years and served as Chairman the last two years and not one of those years that I've been on the committee has the Department of Correctional Services come in and request money for programming. And I want to be clear about this because this year there was a little unique...some request that was made that the Legislature and the executive branch agreed on in regards to short-term use of prison space in counties, amongst many other components. But I specifically remember in this hearing room actually, Senator Bolz asked Director Kenney, your Department of Corrections director, about the Ombudsman's report that was released earlier this year that stated that there was a lack of programming within Department of Corrections. And there was a significant need for the Legislature and the executive branch to address this lack of program before we...as we consider making any wholesale changes. And so I would be remiss not to remind, I guess, my colleagues and Senator Bolz is the only other member on Appropriations who raised this issue with

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your director. And he said that there was enough programming currently in the Department of Corrections and was fairly defiant in regards to questioning by the Appropriations Committee in respects to, why haven't you requested more funding for programming to deal with some of the shortfalls. He simply said they have enough and he wanted to move on from that subject. I just throw that out there. I'll give you an opportunity to respond if you'd like. It's just more of a point of clarification in the sense that there's...the numbers speak for themselves and we can go through the budget documents together if you'd like. But it's just more of a point that I went through those and noticed there were no requests for programming over the last six years. [LR424]

GOVERNOR DAVE HEINEMAN: You know, what I would share would you, in any given year there's a lot of give and take on the budget process. Anybody who wants to add money in on the legislative side could do that at your level or an amendment on the floor. But you know, to me these conversations are ongoing as we learn additional information, particularly what's happened with all of this. I've certainly been enlightened in a number of areas regarding the CSG study. I think that will all be taken into account by the new Governor and the new Legislature. [LR424]

SENATOR MELLO: I may come back to the master plan. I want to think a little bit more about that in respects to the dialogue that you and Senator Lathrop had regarding the '06 master plan, which was three years before I was elected to the Legislature when you released that plan and the budget biennium that in theory you should have requested money for that plan was before I also got elected. So I... [LR424]

GOVERNOR DAVE HEINEMAN: I think that's a judgment call for policymakers to make. [LR424]

SENATOR MELLO: It absolutely is a judgment call for both the Governor and/or the Legislature. So I may sit on that and some questions later. But the one last real issue I've got is Senator Lathrop asked you a little briefly about the administrative good time

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component. And I know you and myself have traded a number of letters over the last years as well as just some conversation, both pleasant and sometimes very tense conversation, in regards to the underlying issue that I still can't get my hands wrapped around when I started to learn about the good time issue from a nonlawyer's perspective. Like yourself, I'm not a lawyer. You and I may be able to look like lawyers, but we both are not lawyers and we both tell everyone that. But in reviewing state statute and I spent a considerable amount of time after the incident with Jerry Dobbe...Jeremy Dobbe, as you remember, the inmate who was driving during the Inmate Driving Program that unfortunately and tragically killed a woman in Lincoln in regards to one of these administrative programs that none of us really knew about that there were regulations regarding. I started to look through the rules and regulations for the department, noticed more about this administrative good time policy in regards to how the department has the authority, the legal authority, the statutory authority to take away good time from inmates' sentences and keep them in prison longer. Senator Lathrop asked you some questions and it kind of seemed like you just generally had a, I guess, maybe just a disagreement of maybe the question. But Director Houston did testify in September and I remember because I asked him the question. And I posed this question over a year ago when this whole issue of good time and sentencing structures came up, which I don't disagree that having a good policy conversation of sentencing reform, which I think we all agree that CSG is going to help work with the state in regards to evaluating our sentencing structure and sentencing reform. But, still, the issue of taking away good time through the administrative process has been something that I know myself and other senators have asked you about. And the World-Herald wrote a story back last late September, early October of 2013 that showed the department takes roughly about 5 percent of good time away from inmates who misbehave. And part of my question is, what have you done in regards to...I appreciate the department and you signing the regulations that increase the amount of good time that could be taken away for misbehavior. But what has been done outside of simply changing those regulations? What has the department, in consultation with you, done to take more administrative good time away from inmates who are misbehaving?

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[LR424]

GOVERNOR DAVE HEINEMAN: Well, what I'd share with you, a couple things. First of all, as Governor, I'm not going to go down there and walk around the prison and see who violated prison rules and what amount of good time ought to be taken away. That's for the department. We've got over 2,000 employees. The point I've been trying to make on the good time, and we may respectfully disagree, is that the administrative good time requires a violation of prison rules and you're likely to take away days, months, maybe even a year. But the automatic good time provisions cuts it in half. So if you have a sentence that goes from 18 to 24, automatically the day they walk in the prison it's cut in half--9 to 12 years. And so, you know, I respectfully...we just disagree on how that ought to be done. The other thing that I've tried to say from a policy perspective, I'll say maybe you can appreciate like me, as a nonlawyer, why don't we simplify and have truth in sentencing? And so if you want a guy to serve five to ten years, let the judge do that instead of, as we've learned, well, they got to take good time into effect. They got to double it if they really want five to ten. I just don't understand why we do it that way.

[LR424]

SENATOR MELLO: Governor, I will give you some agreement there, that I, as a nonlawyer, I've always wondered the same thing in regards to the sentencing structure. When someone is slated to be in prison for a certain amount of time, that is that really the amount of time they're supposed to be in there. But I was kind of, I guess as a little commentary, our LB907 group last week saw that CSG did a survey of all the district judges around the state. And 38 out of 39 said they take good time into their sentence structure. So like they're not confused, I guess, in regards to when they want an inmate to serve ten years in prison, they create a sentence structure to meet that. [LR424]

GOVERNOR DAVE HEINEMAN: So why do we do that? Why do we have a policy to do that? I don't understand. [LR424]

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SENATOR MELLO: You know what, that's...I think that's a good conversation that I have a feeling CSG will continue to take us through. But I still...I appreciate your answer, but you really didn't get to my point, which is, what has the Department of Corrections done under your leadership to take more administrative good time away? After you increased the penalties, which you did increase them from one month and one year to possibly two months' to two years' worth of good time that could be taken away administratively, what has your department done to implement that? [LR424]

GOVERNOR DAVE HEINEMAN: Well, I expect them to take it into account as they see prison violations. But again, it all starts with there's got to be a prison violation regarding an inmate. And again, I just don't think you want the Governor or the Chairman of the Judiciary Committee or the Appropriations Committee going down there and observing inmate behavior and making those determinations. So they've got to do that. They're well aware of the new rule and reg in that regard and hopefully they apply it accordingly. [LR424]

SENATOR MELLO: Well, I wish I could provide you positive news that they are. And I'm sure, as with the mountains of letter I've sent your administration and your agencies over the years, I sent a letter a couple weeks ago to the Department of Corrections to find out how they've been implementing this new good time regulation, to find out how much more good time have they been taking away knowing that this issue has now been brought forward as a significant policy issue we need to consider. And the information they sent me shows that still, roughly...I had the numbers here from the 400-page document they sent me, which there were 24,219 violations from September 1, 2013, to September 1, 2014. So one year there was over 24,000 violations, and there was only 1,278 violations that result in a loss of good time. And that's roughly a little less than 5 percent, which is the number that essentially the World-Herald calculated they did a five-year look back. I pose that to you in the sense that the issue in regards to sentencing reform and sentencing structure will no doubt come in front of the Legislature and executive, judicial branches through the CSG process, as we all said it

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would. But I think there's still a lack of leadership going on in regards to the administrative use of good time in the sense that right there is a perfect example, still. And we heard it from Director Houston when he testified in front of this committee two months ago when I asked the question, did you not take away good time because of prison overcrowding? And he said, quote unquote, that's a fair statement. And I know you said you disagree with maybe Director Houston, but he ultimately was you department director for a number of years. And if that's what he told us under oath, that he was not administering good time and was giving good time back to inmates to move inmates out of Corrections because of overcrowding, that has been a concern of mine for the last year and a half. And I think it's going to remain a concern of mine knowing that these numbers have not changed in a year's time since this issue has taken on a new light in respects to both issues in front of the Legislature and from your department. With that said, Governor, I will probably come back and ask maybe a question or two later about the master plan. But I appreciate you spending time with this committee today. Thank you. [LR424]

GOVERNOR DAVE HEINEMAN: Thank you. [LR424]

SENATOR LATHROP: Senator Seiler, you're recognized. [LR424]

SENATOR SEILER: Thank you. Governor, I guess the lesson to be learned is don't sit next to Mello. He does all your questions for you. [LR424]

GOVERNOR DAVE HEINEMAN: Well, you know, he writes me more letters than any other senator. We appreciate that. [LR424]

SENATOR SEILER: I want to thank you for signing LB999. I met with your group on the regional center rehab about a month ago. And they were really excited about that program. I will tell you the city of Hastings is very excited about that program. And when I use the term "mental health," I include drugs and alcohol abuse as well in my

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questions. You've been around probably longer than any other Governor. So did it start, the vocational training at the prisons, did that start deteriorating while you were Governor or was it before? [LR424]

GOVERNOR DAVE HEINEMAN: I don't know the specific answer to exactly what you're referring to. [LR424]

SENATOR SEILER: Okay. When I was an Assistant Attorney General, they had a welding class, a furniture manufacturing class. They had, I think, they even had a farm program where they raised their own vegetables and crops and everything like that. And there were numerous, those kind of programs. It seems to me like sitting on Education, the hot topic today is vocational training and yet we got 5,150 people locked up out there and we're not providing them any type of training, as I understand it, in the vocational field. [LR424]

GOVERNOR DAVE HEINEMAN: I'll check into that one for you. [LR424]

SENATOR SEILER: And the other thing is, is that I understand they have some educational programs. But also, the people at Grand Island in prison there, we were...I visited there about a month ago and... [LR424]

GOVERNOR DAVE HEINEMAN: The county jail you're talking about? [LR424]

SENATOR SEILER: ...county jail, and their complaint was not that where they were--they thought it was a great facility--but they don't get any training. They don't get any programs which count toward getting out. And so they're considering that really dead time down there and... [LR424]

GOVERNOR DAVE HEINEMAN: I think the department is trying to look at very carefully those they put in the county jail because we're obviously aware it's a short time situation

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and they may not have all of the training that's needed. But I also think we heard loud and clear from the counties, they want these to be--I don't know what the right term--low-risk offenders. [LR424]

SENATOR SEILER: Right. [LR424]

GOVERNOR DAVE HEINEMAN: They don't want people that are going to cause all sorts of problems within their jail system. [LR424]

SENATOR SEILER: And low cross (sic)...well, they couldn't in Grand Island because they're completely separated. But the low-risk personnel out there means probably shorter jail times, which just causes more problem... [LR424]

GOVERNOR DAVE HEINEMAN: I think in general that's another criterion they're looking at,... [LR424]

SENATOR SEILER: Good. [LR424]

GOVERNOR DAVE HEINEMAN: ...trying to use people who have, like you say, shorter time left. [LR424]

SENATOR SEILER: Because of the fact that they need certain, as I understand it, need certain programs to be completed before they're eligible for parole, and if they don't have those, they're not eligible for parole. And so it seems to me that that's something we need to be taking a look at. The other thing running through this program, Health and Human Services, that I'm interested in is how much actual training do we train our people to do their job? Do they go to seminars? Do they have in-house training? Because it just seems like Health and Human Services had the same problem that Jeannene Douglass had. She wasn't getting the feedback from the top and nobody was paying...but when it came time to be a problem appointed, she was pointed at. There

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was a lady at Heath and Human Services I remember, at least in the newspaper, said the same thing. She didn't know she was supposed to do something. It cost the state considerable amount of money. They were all pointing at her. It seemed like there's a lack of training for our own people. Maybe that's something we need to take a look at. [LR424]

GOVERNOR DAVE HEINEMAN: All right. [LR424]

SENATOR SEILER: And I'll fund it when it gets to you. Thank you, Governor. [LR424]

SENATOR LATHROP: Senator Bolz. [LR424]

SENATOR BOLZ: Good afternoon, Governor. I don't want to be redundant, but I, too, have a few questions about programming and the policy surrounding programming. Prior to my election, in 2011 the Appropriations Committee, per your recommendation, picked up some cost savings related to reduction in the number of inmates and picking up that reduction through increased parole. Does that ring a bell, are you...? [LR424]

GOVERNOR DAVE HEINEMAN: Not totally, but I mean we go through those issues all the time. And that may still have been a time, and even in good times there are a lot of priorities, as you well know now on the Appropriations, of what can we afford, what do we want to fund, and how do you make those decisions. [LR424]

SENATOR BOLZ: Sure, but I'll just share it with you. I wasn't present at the hearing either. But the summary is that the plan was to reduce the prison population to 125 percent of capacity over the next biennium, and that the increase in parole and RFP population will be achieved through close cooperation between the Parole Board and the Department of Corrections to ensure that inmates are evaluated, classified, and receive appropriate treatment early in their prison term and are prepared to be parole candidates. So we justified the cost savings that we picked up in the Appropriations

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Committee by recognizing that if they have those services, they're prepared for parole. But by the time that I entered the committee and asked questions about parole eligibility and programming being the bottleneck between people being in and people being out, I got no response in terms of support for that idea and recognition of that need. And I guess I would just like to hear you describe why that policy makes sense to you when it seems inconsistent to me. [LR424]

GOVERNOR DAVE HEINEMAN: Well, it sounds like you were talking about the RFP program in front of the Appropriations Committee that everybody wondered was done in secret. I don't think it has been in that regard. But, secondly, again, I think over the years if you probably go back to 2005-2006, there was a different mind-set here in the building relative to how we handle prisoners. And then I remember many conversations with Speaker Brashear who was a very strong advocate for community corrections, chaired the Community Corrections Council, and we began to move in that direction, maybe not as fast as everyone would have liked. But people were trying to evaluate those programs to determine what made the most sense. And then, oh, I don't know, in '08-09-10, in there, we went through some very difficult economic times. [LR424]

SENATOR BOLZ: Well, just to be clear, the reductions were taken in 2011. [LR424]

GOVERNOR DAVE HEINEMAN: Right. [LR424]

SENATOR BOLZ: So I don't know that the difficult budget times are necessarily the explanation there. Well, I guess looking forward I hope for consistency in those recommendations and we'll certainly work with administrative folks to implement long-term visions. The next thing I want to talk to you about is the RFP program. And listening to the list that you and Senator Lathrop walked through earlier today frankly gives me a knot in my stomach. You know, some concern about folks who have committed violent crimes and are perpetrators of domestic violence being in the community, it's of concern to me. And so one of the things that I would like to ask you is

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given what we understand about the lack of the Administrative Procedure Act being implemented with the RFP program and the concerning list of folks who are participating in that program, do you have intentions to backtrack? Will you go back and look at that and step us back through the administrative procedural process to the degree possible to correct things and allow for public input? [LR424]

GOVERNOR DAVE HEINEMAN: Let me share a couple of things with you in that regard. Over the lunch hour, I had a conversation with the Attorney General who seems to have a different opinion relative to the Administrative Procedures and what various departments can do on an internal basis, and he would seem to suggest that they have the authority to do that. Secondly, again, I'm a little bit concerned, as I expressed earlier. The Parole Board was actively involved in this and had to approve those. And, again, I guess I want to talk to Esther Casmer because again I'm a little surprised as I understand the individuals who were part of that program, it seems out of step with generally how the Parole Board has operated. So I need to have a conversation with her about that. [LR424]

SENATOR BOLZ: Whether the Attorney General's Opinion is that the actions were in compliance or not in compliance, regardless of that, do you think that this was best practice? I mean, do you think that this could be done better? [LR424]

GOVERNOR DAVE HEINEMAN: Well, what I would tell you, again, when there are few areas of state government that I think are really critical that a Governor be careful not to micromanage. One is the criminal justice system, the other is law enforcement. I don't think the Governor ought to interfere with those because there will be serious questions about are you doing it for your favorite friend or another elected official or whatever. But, again, having said that, it's worth talking to the Department of Corrections about. But generally I think they try to follow best practices, they try to attend national meetings. Director Houston certainly was involved at the national level. [LR424]

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SENATOR BOLZ: Well, I would hope that you would have that conversation. It seems like an area that could use some improvement. Bringing me to my last question, you referenced the actions of the Parole Board early in the testimony this morning. You did reference that one of your roles as Governor is to appoint the Parole Board and that you do have the authority to remove if you believe there is cause. Will you take action to investigate whether or not there is cause? What are your...? [LR424]

GOVERNOR DAVE HEINEMAN: For which specific person are you talking about? [LR424]

SENATOR BOLZ: The entire Parole Board. I mean, it sounds to me as though you have concerns about the Parole Board's actions. [LR424]

GOVERNOR DAVE HEINEMAN: I'll talk to Esther about that and what specifically occurred here. [LR424]

SENATOR BOLZ: Will you let us know how that goes? [LR424]

GOVERNOR DAVE HEINEMAN: I'll try to let you know. [LR424]

SENATOR BOLZ: Very good. Thank you. [LR424]

SENATOR LATHROP: Senator Schumacher. [LR424]

SENATOR SCHUMACHER: Thank you, Senator Lathrop, and thank you, Governor Heineman, for appearing before our committee today. I have three general areas of questioning and hopefully none of them will be very long. The first area arises out of an interest that I have because in the days when I was in law school back in Washington, it was the height of the Nixon administration and I had opportunity to get some insight into some of the issues that were on the table then, one of which was executive privilege.

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And I think it's fair here on the record to permit you to have a little time on behalf of yourself and future governors as to what your position on executive privilege is with reference to a subpoena by a legislative body whether or not there's been a waiver of executive privilege so that future perhaps courts, perhaps graduate students working on Ph.D.'s, perhaps future Legislatures have on the record what your position was with regard to that issue. [LR424]

GOVERNOR DAVE HEINEMAN: Well, let me just say from the beginning I've said, you know, if asked I would have voluntarily appeared. I'm glad to be down here today to have this conversation. I think it's constructive and useful. I'm not an expert on executive privilege. I just support the idea that we should be open and transparent in government and that's why I came down here today. So I'm not necessarily trying to waive any particular privilege because that is a very, I'll say I don't know whether it's sophisticated and complex legal issue and theory that the lawyers ought to get into, but I'm just talking for me personally. I'm glad to be down here sharing with you what I know. [LR424]

SENATOR SCHUMACHER: Thank you, Governor. The second general issue is that of the internal management within an agency or a department. In the context of the hearings that we've had, we've seen some real head-scratchers. Fingers now are pointing a bit at Poppert for not being terribly competent in the way he executed his duties. But in fairness to him, he's had a couple of years in college, no degree, not that maybe college means everything but it should mean something. Paid \$50,000-60,000 a year. Got the job of records administrator and then since then apparently has had another assignment of special services agent or something put onto him for no extra pay. And, according to a report from the Illinois guy through the U.S. Department of Justice, wasn't terribly knowledgeable what he should be looking for or how he should be handling it. He's supervised by people, deputy directors and directors paid more than twice what he's paid. And they put him in that job without that training and without communicating to him what was expected of him. Kind of hard for the guy to realize

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that, you know, gee whiz, the Supreme Court decision not only means something but even without a mandate from the court, a piece of paper saying, hey, do something, you better have some lights going off and be talking to the Attorney General or talking to Green and if Green doesn't want to talk to you, hounding him until he does talk to you. We've seen the deal with the psychologist, Weilage I think the name was, not telling the Johnson County Attorney's Office information that anyone with common sense would have been...should have thought would be communicated, not disclosing this shrink's report to Dr. Baker's report saying this guy Jenkins has got a real problem. Supposedly on, at least if I read the charts right, maybe these people don't exist in reality but they look like they exist on paper, there's two psychiatrists within the department making over \$200,000 a year. Should they have been in play here to settle the dispute between Baker and Weilage, assuming that was a legitimate professional dispute? But at any rate, those kind of internal things, those gears do just not mesh. So what would you advise as a policy matter the Legislature and future governors to do to try to overcome that lack of communication which ultimately meant you had to first become aware of these problems from a newspaper article? [LR424]

GOVERNOR DAVE HEINEMAN: You know, I'd share a couple of things with you, Senator. I think it's very critical, first of all, recognizing the challenges we face today let's get all of these mistakes corrected. It just seems to me that's got to be the focus of attention. Secondly, then we talked about a culture change overall. I think also I'll have a conversation with the Governor-elect about the leadership down there and how they ought to be responding. But they've got to do it differently, there's no question about it. Poppert made mistakes. Green made mistakes. But, you know, they have supervisors who should have been looking into it too. [LR424]

SENATOR SCHUMACHER: And finally, Governor, just to...asking for your general advice and counsel, having the unique opportunity of serving as chief executive of a state for ten years--not many people in the history of the United States have had that opportunity. And not running for election or anything, so hopefully you're in a position to

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be real frank with us. (Laugh) We have this criminal justice system and one of the things that was talked about today is community corrections options. So you have somebody that does a big or little no-no. In our current structure you pluck him up with an arrest, plug them into a charging system in the county attorney's office, run them through the court system, almost always give them free attorney with defense counsel. Maybe a jury trial, maybe a plea bargain, maybe a court trial. Then we run them through the probation system to get a recommendation as to what the judge should do with them. And then the judge does whatever he thinks is fair, whether it's probation or whether it's committing him to the institutions and causing this overcrowding problem. Sometimes we tell the judge he has to, whether he wants to or not, commit them because of some things that the Legislature has passed. And we plug them in that system and then we have an overcrowding problem. We have what the people who have testified here hinted to somewhere between 40 and 60 percent of these characters have got mental issues. And our goal then after we put them through this entire process is to get them into some community corrections, provided they're nonviolent. Well, we could have skipped the whole process as to those people by some other mechanism of handling the problem rather than running through rather a mechanism that was really designed for really mean and violent people. And so from your perspective, is there a better way to manage the marginal population that is either criminal, mentally ill, or just plain social misfits? [LR424]

GOVERNOR DAVE HEINEMAN: Well, I'm certainly not an expert on it, but I will say I believe this process we're going through right now that Senator Krist, Senator Mello, and Senator Seiler are part of, and we got the three leaders of all three branches of government working with the Council of State Governments has been very worthwhile, very informative. I think we're all learning new information every day and hopefully we'll be able to take all that information and I think you're going to have a very serious debate next year in the Legislature, how do we move forward. I do want to emphasize because I think this is a key and got two members of the Appropriations Committee here with us, the challenge will always be which programs are you going to fund. And you'll come

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down to some very difficult choices: state aid to education, University of Nebraska, Health and Human Services, or more funding for these programs. And it's always a give-and-take but it does seem to me, depending on what the Council of State Governments recommend, that will carry a lot of weight and probably will be given more priority attention next year in the appropriations process. But it's going to be a work in progress. The other thing, obviously, we've got to make sure we have people in place at the Department of Corrections that know how to do their job. [LR424]

SENATOR SCHUMACHER: And then one final tidbit. It's a question indeed of what programs we're going to fund, and that's on the spending side of the scale. [LR424]

GOVERNOR DAVE HEINEMAN: Right. [LR424]

SENATOR SCHUMACHER: And then we have the other side of that scale is the tax issue. [LR424]

GOVERNOR DAVE HEINEMAN: I'm familiar with that one too. [LR424]

SENATOR SCHUMACHER: So is everybody in the state. (Laugh) But congratulations, Governor. I see the Tax Foundation has given us a few extra points as a result of your work the last couple of years. [LR424]

GOVERNOR DAVE HEINEMAN: We made progress but there's more work to be done. [LR424]

SENATOR SCHUMACHER: Thank you. [LR424]

GOVERNOR DAVE HEINEMAN: All right. [LR424]

SENATOR LATHROP: Senator Chambers, you are recognized. [LR424]

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GOVERNOR DAVE HEINEMAN: Senator, could I ask a question because I assume it's going to take a while before you get started, could we... [LR424]

SENATOR LATHROP: Do you need a quick break? [LR424]

GOVERNOR DAVE HEINEMAN: ...take a 15-minute break? [LR424]

SENATOR LATHROP: Sure, sure, sure. [LR424]

SENATOR CHAMBERS: Maybe you want a half hour? (Laughter) [LR424]

GOVERNOR DAVE HEINEMAN: No, no, 15 is fine. [LR424]

SENATOR LATHROP: All right. We will be back here at ten till. [LR424]

GOVERNOR DAVE HEINEMAN: Okay, great. [LR424]

SENATOR LATHROP: Okay. Very good. Thank you. [LR424]

BREAK

SENATOR LATHROP: (Recorder malfunction) ...respectful of your time, so I'm going to begin the hearings again. The time is about eight minutes before 3:00 in the afternoon. We're back. We've taken a little bit of a break as a committee. Mr. Jenkins, are we on the...we're live. Okay. Governor, you remain under oath, and I say that not that you need to be reminded, but that the record should reflect that you are still under oath. And with that, it's Senator Chambers' turn to ask questions. [LR424]

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

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SENATOR LATHROP: Certainly. [LR424]

SENATOR CHAMBERS: Welcome to my parlor, Mr. Governor. [LR424]

GOVERNOR DAVE HEINEMAN: Thank you, Senator. [LR424]

SENATOR CHAMBERS: But in reality, this is a fact-gathering exercise that we're on and I will be back next session of the Legislature. I'm practical, I'm pragmatic, I'm realistic, and I'm aware that you're in the latter stages and days of your administration. So there's not much you're going to have much impact on one way or the other, not to be disparaging. But, as you know, I've been in politics going on 50 years now, literally. [LR424]

GOVERNOR DAVE HEINEMAN: I understand exactly where you're coming from. [LR424]

SENATOR CHAMBERS: Okay. So there are some questions that I'm going to ask you and I want to be sure we compile a record. One of the first things I need to do though, and I will accept questions from you, is talk about good time. Ever since I've been in the Legislature I have supported good time. People attack it without even knowing what it is. They talk like it's some kind of gift to wrongdoers or a way to deceive the public. But those in the Legislature who send people to prison, those in the judiciary who sentence people, and Governors and other politicians will pick an issue that can excite the public because the public is ignorant. It doesn't cost any money to jump on it and it can give the appearance that something is being done. But what I look at is how things work. The prison system comprises criminals when it comes to their clientele. Everybody in every walk of life will talk about the process known as the carrot and the stick. There's a word that businesses use when they want to beg money from the Legislature, and that is incentivize. People must be given an incentive when you want them to do something

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that under ordinary circumstances they probably would not do. So good time is a prison management tool, and I will advocate for it, I will protect it, and I'm really resentful towards you and Lee Terry for trying to give Senator Ashford credit or blame for what I did and have fought for for decades, literally. I have said and I did say when it was being discussed after the Nikko Jenkins matter that something had to be done about good time. I saw a red herring immediately. It would cost no money. It would distract attention from the fact that there's no programming in the prisons. The education programs they used to have are gone. There are no jobs that may have been available at one time--gone. Incompetent people for political purposes are put in positions and there's no oversight and no requirement that anything be done. Legislators, because it's the thing of the day, will put mandatory minimum sentences in place, taking away the discretion of judges, because they have to appeal to people who they want to vote for them in the same way that Lee Terry--the man has no shame, no ethics--to try to make a man responsible for the beheadings that are occurring in the Middle East, to make him responsible for what Nikko Jenkins did. Then I saw this cop holding up a bullet, head of the police union. To people in my community, those who occupy our community and do very bad things to us talking about how bad Senator Ashford is, and the police are some of the worst people in my community. So I'm the one who has to say good time is not going to be touched. And when your bill was discussed and when the mayor came down here and the police came down here, I made it clear I'm going to stop it. Senator Ashford didn't say that. Senator Lathrop didn't say it. Senator Mello favored it. And I said and the World-Herald wrote about it, you will not get a bill to change good time in the way you're trying. Then the World-Herald will not acknowledge who the villain is if it is a villain. It is me! That French king said, L'etat, c'est moi. I am the state. Well, I am the man who sees good time not as a bad thing but a good and necessary thing. Directors of Corrections have seen the same thing and have sought my assistance and I've given it and I will not back away from it. And you and Lee Terry were both totally wrong when you referred to LB816, which was my bill that I introduced in 1991 with the assistance of the Department of Corrections. And, by the way, there would be no good time laws on the books if Governors hadn't signed the legislation. And I looked at what was

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happening. In those days, they had what was called...you asked and others, why is good time done the way it is now. First of all, you need the incentive. If you behave yourself, you'll get something. You tell your children you want an allowance, you want privileges, you want this and that, well, you have to do what you have to do first. And if you don't allow good time or an incentive to behave and everybody's knowing that you're dealing with bad...they always called them the bad guys. I don't use that term. Some of them are bad, not in the way that these people who use the issue politically. If I were locked up and I'm going to serve ten flat years and they say, Chambers, get out of your bunk. I say make me. Chambers, brush your teeth. Make me. Tuck your shirt in. Make me. What can you do to me? You cannot lengthen my sentence. All I can serve is ten years. And the only way it can be lengthened is if I commit a statutory crime and am charged in court, convicted, and sentenced to more time. So you're going to tell me what to do. I won't do anything. In fact, I won't even look at you. I won't speak to you if you speak to me. But then because we all understand human nature, tell me that if you don't behave there's a price to pay. Now suit yourself. You're going to do the time, not me. I'm the warden. I'm going to be here. You're on that side of the bars and I'm on this side. There's a realism that people will not confront. And when you can sit there and when others can say things, like Senator Ashford supported this bill, he did not vote on my bill at all. When you called it, at your press conference, the Chambers-Ashford automatic good time bill, Ashford's name shouldn't have been there. He had nothing to do with it. He didn't vote for it. You diminished what I was trying to do and you diminished me. When Lee Terry, with his conscienceless self, said in a debate with Senator Ashford you are the main sponsor of this bill, he did not sponsor it. I did it alone. He lied. Now both of you have staffs, so I'm going to put this question to you in view of what all I've said, and then I'll say a little more about good time. Why did you put Senator Ashford on a par with me when the Legislative Journal would have shown that he did not sponsor the bill and he did not vote for it? Why did you link his name to my bill? And it was my bill that you were discussing because LB816 was the one that mandatorily gave six months' credit upon entering your sentence automatically. So why would you tie Senator Ashford into that if it was not for strictly a political purpose?

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[LR424]

GOVERNOR DAVE HEINEMAN: If I could respond, sir. [LR424]

SENATOR CHAMBERS: Yes. [LR424]

GOVERNOR DAVE HEINEMAN: I never said Senator Ashford voted for it. I said he supported it. And from every conversation I've had with Senator Ashford, he does support the automatic good time law. And if he didn't, I assume he'd be running an ad to the contrary. [LR424]

SENATOR CHAMBERS: But here's where you framed it in that column that you wrote, that Ashford-Chambers or Chambers-Ashford, with a hyphen. It was not the Ashford-Chambers bill. You would have had to say the Chambers, and listed 26 other senators, none of whom was Senator Ashford, in it. So... [LR424]

GOVERNOR DAVE HEINEMAN: I think it's a fair statement based on the conversations I've had with Senator Ashford, he supports the good time law. [LR424]

SENATOR CHAMBERS: Well, he supported a lot of bills and he doesn't get credit. His name is not tied to it like that. You all... [LR424]

GOVERNOR DAVE HEINEMAN: No, I understand what you're saying there. [LR424]

SENATOR CHAMBERS: Okay. [LR424]

GOVERNOR DAVE HEINEMAN: But I mean I'm saying in the broad picture when I've talked to Senator Ashford, he certainly indicates his support for the bill. [LR424]

SENATOR CHAMBERS: And so did other senators, 26 of them. [LR424]

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GOVERNOR DAVE HEINEMAN: And so did other senators, right. [LR424]

SENATOR CHAMBERS: But he's running against a guy that you support so you jumped on the bandwagon and an article even said Governor Heineman joins the criticism of Senator Ashford. See, we're both men of the world. We're both politicians. We know what the real truth is. And for people in this room who may not understand it, our relationship could be described like a yo-yo or teetertotter. We've had our ups and we've had our downs. But on good time...go ahead, what were you going to say? [LR424]

GOVERNOR DAVE HEINEMAN: I was just going to say, relative to Senator Ashford, okay? I saw Senator Ashford the other day at the Council of State Governments meeting and we had a very good conversation and both of us indicated we've been good friends, we are good friends, and we're going to be good friends after this. Senator Ashford has supported a lot of legislation that we're in total agreement, for example, on tax policy. On the other hand, this is one issue we disagree. But I'd like to suggest to you that in Nebraska, unlike the federal government, we can disagree in an agreeable way. And again I want to emphasize, Senator Ashford, I respect him. He's a good friend. He's going to continue to be a good friend. [LR424]

SENATOR CHAMBERS: But he's never done to you all what you all are doing to him. But here's something that I want to say. You mentioned that Senator Lautenbaugh introduced your bill. He is a very hypocritical person and I've told him that on the floor of the Legislature, and he's jumping on the Heineman-Lee Terry bandwagon. He had some comments about how Senator Ashford bottled up the bill. Well, if it meant something to him, why didn't he prioritize it? That pompous man did not prioritize the bill. It was a political move in the first place, and he knew I was going to be against it. But he won't attack me. You won't attack me. Lee Terry won't attack me. And I am the one who did it. [LR424]

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GOVERNOR DAVE HEINEMAN: Well, Senator, let me comment if I could. You may recall this when you got elected I think I was the only one in the building who said I'm glad you're back. I respect you. And the fact is I know we can disagree on issues and we can move forward in that regard. [LR424]

SENATOR CHAMBERS: That was one of the yo-yos. I wrote a letter to Mr....that guy who's running for Governor, and I included a comment that Senator Warner had made. And I clipped the article and attached it. And Senator Warner, the article said Senator Warner chuckled and commented on all the freshmen senators who will come here and say they're going to beat Ernie at his own game. They think they can handle him. He said, number one, they can't and, number two, they wind up defending him. So that proves...you're proving it right there. But that's one of the ups. You had sense enough to see what I can do and I had sense enough... [LR424]

GOVERNOR DAVE HEINEMAN: And I respected that. [LR424]

SENATOR CHAMBERS: ...I have sense enough on the occasions when you do something that I think is noteworthy to acknowledge it. But here's what I want to get across with reference to Lautenbaugh. He did not try to pull the bill from committee. He did not try to add it to another bill by way of an amendment. And now he's out there fat-mouthing, like the police union, like Lee Terry, and all the rest of them, and I am resentful when a man who is nonconfrontational, who is very easygoing like Senator Ashford is, he makes an easy target and they pounce. Why won't the police pounce on me? I condemn them for the way they come in our community and brutalize people. But they're going to attack somebody like Senator Ashford. So on the good time we do it the way we do it because when you have what they call meritorious good time, you would earn it by working or by getting in a program. And when there were not enough programs, not enough jobs to go around, then it became a stick because the administration could in a discriminatory fashion say we'll let so-and-so have an

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opportunity to earn it, and I don't care what you do, you're never going to earn it. So I wanted to create a system where when everybody comes into prison, they all come in there on the same footing. You were convicted by a court, you were sentenced here to pay a debt to society, and if no place else you're going to start on the same footing here. And it depends on how you conduct yourself as to how it goes. So you have six months of good time in your account. If you want it to stay there, then you behave yourself. And every time you do something that you shouldn't do, understand you're drawing down your account. But that's up to you. And by starting out on a positive note where you have something of value to hold onto, if it's improperly taken from you then you can challenge or appeal it because there are standards by which that's to be done. But if you come there with nothing, it's like trying to prove a negative to say that they should be granting me good time but they won't. How am I going to prove it? Everything is arbitrary. It's based on the whim of whoever the grantor is. So it's fairer, it's less discriminatory, it places more responsibility and control in the hands of each of those persons who has been sentenced and virtually thrown away by society, to say you're going to start here with something of value and you determine whether you keep it or not. There are philosophical bases behind things that I do and I have a reason which is not political. Other people may think it's so, they'll call it that, but it makes me no difference. So I'm saying again, I will fight against any proposal by anybody to change the way that good time is granted. It can be administered by the people you appointed and even without these changes that they wanted to get supposedly in response to what Nikko Jenkins did. They could have taken good time, whatever amount they felt was necessary, but they chose not to. And has been pointed out another reality that those of us who will acknowledge it must see and deal with, there are simply too many people in too small a space. So any way that can be done to get people out of prison, not by way of escape, I'm for it. Had I been here when you wanted the bill to give three more days a month in good time for people who will behave, I would have tried to amend the bill to make it six days and I would have supported the bill. And I gave credit when I found out that your administration was trying to do that. So I will never run from what I've done and I will do more of it if I can. But at the same time, I'm going to try to

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get my politically sensitive colleagues in the Legislature to get rid of all mandatory minimums to reduce some of those which I feel are too harsh sentences and bring some sanity back to this system which was taken away when I left this Legislature and law enforcement wrote a bill, I think it was LB63, that took away all of the progress that had been made while I was here. But anyway, that's just to put my support of good time into a context. Now for some questions. Would you consider yourself to be a hands-on administrator or Governor or something like one who puts the ship on automatic pilot and just hope it doesn't run into any icebergs? [LR424]

GOVERNOR DAVE HEINEMAN: Well, pardon me. I lost my voice. I hadn't had a chance to talk for a while. [LR424]

SENATOR CHAMBERS: And I'm the only one who's been talking. [LR424]

GOVERNOR DAVE HEINEMAN: I know. You know, what I try to do is set broad policy direction and guidance. I don't put it on automatic pilot. I try to work with the Legislature, the citizens of Nebraska, on a wide variety of policies. And I'm proud of the fact, for example, I believe economically Nebraska is stronger today than they were when I first took over. Educationally we're stronger. We've done a number of things. So on the other hand, I don't try to micromanage or you'll never get anything done. State government is just too big. [LR424]

SENATOR CHAMBERS: Well, if you...do you think government can be run like a business? [LR424]

GOVERNOR DAVE HEINEMAN: Senator, I have always said government can be run more like a business but not totally like a business because we have certain obligations in terms of a safety net and other issues that a company wouldn't have. [LR424]

SENATOR CHAMBERS: Okay. That's a sufficient answer. Now when you say that the

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state is better off now than when you came, do you think the amount that people make by way of a minimum wage has the same value today that it had when that first was put in place? [LR424]

GOVERNOR DAVE HEINEMAN: No, particularly if you take inflation into account. [LR424]

SENATOR CHAMBERS: Okay. So those people are not better off as a result of your being here than they were then, are they? [LR424]

GOVERNOR DAVE HEINEMAN: No, I wouldn't put it that way. What I would share with you, again, if you look at our economic system, we passed two of the largest tax relief packages in the state. [LR424]

SENATOR CHAMBERS: Two of the what? [LR424]

GOVERNOR DAVE HEINEMAN: Two of the largest tax relief packages in the history of the state. And it's reflected I think in the economic rankings we still have work to do. We have a second best high school graduation rate. Again, worked with then-Senator Adams and others on the Education Committee. We updated the graduation requirements so that... [LR424]

SENATOR CHAMBERS: But you know that the graduation rate standing alone and by itself is not really anything to be proud of. They always have to compare it to how bad it was before. And based on a very bad set of circumstances, they should say instead of that it's better that it's not as bad as it was. Because I've paid a lot of attention to education, and I know that even some of those who are graduating cannot read at grade level. And universities are complaining about it and some of them still have remedial courses because children who come to those universities are not operating at a level of a freshman in high school...that a freshman in high school should... [LR424]

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GOVERNOR DAVE HEINEMAN: Senator, you and I are probably in agreement on that because again I'd like to see more early childhood funding. I think you've got to address the African-American achievement gap that exists in our schools up in the Omaha area in particular. You and I have had conversations about it. [LR424]

SENATOR CHAMBERS: And I feel it's a chasm, but we do see that the same way. [LR424]

GOVERNOR DAVE HEINEMAN: Right, but what I was just trying to say is we have the second best high school graduation rate. We ought to be proud of that. And also we've put in a requirement, again working with the Legislature, that every student now has to take four years of English, three years of math, science, and social studies. Now probably about 70 percent of the high schools were already doing it but now it's mandatory. And again we're not talking about general math 1, 2, and 3, because personally I don't believe I'd be the Governor today if it weren't for the great education I received here in Nebraska, the encouragement I got from my parents. And so I want to do everything I can for every young person in this state, regardless of their background, regardless of whether they're black, white, Hispanic, whatever. That's the one responsibility I think we have. [LR424]

SENATOR CHAMBERS: And like Abraham Lincoln I can't resist a wisecrack when I see the opportunity. And you wouldn't even be Governor if you weren't a Republican. (Laughter) Okay. Now when you mention the... [LR424]

GOVERNOR DAVE HEINEMAN: I had a hard road to get here if you recall. [LR424]

SENATOR CHAMBERS: Okay. Relatively speaking perhaps. But when you mentioned the...what was the term you used about that tax cut? The what? [LR424]

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GOVERNOR DAVE HEINEMAN: The two largest tax relief packages in the history of the state where... [LR424]

SENATOR CHAMBERS: Okay. Who got the relief, most of it? [LR424]

GOVERNOR DAVE HEINEMAN: It was across the board. For example, we worked with the Appropriations Committee. We now have a property tax credit relief program there. We've indexed in the last tax bill, we've indexed individual income tax brackets to inflation. We need to do more on exempting Social Security... [LR424]

SENATOR CHAMBERS: And a lot of that was for... [LR424]

GOVERNOR DAVE HEINEMAN: ...income from taxation. [LR424]

SENATOR CHAMBERS: And a lot of that was for the people making more money, wasn't it, because I was in the Legislature and I had conversations with some people? And I'm not saying it's wrong. I'm just indicating that the people that... [LR424]

GOVERNOR DAVE HEINEMAN: I want to lower rates across the board. [LR424]

SENATOR CHAMBERS: ...the people that I'm concerned about usually are not benefited by those things. For example, when they give all these breaks to big businesses, jobs are not created for the people who are unemployed. The poverty rate is not diminishing. But I'm not going into any one thing too long... [LR424]

GOVERNOR DAVE HEINEMAN: Senator, could I just add one thing just for the record? [LR424]

SENATOR CHAMBERS: Sure, sure. [LR424]

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GOVERNOR DAVE HEINEMAN: Senator Schumacher will remember this. I've tried to suggest maybe we ought to get rid of some of the tax breaks that we decided 40 or 50 years ago that are no longer relevant and certainly created a firestorm. [LR424]

SENATOR CHAMBERS: Well, I'm tired of people talking about cutting taxes as though that's all that government is about. Any problem, well, I'll cut taxes, I'll cut. They're not going to do anything. They cannot change the opinion of people in their little town and they're going to change the opinion of the Legislature, they're going to change Congress, and some of them don't even change their underwear regularly like they should. So whenever they say I'm going to change this... [LR424]

GOVERNOR DAVE HEINEMAN: Well, I'd like to think we've taken a more balanced approach working with you, particularly relative to tax relief, education funding, two-year tuition freeze that we're in the second year for all our students attending the university... [LR424]

SENATOR CHAMBERS: You're not in favor... [LR424]

GOVERNOR DAVE HEINEMAN: ...and the state colleges. [LR424]

SENATOR CHAMBERS: Are you in favor of the DREAM Act? [LR424]

GOVERNOR DAVE HEINEMAN: No, I'm not, sir. [LR424]

SENATOR CHAMBERS: And those are children, aren't they? [LR424]

GOVERNOR DAVE HEINEMAN: They are. [LR424]

SENATOR CHAMBERS: And they live in Nebraska. [LR424]

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GOVERNOR DAVE HEINEMAN: And if I could talk for a moment... [LR424]

SENATOR CHAMBERS: And they attended high school in Nebraska, did they? [LR424]

GOVERNOR DAVE HEINEMAN: Yes, they did. [LR424]

SENATOR CHAMBERS: So let me without going into all the niceties... [LR424]

GOVERNOR DAVE HEINEMAN: Okay. [LR424]

SENATOR CHAMBERS: Why would you be opposed to any child having the opportunity to attend high school, any child? [LR424]

GOVERNOR DAVE HEINEMAN: It has to do whether they're here illegally or not relative to how we proceed with the use of tax dollars. Now if we're using... [LR424]

SENATOR CHAMBERS: Illegally as of what date? Because when you all came here the Native Americans were the ones and they were destroyed, and there are books being written now that will show the amount of destruction, the attempt at genocide, the deliberate infecting of tribes with deadly diseases, the taking of land, driving a stick in the ground and saying this is mine. And at a time when all white people had to do was say I'm going to homestead or take this, I was being owned as a slave and my people are the only ones who involuntarily came here. We didn't come here by choice. We were not immigrants. We were brought here like a cow, pig, or a chicken. But I won't go into that. The only reason I'm bringing it up to let you know that my point of view will differ from yours and others. [LR424]

GOVERNOR DAVE HEINEMAN: And I respect that. I hope you'll respect mine. [LR424]

SENATOR CHAMBERS: Okay. Now here's some of the questions. [LR424]

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GOVERNOR DAVE HEINEMAN: Okay. [LR424]

SENATOR CHAMBERS: You had indicated, and I'm going to ask them even though you've touched on them with Senator Mello, that you acknowledged the Governor appoints directors and you feel that people who hold certain jobs if they're to be terminated should be terminated by the director and not the Governor. [LR424]

GOVERNOR DAVE HEINEMAN: If they work in that particular agency. [LR424]

SENATOR CHAMBERS: Right. That's right. Meaning it just the way you said it without trying to repeat everything you said because you're the one I'm going to ask the question to. You know that a Governor or any chief executive can arrange for somebody to be fired without using the word fired. You know that, don't you? [LR424]

GOVERNOR DAVE HEINEMAN: I think I understand what you're getting at. [LR424]

SENATOR CHAMBERS: If you told "General" Kenney--oh, and I call him the "General", and I... [LR424]

GOVERNOR DAVE HEINEMAN: I was going to say, I didn't know you promoted him, but. [LR424]

SENATOR CHAMBERS: ...and I call Wayne the "Colonel" because... [LR424]

GOVERNOR DAVE HEINEMAN: Okay. [LR424]

SENATOR CHAMBERS: ...the top brass get out of all of this without any problem at all and they dump it all on "Corporal" Poppert, whom everybody acknowledges now is as dumb as I said he was, and I picked it up from just questioning him. I don't know how

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much money was spent on this DOJ report to arrive at the conclusion that I did at first. But here's what I'm getting to. If you wanted somebody fired, not you, if a Governor wanted some employee in the Corrections Department fired, that Governor could arrange to have that director fire that person, couldn't he or she? [LR424]

GOVERNOR DAVE HEINEMAN: They probably could. I wouldn't do that. I think that would be a... [LR424]

SENATOR CHAMBERS: I said a Governor. [LR424]

GOVERNOR DAVE HEINEMAN: I know, I think that would be poor policy and you're just setting yourself up for a legal dispute, litigation. [LR424]

SENATOR CHAMBERS: We're talking about a Governor. We're talking about my example now. A Governor can do that, can't he or she? [LR424]

GOVERNOR DAVE HEINEMAN: Again, I want to be real careful here. I wouldn't do that. I wouldn't condone that practice. I don't think that's a good thing for a Governor to do. [LR424]

SENATOR CHAMBERS: Okay. In order that I might get an answer, I will multiply by ten your disclaimer that you wouldn't do it. So now I can get you to answer the question. A Governor could call for the termination of an employee by letting the director know that I don't want that person working anymore. A Governor could do that, couldn't he or she? [LR424]

GOVERNOR DAVE HEINEMAN: I'm not totally sure, Senator Chambers. [LR424]

SENATOR CHAMBERS: Okay. [LR424]

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GOVERNOR DAVE HEINEMAN: If you've hired good people to be your director and I would hope under those circumstances that the director would stand up and say, hey, look, Governor, I'm not going to do that, and if that's what you want me to do I'm going to resign. [LR424]

SENATOR CHAMBERS: So then with all the mess that is going on in the Department of Corrections, every day almost something new comes up, and Kenney doesn't know anything about it, didn't understand it, nobody told him, he didn't find it. He found it out by reading it in the newspaper. You think that is the signal of a good director? [LR424]

GOVERNOR DAVE HEINEMAN: Senator, if I could share with you. Director Kenney took over under some difficult circumstances. He was not in charge when all this occurred. He's a director who essentially is without a legal department and a records department right now given what occurred. And so he's facing some very difficult challenges. And so... [LR424]

SENATOR CHAMBERS: I don't mean now. If it hadn't been for the World-Herald, and that's a shame that it took a newspaper to bring information to light that the Director of Corrections should have been aware of. It's his job to be aware of some...he's not aware of anything. He doesn't know what the deputy directors are doing. He doesn't know what the psychologists are doing. He doesn't know what the psychiatrist is doing. He doesn't know what's happening in the records department. He doesn't know what's happening in any institution. So if you ask him a question, well, I don't know. And you think that that's a good director? Do you still have confidence in his ability? [LR424]

GOVERNOR DAVE HEINEMAN: You know, based on everything that we're doing right now trying to correct this huge mess that's created, I'm still going to continue to work with Director Kenney... [LR424]

SENATOR CHAMBERS: You didn't answer the question. You'll work with him and you

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have no choice now. But here's what I'm asking you. [LR424]

GOVERNOR DAVE HEINEMAN: But I still have confidence in his ability to get this done. And... [LR424]

SENATOR CHAMBERS: Here's what I'm asking you. There was a time before this was exposed by the World-Herald but it didn't just happen at that point. It had been going on and Mr. Kenney had been working in this system of Corrections for many years. He followed Director Clarke, former Director Clarke, to Washington State for a time. Then he came back. [LR424]

GOVERNOR DAVE HEINEMAN: No, Director Houston did I think. Well, Kenney, yeah, you're right; Kenney went there too. [LR424]

SENATOR CHAMBERS: Right. Houston was, oh, he was working at Douglas County I think, wasn't he? [LR424]

GOVERNOR DAVE HEINEMAN: I think maybe you're right on that. [LR424]

SENATOR CHAMBERS: Okay. I'm not always right but I'm seldom wrong. But at any rate, Kenney has been connected to the Department of Corrections and he's been operating at a high enough level to be held accountable for some of the things that are happening now. And you've made it too easy for him to just say I don't know. And we had before this committee, no matter what level the person worked at, when we'd ask them questions about things that were in their bailiwick: I don't know. I don't recall. Maybe I was at a meeting, but I don't remember if I was there. Then as the questioning continues, they begin to tell things that happened at the meeting. And you say, well, so you were at the meeting. Well, yeah, now...yeah, I was there. Who was there? We get all of this evasiveness. But I wanted to have it established that you have confidence in Mr. Kenney. I'm going to go on with some other questions. Now when certain things

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happen on a person's watch, that person is held accountable. There was a woman who was the head of the Secret Service. A guy jumped over the fence at the White House. She was not there. She did not see it. She did not approve of it. He got into the White House. There's a point when the President was going someplace. He was in some building on an elevator and there were Secret Service agents with him and a guy got on the elevator with a gun. And this woman didn't know anything about that. But Congress jumped all over her and she wound up resigning. That has happened before. It happened with the Veterans Administration where a guy because of all of the things that had happened and things that he could not be expected to have any knowledge about because they happened all over the country, he wound up going. Then Kenney can preside over all of these bad things that are happening and have no knowledge of any of it and yet you will not remove him. You do have the power to remove him if you chose, don't you? [LR424]

GOVERNOR DAVE HEINEMAN: I do. [LR424]

SENATOR CHAMBERS: And what you're saying by keeping him there is that the standard he set for being a director meets with your approval and it's what you expect from him and you're satisfied with what he has done up to this point. [LR424]

GOVERNOR DAVE HEINEMAN: Senator, what it means is we've got a huge mess and I don't think he ought to walk out in the middle of correcting it. I think all of us ought to be engaged. Our responsibility, particularly at this level, may not be aware of the mistakes that occurred or you committed them personally. But you have a responsibility to get them corrected. And that's what I'm focused on. That's what I want him focused on, and I want him to coordinate every action with the Attorney General's Office so that we're doing it legally. [LR424]

SENATOR CHAMBERS: Then why didn't we do all we could to make sure that Mr. Green kept his job and Ms. Lindgren kept her job? Because the mess is here now and

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we need everybody to help clean it up, and who better can help clean it up than those who were there when it took place? Why were they sacrificed? [LR424]

GOVERNOR DAVE HEINEMAN: I have absolutely no confidence in Mr. Green given what he did. I think the independent personnel report indicated he was the one most accountable and he no longer works for state government. [LR424]

SENATOR CHAMBERS: But Mr. Kenney is the one who was the captain of the ship when it ran aground, but his is called a mistake. Now they're turning on Mr. Poppert. I saw in the newspaper where you said--unless you were misquoted--that his status is being reconsidered and reexamined right now. That's because he brought additional embarrassment. He's no more incompetent now than he always was. He's no more incompetent than he was when you allowed Mr. Kenney to give him just ten days in the street for what he did and he didn't have to serve it all at one time because they needed him to stay there. [LR424]

GOVERNOR DAVE HEINEMAN: There's a little bit more to that story. I've talked to Director Kenney. He's undergoing a performance review of Mr. Poppert. That additional report added to it, but that situation involves a lot more than just that report. [LR424]

SENATOR CHAMBERS: Didn't they give Mr. Poppert some commendations along the way and good write-ups on how well and effectively he was doing his job as the head of that department? [LR424]

GOVERNOR DAVE HEINEMAN: I don't know the specific reference you're referring to. [LR424]

SENATOR CHAMBERS: But if, with what this report uncovered, he got commendations, he should not have gotten them, should he? Because Mr. Kenney and Mr. Wayne are right there watching him. And if commendations were given, it means they didn't detect

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what those who did this report detected in a very short time. Wouldn't that be reasonable to conclude? [LR424]

GOVERNOR DAVE HEINEMAN: I understand exactly where you're coming from in that regard. Those are all things that are going to be evaluated in due course. But I don't... [LR424]

SENATOR CHAMBERS: But not by you. [LR424]

GOVERNOR DAVE HEINEMAN: But I don't think there's any question that the legal department down at the Department of Corrections was...I mean, I don't know how to describe what a poor job they did and the records department. [LR424]

SENATOR CHAMBERS: But, Governor, who's going to do the evaluating? You're not going to do it because you don't believe in micromanaging, so you're not even in it. I don't trust the Attorney General because if he cannot read a Supreme Court decision where it was detailed by the Chief Justice how a situation is to be handled and he says he needs a test case, that's total incompetency, in my opinion, in the same way that he said Mr. Green is incompetent. So you're relying on... [LR424]

GOVERNOR DAVE HEINEMAN: I think that we disagree on that particular issue relative to the Attorney General. Director Kenney is responsible for his agency. I'll make my own evaluation relative to the Director's performance. [LR424]

SENATOR CHAMBERS: But so far you give him a clean bill of health. [LR424]

GOVERNOR DAVE HEINEMAN: I wouldn't say I give him a clean bill of health. What I'm saying, you know, I get a lot of people who give me free advice on who I ought to hire and who I ought fire. And I'm not prepared to do that in the case of Director Kenney because the focal point of what we need to do right now is get this situation corrected.

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[LR424]

SENATOR CHAMBERS: I think as time goes on it's going to be shown how totally incompetent and inept he has been and even subsequently. He...well, I won't go into that. I'm going to ask some questions. [LR424]

GOVERNOR DAVE HEINEMAN: Okay. [LR424]

SENATOR CHAMBERS: Some discussion took place with reference to community corrections and you had mentioned that Senator Brashear had worked in that area and had helped do some worthwhile things and changes were...in attitude even toward I'll say even penology with a greater move toward community corrections and not putting all our trust in jail cells, guards, and so forth generally. Was that the opinion that you had expressed? [LR424]

GOVERNOR DAVE HEINEMAN: Yeah, yeah. Generally, you know, I had several conversations, probably more than several, with Speaker Brashear and he was a very strong advocate for doing things differently, particularly regarding community corrections. And as I recall, we set up the Community Corrections Council which he was the chair of. [LR424]

SENATOR CHAMBERS: Governor, I know some things. I'm going to ask you a question. Why did you then dislodge Speaker Brashear from the position he held in the community corrections universe? [LR424]

GOVERNOR DAVE HEINEMAN: You know, I don't recall, you know, every little detail but I thought it was time to move forward. He'd had his opportunity and we were looking for new leaders there. [LR424]

SENATOR CHAMBERS: And things have not progressed since he left, have they? In

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fact, there's been a bit of dismantling of some of the things that had been done. Isn't that true? [LR424]

GOVERNOR DAVE HEINEMAN: I don't know that I would characterize it that way. But I would tell you in general I try to get more people involved in these boards and commissions rather than less. Too often I've seen during the time that I've been Governor that people get appointed and they think they're going to be there for a life. I don't necessarily think that's a good idea. I like to see new people get the opportunity to bring in new ideas, new energy to what's going on. [LR424]

SENATOR CHAMBERS: But to me, this was...and I'm saying to me, this area of community corrections was something that took real substance and significance, took these things on when Speaker Brashear got involved. And if you've got somebody doing an excellent job in a difficult area to terminate that person makes no sense when at the same time you're going to keep somebody who's incompetent, inept, and the newspaper day after day shows additional evidence of it and you're going to keep that person and say, even with all these things that happen and are wrong and we're in a big mess while he was in charge, we don't want him to leave because he's got to clean up the mess. Senator Brashear did not make a mess. Things were going forward. They were moving up and there were people who had confidence in what community corrections were doing and then you bounced him. You did that. You took away a man who was having great success with a program that needed handling but you got rid of him. So I guess all I'm doing is expressing my opinion because you are so strongly behind Mr. Kenney when he shows a total lack of competency and then did to Speaker Brashear what you did. And I'll wait for you to respond if you want to or I'll just go on. [LR424]

GOVERNOR DAVE HEINEMAN: No, go ahead and go on. [LR424]

SENATOR CHAMBERS: Okay. Now you know that the constitution says basically that

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the supreme executive power is in the Governor and the primary job is to see that the laws are faithfully executed. Do you think that when Mr. Kenney did what he did in letting people out without the approval of the Parole Board that the law was being faithfully executed? [LR424]

GOVERNOR DAVE HEINEMAN: Are you talking about the TAP program? [LR424]

SENATOR CHAMBERS: Yeah. He can't show anywhere in the law where that's supported. [LR424]

GOVERNOR DAVE HEINEMAN: You know, that was one of the first questions I asked the Attorney General and I think I referred to it earlier, he said it's reasonable to assume that he was operating within his statutory discretionary authority. [LR424]

SENATOR CHAMBERS: And what statute did he refer to? [LR424]

GOVERNOR DAVE HEINEMAN: I don't have a... [LR424]

SENATOR CHAMBERS: It doesn't have to be the number. Was it the one that said he could...that people could be kept in an alternative residential facility? [LR424]

GOVERNOR DAVE HEINEMAN: I don't have the details in front of me, but again, you know, I'm not a lawyer and I rely on the advice and counsel of the Attorney General. That's what he indicated to me. And I think he's reiterated he doesn't necessarily think it's illegal. [LR424]

SENATOR CHAMBERS: All right. Here's what the Supreme Court has said. In looking at a statute, words are given their ordinary, popular meaning unless something is stated in terms of it having a different meaning or becoming a word of art. For example, the word person may include, and then they list businesses, corporations, partnerships, and

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so forth. So the word person in statute does not just apply to a natural-born human being but others. And that is where the definition tells you that the word person in statute does not have the popular meaning. Now there is nothing in the statute that indicates that the term residence facility means a residence. The term facility in the context of that statute let's you know it's not the person who had been the wrongdoer going to his or her home. It doesn't mean that at all. So when you place reliance on the Attorney General, you're placing your hand on a broken reed and a very slender one at that. But I'll go on with the questioning, and I would try not to be too repetitive on this because I'm going to spend a little time on Weilage and what he did. And to show you that Nikko Jenkins certainly is culpable, but there were enablers and facilitators and contributors to what happened. Now you had mentioned in your discussion about whether or not you had offered in your budget a recommendation to build a prison, and you immediately said what the Legislature could do. If you made it clear, as you did, and I agree that I don't want to see a prison built, but if you had made it clear that you were not in favor of a prison being built, why would the Legislature approve an appropriation that they know you're going to veto? But I'm going to ask you a preliminary question. If you had made it clear that for whatever reasons you had this is not the time to build a prison and the Legislature nevertheless appropriated several millions, maybe tens of millions as a start, to build a prison, would you have allowed that appropriation to stand? [LR424]

GOVERNOR DAVE HEINEMAN: You know, first of all, I try not to speculate on those issues. But the point I was trying to make, I know numerous times where I've stood up and said I support this and the Legislature says and you've probably done it more than once, I don't care what you're supporting, Governor, we're going to go ahead with what I want to do. And that's the point I was trying to make. If the Legislature really felt that we needed to build a new prison, that could have been a discussion. I don't ever recall there was ever a discussion. The money could have been in the budget. It could have been sent to me, and I would have taken a look at it. You're probably right. I probably would have vetoed it. But you've over... [LR424]

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SENATOR CHAMBERS: There, you answered the question. [LR424]

GOVERNOR DAVE HEINEMAN: ...you've overridden me more than once. [LR424]

SENATOR CHAMBERS: Not on my mountain lion bill (laugh). [LR424]

GOVERNOR DAVE HEINEMAN: Well, that was one I won but there have been a lot of others. Senator Mello over here, he tried to override me and did override me on about \$60-plus million in the last budget. [LR424]

SENATOR CHAMBERS: But we know that had they appropriated money for a new prison, I know it if you don't know it which means I know you better than you know yourself, you would have vetoed it. And the Legislature... [LR424]

GOVERNOR DAVE HEINEMAN: Well, I've indicated that was probably likely. But, again, I try not to speculate on these issues because I get asked all the time by the media, what do you think about LB1. And I learned a long time ago LB1 turns into LB110 by the time it gets to my desk and they said, well, you said you were going to support it. So I try to be careful. [LR424]

SENATOR CHAMBERS: And I understand that. But when there's a dispute between the executive branch and the legislative branch, then I have to get into it in the way that I'm doing it. It is up to the Governor to set policy or attempt to by means of his or her budget, and you did not want to see a prison and you were not about to bring a recommendation that a prison be built. [LR424]

GOVERNOR DAVE HEINEMAN: Senator, let me be very clear. Based on my conversations with the people down at the Department of Corrections, talking to various senators, I don't think there was anybody who wanted to build a prison and, no, I did not

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make a recommendation because I had higher priorities and I believed that we could manage the prison system. [LR424]

SENATOR CHAMBERS: You're the commander in chief. You go to your general. You say, General, what do you want done here? And the general says, Commander in Chief, what do you want? And the commander in chief says, well, now that you ask me, I want A, B, C, D. The general says, well, you know what, Mr. Commander in Chief, I want A, B, C, D. You know good and well that somebody like Kenney and none of these people you appoint are going to oppose you in anything. They came to this committee and talked about how sometimes they wanted to put things in the budget but they knew the money was not going to be there. I can show you transcripts of their testimony and testimony on other bills that were before the Judiciary Committee when I wasn't even there, because I read transcripts, where they mention that they...the money that they needed to do certain things would not be there. [LR424]

GOVERNOR DAVE HEINEMAN: Senator, let me just say, maybe directors feel that way but I've never felt the Legislature felt that way. [LR424]

SENATOR CHAMBERS: Is this Legislature known for courage in your view? [LR424]

GOVERNOR DAVE HEINEMAN: They've exhibited a great deal of independence on a variety of issues... [LR424]

SENATOR CHAMBERS: That's not the answer. You're answering questions with nonanswers as those who came before you. [LR424]

GOVERNOR DAVE HEINEMAN: Well, you know, I don't want to get into a definition of courage, but... [LR424]

SENATOR CHAMBERS: I'm not defining it. I'm just... [LR424]

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GOVERNOR DAVE HEINEMAN: I would just...my way to define it is when you've disagreed with me, you've had no problem moving forward with legislation. I may veto it. Sometimes I win the veto override; sometimes the Legislature overrides me. [LR424]

SENATOR CHAMBERS: So then you think that the Legislature is not a courageous body, right? [LR424]

GOVERNOR DAVE HEINEMAN: No, I wouldn't say that at all. [LR424]

SENATOR CHAMBERS: Then you're saying they are a courageous body, right? [LR424]

GOVERNOR DAVE HEINEMAN: If you want to use that term, that's fine with me. I think they're an independent body and they've exhibited that independence frequently. I'm glad I got a smile on your face on that one. [LR424]

SENATOR CHAMBERS: Well, I don't know whether it's a smile or a snarl because they say a smile and a snarl both show the teeth and draw the lips tight. But what I'm (laughter) going to do because we usually stay here till about 10:00 and I don't want our reputation to be hurt. So I'm going to get on a subject that I really am concerned about, and it's the Nikko Jenkins matter. And what I'm going to do because an article appeared in the paper this morning where I'm asking that the Johnson County Attorney prosecute Dr. Weilage for concealing that report. So I'm going to read something from a transcript because you did not hear his testimony. So this is some of what he said under oath. [LR424]

GOVERNOR DAVE HEINEMAN: Who now, Senator? [LR424]

SENATOR CHAMBERS: Dr. Weilage. [LR424]

GOVERNOR DAVE HEINEMAN: Okay. [LR424]

SENATOR CHAMBERS: His name is spelled W-e-i-l-a-g-e, and I've heard it pronounced Waylage (phonetic) and Whylage (phonetic). But that's who I'll be referring to. And when I get into the exchange between him and me, when I say "Question" that will be Chambers, when I say "Answer" that will be him. I was directing his attention to a page number in one of those big books that you find there to consider something because we had been having a discussion about Nikko Jenkins. And when the Johnson County Attorney had contacted the department, Weilage had had a conversation and said that they were monitoring and treating him. The monitoring program and the treatment were sufficient at that time. So this is the exchange. I asked Dr. Weilage to turn to a certain page and I asked him did he see where I was reading, and he said yes. And a person named Sherman was responding. This is a member of a committee that met to see what kind of programs would be available for various inmates. Chambers, and this is starting at page 297 of the transcript of the September 18 hearing. I'll read what it says. "Sherman responds," and this would have come from a document that was on that page talking about the meeting they had had. "Sherman responds that the only mental health programming recommendation for Nikko Jenkins is the Violence Reduction Program." That was a quote. Then I asked him, "Do you see language like that? Okay, yes, in that first paragraph to Mr. Wayne. QUESTION: Okay, now the only place where that program is offered is at NSP. Are you aware of that? ANSWER: That's correct. QUESTION: And that's in Lincoln? ANSWER: That's correct. QUESTION: And Nikko Jenkins was in Tecumseh, right? ANSWER: That's correct. QUESTION: So when you say he was getting mental health treatment, what kind of treatment was he getting when this is the only program, the only mental health treatment that's recommended? It's the only program recommended and it's not even at Tecumseh. So what mental health treatment was he getting that you were assuring the county attorney he was receiving? ANSWER: Individual services are available at every institution. This in particular speaks to..." and on a written page you'll see three dots to indicate that the

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person paused or something. So if I say, dot, dot, dot, I'm just trying to indicate what's here. "This in particular speaks to...we have a team that reviews cases and makes recommendations for... QUESTION: I'm not talking about reviewing cases and making recommendations. I'm talking about direct interaction with him. That's what treatment is. Was he taken out of that cell to someplace where he was given treatment? Well, tell me what the treatment consists of. ANSWER: Individual counseling is available at all the institutions. QUESTION: So he was receiving individual counseling? ANSWER: I don't know the frequency or the context. I don't think... QUESTION: No, listen, Doctor. You said that he was..." See, he answers kind of like you and like Mr. Kenney and all the rest of them we had. "No, listen, you said that he was getting treatment. Now I'm asking you what the treatment was and you said counseling. I asked you was he getting this counseling, yes or no? ANSWER: I don't think...no. QUESTION: Did you lie to the county attorney? ANSWER: No. QUESTION: What did you tell the county attorney he was getting at your place so that he didn't need to get this kind of commitment?" Because that's what the county attorney was talking about. "ANSWER: I believe what I said to him was that we're going to continue to work with him to try and develop a discharge plan, transition plan, and that he would be monitored and reviewed prior to his discharge to see if a mental health... QUESTION: Let's go back to that paragraph that you read. What does the last sentence say? It begins with 'Pearson'. ANSWER: He is not recommended for other mental health programming at this time. QUESTION: Okay, so he's not going to get that one. But they also say in there that he's not being denied mental healthcare. So he's not going to get that program," meaning the Violence Reduction Program. "You say he's not getting the counseling. So how can you say he's not being denied mental healthcare when he's not getting into that program, he's not getting the counseling? How could you assure the county attorney that that's what he was getting? You misled him. That was not a completely true statement that you made, was it? ANSWER: I believe it was. QUESTION: Now you are lying because you know better than that, because our exchange indicates that...all right, let me back up. He was not in that Violence Reduction Program. He was not receiving the counseling. What was the mental healthcare that he was getting? ANSWER: As with all offenders...

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QUESTION: No, not all; what was he getting? ANSWER: He was offered and declined some of the counseling that was being offered. The plan was... QUESTION: No, not a plan. You said he was getting treatment. ANSWER: Okay, maybe you can clarify the time frame you're talking about." See, no answer to the question. I threw that in. That wasn't in the transcript. "QUESTION: Let me read something: May 20, 2013, e-mails between Trudy Clark, administrative assistant with the Parole Board, sent to Wayne," who was a deputy director, "Chandler," whoever that was "and Mark Weilage," the one I'm talking about. And this is what she wrote. "This e-mail is written from a personal level only. Why isn't Nikko Jenkins, number 59478, in the mental health unit? The board is getting letters from him that he is going to eat people, specifically Christians and Catholics. This is only one of many bizarre letters the board has gotten from him. Is he being evaluated for a mental health commitment? As a taxpayer, this guy scares me to death." Weilage responds: "We are aware of the things that Mr. Jenkins is saying and writing. We are working with them on issues related to his upcoming discharge. Feel free to forward the documents you are concerned with." And this is still the question, "You didn't tell her why he was not in the mental health unit, did you? ANSWER: No, I did not. QUESTION: You didn't answer that question. And when she asked is he being evaluated for a mental health commitment, you didn't answer that question either, did you? No, I did not. QUESTION: You didn't really respond to anything that she said directly, did you? ANSWER: No, I did not. QUESTION: Okay. And the failure to respond is as much a fraud." And this is a quote from a Supreme Court Opinion that I read to him. "A partial and fragmentary disclosure accompanied with the willful concealment of material and qualifying facts is not a true statement and is as much a fraud as an actual misrepresentation, which in effect it is." That's from the Nebraska Supreme Court. Now, on February 25, 2013, there's an e-mail from Cameron White," who was Weilage's boss, "to Mark Weilage. White explains that the deputy county attorney from Johnson County, Richard Smith, contacted him regarding a civil commitment for Nikko. White assured Smith that they review cases of concern and make referrals when warranted. White was not aware that they were planning to make a referral for Nikko. White asked Weilage to call Smith. And did you call him? ANSWER: Yes. QUESTION: And what did

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you say to Smith? ANSWER: Do you want to know what he said to me first? He started the conversation. QUESTION: If you need to say something first, just...I want you to answer the way you feel you need to. ANSWER: Okay. He had indicated," meaning the deputy county attorney, "that he had this referral from or request from mental...civil commitment from the mother...Mr. Jenkins' mother. And I relayed to him that we normally will do these things as they get close to discharge. We would notify the county attorney if we had concerns. Sorry. Do you want me to start all over? SENATOR LATHROP: No, just speak up. DR. WEILAGE: Okay. We notify...we do these things closer to discharge. We normally notify the county attorney if we're going to be filing and provide information, assessment, and that we...given the distance from his discharge that we weren't filing anything right now. QUESTION: Let me read some more. February 27, 2013, e-mail from Richard Smith, Johnson County, County Attorney, to Mark Weilage. Smith sends Weilage a letter from Nikko Jenkins. Jenkins discusses his mental health, lack of treatment, and desire for a civil commitment. Did you tell the county attorney that Jenkins was not telling the truth when he said...when he complained about a lack of treatment? ANSWER: No, I did not say... QUESTION: Because he was not getting treatment, was he? We've established that when you and I were talking. He was not receiving treatment, was he? ANSWER: It depends on the time frame as to what services he was receiving. QUESTION: February 27, 2013, when you were talking to the county attorney. He was not receiving any treatment at any time down there. But let me go on. Weilage then forwards Smith's e-mail to Cameron White, Kathy Blum, and George Green. Is that correct? You forwarded Smith's e-mail to those people. ANSWER: Yes. QUESTION: November 25, 2013, some months in the future: Jenkins filed a bar complaint against Richard Smith stating that Smith did not file a civil commitment in Johnson County. Smith spoke with Weilage at Tecumseh to determine if a petition was warranted. Dr. Weilage explained that staff would continue to monitor and treat Jenkins and that the current treatment plan was sufficient. What was the treatment plan at this time when you were dealing with the county attorney? What was the treatment plan? It wasn't counseling. It wasn't the Violence Reduction Program because that was only in Lincoln. And that was the only recommendation made at that meeting

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for him, but he couldn't get it because it was in Lincoln and he was in Tecumseh. And you said that counseling comprises the treatment, but he was not getting the counseling. So when you said that he was receiving treatment, you misled that county attorney, didn't you? ANSWER: I don't believe that those are the exact words that I said, but... QUESTION: You don't think that's what you told him? If he wrote that in his response to the Counsel for Discipline, you'd say that he's mistaken and he didn't get right what you told him? ANSWER: I think what I told him was what I had already testified to. QUESTION: You never mentioned that he was receiving treatment though. ANSWER: (Inaudible) that we were going to be working on... QUESTION: No, no, I'm just...just yes or no. ANSWER: Oh. QUESTION: You never told him, you never told the county attorney that Nikko Jenkins was receiving treatment, correct? Because I'm going to contact him when we get this transcribed and tell him I need him to go back and check his records to see what you told him; otherwise, he lied to the Counsel for Discipline. ANSWER: I believe that I said that we'll continue to work with him. QUESTION: But you didn't mention treatment. ANSWER: I don't recall. QUESTION." See, and now I'm departing from the transcript. It's hard for us to get answers from people in Corrections. They will not answer a yes or no question. Back to the transcript. "QUESTION: I don't want to keep you here too long, but I'm enjoying this so much I want to keep you here a little longer. Do you believe... [LR424]

GOVERNOR DAVE HEINEMAN: Is that in the transcript or are you talking to me now?
[LR424]

SENATOR CHAMBERS: No, that's in the (laughter) transcript! I'm glad you asked.
[LR424]

GOVERNOR DAVE HEINEMAN: Okay. I just wanted to be sure. [LR424]

SENATOR CHAMBERS: For those who are not watching, that's in the transcript.
[LR424]

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GOVERNOR DAVE HEINEMAN: Okay. [LR424]

SENATOR CHAMBERS: It's being spoken by me to Dr. Weilage. [LR424]

GOVERNOR DAVE HEINEMAN: I thought you were inserting that. [LR424]

SENATOR CHAMBERS: Excuse me, I'm collecting myself. "Do you believe--and now I'm asking for your opinion--that if you had told Mr. Smith that you had the report from the psychiatrist who was hired by the state of Nebraska to assess, evaluate, and treat inmates for mental-related problems and mental illness, and you had a report from her where she declared her diagnosis to be one of mental illness, let's say you told him that. Next you told him that on several occasions Jenkins had cut himself seriously, mutilated his face. Then you told him you wanted to say 'snorting,' whatever, he was snorting or sniffing but somehow ingesting his semen. Then you told him that he's drinking urine. Then you told him that he is writing with his blood on the wall. If you had told that, if you had told that to the deputy county attorney, do you think he would have initiated steps to have a civil commitment for Nikko Jenkins when he was released from this institution? And I'm asking for your opinion. If you don't think he would have, just say no. You don't think that would have been enough information?" ANSWER: "Given the time..."

QUESTION: "Just say yes or no, and show people what you know." ANSWER: "Yeah, all right." QUESTION: "Okay, it would have been enough. And if in fact steps were taken and a rational review board said, this man is indeed mentally ill and we are going to commit him to the Lincoln Regional Center, that would have been what they would have said if they found him to be mentally ill, correct?" ANSWER: "If they found him to be mentally ill, yes." And you can't tell from the reading, but by this time Dr. Weilage was starting to look kind of beaten down. QUESTION: "And if they had found him mentally ill and committed him, he would not have been in Omaha, would he? He was released into Omaha"...I had said July 29, it was July 30. "He would not have been released from custody to roam free on that date, would he?" ANSWER: "That's correct."

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QUESTION: "And he would not have been cured within a month's time, would he?" Now here's the evasion that we ran into all the time. "I can't speak to that." QUESTION: "Then you think somebody can be cured of mental illness in one month, in 30 days--cured. You believe...now you're a psychologist. You have clinical psychology. You are a Ph.D. and you're going to sit there and tell me that you don't know whether or not a person can be cured of mental illness in 30 days?" ANSWER: "Depends on the type of mental illness." QUESTION: "So you think there are some types of mental illness that can be cured in 30 days." ANSWER: "The symptoms alleviate where they don't..." QUESTION: "I'm not talking about symptoms. Medication can do that. If you take medication and you're stabilized, is that the same as being cured?" ANSWER: "No." QUESTION: "Do you honestly believe, and you're under oath, that mental illness...let me build it up. Based on your training, your education, your experience in clinical psychology, is it your honest belief that mental illness can be cured in 30 days?" ANSWER: "No." He could have said "no" in the first place. I departed from the transcript to make that comment. Back to the transcript: "All right. Now if he was committed, would there be an evaluation period they would go through to determine precisely what his situation is and maybe the kind of treatment that is warranted?" I'm departing from the transcript: Evasion is what I say. Back to the transcript: ANSWER: "I'm not 100 percent familiar with their..." QUESTION: "But they might do that." ANSWER: "Yes, that's..." QUESTION: "That wouldn't be out of the question." ANSWER: "Yeah." QUESTION: "So if he were held for just 30 days, any crimes committed during that period would not have been committed, would they?" ANSWER: "No, that would make sense." QUESTION: "If the four murders were committed during that period, they would not have been committed, would they?" ANSWER: "That's correct." QUESTION: "And we wouldn't be here today, would we?" ANSWER: "I guess." QUESTION: "You and I are not dealing in theory. We are not playing cat and mouse. We are talking literally about life and death. Those deaths could have been prevented, couldn't they? It does not take a stretch of the imagination to show, based on our discussion here, that those deaths were reasonably preventable." ANSWER: "Based on the scenario you gave, yes." QUESTION: "And you still stand by what you did." ANSWER: "Specifically..."

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QUESTION: "Okay, you already said it. I'm getting to the point where I can wrap it up because I got from you what I needed. There was no program available at Tecumseh for him. The only program recommended was Violence Reduction and that program was not available at Tecumseh." ANSWER: "Correct." QUESTION: "He was not receiving counseling. He was not receiving any treatment at all. And he was in segregation continuously. And 'continuously' as opposed to 'continually,' that means without interruption, without break, without cessation. He was continuously in segregation from the time he came to Tecumseh to the time he was transferred to NSP in Lincoln. And during all that time he received no treatment. But there were at least four serious self-inflicted injuries. There were at least 38 requests for mental health treatment. And the responses that he always got...he reached the point where he would file these grievances and he wanted hospitalization. And the response was: Does not meet the criteria for an emergency grievance. Which to me means the grievance wouldn't even be entertained. He asked for hospitalization. He asked for civil commitment. He asked you all, whose job it was to help, to help him, and you refused. You made an arrogant, erroneous diagnosis based on some conversation and used that to overrule what a psychiatrist had determined to be the case. And not only did you, in your mind, overrule what she said; you kept that report from people who should have gotten it. I'm going to take you through one more little exercise for the record. Dr. Baker was hired by the state of Nebraska to do the work of a psychiatrist. Is that true?" ANSWER: "Yes." QUESTION: "And that work would be performed with and on behalf of and for the benefit of prisoners. Is that true?" ANSWER: "Yes." QUESTION: "And when she made a diagnosis, that diagnosis could be considered her work product. Isn't that true?" ANSWER: "Yes." QUESTION: "And what the state of Nebraska hired her for and paid her with money contributed by all of us in this room and throughout the state, they paid for that work product. And that work product was to be put to use. Is that true?" ANSWER: "Yes." QUESTION: "And putting it to use did not mean putting it in a folder and putting it on a shelf or in a drawer. Is that true?" ANSWER: "Yes." QUESTION: "You had that work product, didn't you?" ANSWER: "Yes." (QUESTION:) "And you did not make it available to people who could have made use of it in arriving at decisions.

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Isn't that true?" Here comes the evasion. ANSWER: "I did not purposely withhold it."
QUESTION: "I'm asking you what you did. You withheld that report from people who had decisions to make. And in making or informing that decision, the work product of the psychiatrist would be essential. So that for which the state paid, that which the one who was paid by the state had done, the product of all that was bottled up by you. And it was not made available to people who have to make decisions which would rest partly on or be influenced by that work product. The question, now that I've given the context, you withheld that report from people whose decisions would have been affected and influenced by that report, didn't you?" ANSWER: "Not purposely, no." QUESTION: You can answer 'yes' or 'no.' "If you can't, then tell me. Is this a question you cannot answer 'yes' or 'no,' or that you will not answer 'yes' or 'no.'" ANSWER: "Restate the question one more time, please, just so I'm clear." QUESTION: "I'm going to do what it takes to get this done." ANSWER: "Okay." QUESTION: "If I'm a dentist and you," speaking to Weilage, "have a bad tooth that has to be taken out, I'm going to take the time that's necessary to remove that tooth with the competency and skill demanded of a dentist licensed to practice. So I'm going to pull this tooth and you and I are going to stay here until we get it pulled. As you all say, we can make it the easy way or we can make it the hard way. I'm not being embarrassed by what I'm doing, but I'm sure if you read your testimony and you show it to people who care about you, they'll be embarrassed if you don't have sense enough to be. Here's the question: The psychiatrist made a diagnosis of mental illness with reference to Nikko Jenkins. You had that report. You withheld that report from individuals who had decisions to make; it was a part of their duty, their responsibility. You withheld that report from people whose decisions would have been affected, influenced by that report. Isn't that true? Did you give them the report?" ANSWER: "I did not give copies of the report." QUESTION: "And when you didn't give it to them that's withholding, isn't it?" ANSWER: "To withhold..." QUESTION: "Let's try to make it simple." And, Governor, I wanted things in the record so that just what I'm doing now could be done and people could see, who were not here listening to the testimony. But to continue from the transcript, I'm going to start again with the question. "Let's try to make it simple. I forgot you're a Ph.D. You're not somebody who just works on the

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street like somebody who goes to a fast-food store and works. If a person works at the fast-food store and gets a check, and there is a salary they're entitled to get, but they don't actually get in that check all the money that they should get based on the number of hours they work, because some of that money is withheld. It's called withholding. Are you familiar with that?" ANSWER: "Yes." QUESTION: "So when you get your check, has some of the money that you earned been withheld?" ANSWER: "Yes." QUESTION: "And it was withheld because they didn't give it to you. Is that true?" ANSWER: "Yes." QUESTION: "You didn't give that report to these people that I've describe, did you?" ANSWER: "No." QUESTION: "So you withheld it, didn't you?" ANSWER: "I withheld the report, yes." QUESTION: "Was that so difficult now that you've done it? Doctor, do the thing you fear and the death of fear is certain. The thing you fear to do is to tell the truth. And because you feared to tell the truth, you will obfuscate, you will vacillate when you don't even need to, because you think that if you say, like a syllogism, this major premise is true; this minor premise is true; the conclusion is inescapable." Such as for example, "all men are mortal: Aristotle is a man, therefore, Aristotle is mortal. You know the truth, even if we"...on the committee..."are trying to get at it. We may suspect, but you know the truth. And you're in a position to determine in your mind, as Nikko Jenkins was delusional, it could be a delusion that if you answer this question then it's going to lead to what you consider to be the next question, because your desire not to tell the story is going to cause you to formulate in your mind all these questions in a series that you presume somebody is going to know to ask, just like a chess master can look and determine moves far in advance. So you know how you get out of it?" You say, "I don't remember. I don't recollect. I was at a meeting where I remembered the janitor; I remembered the doorman; I remembered the one who delivered from Jimmy John's; but I don't remember if the president of the company was at the meeting. Do you see how what you say may sound, even if you're telling the truth? Now I'm going to ask you a question, then I'm going to let you go. And this might have 15 parts to it. There are statements that you made which were not 100 percent forthcoming. Isn't that true? You were worried about where a straightforward complete answer might lead you."

ANSWER: "No, I don't think so." QUESTION: "Okay. Are you aware that Nikko Jenkins

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on several occasions asked for a civil commitment himself, that he asked for it?"
(ANSWER): "Yes." And I will not go through all of this. But, Governor, I read that so that you can get an idea of how this Weilage person not only misled the county attorney and this committee, but he had a great amount of trouble admitting what he finally admitted after he made me take all of that time, that I made you sit here and take to get him to give a "yes" or "no" answer to a question which he ultimately wound up giving. And that's the conduct of a person who wants to hide something. But as I've said before when we were having hearings, this is my bully pulpit. This is one of the most significant issues, I think, that has come before the Legislature. And I want some things in the record. And one of them is that Mr. Kenney is totally incompetent; that he should be fired in the way that Weilage should be have been fired; that Cameron White, his supervisor, should have been fired; that Deputy Director Wayne should have been fired. All I'm taking is a little time. When people can leave here, they can go eat, they don't have to think about this one more time. But I'm going to still be here struggling to try to do something about cleaning up this mess. Kenney won't be here. The next person to be Governor, both of them have already said their going to clean house in effect. Kenney won't be here; Wayne won't be here; Weilage won't be here; Cameron White won't be here. Poppert, you and Kenney will probably make Poppert a scapegoat. That's where they would take an animal and because the people had sinned, in those superstitious days, the gods had to be appeased. So they would ceremonially heap all of the sins on this scapegoat, this poor innocent animal, then they'd kill it. Then they got a little more civilized and they said in reality the goat didn't do anything so we will heap all of these sins on the goat, but then we'll release it into the wild and let the gods determine whether it should live or die. You and Kenney, I predict, will decide that Poppert, that scapegoat, is not going to keep his employment and he shouldn't. But here's a little something from Cameron White, then I'm just about through. And I was interrogating him. I don't want to put more in it than I need to. Talking to Dr. White because Weilage had testified to something. QUESTION: "That never happened which he," meaning Weilage, "said happened, did it?" White--that's who will be the "ANSWER" this time--Please clarify what he told me about. QUESTION: "Yes, when the Chairman

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was questioning you and you kept saying, I don't have any recollection of that. And the Chairman said, he," meaning Weilage, "that he told you this. Mr. Chairman, could you restate what that was that Doctor"...and I mispronounced his name as 'Weege,' not on purpose, I couldn't remember, they put (phonetically)..."said that he..." "SENATOR LATHROP: Dr. Weilage testified that he told you," meaning Dr. White, "before the March 4 hearing...or meeting in the conference room next to the director's door, before that meeting, that Weilage said he told you about the Baker report." ANSWER FROM DR. WHITE: "He did not." QUESTION: "So he lied. He stated..." ANSWER: "His..." QUESTION: "He said something that was not true. He was willing to sacrifice you and use you, hoping, I think, to go along with him, because he and these other people around here apparently play fast and loose with the truth all the time. But you happened to have been here so you could point out that what he said happened didn't really happen." Then going to something that Weilage had said about Nikko Jenkins being majorly mentally ill, and this is what the discussion is at this point: "Was the term that was being discussed about majorly mental illness, was 'majorly' the word that was in front of mental illness that was being discussed back and forth?" ANSWER: "Yes, earlier, yes, 'majorly.'" QUESTION: "Now isn't it true that either you're mentally ill or you're not?" ANSWER: "Yes. It's one of those binary issues." QUESTION: "It's just like the old cliché is you can't be a little bit pregnant. Either you are or you're not." ANSWER: "True, correct." QUESTION: "Was that term 'majorly' mentally ill something that Dr. Weilage had you utilized, that Jenkins wasn't majorly mentally ill? Was that his term?" ANSWER: "Yes. 'Majorly' was referenced in the..." QUESTION: "And he should know that either you are or you're not. So for him to say majorly, he's trying to hedge his bet. He was in fact acknowledging that mental illness was there, wasn't he?" ANSWER: "Yes. I believe so because the nuance in mental illness is..." QUESTION: "And who was he applying that term to?" ANSWER: "I believe Nikko Jenkins." QUESTION: "So he did acknowledge that Nikko Jenkins was mentally ill and it's right there in that record, isn't it?" ANSWER: "Yes." That's from Nikko Jenkins' (sic) boss, who is also a psychologist. QUESTION: "So he should have just acknowledged that here, even if he didn't want to do it before, when he's under oath. And there is so much questioning focusing on that

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very point. And he in fact had acknowledged it before. He was not forthcoming." Then I mentioned some things that I've written down that I was going to ask him about. I was asking him about these various things that Nikko Jenkins was documented as having done. QUESTION: "Have you ever heard of a situation where a man mutilated himself four times?" ANSWER: "Yes. We've had inmates who were self-mutilators that repeatedly did that." QUESTION: "And what kind of mutilation was it?" ANSWER: "What I'm recalling is we've had people who were cutters who may cut on an arm or a body part." QUESTION: "Were they serious cuts? Were any of the cuts requiring of 39 stitches that you can remember?" ANSWER: "I don't believe so." QUESTION: "You haven't had any where one person did that kind of disfigurement and serious harm to himself, did you?" ANSWER: "Not like that exactly." QUESTION: "And did your cutters then take their blood and write on the wall with it?" ANSWER: "No." QUESTION: "Did they ingest their semen?" ANSWER: "No." QUESTION: "And drink the urine?" ANSWER: "No." QUESTION: "So when we have all of this being done by one man, how in the world is somebody who is not crazy himself going to say, that man has no mental illness? Were you sitting there listening to your protege testifying?" ANSWER: "Yes." (QUESTION): "Did it disturb you that with all of these things being said he claimed that a person can do all this and not have any mental illness? Did that trouble you to hear your protege say that, the man you hired?" ANSWER: "Yes." QUESTION: "They say that the power to tax is the power to destroy. The power to hire is also the power to fire, isn't it?" ANSWER: "Yes." QUESTION: "If when you interviewed him, and you gave this scenario and asked him, would that comprise mental illness in your view, and he said no, would you have hired him?" (ANSWER): "Would you restate that? I apologize." QUESTION: "If when you were interviewing the man who now is your protege and you wanted to get an idea of how he views mental illness and you asked him because, and this is the way you put it, you're going to be working in an environment where you have prisoners of all types and varieties and there's no telling what might surface, so you say let me give you an example. Let's say we have one inmate who seriously mutilates himself on four different occasions, he ingests his semen, he drinks his urine, he takes his blood and he writes on the wall. Would you say that man is mentally ill? And with a

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straight face he says, no, there's no mental illness there at all. Would you agree to hire him?" ANSWER: "With that alone, no." QUESTION: "That would be enough though if he's that far off the beam. But you probably were not anticipating that he would testify the way he did today." And then we just kind of go on. QUESTION: "And you were disappointed, weren't you?" And I'm going to wrap it up with this. And "if not disappointed,"...it will only take about two hours...not really..."if not disappointed, you were surprised. If not surprised, you were bemused, not amused, but bemused. You were...you looked at it quizzically. You know, you raised one eyebrow like Mr. Spock. What in the world is going on here? Now as Senator Schumacher alluded to what happened during our previous hearing with some Corrections people, Senator Krist and others had touched on it, nobody knows anything; nobody is responsible for anything. In this case, four innocent people going about their affairs, not knowing that that morning when they woke up was the start of the last day they would have on this earth. And the husband, the brother, the children of that woman who was killed would never have known and could not have known that when she left the house that morning she was on her final voyage. And when the man who had served time with Nikko Jenkins, and they were like what is called in the street 'homeys,' like brothers, closer than brothers, had no idea that this man was going to be instrumental in erasing him. And those two Latinos doing what a lot of men would do, they were going to have a rendezvous, an assignation. And it resulted in their doom. These were preventable deaths. But we're not talking about anything random or chancy. There was a deliberate decision consciously taken by your protege, and that's why we're here today. Otherwise, you never would have been in the same room with me, you wouldn't have had to be. We never would have had an exchange." If I say anything that makes you comfortable (sic), it wouldn't have happened--none of this. And that's what I say to you, Governor. If those people had not done what they did; if some had not neglected what they should have done, things would have been different. So when you constantly say Nikko Jenkins did this and he's culpable, how can I disagree? But these other people were aiders and abettors. And I doubt, I'm not going to ask you this question, but I doubt that you would say that Dr. Weilage deliberately withholding that report from the county attorney

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because he did not want Nikko Jenkins to be given a civil commitment hearing, and he knew that withholding it would result in that, I don't think you would say that behaving like that comports with the standards set by a psychologist licensed to practice in this state who had duties and obligations, not only of a legal nature to keep his licensure intact but of a moral and ethical nature which he would have whether he was licensed or not, just as a human being. You stated correctly that these people can disagree and everybody should have their opinion out there, and we on the committee, we all agreed with that. Everybody who testified and was question agreed with that. But what nobody agreed to, even Mr. Kenney when he testified and I ran some of this down for him and asked him did he think that the man should be fired. Well, he said he didn't want to make a decision right there on the spot, but he would look into it. When I ran it down for Mr. Wayne, the deputy director, he had a similar response that he didn't want to say what should be done, but this should not have happened. Weilage, according to his boss, should have given that report over. There's no reason for him not to. And when you go home and you think about these things, I'm hoping that you'll understand, not speaking for anybody else, but why I am so concerned about the direction this case has taken. Whenever you had an employee of the state, whether it's a psychiatrist, like Dr. Y. Scott Moore or his sidekick, Klaus Hartmann, reviewing Nikko Jenkins, they concluded that he was mentally competent. When you went to Weilage and these psychologists who resented the fact that there was a contract psychiatrist working with the inmates and making diagnoses and recommendations for treatment that the psychologists didn't want and would not follow, when you look at all of that then you can see that these people apparently felt that their job might be at stake if they didn't cooperate in letting Nikko Jenkins stay in the hole for more than half of the time he was locked up and be punished because he had a falling out and may have struck some guards at this funeral he went to. Nobody can give any other explanation for why he was continuously in the hole that long. So once you made the statement that you wanted him to get the death penalty, that was the second politicization of the case. It first was politicized when the white woman was killed. In my community we had seen where babies were shot unintentionally by bullets going through a wall; somebody

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would be on a porch, a child, and shot and killed. People on their porches, walking down the street bothering nobody, were shot and killed and there was not the wall-to-wall coverage given to any of those, even when babies were involved, that the local television and newspapers gave to that situation where the white woman was killed. Two people wrote to the Public Pulse and acknowledged that they were not approving of what was done, it was horrible, how they would have felt if it was a family member. But it should have been clear to everybody, was what they wrote, that the treatment is different because of a white woman. And whereas in my community, where I railed against the State Patrol, Homeland Security, the police department; written to the chief, the former chief; to every member of the Nebraska delegation, to other federal officials, the U.S. Attorney, the FBI, and mocked and ridiculed them because America can keep Havana cigars out of this country, but a city as small as Omaha, in a community as small as mine, where babies are shot dead, they cannot find and dry up the source of these guns that come into my community, and it's intentional, it's deliberate. But laying that aside, the politicization started when the white woman was killed. Because not only were they looking for a gun, they traced down the source of the ammunition. And if they did that with everybody, then maybe things would be different in my community. But I tell black people, you're not cops, you don't have to arrest these people. You don't have to go find who's shooting and stopping it. These cops are paid to do that and that's their job and don't let them make you think it's your job to do anything. They don't tell the white people they have to stop methamphetamine in their community. White people don't have to go out and catch the ones who are providing the kegs of liquor to white children. The police, the sheriff, and others do it. In fact, there's one effort, it was called a multidiscipline approach. And your wife joined the mayor, the various police officials, and it was a great move they were making that we are concerned about the liquor being supplied to these underage drinkers and we want those who supply it to know that they don't get a free pass now. We're not just going to the kids who are at the party. If you're supplying the liquor, then we're coming after you. And I immediately jumped on and said--liquor in and of itself is not lethal and it's not necessarily designed to be, but guns are lethal and designed to be and why can't there

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be an effort like this? But there wasn't. All right, so the state employed people said that, first of all, Nikko Jenkins was not mentally ill so they could keep him in the hole and deny him all treatment. And you heard somebody point out, or Mr. Houston had said that, that's one of the worst things you can do, keep somebody in solitary all that time. Then when he gets out, he had no transitional program, and the Ombudsman's Office had tried to talk to the Corrections people about that. When they had a meeting, then Sharon Lindgren said, well, we're not going to talk about Nikko Jenkins' mental health. I had contacted Mr. Houston months, in fact, a year or maybe even more about Nikko Jenkins and that I didn't want him coming out to our community without some kind of mental health treatment. And if they couldn't give him the treatment that he needed with the time he had left, they should have him civilly committed. So those ideas had been brought to them by me, by people in the community, by Nikko's mother, by him. As I say, from the papers we had, they were documented in writing 38 times when he pleaded for mental health treatment. Six times he asked specifically for hospitalization for his mental problems. Three times he asked for commitment and even filed a complaint against the county attorney because the county attorney didn't initiate those proceedings. And the last time, after he seriously mutilated himself, the treatment they gave him was to put him in five-point constraints. And even in that posture, inmates in the segregated unit said he was still, as he had been doing before he mutilated himself, begging and pleading for mental healthcare. And this is the man you wrote to the county attorney and said, you need to kill him. But when a white man...I think it was in November 2013, his last name was Petersen was upset about a divorce that occurred nine years before that, never claimed to be mentally ill, nobody said he was mentally ill, his wife lived in Kearney, ex-wife, so he lay in wait with a high-powered rifle and shot her in the back and killed her. And to show that he acted with malice of forethought, to use the old, quaint language of the law, he then drove to Grand Island, changed cars, I believe, maybe changed his clothes, and went to the parking lot of the building where the one who served as his lawyer worked. And when that man emerged from his building, this white man, using the same high-powered rifle, shot him dead. That white man had been sentenced to life for murdering his wife. When time came for him to face

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the music, the county attorney, who has supported the death penalty being retained, immediately took the death penalty off the table, dismissed a felony gun charge if he would plead guilty, which he did. There were two vicious, brutal murders of two innocent people, and I didn't see where you condemned the county attorney for not seeking the death penalty but, rather, being instrumental in taking it off the table. And I didn't see you insist that there be a death penalty. There's a man in Omaha who's been charged with murdering a doctor and his wife, a youngster, and a housekeeper, four murders, being prosecuted by the same Don Kleine who is prosecuting Nikko Jenkins. And whereas you wrote to Don Kleine and said you wanted the death penalty, and Don Kleine responded by saying publicly that he was going to seek the death penalty, you have not written to Don Kleine about seeking the death penalty for this man. As you and everybody knows, I am against the death penalty in every case. But when I see differences like that, it troubles me. If I didn't think Nikko Jenkins was crazy, I'd still be trying to prevent his execution, as I successfully did in preventing the execution of Carey Dean Moore, a white man, who was to be executed in a few days until I intervened by contacting the Supreme Court in a way that was never done before. And the Chief Justice was very upset that the judges agreed to hear and determine not to let him be executed. They withdrew their death warrant and said they acted prematurely and they used the same arguments I used in my letter to them. Then they ruled on the case that I told them they ought to look at before they let anybody be executed because a fully developed record was there showing the cruel inhumanity of the electric chair. And that's what they found and they abolished it. So I would fight against the death penalty for anybody. But when Judge Bataillon said that he was going to let this crazy man stand trial because a state employed psychiatrist, who had gotten his green light from the Governor of the state, who is the ultimate employer, that he wanted the death penalty for this man, and the only way he could get it is to be found competent, this psychiatrist told the court he's competent. And I not only railed against the judge; I wrote him a letter. I talked against him and what he did on the floor of the Legislature. Then when Nikko Jenkins representing...wanted to represent himself, the judge said, well, you can do that too. And I pointed out that in Lancaster County there was a black guy,

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and I mention his race because that might remind some people who he was, who had killed a doctor at the regional center, not intentionally. Well, maybe so, but it wasn't the act that killed him. I think he knocked him down and he hit his head and died. And Judge Merritt, I think was the one, who was going to...who said he was competent, then he was going to let him represent himself, and I wrote the judge a letter. And I emphasized that because somebody is competent to stand trial, is not the same as saying that he is competent to represent himself, and this man should not be allowed to do that. And there's evidence in the record in the way he comported himself in your courtroom to show that he's not competent to represent himself. About two days later, a member of the Nebraska Supreme Court was getting out of his car in the parking lot and so was I. He said, Senator, you were right on point on what you wrote about, what I said, that you can be competent to stand trial but not to represent yourself. I said, well, that doesn't mean anything to me. I won't have done anything until the judge changes his mind. He said, oh, the judge is going to change his mind. I said, why is that? He said, because the U.S. Supreme Court ruled that to be found competent to stand trial is not the same as being competent to represent yourself. And if there's evidence that the person is not competent, one of the...the main thing of a criminal trial is to have a fair trial. And to have a person, who is mentally incompetent, standing alone, unrepresented by a competent lawyer, against the justice system is unjust on its face and an unconstitutional act. So that's when the ruling was made and Merritt changed his mind. I made that argument to Bataillon, but he still let him represent himself and it was a fiasco. The judge pounded on the desk, they call it the bench, to try to make him stop talking, let him know that there were things he couldn't ask because it had nothing to do with anything. And Nikko Jenkins was interested and hurrying up to complete all of this nonsense we're talking about, even though his life was at stake, so he could file a complaint against Don Kleine for having said before the trial that he was mentally incompetent. That's what was on his crazy mind. But the judge let him go ahead and do it. So Nikko Jenkins said, I want to plead "no contest." And the judge said, well, no, I can't let you do that. This is a death penalty case and we need an unequivocal declaration of guilt. So I cannot accept that plea; you'd have to plead guilty. And Nikko

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wasn't going to do that. So then the judge changed his mind. And it shocked all the people in the courthouse. But there was a greater shock coming later than this. He said, well, he decided he'd let him plead "no contest" after all. And no contest is not a guilty plea. No contest just says with the evidence you've got, you probably can convict me, but I'm not saying that I'm guilty. So that absolute plea of guilt, that unequivocal plea that the judge said he insisted on, he said no more. You know why? Because he underwent the same political pressure that Don Kleine was under and that psychiatrist, Dr. Moore, and his partner, Hartmann, were under. So they said, well...the judge said, I'll accept your "no contest" plea and I will find you guilty. Which is what he did. And that meant, since the county attorney wanted the death penalty, that a three-judge panel would be set up and Nikko Jenkins would go to a hearing before them and these judges would look at all the evidence and determine whether he should die, as you wanted, or be given life without possibility of a parole, which I and every other civilized person wanted. Am I saying you're uncivilized? I'm not saying you're anything. I'm just telling you what I am. But if you're the opposite of what I am, then I guess the conclusion...but anyway. This is what the judge said and this is the way I described it. He probably had heartburn when he said Nikko could stand trial. And it was even aggravated when he went the step further and said he can represent himself. And that put the judge right at the edge of the abyss, and he looked over and saw the travesty, the degrading of the very system of justice, the judicial system, the mocking of mental illness, the savage, brutal barbarity of saying that this man who, obviously, is crazy should go before that panel. He said, I'm not going to let it happen; he's mentally incompetent, in my opinion, so that hearing that was set will not take place. And people in the courthouse were buzzing. And people called me and they said, well, you got what you wanted, didn't you, but it took a long time. I said, but there's no satisfaction, because the thing is not over and some of those wounds that he opened by what he did will never be closed, but you have to take what you can get. So then he had a hearing and I went to it. And the hired guns for the state--Y. Scott Moore, the psychiatrist out at the regional center, and his sidekick, Klaus Hartmann, like Charlie McCarthy and Edgar Bergen, with Hartmann being the ventriloquist and...Moore was the ventriloquist, Hartmann was the dummy.

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Whatever Moore said, Klaus may have said, um-hum, me too. But there were other independent psychiatrists that the judge heard. And based on the testimony of the independent psychiatrists, the judge said, yes, he's mentally incompetent. Because Moore and Hartmann said that he was competent...and when Dr. Natalie Baker testified, and had looked at some of the records of Nikko Jenkins from his early days, that Senator Krist alluded to, she mentioned that there were diagnosis that they can pronounce on children now that they couldn't then because it was felt in the psychiatric world that children should not be labeled with these kind of labels, even though all the symptoms if found in an adult would carry this title. And so she was asked, well, how would you characterize him? And she put the proper label on him. But it went back to when he was seven years old. When Dr. Moore got on the stand he said that...well, he thinks Nikko Jenkins is a liar, everything he says is a lie, he's not hearing voices, this Apophis god was make-believe, the mutilations were just acting out, trying to get attention and all these other things meant nothing, and that he was faking it and he was fooling everybody. So then he put himself in a ridiculous position of being asked, well, when he was seven years old was he faking mental illness then? With only the slightest detection of a pause, Moore had to say, yes, this seven-year-old child. So everybody in the courtroom could see what was happening. So after that hearing, the judge not only determined that, on the basis of that testimony, Nikko Jenkins was mentally incompetent, but had to determine where he should be housed. And you're aware of the fact that your people that you appointed and that some of your appointees hired did not want him at the regional center even though they have murderers at the regional center and one guy who actually killed a doctor at the regional center is there. They had made up their mind that he was not going there so they said, we're not going to take him. So the judge was having a discussion, instead of giving the order as he should have, asking these perpetrators who worked for the state, well, where should we put him? They said, well, you can put him in the D&E or some other mental ward they had, even though they couldn't give him the treatment he needed. He couldn't interact with people as he needed to. They had stated during the testimony period, these psychiatrists, that a part of the treatment was resocialization; a person had to have human contact, had to

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learn how to function around people. And without that aspect of it, then you're wasting your time. But because of the way...where they got him now, I believe he's still locked down 23 hours a day--the very condition that led to such a deterioration in his condition mentally; that the judge, who had found him competent, would now rule he was incompetent and said that that solitary confinement had so greatly deteriorated and diminished his mental condition that he could not be found, under the law, competent. I'm going to tell you why I said all that, but I'm going to give you a parable first because I know you're a Christian and all these other people in here probably are, except those who are enlightened, such as myself. With all due respect to everybody, everybody chooses their own poison; I've chosen mine and some people would characterize what I have. And you've chosen yours, so I characterize what you have. But Jesus, whether there was such a person or not, was somebody who, if somebody existed and did that--or if he was just a creation like characters created by mythologists, storytellers, and so forth--I like the things that they said he did. So at this temple, the rich people, the ones who benefit from your tax relief bills and so forth, would go into the temple and outside they had an alms box and the rich people with a great show would unfurl...well, they didn't have dollars then but whatever they had and put it in there with great fanfare. Then this poor little widow lady came up and she put in a farthing or some little tiny bit of money. And Jesus' disciples were standing around. They never seemed to understand what he was about. And He said she...what she gave is more than all the rest of them put together. They said, what are you talking about? He said, they gave of their abundance; she gave all that she had, even her whole living, working for minimum wage and she gave it all up. So when Warren Buffett gives his billions and Bill Gates gives his billions and that young guy who created Microsoft gives his millions and hundreds of millions, it's not of a morally equivalency to that mite that the person making a minimum wage and cannot feed the children, cannot pay for heat, cannot provide adequate shelter or clothing--which Jesus said everybody should have and those who have more should help them get it--these poor people are giving more. But here's a story that impresses me. There was an unjust judge, and his name may have been Bataillon. And this poor widow lady, she would sit outside the courthouse every day and she would pull

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on his...she said, Judge, avenge me of mine adversary. And the Judge said, woman, get away from me, and would go on about his business. So she was there every day. In the same way that nothing...few things would be softer than water, few things harder than stone, but the constant running of that water over hard rock cut the Grand Canyon, so she was the water and the judge was that rock. So finally one day he got tired. He said...she said, Judge, avenge me of mine adversary. And that judge said, though I neither fear a God nor regard man, yet because this woman is driving me to distraction, woman, what do you want? She said, avenge me of mine adversary. And the judge...this is not in the Bible, but this is what he said I'm sure: Done. And she said, well, Judge, I'm out of here. That was a good story. So what I want to be is the one who can try to persuade these unjust people who were in such a haste--as the Bible said, the wicked hasten to shed blood--I want them to have a second thought. I want them to look at what we're dealing with and feel all the anger at Nikko Jenkins, all the hostility, even hatred, contempt, and whatever. But we as the lawmakers, as the leaders, we're to be the civilizing element in a society gone mad, not just by the...through the murderers, but there are plenty of them now. We have to be the ones who are going to say we won't be swept away by this. We'll be like the rock by the shore. And when those giant waves come upon the shore, they'll dash themselves against our rock and we say, this far and no further. And that's what we have to do. If we are moral people, if we are humane people, if we are civilized, then our example is what is to make the difference. And all of those fine words that we all know how to say should be reflective of our conduct so that we can have a clear conscience, not by turning away from what we've seen and pretending that the things we should have done but didn't do had actually been done. We can honestly look at ourselves and say I did what I knew was right to do. And people may disagree. But I know what's right if nobody else does. And I know when I've done what I ought to do if nobody else does. So I'm doing what I think is right and whatever it makes me, that's what I am and that's what I will always be. I will never convince somebody like the Governor or all the people who believe that if one person kills, somebody else should be killed. That's what the old Mosaic law said. That's what was said in the Garden of Eden: He that sheddeth a man's blood, by man shall his

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blood be shed. But if you'll notice, the first murderer was Cain. And the one who had said that he who sheds blood, by man shall his blood be shed put a mark on Cain's head so that no man would raise his hand against this murderer and take his life. This one (inaudible) I said kill? Well, let me explain something to you and you try and figure it out. When the killing occurred, I changed my mind. I said this that I created that was made in my image could go so far astray, and it could only be what I made. Nothing could come out of it that I didn't put in it. The fault is mine. Don't kill; nobody should. So when I see this person, this creature that I made in my image, destroyed another of those that I made, let me know that my blueprint was not complete, I left something out. So forget all that stuff. I'm marking the murderer and you know what he did, but don't you raise your hand against him. Now that's all in the Bible, but they don't read that, do they? They don't pay attention to where Jesus talked that stuff, don't render evil for evil. He said, I know that's what they said of old time--an eye for an eye, a tooth for a tooth. That's what they said, but you all are more civilized than that. Do good to those who do evil to you. Bless them that curse you. If somebody makes you walk a mile, walk with him twain. If he takes your coat, give him your cloak also. If he smites you on the one cheek, offer the other also. That's the dispensation that I'm bringing into being, and I'll have a chance to demonstrate it at some point. See, I can talk, but I'm going to end this in less than five minutes, because that's when the world is going to end and we're going to end...there will be a great crescendo. But this woman--and it showed the sexism--caught this woman, they said they did, in adultery. They brought her to Jesus because they knew he was against the death penalty. But they knew he said he came to fulfill the law, so they're going to trick him. They were always trying to trick Him, but they never could because he was one slippery fish. So they said, Lord, we caught this woman in the very act of adultery. And the first thing in Jesus' righteous mind: Well, where's the man? Adultery is like clapping your hands; you need two of them. But he was going to turn the tables on them. He didn't ask them that. So Jesus stooped down and he wrote on the ground, they said, and nobody knows what he wrote. But he did say, let he...now this is not in the Bible, but I think it would be said. That's why people don't like me to tell their children Bible stories. He among all you hypocrites, all you

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wrongdoers, all of you who were at the same house of ill repute where you dragged this woman from, doing what some man did that you didn't bring before me, I want one of you who hasn't committed that sin to throw the stone. And understand this, everybody here knows what you've done. You're notorious in this neighborhood. Oh, you wear your gowns, you carry your phylacteries, your little boxes with the prayers in them. You stand on the street corners and you pray; everybody sees you do that, but everybody knows what you are. Now I'm going to make you put up or shut up. The one among you who brought her here and you pronounced the law, you said that the one who does this should die, you throw the stone. So they're shaking, something like those who testified before us when the goods were gotten on them. They said, well, Lord, the law did say she should die, so what do you say? They turned the tables on him. And that's when he wrote in the ground. Nobody knows what he wrote. But these people...it said they were convicted in their heart. That's poetic. People around started muttering. Then if she dies, I got a handful of rocks here for each one of you because you've done it too. So then they one by one began to disappear. So Jesus, canny old guy, young guy, canny that he was, he had good peripheral vision, he could see those feet raising the dust as they went away. So when the last bit of dust settled, he stood up, he looked around and said, woman, where are your accusers? And somebody who is not vicious but wanted to know the truth and about the law asked him, and this is not in the Bible, but this happened. They said, Master, I believe in what you say, but you did say that you came to fulfill the law. He said, that I did and that is what I'm here for. They said, the law says that a person who does this should die by stoning. And Jesus said, that's what the law said. And they said, well, why are you handling this they way that you said it? He said, did you hear me say he that is without sin among you, let him cast the first stone? The guy said, yes. He said, and you said you believe in me? He said, yes, Lord. He said, well, do you believe that I'm sinless as I say that I am? He said, yes, Lord. He said, then the only one here qualified to cast the first stone is whom? He said, you, Lord. He said, and I'm fulfilling what the law is about. The one who is sinless will not cast the stone. Now you go and do likewise. But the Christians of today don't get that far into the story. All they do is get to the part that says "kill." Then I'm through, because I got about a

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minute. I'm looking at the clock. The Attorney General is spending all this time telling the state how it can find a way to kill people. You can have the drug compounded, you can work with other states, all of this to kill. Not once have you heard him say we should get the states together and formulate a way to educate all children, all the people in the state to do it. We're going to do like Jesus said. We're going to bind up the wounds of the wounded. We're going to heal the brokenhearted. We're going to follow the example of that old sin-cursed Samaritan and we're going to help those who need it. The strong should bear the infirmities of the weak. But this Attorney General says we're going to find a way to kill. And, Governor, he's going to find a way to bring you embarrassment by convincing you, a nonlawyer, that when the Supreme Court gives what it calls a "holding in a case," you have to find another case to ask the Supreme Court, did you mean what you said? And if there is such case, they'll say the same thing that they said in Anderson. Then they'll say, and for you, Jon Bruning, this time we mean it. And that's all I have to say and I'll let the stones fly. But the first one better be thrown by the one who hasn't got a sin. But see, if you're a sinner, you're a liar too, so you'll throw the stone and lie and say that you're not a sinner. That's all that I have. Thank you, Governor, for coming. [LR424]

SENATOR LATHROP: So the Chair...it looks like we're out of questions. I do have something I want to comment on though, Governor. And it really is not a question directed to you. But over the lunch hour, Attorney General Bruning came down, I thought maybe to express some outrage over 162 people, violent people, that were released on this secret program. And instead, suggested that the Administrative Procedures Act didn't apply to this, as though that were...negated much of what we heard this morning. And first, I will stand by my opinion that the Administrative Procedures Act applies to the promulgation of the rules that led to the reentry furlough program. Now, I'll suggest that maybe that's not the practice...hasn't been the practice that people haven't conformed to the statute, and there are many of us who can find examples of that. The statute is pretty clear. That's the first thing I would say. The second thing, and again this is not directed at you, the second thing I would say is, even

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if...even if the statute didn't require that these rules be promulgated in an open and public fashion, as the statute requires, they should have been. We're talking about putting people out on liberty or releasing them to the community before even their parole eligibility date. And finally, even if you don't agree that they should have been or that the law requires it, the point is that they promulgated rules and regulations. And by the way, they did it on stationery and on forms that suggest that they were...they knew what they were doing, that these were administrative regulations. The bottom line is, they didn't even follow their own regulations that said "no violent offenders," and put out 162 people. I say that only because the Attorney General came down here into this room over the lunch hour and had something to say about this program and suggested that Bob Spire was talking about it in 1991, which, of course, this reentry furlough program started in 2008. And God bless Bob Spire. He was a friend of mine and a very, very honorable lawyer, but he was not working on the reentry furlough program in 1991. So that's all I have. I, too, want to express my appreciation for you taking...it's not...we started at 9:00, it's now 5:00, and we had an hour for lunch, and I do appreciate your patience with the committee and your willingness to appear today and to answer our questions and help us with our investigation. And with that we will... [LR424]

SENATOR CHAMBERS: Let me just offer an apology. No, don't grimace. [LR424]

SENATOR LATHROP: Okay, okay. [LR424]

SENATOR CHAMBERS: I'm sorry I didn't give you the full five additional hours that would take us to 10:00, but I'm not up to it today. [LR424]

SENATOR LATHROP: Okay. [LR424]

GOVERNOR DAVE HEINEMAN: Could I just make one final comment? [LR424]

SENATOR LATHROP: As long as it won't provoke other questions. [LR424]

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GOVERNOR DAVE HEINEMAN: No, it won't. [LR424]

SENATOR LATHROP: Okay. [LR424]

GOVERNOR DAVE HEINEMAN: I just want to say I appreciate the opportunity to be here today. And I hope Senator Chambers will take this as a compliment about what I'm about to say. Listening to him read, I think he should be a first grade reading teacher because he's very good at it. But then when I hear him preaching, I guess would be the way it would be there towards the end, I think maybe he should become a minister. So I just want you to know you have many opportunities in life to succeed. [LR424]

SENATOR CHAMBERS: One thing. [LR424]

SENATOR KRIST: You promised not to provoke. [LR424]

SENATOR CHAMBERS: I am a minister. I am. I bought one of those licenses from Chicago, so I am a minister and I perform weddings and I don't charge for it. [LR424]

SENATOR SEILER: Governor, I think Ernie probably quoted those Bible verses that weren't from the Bible because he was there at the time. (Laughter) [LR424]

SENATOR CHAMBERS: Right. And I looked as old as I am now. (Laugh) [LR424]

SENATOR LATHROP: Okay, enough. Thank you for your coming down here today. And I...that's all. Mr. Jenkins, you can turn the recorder off. [LR424]