

PUBLIC MEETING
of the
ASSEMBLY CORRECTIONS, HEALTH AND HUMAN SERVICES COMMITTEE
on
THE COST OF PRISON CONSTRUCTION PROJECTS

Held:
October 24, 1983
Room 348
State House Annex
Trenton, New Jersey

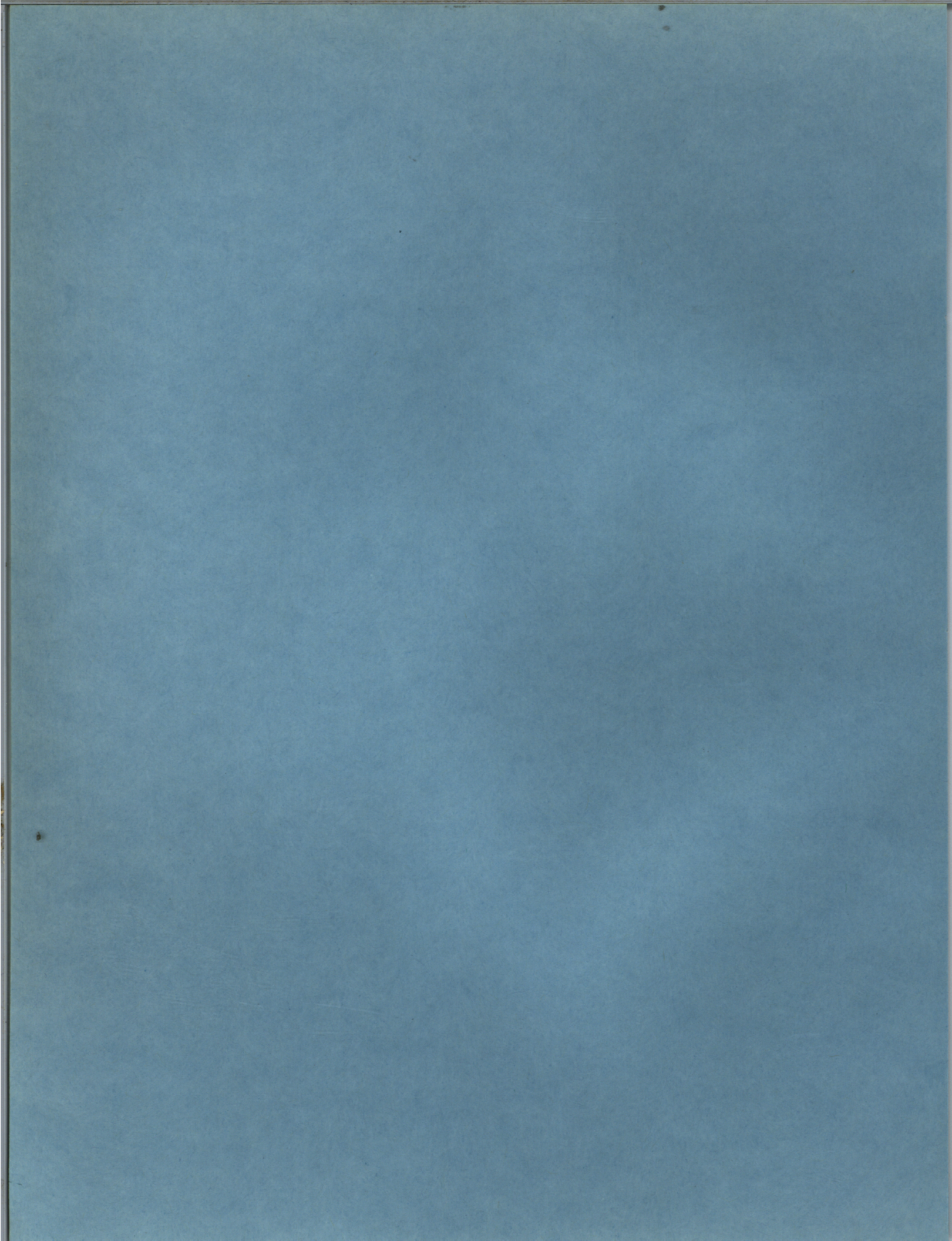
MEMBERS OF COMMITTEE PRESENT:

Assemblyman George J. Otlowski, Chairman
Assemblyman Frank M. Pelly, Vice Chairman
Assemblyman Garabed "Chuck" Haytaian

ALSO PRESENT:

David Price, Research Assistant
Office of Legislative Services
Aide, Assembly Corrections, Health
and Human Services Committee

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ASSEMBLYMAN GEORGE J. OTLOWSKI (Chairman): This meeting will now come to order. Before we do anything, may we call the roll so we can identify the people who are here?

MR. PRICE: Assemblyman Otlowski?

ASSEMBLYMAN OTLOWSKI: Here.

MR. PRICE: Assemblyman Pelly?

ASSEMBLYMAN PELLY: Here.

MR. PRICE: Assemblyman Visotcky? (not present) Assemblyman Felice? (not present) Assemblyman Haytaian?

ASSEMBLYMAN HAYTAIAN: Here.

ASSEMBLYMAN OTLOWSKI: That, incidentally, will also serve as an introduction of the Committee members who are here this morning.

Before we begin, I just want to read a brief statement. My name is George Otlowski; I am the Chairman of this Committee. The purpose of this meeting is to examine problems which have emerged, or which may emerge, in the program of prison construction and renovation that is now being implemented as part of the Governor's overcrowding plan. Questions have been raised about the cost effectiveness of this program, and the durability of the facilities that will be used to house inmates. Recently, there have been instances disclosed of alleged cost overruns on construction work at the Mid-State Correctional Facility at Fort Dix, and at Leesburg State Prison. These alleged improprieties raised additional questions about whether taxpayer dollars are being used in the most efficient way to deal with what we all agree is a real problem and an important public concern.

We know that our State prison facilities have been operating at a capacity far in excess of what they were designed to accommodate, especially in those institutions that hold maximum and medium security inmates. We want to be sure we are addressing this problem on an effective basis, both now and for the long run, by constructing adequate facilities to confine every person who violates the laws of our State, who is sentenced to a State prison.

The Committee hopes that the testimony presented will shed light on these issues, and clarify any questions we may have about the prison construction program.

First of all, I want to thank everyone present who responded to our request. I want to point out also, that this meeting is really bipartisan in nature. The Governor has the Attorney General investigating the possible criminal aspects under the jurisprudence system. We, as a legislative committee, are concerned not only with that, but with the broader aspects of the whole problem, that is, to determine if the present legislation is working, if there is a need to revise the legislation and, as I indicated in my former statement, if what we are doing is cost effective and is really serving the needs that are there. I just want to make that known for the record.

Now, also for the record, there is a letter here from the Attorney General signed by Michael R. Cole, First Assistant Attorney General, in which he points out what I have already said in my opening remarks, that the Attorney General is looking into this matter. As a matter of fact, he has subpoenaed certain people. We are going to be careful, of course, that we do not prejudice anything the Attorney General is doing. We are also going to issue an admonition to people who are testifying that the Attorney General is looking into this, so they will be on guard about any rights they may have under the criminal laws.

Secondly, there is a letter here from Commissioner Fauver, but he will probably read that into the record, or discuss that for the record. However, I want the record to show that there is a letter from him on hand. Those are the two pieces of correspondence. Attached to the Attorney General's letter, there is an appeal from a final decision of the Director of the Division of Building and Construction. It is a brief and an appendix in opposition to the motion for a stay, pending appeal on behalf of the respondent, Division of Building and Construction, Department of the Treasury.

One of the contractors is in court on this question about his rights under the contract. So, we are dealing with that, and I just want everyone to be made aware of that, so when they are testifying they will be on notice of those two things.

The first person we will call upon to give testimony to this panel will be Commissioner William H. Fauver of the Department of

Corrections. First, Commissioner, would you want to tell us, briefly, what is in the letter?

COMMISSIONER WILLIAM H. FAUVER: Yes. Good morning, Mr. Chairman. I'm glad to be here to be able to respond to some of the questions you raised in correspondence to me. Basically, the letter to you indicates there are certain aspects of this -- as you indicated -- that are under investigation by the Attorney General's office. They really cannot be commented on, but that doesn't mean that I can't respond to the questions raised by you in your letter or other questions the Committee may have.

Before getting into the details, and I'll try not to read all of this because it will be in the record, I would like to make several comments predicated on your opening statement. Number one, I think the construction, particularly the construction at Southern State, is something that this Administration, this Committee, the Legislature and the Department can be justly proud of. This is a construction project for almost 450 medium security inmates, freestanding, by itself, not supported by any other institution. As far as we know, it is the only one like this in the country. It went from the actual start of construction to occupancy within six months, which is the fastest I have ever seen in my career in State government of any construction project being done.

This project has been written up in the American Correctional Association Journal, which is the national magazine for corrections. There is a copy of the ad that describes this in the material that all the members have, so I won't go into that in detail. I think it suffices to say that the overcrowding problem is not a problem just in New Jersey; it is a problem nationwide. We have had people from a number of states -- Illinois, Massachusetts, Delaware -- who have come here already to look at this, with the idea of replicating this type of facility in their states. We know for a fact, that in Massachusetts, this will be recommended by the people who visited us as part of the master plan for solving the overcrowding problem in Massachusetts.

So, I think sometimes it is easier to be recognized by other professionals in the field for what it is, and I think the fact that it

has drawn this kind of attention speaks for itself. As I indicated before, I think we in New Jersey should be proud that this kind of thing happened.

I think it is only fair to go back and give a little bit of background on the overcrowding and why we were forced into the building program. With the change in the penal code last year -- or several years ago -- the number of commitments to the State prisons and youth institutions increased dramatically. Without going into detail on that, the number of counties that went to court and forced the State to take inmates under either consent orders or judicial decisions increased and, as will be discussed by some of the other people appearing today, that really led to the building program.

I think the question comes up, are there other alternatives? Could other things be done? I'm sure there are always other things that could be done. I'm sure it is always easier after a pro football game on Sunday with a loss, to decide on Monday that something should have been done differently. I do not think that is the case here. I think we are pretty well satisfied with what has been done. I don't know how long you can discuss alternatives and what should be done -- whether this should be done or whether that should be done -- at a point where you are in a crisis situation. You know, a drowning person doesn't care whether it is a rope that is thrown to him or a life jacket or whatever. It is to get him out of that situation, and that is the purpose of this construction, to get something done in a very short period of time. There is no question that it accomplished that. It accomplished it because the bed space, as you indicated, Mr. Chairman, was needed, particularly in medium type security institutions, not in minimum institutions.

The alternative of community correction is only applicable to those people who fit for minimum security. I think, also, there is something I should address here, as long as we are talking about cost, and that is, the cost for the State to house someone in a VOA or halfway house that we contract with, or the one we run, can turn out to be about \$10,000 a year. So, the cost is comparable to that of our larger institutions. Again, I think the bed space we have added, and

which we intend to add as the second part of Southern State, will address the crowding situation and will keep us where we are with the Governor's plan to relieve this overcrowding.

Regarding the Governor's plan, I will be glad to discuss that in detail with the Committee or respond to questions. My impression is that not only are we going to pick up more beds than we originally thought in the plan, but we are going to do it at less cost. It is going to be cheaper to do. I think as all these institutions come on line, that will become evident.

I would like now to turn to the specifics, Mr. Chairman, about which you asked me in your letter. For the record, I would like to read through this; it is fairly brief. The first question was, "Why was a contract for construction work at Leesburg State Prison awarded to Costanza Construction Company on a non-bid basis?" Response: On July 18, 1983, Costanza Contracting Company and four other firms (R. M. Shoemaker Company, Joseph T. Moscarelle, Inc., Roland Aristone, Inc. and Merrell & Garaguso, Inc.) were considered for award of a contract to manage the construction of the Southern State II facilities. To meet the extremely tight completion dates established by the DOC for the facility, the DBC determined it would be necessary to engage a construction manager to expedite the work. The construction manager was given the authority to competitively bid the work and engage the contractors who would be performing the construction.

On July 19, 1983, the DBC Selection Board selected Costanza as their top rated firm based on an evaluation of its capabilities, past performance and fee proposal. See the attached memo -- there is one -- dated July 26, 1983, Smith to Forker. An appropriate waiver of advertising was approved by the State Treasurer to award the contract to Costanza.

I think you will find the material I just referred to in your packets.

The second question was, "Why was that contract then cancelled?" Response: The Division of Building and Construction did not proceed to award the contract with Costanza Contracting Company to

manage the Southern State II construction project on advice from the Attorney General's office due to the investigation being performed on the Mid-State construction project.

Number three, "Why was that contract then given to R. M. Shoemaker Company for an increased cost of \$130,000?" Response: The contract was awarded to the R. M. Shoemaker Company since they were the second highest rated firm of the Selection Board. Further, despite the delay in their selection, Shoemaker was able to guarantee that the Department could begin operation of the facility by February 1, 1984, the date originally proposed by the Costanza Contracting Company.

I will digress a minute and point out that these earlier dates are pushed by the Department because every day that we can get someone out of a county jail, it is obviously a saving to the State, since we are paying a per diem cost to all the counties.

Number four, "What 'irregularities' were noted in the construction work by the Costanza Construction Company on the Fort Dix project?" Response: Costanza was not ultimately awarded the Southern State Correctional Institution contract because a routine post-construction audit on the Mid-State Correctional Institution revealed an irregularity in the costs of one of the subcontractors to Costanza on that project, and more particularly, a short term loan with an exceedingly high rate of interest made by Costanza's project manager to the subcontractor shortly after the contracts were awarded. The Attorney General's office recommended to the Department of the Treasury that the contract not be awarded to Costanza since the facts concerning the loan and the costs on the Mid-State project had to be investigated, but that the investigation could not be completed within the time frame available. The Department of Corrections does not have detailed information concerning the problem, since the DBC administered the construction project, but it understands that the basic facts available at the time were set forth in papers filed in court by the Attorney General's office in response to an appeal by Costanza from the decision not to award the contract.

I believe, Mr. Chairman, you received that today from the Attorney General.

The fifth and final question raised was, "What is the estimated life span of the 448 prefabricated prison cell units to be constructed at Leesburg State Prison?" Response: The architectural firm of CIH2A which was responsible for the design of the Southern State facilities, has indicated that the prefabricated units have a minimum life span of fifteen years.

Now, the other question you asked me, Mr. Chairman, not in the letter, but verbally when we spoke on the phone about this appearance, was, would I have any suggestions as to any legislative initiative that could be taken to ensure that the cost overruns, in fact on all projects, could be somewhat controlled, if it was by legislation? I would rather try to respond to anything in this letter and my responses first, and then get to that. However, I would like to say on the Mid-State project, that technically there is no overrun, because there was a time and materials type of contract awarded, meaning that we really did not know what we needed when we went in there. We had an estimate -- even the estimate from Costanza was high -- and I don't think the overrun, in a sense, was tied to what was not in the facility nor some of the things we thought were in there. But, I would let the people in construction respond to that more.

ASSEMBLYMAN OTLOWSKI: Commissioner, who made the decision about the contractors who were going to be selected? I think there was a group of eight. Who made that decision? Do you know who made it?

COMMISSIONER FAUVER: I don't think there were that many. There is a paper, I think, in your material, Mr. Chairman, which shows the--

ASSEMBLYMAN OTLOWSKI: Yes, but who made the decision not to go out on bid, but to use this method? Who made that decision? Do you know who made that decision?

COMMISSIONER FAUVER: Building and Construction made the decision, within the Treasury Department.

ASSEMBLYMAN OTLOWSKI: That would be John Forker or James G. Ton?

COMMISSIONER FAUVER: Well, when this decision was made I'm not sure Mr. Ton was there. Whether Mr. Siegler--

ASSEMBLYMAN OTLOWSKI: (interrupting) Who would have made that decision?

COMMISSIONER FAUVER: I don't think it was a unilateral decision by a person; that is what I am pointing out. I think it was the Committee which handled the selection process. It was the Department's request that this be advanced or sped up as much as possible.

ASSEMBLYMAN OTLOWSKI: Commissioner, excuse me. Under the law -- while, you know, committees are great because they never make decisions -- one person under the law undoubtedly had the responsibility of making the decision. Do you know who that person was?

COMMISSIONER FAUVER: No, it would be someone in Building and Construction.

ASSEMBLYMAN OTLOWSKI: All right, that answers the question, because we will get that later on. Commissioner, how long have you been in the Department of Corrections -- your total career -- how long?

COMMISSIONER FAUVER: About twenty-three years.

ASSEMBLYMAN OTLOWSKI: About twenty-three years. How long have you been the Commissioner?

COMMISSIONER FAUVER: About five years.

ASSEMBLYMAN OTLOWSKI: About five years. Commissioner, one of the things that disturbs me -- there are a couple of things. As a matter of fact, I am just wondering if they are within your purview, or within the purview of the people who made the decision. In the models that were picked, the temporary models that were picked -- these are the same models they have in New Mexico where they had problems with them, where they had the riots and the fires and the destruction. Am I correct about that?

COMMISSIONER FAUVER: No, you are not correct about that. The New Mexico riots -- I am somewhat familiar with that because we sent people out to New Mexico -- were in a regular institution. The takeover happened because it was a regular cellblock. The inmates got out of the housing unit; they broke into Center Control and got out. It is permanent type construction. Oklahoma, more recently, had a

takeover in one of their institutions which is about four years old, and which is permanent type construction.

ASSEMBLYMAN OTLOWSKI: Are you saying it started in the permanent part of the prison in New Mexico?

COMMISSIONER FAUVER: Yes, I am.

ASSEMBLYMAN OTLOWSKI: How did the other people become involved? Again, it is my understanding that those temporary quarters were destroyed, or at least the damage to them was great. How did they become involved in it?

COMMISSIONER FAUVER: As far as I am aware, there were no temporary quarters. I mean, I'm not -- I have enough problems keeping track of New Jersey, so I am not that definitive on the details. But, I do know that it happened in a dormitory in the regular section of the prison. I know this because when there are disturbances in other states we review them.

ASSEMBLYMAN OTLOWSKI: Yes, but how much damage was done to those facilities, the facilities which are similar to the ones we're building now? How extensive was the damage to those facilities?

COMMISSIONER FAUVER: I do not know what the total dollar value was to the whole institution but, again, I do not think the new facilities, if there were any, are the question. It was an old institution which was taken over; parts of that institution were burned down by the inmates, and that can happen to a permanent construction or a temporary construction.

ASSEMBLYMAN OTLOWSKI: What you're saying is, the nature of the construction wouldn't make any difference once a thing like that took place. The damage could be extensive in a permanently constructed facility or even in one such as this, where the life span of these facilities is supposed to run anywhere from seven to fifteen years.

COMMISSIONER FAUVER: Well, I think fifteen years up is what the architectural firm has told us. I don't think there is an awful lot of difference. I think the difference is in the management of the system. I mean, going back to the overcrowding, the attempt to relieve the overcrowding, in the county jails particularly where there is a

very bad situation -- generally speaking inmates will respond. If they have good living conditions, they are not going to destroy the facility. Now, there are exceptions to that. There are incidents which occur that are beyond anyone's control. But, I think the fact that the living conditions are better than what they are used to in any kind of a county jail, certainly is a plus for the State system. However, I think, also, that we manage it well.

ASSEMBLYMAN OTLOWSKI: So, what you're saying is, there was no relationship between the--

COMMISSIONER FAUVER: (interrupting) I have never heard that. I have been privy to the Attorney General's report on the riot in New Mexico and, as I indicated, we had people there, and this is the first time I have heard that.

ASSEMBLYMAN OTLOWSKI: Did you get a written report from the people you sent there, to determine the nature, the cause of that riot, how extensive the damages were to both facilities, and what kind of preventive measures could have been used? Do you have any written report from the people you sent out there?

COMMISSIONER FAUVER: I'm not sure that I have much in writing, but I do have the Attorney General's report from that state which I could send you. We concur, basically, with their findings. We did not do an investigation; we were there for informational purposes, to see how--

ASSEMBLYMAN OTLOWSKI: But, your people analyzed the Attorney General's report?

COMMISSIONER FAUVER: That is correct.

ASSEMBLYMAN OTLOWSKI: They have analyzed it?

COMMISSIONER FAUVER: Yes, they have, and I have personally.

ASSEMBLYMAN OTLOWSKI: Could this Committee have a brief, a summary of that analysis? Could you make that Attorney General's opinion available to this Committee?

COMMISSIONER FAUVER: Sure. Well, I'll find out about the opinion, but we will make the analysis available for sure.

ASSEMBLYMAN OTLOWSKI: Commissioner, you're talking about the fact that -- and I suppose you were one of the people who made the

recommendation -- this construction went out in the manner it did by way of selecting contractors based upon proposal, rather than bidding. Were you consulted about that?

COMMISSIONER FAUVER: No.

ASSEMBLYMAN OTLOWSKI: That wasn't under your purview?

COMMISSIONER FAUVER: No. We had representation on the Committee. If you refer to the letter of July 26, 1983 which is in your material, it does show the point system which was used and the people who were at the meeting to make the decision. There were members from the Department of Corrections.

ASSEMBLYMAN OTLOWSKI: Again, I just want to refresh your memory, if my memory serves me correctly -- before I refresh yours. I remember that at one of the Committee hearings, the Governor and the people in the Department of Corrections were asking for legislative powers for the Governor, granting him authority to move prisoners from one institution to another and, as a matter of fact, even to provide release for certain prisoners who were not guilty of violent crimes. This whole business of emergency you have been talking about, has that ever been used?

COMMISSIONER FAUVER: No, the emergency power which was passed was that I would certify to the Governor that an emergency situation existed within the State prisons, and that the dates should be moved up for release of certain prisoners. That is really like a last resort in the program. All of these things that have been done, the construction and the beds which have been added in the past several years, have been to address that issue of overcrowding. I think the last one, should be the release to the community of people prior to when they would ordinarily be getting out. I think that is the posture the Governor has taken, that I have taken, and I think it is one the Legislature has taken by the type of laws it has passed. I think that is the general feeling among people. So, I see it only as a last resort.

ASSEMBLYMAN OTLOWSKI: But again, Commissioner -- this may not have been within your province, but I ask you the question. When you are talking about dire emergency and you're talking about, you

know, using the alternative to bidding laws because of the emergency, and you use a proposal list, how dire is the emergency when you are going by that method and not exhausting some of the other possibilities that exist under the law?

COMMISSIONER FAUVER: Well, you know, that is subjective, I guess, and we could argue on that. But, I think the fact that we made this case-- I personally went around and campaigned for the bond issue, which passed by a huge plurality. What we said in the bond issue was, "We need space to put people in jail," and it appears to me, because of the response we got, that the overwhelming view of the citizens of the State was that that was what they wanted. They want the people who are sentenced to stay there, not to be released early, and not to have enough room to keep them. I have not, in my judgment, decided that the State institutions were to appoint that. I would ask the Governor to declare an emergency.

Now, a lot of things have happened. We have added a lot of bed spaces. If those things hadn't happened, yes, there is no question that that would have been an alternative that would have had to have been used, and it is still there as one that can be used.

ASSEMBLYMAN OTLOWSKI: I think everyone would agree, and certainly the people agreed when they approved the bond issue, that that was something they wanted; it was something that was needed. But, by the same token, when they gave that approval, they expected also to get their moneys' worth out of any money spent. Now we're in an area here, and we are going to get into that later, where we spent money for a bond issue that was supposed to have a life span of twenty-five years, and it is debatable about these facilities having a life span -- this is debatable -- anywhere from seven years to fifteen years. It is also debatable whether these facilities have the kind of durability to fit into a medium security prison program. So, there is no question that the people wanted the bond issue to pass. However, we are going to be getting into some of the other questions that I just posed to you, which are probably not in your province. They go into the province of those people who make the decisions on building.

COMMISSIONER FAUVER: Well, to a degree that is true, but I think it is within my province to decide security status within the prison system. I take exception to the fact that people who are not in the field think they can make decisions on what a medium security or minimum security prison is. I think if I, as Commissioner, were to say, for example, that those 400 beds could be minimum, there would be a human cry throughout the State, throughout the Legislature, from the Governor and everyone else. I would be crucified on it. I wouldn't be in the job, and I wouldn't deserve to be if I said there were more medium security people in the prisons.

Now, as far as the security itself is concerned, to say that it doesn't look like a traditional institution -- that is true. But, basically, security is provided by the way we manage and by the perimeter, and in this perimeter there is a double fence of razor wire, with towers that are manned twenty-four hours a day, and those officers will shoot people if they try to escape. How can that be construed as not being medium security? Can inmates take over a unit? Yes, they have taken over units; they took over a unit in Sing Sing in January. We have that report, which we are reviewing for the Governor right now. They can take over. They took over at Rahway ten years ago. It is not the construction per se, but the construction helps. Obviously, with the newer construction, different kinds of things can be done and can be secured at the new Trenton Prison, that cannot be done at Southern State with this modular type construction.

What we hope to do, Mr. Chairman, is not send people there who fit that category who would be starting those kinds of things, as the Trenton State Prison inmates might.

ASSEMBLYMAN OTLOWSKI: Commissioner, I have no argument with what you said in response. The only point you haven't addressed, and maybe you cannot-- What we are talking about here is, we're spending money that is supposed to have a twenty-five year life and you, by your own admission, point out that this only has a life of fifteen years, and there are other people who will probably testify that it only has a life of seven years. So, what we are doing is, we are spending that money and short-changing the people in the life of the project. This is the point I'm making.

COMMISSIONER FAUVER: Well, you're right, I do disagree on that. I have the architectural firm giving me the estimates; they are not my estimates. But, I think what is not looked at is, if this wasn't built -- on the other side of that is the cost to the State taxpayers also for keeping people in the county jails, which would turn out to be several million dollars a year on this 450 people, if they were not in the system.

ASSEMBLYMAN HAYTAIAN: Mr. Chairman?

ASSEMBLYMAN OTLOWSKI: Yes, Assemblyman Haytaian.

ASSEMBLYMAN HAYTAIAN: May I just ask a question to you on the basis of what I remember on a number of these bond issues? I don't remember anywhere where the bond issue called for a life span of the cells, but a payment of twenty-five years of the bonds. Now, I don't know if I got the wrong information on that, but I don't remember that any of our bond issues, either the ones that we discussed, or those that were discussed when I was a Freeholder that I went out and campaigned for, talked about the life span of the cells being twenty-five years. I don't remember that.

ASSEMBLYMAN OTLOWSKI: As you know from your own experience, when bonding attorneys draw up the bond, the bond also includes the life span in it. As a matter of fact, even by law, life spans are a part of every single bond issue. So, it is a legitimate question that is confronting us. At this point, I am not faulting anyone for making the decision. The answer here has been that the decision was made to save the counties money. That is all well and good, but are we running from one area into another area? These are some of the things we are going to have to look at.

COMMISSIONER FAUVER: No, that is not quite correct, Mr. Chairman. What I am saying is, the State would be paying the counties money. The counties, I'm sure, would be glad to continue to get the money -- not to keep the inmates, but to get the money. What I am saying is that it is a saving to the State. I also think you have to look at the overall plan and, as I indicated, our estimate right now, based on what we see happening with Southern State, with Camden and with Newark, plus the renovations we have done within the system to

provide more bed space, is that we will have approximately 117 more beds than were outlined in the Governor's Master Plan on this -- the overcrowding plan -- and a saving of over \$24 million because of that. A lot of that saving should be realized because of the Newark facility and the way we are talking about the construction of that, and we have indicated that to you in a memorandum to the Committee.

ASSEMBLYMAN OTLOWSKI: Commissioner, I just want to call your attention to the fact that on Page 4 of the memorandum you submitted, the last part of the first paragraph on Page 4, where they are talking about the New Mexico experience -- that is at the top of the paragraph -- "New Mexico, used as an example dormitory setting, breeds officer assault, inmate assault, sexual assault, stealing," and then it goes on, "A traditional medium security facility has the ability to lock inmates in their cells in the event of a disturbance, to isolate inmates from each other. In a dormitory setting," and that is what we have with this thing, "this is not possible." Mr. Hilton pointed out that this problem is only apparent in a medium security facility, and would not exist if used in a maximum security facility. Then the thing goes on to say that this is even more costly -- the patrolling of this kind of a facility is more costly.

On that basis, how do you justify building such a facility as this, where the life span is shorter, and where the expenses could be greater to maintain the kind of security that has to be maintained?

COMMISSIONER FAUVER: Well, I don't think that is my letter to you from this morning.

ASSEMBLYMAN OTLOWSKI: It's on your stationery, dated April 7, 1983 -- oh no, I'm sorry. It was addressed to the Joint Appropriations Committee.

COMMISSIONER FAUVER: Yes. I think the dormitory versus the single cell is an issue. If I had the best of all worlds, I would like to see everyone in a single cell. What we try to do is to make the dormitories small dormitories, which they are. They are -- approximately the most would be eight people in any one area; that is the way the thing is laid out. Dormitories are more of a problem. The other question is, "Are they more costly to run?" No, I don't think in

this case they are. I don't think in most cases they are. As I pointed out to you, the perimeter security at Southern State is what gives it its medium security status, as well as our classification of the inmates.

Obviously, it is easier for some problem to start even if there are only eight people, than it is if there is only one person. There is no question about it, but I think if you look at the costs, the costs are-- There are modular units that are built with individual cells. We are using some of those when we are talking about segregation units or administrative segregation units. The cost of those becomes astronomical. It is the same basically as building a permanent cell. So, you know, the issue appears to be that there is no concern for the cost. I would say that the contrary is true; there is a great concern for the cost, because as a manager, I would much prefer to have the individual cells. But, realistically, the cost is too great and this is the best we can come up with.

ASSEMBLYMAN OTLOWSKI: Commissioner, as a follow-up now, where are we with the construction, you know, staying with the bond issue you presented -- where are we with the construction of the permanent prisons, the one in Camden and the one outside of Newark? Where are we with them? What kind of schedule are we on?

COMMISSIONER FAUVER: We are on a schedule in Camden -- a lot of the steel work is up in Camden. The projected date is 1985; the opening of the Camden facility, I think, is September of 1985.

ASSEMBLYMAN OTLOWSKI: The one in Newark?

COMMISSIONER FAUVER: The one in Newark -- very little has happened on that yet, other than the identification of the site. We are in the process-- I shouldn't say very little has happened. Very little has happened in the way of actual construction, but the selection process on the design and so forth is in progress right now.

ASSEMBLYMAN OTLOWSKI: There is no time schedule on the one in Newark?

COMMISSIONER FAUVER: The time schedule for Newark is August of 1986. The reason that has moved up from our original estimate, is because of the change in the design there, to basically meet a couple

of things. If I may take a minute to address that, our original plan was to have two 500-bed institutions in the northern part of the State, when this site would accommodate a larger institution. In meeting the Federal accreditation standards, which really called for 500 as a maximum number, we split the institution into two separate institutions with one Administration Building, sort of between them. So, it will be on one site, but--

ASSEMBLYMAN OTLOWSKI: (interrupting) Are they totally detached?

COMMISSIONER FAUVER: No, they will not be totally detached. There will be a lot of shared costs, which will create a saving. For example, one power plant type of thing, one kitchen -- those types of things. That is really where a lot of this projected saving comes in, because we were able to acquire a site large enough to do this. The other sites we were talking about-- For example, in Camden we couldn't have done it, because the acreage is too small. So, this is another advantage to the Newark site, and it will be a cost saving to the State.

ASSEMBLYMAN OTLOWSKI: But, the one in Newark is so constructed that it is really divided into 500 units?

COMMISSIONER FAUVER: Well, it is not designed yet.

ASSEMBLYMAN OTLOWSKI: I'm asking that question based upon the fact that I'm convinced you cannot control an institution of a thousand people in today's world and, if you go over 500, you're asking for trouble. So, I'm asking that question -- are they divided?

COMMISSIONER FAUVER: Yes, they will be divided. The design has not been accepted yet -- any formal plan -- but that is our intent, to not accept a plan that doesn't do that kind of a division. You are correct.

ASSEMBLYMAN OTLOWSKI: As a matter of fact, since that is a question that is going to be bothering this Committee, I'm pretty sure, you know, about the divisibility of that, the security of that institution, later on we want to take a look at that whole thing to make sure that one of the anxieties we have is substantially met. I agree that what you are doing is probably a cost-saving device by

power, laundry, etc. That is good, but I just want to make sure, and I'm certain that the rest of the members of this Committee want to make sure, that there is absolute divisibility there, so it will be easier to control.

COMMISSIONER FAUVER: Well, I assure you that that is a concern of mine too. I think if any of the Committee would look at Trenton State Prison's new construction, they would see the kind of design we are talking about. Although there are over 800 beds, they are split into two separate sections in which they do not mix. That would be the kind of a model we would be looking for, although maybe not exactly, in Newark.

ASSEMBLYMAN OTLOWSKI: Commissioner, thank you very much. That is all I have. I would like to ask the Vice Chairman, Frank Pelly, if he has any questions.

ASSEMBLYMAN PELLY: Yes, I have several. Commissioner, before I begin with my questioning relative to your testimony this morning about the facilities themselves, I wanted to ask if you would be kind enough, or if your staff would be kind enough to provide this Committee with a statistical analysis, and your communications from the various counties which have led you to the conclusion that the counties would be glad to keep the money and the State-sentenced inmates they currently have? Do you have that with you?

COMMISSIONER FAUVER: I do; I can give you the numbers in the counties, the total number of beds, and the total dollar amount of assistance from the particular counties. I can read that into the record.

ASSEMBLYMAN PELLY: No, I have that information. My interest is in their anxiety to continue keeping -- as you say, counties would be glad to keep the money and the State-sentenced inmates. I am looking for communications from the counties indicating their desire to continue to keep State-sentenced inmates in their facilities. Would you provide us with those communications, Commissioner?

COMMISSIONER FAUVER: Well, I think the fact that they enter into the contract would be-- I'm not sure I understand the question. We have commitments, or contracts with a number of counties to house

State inmates, as you are aware, with construction aid being given to the counties to improve or to build a new facility. Those counties will still receive a per diem, but a reduced per diem rate for the county inmates who are held there. To me, that demonstrates they are willing to do it, if we have a contract with them.

ASSEMBLYMAN PELLY: Is it some counties, or all counties? I am talking about the current situation in counties. Is it fair to say that some counties are entering into expansion programs whereby they are getting dollars toward construction of additions to their facilities, and as a prerequisite requirement they have committed themselves to keeping State-sentenced inmates -- certain numbers of State-sentenced inmates? I am talking about your statement with respect to the situation as it now exists, whereby effectively all counties are keeping State-sentenced inmates in order to keep the numbers of inmates in State facilities at a decent level. Earlier in your testimony, you said the counties would be glad to keep the money they are now being given, and to continue keeping these inmates in their county facilities. This is an enlightening experience for me; I had not been aware of that, and I only want that documentation that they are interested, in fact eager, to continue keeping these inmates in their already overcrowded county facilities.

COMMISSIONER FAUVER: Well, I'm not sure that is a correct characterization. They are willing to keep them for the money at the per diem rate they are getting, which many counties have built into a routine thing for about three years now. Obviously, in a county jail that is not expanding and does not have the room, they are not anxious to keep State inmates. There are a number of counties where we have none, because--

ASSEMBLYMAN PELLY: (interrupting) But, they are keeping State-sentenced inmates, aren't they?

COMMISSIONER FAUVER: Not in all of them, because we are under court order in some of the counties to remove them. I am aware that there were fourteen counties in this last go around that applied for county aid, with the stipulation that they would keep State inmates. As you point out correctly, that is in the future.

ASSEMBLYMAN PELLY: In their new future construction plans?

COMMISSIONER FAUVER: Yes.

ASSEMBLYMAN PELLY: Certainly, that makes sense. How many State-sentenced inmates do we currently have in county facilities?

COMMISSIONER FAUVER: As of Friday, we had 840.

ASSEMBLYMAN PELLY: A total of 840?

COMMISSIONER FAUVER: That is correct.

ASSEMBLYMAN PELLY: What was the backup in July of 1983, when the emergency non-bid was awarded?

COMMISSIONER FAUVER: I am not sure exactly, but I would say it was around 1,200, or something like that. You can see that has been reduced almost in direct proportion to the opening of the beds at Southern.

ASSEMBLYMAN PELLY: I wanted to point that out about the opening of those facilities. I have no problem with that issue. I would like to go on and ask, with respect to the prefabricated facilities at Leesburg -- Southern State -- there are two 448-bed units, as I understand it, to be constructed, or where one is already in operation. What was the anticipated cost of that first 448-bed facility?

COMMISSIONER FAUVER: (Commissioner consults with his staff.) The projected anticipated cost for the first 448-bed facility was \$10 million. Currently, it is \$12.120.

ASSEMBLYMAN PELLY: Twelve million?

COMMISSIONER FAUVER: Twelve million, one hundred and twenty thousand.

ASSEMBLYMAN PELLY: What about the second? What is the anticipated cost of the second 448-bed facility? Is that not \$10 million also?

COMMISSIONER FAUVER: No, the projected figure is \$12.6 million. I might point out that there is also an additional eighty beds, an eighty-bed unit, so it would take the figure up to 560, as far as the number of beds is concerned.

ASSEMBLYMAN PELLY: So, the second facility will be 560 beds?

COMMISSIONER FAUVER: That is correct.

ASSEMBLYMAN PELLY: And, the anticipated cost is \$12.6 million. Do you have any projected figures as to what you now anticipate that facility to be, since you are several months away from occupancy?

COMMISSIONER FAUVER: No, I don't, but maybe DBC does. I don't have that, Frank.

ASSEMBLYMAN PELLY: I have a figure; I don't know how reliable it is, but it's \$16.3 million.

COMMISSIONER FAUVER: I would let DBC respond to that.

ASSEMBLYMAN OTLOWSKI: Let's get that from someone else; the Commissioner doesn't know the answer.

ASSEMBLYMAN PELLY: Okay, I will agree with that. Commissioner, were there other alternatives with respect to prefabricated units considered or available? That is, prefabricated units of longer duration, that could possibly have been used?

COMMISSIONER FAUVER: Well, the only ones I am aware of are those which I indicated are the individual cells, where the cost was, you know, just too high, in my opinion, to utilize as a tool. We have used regular trailers which we acquired as government surplus to house inmates in for a number of years. Some of those have been in existence very close to ten years now, and they are just regular house trailers that we have lost, some through attrition. I really think a lot of it depends on the management of the administration, the management of the inmates, as to the life span.

Also, there are prefabs that are not modulars -- that is, they are modulars, but they are not the trailer construction. We looked at those and, in fact, some of the smaller units we are doing, we are doing just to get a comparison, because that was an issue this Committee and the JAC raised as to the permanency of some of the places. We were looking for, as I indicated, a number of things, maybe all of which cannot be married at the same time, but one of the things was speed, because we wanted to get something done prior to the summer, which is traditionally a bad time in prisons, and this was completed and accomplished. But, we are doing some of the other type of construction at some of the smaller units, and they are listed in the

material I gave you. Then we will have something to compare, to see which is more cost effective.

ASSEMBLYMAN PELLY: What is the life expectancy of those units?

COMMISSIONER FAUVER: I am not sure. I don't know that we have any under actual construction yet; I don't think we do.

ASSEMBLYMAN PELLY: Were there not units considered during that period of time which were ruled as not being feasible due to the time constraint, that would have had a life expectancy of substantially more than the maximum fifteen years you project, or, the seven years the Chairman has suggested might be appropriate -- I don't know which -- but which would have the ability to be used as dormitory type facilities?

COMMISSIONER FAUVER: Well, I don't think for medium security, but, yes, there are some places that are even in the plan, but that did not vacate. For example, one of the places that was included in the plan was a building at Trenton Psychiatric Hospital, which is occupied and which will continue to be occupied, at least for another year, to the best of my knowledge. There was a dormitory setting at Ancora State Hospital, which could not have been used for anything besides medium security, as far as I could see. There was another part of the Vroom Building which we looked at, but we decided not to use it because the cost of fixing it up with toilets and water, and just about everything in there, was so high. Aside from those, I really cannot think of anything that was looked at or offered -- maybe looked at, but I'm not sure offered -- by any government facility.

ASSEMBLYMAN PELLY: Then, the Department of Corrections never considered any modular prefabricated units of greater life expectancy than those that have currently been put on site?

COMMISSIONER FAUVER: Well, we considered them, as I think I have indicated, but the cost has outpriced them until they are out of reach. I can get you those costs, but I don't have them with me. I know they are at least double of where we are.

ASSEMBLYMAN PELLY: I would be interested in obtaining that information. During the year and ten months that I have been a member

of this Legislature, one of the packages that came before us which was of major interest to me and, certainly, a very positive initiative, was the Governor's plan to relieve overcrowding. I supported all but one part of that package, and worked toward its passage, as a matter of fact. I was particularly interested in the bill which was passed and signed into law, as Chairman Otlowski discussed earlier -- signed into law in August of 1982, Senate Bill 1462, the emergency mechanism, as you are aware, to permit the acceleration of parole release dates for certain non-violent prisoners.

I inquired during one of our meetings as to how many persons would be eligible if this plan were to be enacted, and the number given to me was approximately 500 inmates, who would be eligible for early release under this program, if the mechanism were initiated for setting this off. Is that accurate, Commissioner?

COMMISSIONER FAUVER: I believe that number was given by the Chairman of the Parole Board.

ASSEMBLYMAN PELLY: That is correct.

COMMISSIONER FAUVER: I am not sure that is accurate. I mean, I think you get into arguments, in the sense of semantics, on the non-violent, but I think it goes back to the question the Chairman asked earlier, you know, "Why not?" As I indicated, I think it is a useful tool, it is there; I hope it never has to be used, but if it is, it is on the books and can be used.

I daresay that if there were a release of inmates as suggested under that program, one of the things that would be happening would be that there would be a cry from the public. I probably would be in front of some other committee explaining why I was doing that, when at the same time we were constructing and using these other alternatives. I am not sure those numbers are there, but again, that wasn't my statement, so I would let the Chairman speak for himself on that.

ASSEMBLYMAN PELLY: During testimony before a committee on that particular piece of legislation, persons representing the Governor's office testified to, not only the need for this, but to the way in which non-violent prisoners could be selected, judiciously

selected, for this program, and how effective it was in Michigan, for one state, and, certainly, making a strong case for its use, and for the implementation and ultimate passage of this legislation. Now, this legislation was passed over a year ago, predicated upon the backup in these county facilities being 1,200 at the time the first modular was being considered. Certainly I do not understand why, if it was pushed so diligently, it was not used.

That brings me to the question, Commissioner, did you at any time ever discuss, or recommend to the Governor, or member of the Governor's staff that serious consideration be given to using this emergency power?

COMMISSIONER FAUVER: Yes. I never discussed it directly with the Governor, but I have discussed it with several members of his staff.

ASSEMBLYMAN PELLY: Is it fair to say you advised a member, or members of the Governor's staff that they should be seriously considering using this mechanism, because of the serious overcrowding that is occurring?

COMMISSIONER FAUVER: I think that is true in part, but at the time the law went through, or when it was signed in, it was a part of the Governor's overall plan. I think one of the things that happened was that we were able to get things on line as fast, or faster than we had anticipated and, secondly, there had been an increase in paroles in the beginning of the year, which further helped to reduce the backlog.

Now, I might point out I think that is something that may or may not continue. We were just starting to get to the point where people who were under mandatory minimum sentences were becoming eligible for parole, so that may be a one-time thing that happened; I'm not sure. That is really a question for the Chairman. But, yes, I discussed it. I was pleased to get the legislation, because I thought that was something we might have to use. I think in the really darker days at the end of last year, that looked like something that would be recommended, and I alerted the staff that would be the case if it continued. But, as I said, other things happened.

I do not have a problem recommending it, basically, if in my opinion it is the final alternative, and there is nothing left. But, I think these other things have addressed it.

ASSEMBLYMAN PELLY: The point I'm making, if we are all dealing honestly with the issue, is that the legislation was called for. I agreed with the legislation. As a matter of fact, I supported the legislation, pushed for its enactment, and suggested to the Governor and his staff, both in writing and verbally, that this should be enacted because of the crisis that existed at that time. Unfortunately, it was considered to be a hot political issue, and was not implemented at that time. If we are honest with ourselves, we will recognize it was just that, and was not implemented for that reason. As a matter of fact, I suggested to the Governor and his staff -- and I telegraphed the Governor -- that I would be glad to take responsibility, if need be, for the implementation of that, if they thought it was too hot a political issue to deal with. Obviously, it continues to be on the books, it continues not to be used, and, perhaps in retrospect, it could have saved us some dollars. With respect to the construction, and I don't fault anyone for the modular construction, I just felt it should have been done in a more orderly fashion. This would have provided the relief mechanism necessary to do that kind of construction in an orderly fashion, to go out to bid, and to see that the job was done under the terms and conditions of bidding, rather than immunizing ourselves from the bidding process predicated upon an emergency, when, in fact, there was another alternative, that being the one we have described. That is my plea and my concern at this point in time and, as a result, I see a couple of million dollars in cost overruns in the prefabricated units -- maybe \$4 million in cost overruns -- which represent 15% or so. That concerns me.

COMMISSIONER FAUVER: I understand your concern, Assemblyman Pelly. I would also like to comment on a couple of things you said. One is, basically, I don't think there is any question that releasing inmates could be political, and could make you unpopular politically. We have another alternative, which is the intensive probation program and also a part of this, which is keeping that non-violent type of

person out. That has just begun to be implemented under the AOC, with input from the Department.

Secondly, I think there is a tendency to mix apples and oranges on this. The people who would be going out would be minimum security inmates even under this, if they were non-violent and were in that kind of a status. That would not pick up bed space for us in the medium security type units we need, not that some wouldn't, but I don't think it would pick up this large number.

Thirdly, I guess what it boils down to is really an administrative kind of a decision, is there, or is there not a crisis? Now, we can banter that term around rather freely, but overall I think there is a crisis in corrections in general in the country, in the State, and in the counties. How do we determine whether that judgment was a good judgment or not? I would offer that one of the reasons I would argue it is a good judgment, not declaring the emergency and that the other things have worked, is that nothing happened. You know, a crisis, in my opinion, means when something is going to happen in the State or county jails. Have there been things that have happened as incidents? Yes, but they were not directly related to the overcrowding, other than the fact that there are more people together, and just naturally that changes the living conditions. But, I don't think there is anything that can be pointed to, other than what you said about taking a longer time to evaluate and decide if another type of alternative would be possible, that has happened. I think in that respect, the judgment not to declare the emergency can be supported.

ASSEMBLYMAN PELLY: I have no further questions, Mr. Chairman.

ASSEMBLYMAN OTLOWSKI: Assemblyman Haytaian?

ASSEMBLYMAN HAYTAIAN: Thank you, Mr. Chairman. Commissioner, there has been a lot of talk, and I would like to get to the questions that were asked you, one in particular, the third question, "Why was that contract then given to the R. M. Shoemaker Company?" You indicated it was approximately \$130,000 more, but I am interested in the time frame. When Costanza was taken off the contract and Shoemaker was taken on, how much time was there in between? In

other words, Shoemaker has indicated he would finish up on the required February 1, 1984 date, and I think it is important that we talk about time and money. I think we all understand and realize that time is money, and I just want to make sure that we understand the time frame and the money involved.

COMMISSIONER FAUVER: Well, the time frame, as you indicated, was that they would be able to keep with the date of February 1 of next year. The date of the denial of the use of Costanza and the date to go to Shoemaker -- I am not sure how much time elapsed in there. But, it was about a month I would say, approximately.

ASSEMBLYMAN HAYTAIAN: Okay. But, they do intend to finish by the February 1, 1984 date?

COMMISSIONER FAUVER: Yes.

ASSEMBLYMAN HAYTAIAN: All right. Could you give us an indication -- and maybe this is not in your area -- but, how long would it have taken to go to permanent construction, versus the present modular the agreement has brought forth? That may not be in your area, but may be in the Department of the Treasury's area. I'm not sure.

COMMISSIONER FAUVER: Well, I think they can address it in more detail, without any question, but just basing it on the closest thing we have on permanent construction of this size, the facility in Camden, which is also a medium facility, the best time, I believe, on their fast track basically, was two and a half years for construction.

ASSEMBLYMAN HAYTAIAN: Versus approximately a year?

COMMISSIONER FAUVER: Versus approximately six months.

ASSEMBLYMAN HAYTAIAN: Six months, okay. Also, since 1982, when I first came into the Legislature and we talked about overcrowding -- I guess the question would be, how many beds have been completed since that date, and how many projected since that date, to relieve the overcrowding? I think that is a very important point in all of this discussion here today.

COMMISSIONER FAUVER: Our original projection, including the total, was roughly 3,100 beds that would be added to the system. Currently we see, as I indicated earlier, another hundred and some on top of that, making a total of about 3,300, or a little over, which

will have been added. This is not just with new construction; this is with the renovations within the institutions. With Southern State, we should have roughly about 2,000, or a little under I think it is, which have been added.

ASSEMBLYMAN HAYTAIAN: Two thousand since January, 1982, that have been completed to relieve the overcrowding that was precipitated back in the previous Administration's Executive Orders to house State inmates in county institutions? In essence, that is what we have accomplished?

COMMISSIONER FAUVER: Yes, overcrowding in the county institutions, plus in the State institutions. Those Executive Orders applied to the counties and the State.

ASSEMBLYMAN HAYTAIAN: Okay. There was talk about the New Mexico experience. I don't know enough about it, and I do not intend to ask you about it. That is truly not your concern, but maybe the experience would teach us something here. There was a projected life span. Being an engineer, the only way you can get a projected life span is through experience. Have any of these prefabricated modular units been in existence for fifteen plus years?

COMMISSIONER FAUVER: I don't believe so.

ASSEMBLYMAN HAYTAIAN: So, we really do not know how long a life span they have. It could very well be twenty-five years.

COMMISSIONER FAUVER: That is projected.

ASSEMBLYMAN HAYTAIAN: Or, it could be ten years. So, we really do not know the true life span, because of the fact that there is no experience involved in them?

COMMISSIONER FAUVER: That is correct. My response on that situation was that-- Somehow I felt the implication was that modular units, if there were modular units there, caused this, or were the reason it could not be contained. As I indicated, not only there, but in other long-term institutions which are very secure, such as Sing Sing, and the new facility in Oklahoma, these kinds of things occur. They will occur in prisons, and they will occur in prisons all over. I do not see it as tied to the modular, regardless of its life span.

ASSEMBLYMAN HAYTAIAN: All right. If the ongoing -- and it is ongoing -- investigation into the former construction managing firm had continued, would there have been a delay if you had not, or if the contract had not been given to the other company, the Shoemaker Company? Would there have been a delay in the construction of those modular units?

COMMISSIONER FAUVER: Yes, there would.

ASSEMBLYMAN HAYTAIAN: What type of delay, the ongoing investigation delay, the time lost by that?

COMMISSIONER FAUVER: I think the investigation delay, plus, if the decision was then made to go, you know, to routine units, there would have been another delay. I am not sure how long a delay, but the DBC people can respond to that.

ASSEMBLYMAN HAYTAIAN: All right. I know there was a question asked about the \$130,000 increase. Given the fact of the delay because of the ongoing investigation, with the costs you are paying the counties per diem, I would suspect that if it were a three or four-month delay, that \$130,000 in terms of cost because of the delay would have been more like a half a million dollars that the Department would have been paying out, whereas we would have had those inmates in the prefab units. Would you agree with that?

COMMISSIONER FAUVER: I would agree, but I would say I think the cost would have been even higher than that.

ASSEMBLYMAN HAYTAIAN: All right. So, in essence, what has happened is, by changing contractors because of the ongoing investigation, the State has saved money, even though they are paying \$130,000 more. Is that correct in your estimation?

COMMISSIONER FAUVER: In my estimation, based on the rationale you used which is correct, those inmates then would have been in the county jails for a longer time, and there would have been per diem costs paid for their keep.

ASSEMBLYMAN HAYTAIAN: The reason I bring this up is that through my own experience on the county level, I know that delays cost money, and the only way you can save money, in essence, is by changing as the contract was changed. So, I am in agreement with that, pending

the results of the investigation. I have one last question. If I remember correctly, when we were talking about the bond issue, the Bond Act provided that prior to the construction of any modular units, there had to be approval by the Subcommittee on Transfers of the Joint Appropriations Committee. Is that correct?

COMMISSIONER FAUVER: Yes.

ASSEMBLYMAN HAYTAIAN: Was that approval given before you went to the modular design versus the permanent?

COMMISSIONER FAUVER: Yes, it was.

ASSEMBLYMAN HAYTAIAN: So, therefore, it really is a mute question as to why it was done, because it had gone through the Joint Appropriations Committee?

COMMISSIONER FAUVER: It went through the Committee; that is correct.

ASSEMBLYMAN HAYTAIAN: Okay, thank you. Thank you, Mr. Chairman.

ASSEMBLYMAN OTLOWSKI: Commissioner, just to bring this into perspective now, when we are talking about the modulars, we're talking about a temporary approach. The modular, of course, is a temporary approach. This the word of the people who design them. They say it is a temporary answer; prison authorities say it is a temporary answer. So, we are really dealing with a temporary answer when we are dealing with the modular. Am I correct about that?

COMMISSIONER FAUVER: Yes, I think so. I think the question we are debating basically is, how temporary is temporary?

ASSEMBLYMAN OTLOWSKI: The other thing, of course, is that the one thing we learn from government is that emergencies are always very, very pressing, and yet with time, we find that an emergency can disappear, and that another approach will be recommended. For example, in some of the observations that have been made by different departments, they point out that the plan of action on prison overcrowding as justification for compressed design and construction scheduling has been shelved in New Lisbon, Bordentown, and other experiences during design development. They go on to tell of some of the great emergencies that have been shelved because of the fact that time showed a better approach, or that there were different designs.

I think one of the purposes of this Legislative Committee, and I am not too concerned with the criminal aspects, those are for the Attorney General, but what I am concerned about here, and what I think the Legislature ought to be concerned about, is whether there is a better approach to this whole problem. This is what we have to search for here. That is why I was pressing you about the life of these modular facilities; that is why I was pressing you about not only their life span, but about their efficacy and how they fit into a prison system. When you spend emergency money, you're spending money that in most cases is gone after the emergency disappears, and you don't have the permanent facility. I just hope, of course, that one of the things we can accomplish with this meeting is to clear that phase up.

I just want to point out that I think what we are doing in Camden, and if what you are saying about Newark with the permanent facilities is going to be true, it is just too bad that the timetable cannot be accelerated, but, of course, that is another question. In any event, I want to express my deep thanks to you. I think you have been very helpful, honest, direct and frank with us. I think we are all mindful of the kind of job you have, and that we are dealing with a very difficult situation. Thank you very much.

ASSEMBLYMAN HAYTAIAN: Mr. Chairman, prior to the Commissioner leaving, I just want to make sure I understand. Commissioner, are we saying that an emergency no longer exists? I can't believe that. I think an emergency still exists; I don't believe it is over. Now, I want to make sure you go away, in my mind, with that thought -- or am I mistaken?

COMMISSIONER FAUVER: No, you are not mistaken. The emergency in that sense does exist. My statement before directed to Assemblyman Pelly's question, "Am I at a point where I am going to declare to the Governor that there is an emergency and to institute the power?" -- was, "No, I am not at this point, in my judgment, ready to do that."

ASSEMBLYMAN HAYTAIAN: Thank you. Thank you, Mr. Chairman.

ASSEMBLYMAN PELLY: By the way, to clarify the record, I did not suggest that it be done at this point in time with only 840 backed

up. I had suggested it, as you well know, when there was a backup of about 1,500 or so in the county facilities.

ASSEMBLYMAN OTLOWSKI: Commissioner, thank you very much.

COMMISSIONER FAUVER: Thank you, Mr. Chairman.

ASSEMBLYMAN OTLOWSKI: May we have Mr. James G. Ton, Director, Division of Building and Construction, Department of the Treasury? Good morning. Some of the questions that were posed to the Commissioner were then withdrawn because we felt the Department of the Treasury would be able to give us more direct answers, more complete answers, particularly on the question of some of the decisions that were made. In talking about the emergency and how dire the emergency was, how fast you had to act, and whether all of the emergency measures were used, one of the questions that arose, I believe in everyone's mind, was, why did you shift from the regular bidding procedure to a procedure that, obviously now, has raised all these questions and, as a matter of fact, also caused the problem with the Attorney General? Why did you abandon the ordinary bidding procedure?

JAMES G. TON: The question of the technique by which we were going to contract for and build the Southern State II facilities came up in the latter part of June, or in July, if my memory serves me correctly. At that time, we had projected using conventional means, based on a very optimistic schedule, that is, everything falling perfectly into an April, 1984 completion date for the facilities.

ASSEMBLYMAN PELLY: When was that?

MR. TON: April, 1984.

ASSEMBLYMAN PELLY: When had you projected that?

MR. TON: This was in the latter part of June or beginning of July of this year, 1983. This was predicated on the fact that our architect/engineer, who was then preparing the plans and specifications for the Southern State II facilities, had a projected date for completion of the design documents by which we go out and bid, of sometime in September, using our regular procedures, preparing the plans and specifications for bidding and advertising over a thirty to forty-five day period. Then, once the bid comes in, we normally have about two weeks in which we have award procedures; these are normal

procedures for awarding a contract, which do take time. Therefore, we would not be able to award the contract using conventional procedures, based on that schedule, until sometime in October, the latter part of October. With a six-month construction schedule, and this is based on the experience we had with the Southern State I facilities, it would take a minimum of six months construction time to build the facilities, and we would end up with a date sometime in April, 1984.

I say this optimistically, because we were going to enter into the contract just when the weather was going to get bad, during the worst construction weather. We are talking about using five contractors on the site and trying to coordinate the efforts of their work.

ASSEMBLYMAN OTLOWSKI: In your opinion, how much of a delay would there have been with the conventional bidding?

MR. TON: Comparing the two techniques?

ASSEMBLYMAN OTLOWSKI: Yes, the two methods.

MR. TON: A minimum of nine weeks.

ASSEMBLYMAN OTLOWSKI: There would have been a delay of nine weeks?

MR. TON: If we went to the conventional way. Based on our look at the schedule, the completion date was sometime in April. By going the method we finally ended up with, we were able to come up with a completion date of February 1.

ASSEMBLYMAN OTLOWSKI: Are you saying there would merely be a delay of two months in the completion of the entire project if you had gone by way of the conventional method -- that the delay would be two months overall?

MR. TON: I would say more than two months; it would be a minimum of nine weeks.

ASSEMBLYMAN OTLOWSKI: How much more than two months? Would you say, three months?

MR. TON: I would say about three to four months, yes.

ASSEMBLYMAN OTLOWSKI: So, the maximum delay would have been anywhere from nine weeks to three months?

MR. TON: That is correct.

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on February 1. The problem we are now having with Costanza, and the changeover from Costanza to Shoemaker, was the result of a post-construction audit of the Mid-State facilities. I think they are two unrelated issues.

ASSEMBLYMAN OTLOWSKI: In my opinion, they are related issues, because if the first method had been used, you probably would have avoided the kind of pit you have fallen into.

MR. TON: If you are saying, if we had not decided to go the construction management route, had not even considered Costanza for a possible role in the construction of Southern State II, in that regard, yes, you are correct.

ASSEMBLYMAN OTLOWSKI: Isn't a three-month delay quite usual in construction? As a matter of fact, a three-month delay is a short-term delay in construction today, and yet, on the basis of that, you were willing to make the recommendation to abandon the bidding process and go by way of this method.

MR. TON: Well, I think the potential delays in the conventional method were, in fact, part of the reason why I recommended and made the decision to go with the construction manager, and waive the advertising. Using the conventional method, we would have been letting the contract in the middle of the winter. Going with the conventional method, we would have been letting the contract, as I mentioned, almost at the beginning of the winter, or the latter part of the fall. Going with the construction manager meant that we could have let the contract during the summer, when construction weather is best, where we could get in a good deal of the construction prior to the poor construction weather that we would have encountered by the conventional method, hence, higher assurance of completion and meeting the Department of Corrections' methods.

By waiving the conventional method of contracting, by open bidding, by law we must award the contract to the lowest bidder. You must have--

ASSEMBLYMAN PELLY: (interrupting) The lowest responsible bidder.

MR. TON: Pardon?

ASSEMBLYMAN PELLY: The lowest responsible bidder.

MR. TON: The lowest responsible bidder. You have five different contracts with the State, and we must coordinate these contracts. Our experience with that technique is that sometimes you might get a contractor in, who is not the best, causing problems and additional potential delays. By waiving the bidding statutes on the contract we now have with Shoemaker, which we had planned with Costanza, we stated that the construction manager would go out, using the DBC prequalification list, would still get three bids, but would select those contractors from the list the DBC maintains. He could select the better contractors we have on the list, thereby assuring--

ASSEMBLYMAN OTLOWSKI: Excuse me.

MR. TON: Yes, sir?

ASSEMBLYMAN OTLOWSKI: Costanza selected the people who were going to be bidding?

MR. TON: That's right.

ASSEMBLYMAN OTLOWSKI: And, Costanza is the man who now has the problem?

MR. TON: Well, Costanza was in the process of selecting the contractors we were going to have. Before I could sign a contract with Costanza, the State's relationship with Costanza was terminated, hence, Shoemaker was the one who selected the contractors.

ASSEMBLYMAN OTLOWSKI: Shoemaker was the one who finally selected the contractors?

MR. TON: That is correct, sir.

ASSEMBLYMAN OTLOWSKI: After Costanza had the problem?

MR. TON: Yes, after Costanza had the problem, and had to bow out.

ASSEMBLYMAN OTLOWSKI: Costanza was on the prequalified list, is that correct? You have a prequalified list of these managers?

MR. TON: Yes.

ASSEMBLYMAN OTLOWSKI: And, he was on the list?

MR. TON: Yes.

ASSEMBLYMAN OTLOWSKI: Did you ever have any problems with him before? Were there any indications that he had had problems before?

MR. TON: No, sir. One reason why he came up at the top of the five we considered, was because he had done outstanding jobs for the State previously.

ASSEMBLYMAN OTLOWSKI: In any event, Shoemaker then made the final decision?

MR. TON: Yes.

ASSEMBLYMAN OTLOWSKI: And, that job now -- where is that job in the total overall schedule?

MR. TON: They are about 45% complete with that job. I would say at this point they are ahead of schedule, and they will meet the State's requirement for an occupancy date of February 1.

ASSEMBLYMAN OTLOWSKI: How did the cost overruns develop in this project? If they are on schedule, the contractor, in your opinion, is reliable, and Shoemaker picked out all of the contractors, how did we arrive at the cost overrun? What is the cost overrun at the present time, when we are 40% completed?

MR. TON: Right now, we have one change order with regard to the construction.

ASSEMBLYMAN OTLOWSKI: And, that change order amounts to how much?

MR. TON: Eighty-eight thousand dollars.

ASSEMBLYMAN OTLOWSKI: Is that 40% completed?

MR. TON: Forty-five percent completed.

ASSEMBLYMAN OTLOWSKI: So, you still have another 55% to go?

MR. TON: That is correct.

ASSEMBLYMAN OTLOWSKI: What do you anticipate will happen with the 55%, when you had this experience with the 45%?

MR. TON: Well, normally on most construction projects, we put into a project about 3% to 5% for construction contingencies.

ASSEMBLYMAN OTLOWSKI: What was this project projected at originally?

MR. TON: It was projected originally, I believe as the Commissioner said, at something like \$12.8 million.

ASSEMBLYMAN PELLY: It was \$12.6 million.

ASSEMBLYMAN OTLOWSKI: Twelve point six? At the present time, the overrun there is about \$88,000?

MR. TON: Yes, over and above our original estimate.

ASSEMBLYMAN HAYTAIAN: Mr. Chairman, while you are asking these questions, because I think it is pertinent at this point when we talk about overruns, are we talking about the difference in construction firms, or are we talking about actual overruns?

ASSEMBLYMAN OTLOWSKI: I was going to come to that.

ASSEMBLYMAN HAYTAIAN: I don't understand what you mean by overruns.

ASSEMBLYMAN OTLOWSKI: I was going to come to that, because there is a difference between this project and the one at Fort Dix. Let me ask you this. The \$88,000 change order -- let's not call it an overrun, let's call it a change order, not to be charitable, but to be fair -- you are permitted out of that \$12 million-- The range runs what for change orders in your experience?

MR. TON: Well, as I said, normally on most construction projects we allow 3% to 5% for change orders.

ASSEMBLYMAN OTLOWSKI: Three to five percent?

MR. TON: Yes.

ASSEMBLYMAN OTLOWSKI: So, you do not see anything unusual here at this moment with this project?

MR. TON: Absolutely not; absolutely not.

ASSEMBLYMAN OTLOWSKI: All right. Let me ask you this question on the life of this modular project. You heard some of the testimony given here that the life span is fifteen years. You have heard me say it is seven years. The people who sell these modular things emphasize the fact that they are a temporary facility and, as a matter of fact, I think they list the life of these facilities from ten to fifteen years. The bond issue -- it is my understanding on this -- expects a life span of twenty-five years. How do you reconcile spending public monies on this kind of short life expectancy?

MR. TON: In part, in answer to your question, I think-- Now, this was before my time, so I am speaking from information provided to me by my staff. I was officially appointed to DBC on or about May 1 of this year. But, in coming up with what facilities were to be constructed at Southern State I, and subsequently at Southern

State II, there was a cost effectiveness study made, conducted by our architect, CUH2A, in which they looked at going conventional versus going with the modular or prefabricated units. I think to just abbreviate it, here is part of that report right here. I am sure this has been made available to the staff and to the members of the Committee. I'm sure what the decision revolved around was the matter of cost, time, and projected future needs of the Department of Corrections. Obviously, I cannot answer all of those aspects as to why the decision was made to go to prefabricated as opposed to conventionals. Some I can. As I understand it, in the course of that study, and in the decision-making process, those were the three factors that entered into the decision. You will note here that the cost per bed at the facility is quite low, something on the order of \$25,000 per bed. If you look at a permanent facility, it is costing us something on the order of \$65,000 or \$70,000 a bed. So, you could build these things twice; that is one factor.

The other factor is time. We are building these facilities, almost 1,000 beds, within a one-year period. Camden Prison is taking us something like two and a half years. Newark will take us close to three years. So, these are the factors, I think, that entered into the decision. Were they right or wrong? I think these are all judgment factors, but I think they have all been thrashed out and properly considered. Why we embarked on that course, I think, was the result of a dialogue among the DBC, the Department of Corrections and, as I understand it, also the Governor's office and members of the Legislature.

ASSEMBLYMAN HAYTAIAN: Mr. Chairman, I may be able to help out on this. I just did some multiplication here that may be of interest to the whole Committee. Based on \$35.00 a day, and I believe Commissioner Fauver can verify that it is \$35.00 a day to the counties, approximately, on 480 beds--

ASSEMBLYMAN PELLY: That is not accurate; it's \$42.95.

ASSEMBLYMAN HAYTAIAN: It may be higher, I'm sorry. That even better supports what I am going to give here. I did this on the basis of \$35.00 a day, 480 beds, and it comes out each day, whether it

be construction on a two and one-half year basis versus a six-month or nine-week delay, or a ninety-day delay, \$16,800 per day based on \$35.00 a day for 480 beds. If you multiply it by \$43.00 a day, which is what we are saying it is approximately, you are going to add on -- it's usually about \$25,000 per day lost, or given to different facilities such as the county facilities, in order to house those inmates, when they could be housed in a State facility. Naturally, there is cost in a State facility, so that is not totally saved, but a percentage of that would be saved.

ASSEMBLYMAN PELLY: Before you go off on that, Chuck, let me just make an observation. The cost of housing a State-sentenced inmate in a county facility is predicated upon the average cost for the State to house a State inmate in a State facility, that being \$42.95, and the contracts between the counties and the State are adjusted in accordance with, in fact, what it cost the State to keep a State prisoner in a State prison. So, the net result, that is, to claim that time is money predicated upon those costs, is zero, because the counties are receiving what it cost for an average State prisoner in a State prison for the State of New Jersey.

ASSEMBLYMAN HAYTAIAN: All right, Frank. If I may, Mr. Chairman, I don't want to make this a discussion between two members, but I think it is very pertinent. When I served on the county level, I was on the Department of Corrections in my county. We talked about a correctional facility that would be a facility for a number of counties. At that time, and that was just three years ago, we were talking about the Sussex County facility, the Morris County facility and the Warren County facility, because we were talking about a regional jail. Each of those counties brought in their costs for housing the county prisoners per day, and it was a low of \$21.00 a day versus a high of \$38.00 a day. So, whatever the State is paying today is over and above the per county cost, and I can verify that in our county. People can shake their heads all they want, but I'm telling you that as a Freeholder, I was responsible for that. So, you can't tell me, on the basis of what you have, unless you bring it into perspective with all the counties. I gave you three counties, the low

and the high. What the State is paying today is over and above that, because what you are doing, in essence, you're reducing your overhead in a facility that has unused beds by putting those beds into use. You reduce your overhead.

So, there is no one who can tell me personally, because of all the experience I've had in this.

ASSEMBLYMAN PELLY: Chuck, I am merely responding to the statement made that "time is money," and the sooner we can get our State prisoners out of the county facilities into the State prison system, the sooner the State is going to save a lot of dollars. That is not accurate, because the \$42.95, as I said earlier, represents the average cost. Is that accurate? (Assemblyman Pelly addresses unidentified person in the audience.)

FROM AUDIENCE: The average is somewhere between \$32.00 and \$35.00, versus \$42.95, which is the actual cost at Trenton, including any appropriations they receive during the year in order to operate that facility. That is only in Trenton.

ASSEMBLYMAN PELLY: And, you've included everything, including amortization?

FROM AUDIENCE: The actual cost at that facility in comparison to what it cost to operate a county jail -- the comparison is that it is \$42.95 for Trenton and it's less at Leesburg and Rahway.

ASSEMBLYMAN PELLY: What does it cost at the stockade at Fort Dix?

FROM AUDIENCE: We think it is somewhere between \$8.00 and \$10.00 a day; about \$10,000 per bed is what that came out to.

ASSEMBLYMAN PELLY: No, what is the average per diem cost?

FROM AUDIENCE: Oh, the average per diem is somewhere in the neighborhood of an \$8.00 to \$10.00 difference between what it cost us to--

ASSEMBLYMAN PELLY: I understand that.

FROM AUDIENCE: (Unable to transcribe comments here; two or three individuals speaking at once, and not near a microphone.)

ASSEMBLYMAN PELLY: That is your highest, isn't it?

FROM AUDIENCE: No, I don't think so. Clinton would probably be higher.

ASSEMBLYMAN PELLY: Clinton? Okay.

ASSEMBLYMAN OTLOWSKI: Can we get back on the subject?

ASSEMBLYMAN HAYTAIAN: I'm sorry, Mr. Chairman. I just thought it was pertinent, because we should talk dollars when we start talking about delays.

ASSEMBLYMAN OTLOWSKI: Again, in speaking of dollars, we're talking about an expenditure here of \$12 million. Is that correct?

MR. TON: Well, the current projected cost is higher than the \$12.6.

ASSEMBLYMAN OTLOWSKI: What is the current projected cost?

MR. TON: The current projected cost of the Southern State II facility -- these are construction costs--

ASSEMBLYMAN OTLOWSKI: Is it \$12 million on this one we are talking about?

MR. TON: No. On Southern State II, the projected construction cost is something like \$14.5 million.

ASSEMBLYMAN OTLOWSKI: We're talking about \$14.5 million.

MR. TON: That is correct.

ASSEMBLYMAN OTLOWSKI: What is the projection on the stockade at Fort Dix?

MR. TON: Do you mean as far as its cost?

ASSEMBLYMAN OTLOWSKI: For the three-year lease -- the cost for the change, the rehabilitation?

MR. TON: The construction cost for rehabilitation at Southern State II -- this is still subject to audit, but it is in the neighborhood of \$5.2 million.

ASSEMBLYMAN OTLOWSKI: Oh, \$5.2 million. What we are talking about here -- we're not talking about peanuts. It seems to me we're talking close to \$20 million for two temporary facilities. We're talking about the modulars, which are temporary facilities, running at \$15 million, and we're talking about Fort Dix, \$5.2 million, which is a three-year lease. Let me ask you this. During this whole process, and again speaking about emergencies, and speaking about the relationship of money to emergencies -- during this period, and you know, I am not going to fault anyone because it may be hindsight, and the fact of the

matter is I have absolute contempt for anyone who imposes hindsight on me -- but, during this period, has there been a decline in the people who have been housed in county jails?

MR. TON: A decline in the number of people in county jails?

ASSEMBLYMAN OTLOWSKI: You don't have the answer to that?

FROM AUDIENCE: State or county-sentenced?

ASSEMBLYMAN OTLOWSKI: The State people.

FROM AUDIENCE: State people? Well, it has been dropping down because of the increase in beds.

ASSEMBLYMAN OTLOWSKI: Is there a decrease of State prisoners in the county institutions?

FROM AUDIENCE: There is.

ASSEMBLYMAN OTLOWSKI: The answer is, "There is." And, Mr. Ton, your answer was that you didn't know.

MR. TON: I didn't know.

ASSEMBLYMAN OTLOWSKI: So, on the basis of your lack of knowledge on the fact that State prisoners are being reduced in number now in county institutions, we're talking about the difference in permanent institutions and temporary institutions, and the cost factors in those. I am just wondering whether or not we are using good judgment here in the kind of money we are expending for temporary facilities, and whether or not we still have the possibility of using the county facilities by contract to avoid this kind of an expenditure, and put this money into the permanent expansion of the prison system.

Now, I ask you that question because you are going to be faced with this repeatedly.

MR. TON: I think that is a broad question, which I believe is a collective one which the State must address, as opposed to me, as the construction agency for the State. I must respond, be it to the Department of Corrections or any other agency, as a construction agency of the State -- I must respond to the needs of that agency, be it the Department of Corrections, or any other department within State government. To decide whether it is better to put prisoners in temporary facilities -- whether it is better to put them in county facilities versus State facilities, I think that is a much broader

question, which I am not prepared to answer. I think that requires the answers of collective decision making, and at least the consideration of the Legislature, as well as the Executive Branch. I mean, I think that is a much broader question that I am prepared to answer at this time, Mr. Chairman.

ASSEMBLYMAN OTLOWSKI: Let me ask you this question. On the basis of the fact that the Fort Dix project is a three-year lease, is the cost at the present time \$5.2 million?

MR. TON: Something like \$5.2 million.

ASSEMBLYMAN OTLOWSKI: Is that completed now, or do you foresee more money being spent there?

MR. TON: I do not see any more money being spent than \$5.2 million.

ASSEMBLYMAN OTLOWSKI: In your opinion, the \$5.2 million is the end of the road there?

MR. TON: It represents an upper limit on what the State expects to spend.

ASSEMBLYMAN OTLOWSKI: It represents the ultimate.

MR. TON: Right.

ASSEMBLYMAN OTLOWSKI: That was projected at what figure originally?

MR. TON: The original estimate when we went into that project was based on a base contract of \$3.9 million.

ASSEMBLYMAN OTLOWSKI: A base contract of \$3.9 million. Let me ask you this question. You are not talking about change orders here; now you are talking about an overrun.

MR. TON: As mentioned by the Commissioner earlier, the Mid-State facility was built on a time and materials project. It was not--

ASSEMBLYMAN OTLOWSKI: Excuse me. Just for purposes of identification -- Mid-State, what institution are we talking about?

MR. TON: We are talking about Fort Dix.

ASSEMBLYMAN OTLOWSKI: All right.

MR. TON: We're still talking about Fort Dix. That was built on time and materials. It was a renovation project. In other words,

we merely had estimates, really a feasibility study. We had not even made an engineering study. We went in and said--

ASSEMBLYMAN OTLOWSKI: (interrupting) That was on time and materials?

MR. TON: Time and materials, because of the nature of the project, meaning renovation, and the urgency with getting that done in the shortest possible time.

ASSEMBLYMAN OTLOWSKI: And, who made the decision that it should be on time and materials?

MR. TON: Director DiDonata, who was the Director of DBC at that time.

ASSEMBLYMAN OTLOWSKI: There is a great discrepancy in the figures here. Let me just step back a moment. Where did Chuck go, because he was just defending this a moment ago, and I want him to hear this. We'll hold that back until he returns.

Let's go on with Fort Dix. You're saying that the ultimate expenditure on Fort Dix will be \$5.2 million.

MR. TON: That is correct.

ASSEMBLYMAN OTLOWSKI: I asked you the question, who made the decision that that be on time and materials, and you said the decision was made above your level.

MR. TON: No, not above my level; it was made by my predecessor twice removed, I was told by one of my staff who was here then.

ASSEMBLYMAN OTLOWSKI: By affinity or consequence twice removed. (laughter)

MR. TON: It was made by Director DiDonata, who was at that time Director of the Division of Building and Construction.

ASSEMBLYMAN OTLOWSKI: Is this project under investigation by the Attorney General?

MR. TON: The Mid-State project is, yes sir.

ASSEMBLYMAN OTLOWSKI: And, the Attorney General has subpoenaed all the records on this project. Is that correct?

MR. TON: That is correct.

ASSEMBLYMAN OTLOWSKI: The time and material decision was made by your predecessor?

MR. TON: Yes.

ASSEMBLYMAN OTLOWSKI: Who were those predecessors by name?

MR. TON: Director DiDonata was the one who made the decision to go with the time and materials contract to renovate the Mid-State facility.

ASSEMBLYMAN OTLOWSKI: Where is he now?

MR. TON: He is now working for a firm.

ASSEMBLYMAN OTLOWSKI: He is in private employment?

MR. TON: Yes, private employment. He is no longer with the State.

ASSEMBLYMAN OTLOWSKI: With the overrun of \$1.3 million -- what is the rationale and the justification for that kind of overrun, and let's just forget the fact that the Attorney General is in this. But, from your point of view, were you at any time during this period recommending the increased expenditures which exceeded the original estimate of \$3.9 million? Were you recommending any of these?

MR. TON: I personally was not recommending them. Let me answer that in general, and then I do have a member of my staff who was here at the time of construction, who could respond to any specific questions you may have.

Begging your pardon, we have not, within DBC, characterized the difference between \$3.9 million and \$5.2 million as being an overrun. We feel that is a time and materials project, it's a renovation project and, therefore, we do not characterize it as such.

ASSEMBLYMAN OTLOWSKI: Excuse me, I would like to bring this into perspective because, you know, the wonderful thing about government is that it has a language of its own. Let me just ask you this question now. If you estimate \$3.9 million on time and materials, and you have spent \$5.2 million, Noah Webster would say that was an overrun, wouldn't he?

MR. TON: Yes, sir, but let me explain it this way. This job, when it was started -- you were all here and I wasn't -- but, I understand it was a high priority project and had to be done in a very

short time. Time was of the essence. On a construction project, what is normally done is, we send in an engineer to make exhaustive engineering studies to find out what needs to be done. This would have required someone to go in there, take a look, and survey all the facilities, i.e., the electric, the plumbing, the air conditioning, the structure, all these conditions, to find out the "as is" situation. From that, we would then determine what upgrading was necessary to meet the code requirements and the Department of Corrections' security requirements, and to fix up those facilities to meet State standards, as well as Army standards, because the Army was then the owner of the facilities.

Because of the urgency, those preliminary steps were not taken; a feasibility study was undertaken. Basically, what did this consist of? As I understand it, the contractor, Costanza, who was involved in that project, called in various trades and said, "Okay, take a look. Here is what we would like to do. What is your estimate? There will be no detail breaking into the walls; survey the exact conditions of the various systems." This was not done, but based upon this walk-through, a very preliminary feasibility study, and that is what was done, we came up with \$3.9 million as the cost of that project.

As you got into the project, you broke into a wall, you looked at the systems -- hey, it hasn't been used in seven years, and there was a lot of deterioration. These things resulted in the cost increases you see, the difference between the \$3.9 million and the \$5.2 million. As I understand it, there were some negotiations between the Department of Corrections and the Army to use their medical facilities. Those negotiations fell through; therefore, we had to add certain facilities to Mid-State that were not originally anticipated. These were the kinds of things which contributed to what I call, "cost growth," not overruns, in the construction of the Mid-State facilities. If you want us to address the specific change, I can.

ASSEMBLYMAN OTLOWSKI: Isn't it fair to say we are dealing with an old building when we are dealing with the Fort Dix building?

MR. TON: That's right.

ASSEMBLYMAN OTLOWSKI: From your point of view with construction, because that is your business, old construction was well done. The masonry was very, very solid. Every time you look at the rehabilitation of an old building, you have to consider how well it was constructed, how well the floors were constructed, and how well the walls were constructed. This is something you have to consider immediately. Wasn't this considered in the Fort Dix project, the fact that you were dealing with an old building that was well constructed, and that any deviation from that construction would run into money? Was that considered?

MR. TON: It certainly was, but, as I said, until you get into an old system, like for instance the piping, which had not been used for seven years, you just do not know what that piping looks like. You don't know how much of it has deteriorated, how many valves need to be replaced, how much pipe needs to be replaced. You do not know the extent of the wiring, or how much of it has to be replaced; or the air conditioning systems, or the HVAC systems, how much of those systems needs to be replaced. How much because the motors were not run for seven years? Is it going to work now as you turn it on, or do you have to replace it? You really have to make, I think, broad guesstimates and estimates as to what it is going to take to renovate those systems to bring them up to standard and make them operational.

I think that is what we are talking about in this particular case. Structural, yes; I do think you look at the structural conditions.

ASSEMBLYMAN OTLOWSKI: Are you telling this Committee, notwithstanding the fact that the Attorney General is into it, that there was nothing unusual in what you call "cost growth," and what I call an "overrun" -- that there is nothing unusual about this?

MR. TON: I said, in view of the circumstances under which this project was conceived and built, I do not see any unusual nature with regard to the difference in the original estimate and the final costs.

ASSEMBLYMAN OTLOWSKI: Again, we're talking about the expenditure of money for a temporary facility. You have a three-year lease there.

MR. TON: I recognize that, but after all, when one considers what we were getting for the money, I mean, basically it cost something like \$10,000 per bed to get that facility to relieve a very, very serious situation.

ASSEMBLYMAN OTLOWSKI: But, again, when you are talking \$10,000 for a bed, you're talking \$10,000 for a bed for three years. It is going to disappear after that. So, that figure is not correct. Again, we're spending millions of dollars here and, really, are we taking the kind of look at those expenditures we should? Are we taking a look at the alternatives? I know the pressure, particularly about the word "emergency." I am familiar with that. But, isn't this something that requires a little better approach, more thought?

MR. TON: Well, addressing several of the points you made, I think we all knew when we went into Mid-State it would be temporary. I think it is a matter of, did we get our money's worth for the money we spent on the facility? We all knew when we went into Mid-State that it was an Army facility. They told us, they told the State, "You can only have it for 'X' number of years." We accepted that; therefore, the fact that it is temporary or not temporary for three years, I think, is not really an issue. I think the issue is, are we getting our money's worth for the \$5.2 million we are going to spend on the facility? Obviously, from my perspective, we had to bring these facilities up to meet Army standards, Department of Corrections' security standards, and the building code standards imposed by the State as far as life safety, fire, and what have you, and we believe that the \$5.2 million was necessary, was required to provide the State with a useable facility for the three years they will occupy it.

ASSEMBLYMAN OTLOWSKI: And, you're saying this, not withstanding the fact that you bought something that only has a life of three years. This is what you bought. Let me just step back a moment. On Leesburg, you mentioned the fact, and Assemblyman Haytaian pointed out and I quickly agreed, that \$88,000 was not an overrun, it was a legitimate change order and, as a matter of fact, a minor change order.

I have just been told that while your estimate on that Leesburg project ran \$12 million, the figures are coming in and it looks like a \$16 million project.

MR. TON: Okay. Mr. Forker informed me that an eighty-bed unit which was originally part of the first facility, is now going to be incorporated as part of this facility. I did not add those costs to the numbers I gave you. It is going to be something like \$16 million.

ASSEMBLYMAN OTLOWSKI: So, it's not \$12 million, it's \$16 million?

MR. TON: That is correct; it is going to be \$16 million.

ASSEMBLYMAN OTLOWSKI: How did it happen that we went from \$12 million to \$16 million?

MR. TON: I think a lot of it has to do with defining what is going to be in the facility. I think if you compare what we thought we were going to get in the facility at \$12.6 million, and what we are going to be putting into the facility at \$16 million, you will see that it is a lot different.

ASSEMBLYMAN HAYTAIAN: Wait a minute, Mr. Chairman. The \$12.6 million was for how many beds?

MR. TON: It was for 448 beds.

ASSEMBLYMAN HAYTAIAN: How many beds are we talking about for \$16 million?

MR. TON: That would be 480, plus eighty -- 560 beds.

ASSEMBLYMAN HAYTAIAN: There is a difference in beds, so there is a difference in cost.

MR. TON: Yes, sir, that's right.

ASSEMBLYMAN HAYTAIAN: That is not a cost overrun.

MR. TON: That is what I am trying to say. You have to look at what the project was as we envisioned it for the \$12.6 million--

ASSEMBLYMAN OTLOWSKI: The project originally was how many beds?

MR. TON: Four hundred and forty-eight.

ASSEMBLYMAN OTLOWSKI: Four hundred and forty-eight.

MR. TON: That was the amount of beds that the \$12.6 million was predicated upon.

ASSEMBLYMAN OTLOWSKI: The project now is designed for how many beds?

MR. TON: It would be 480, plus eighty, or 560 beds.

ASSEMBLYMAN OTLOWSKI: Five hundred and sixty.

ASSEMBLYMAN HAYTAIAN: That justifies it right there, Mr. Chairman. The difference between the \$12.6 million and the \$16 million is approximately \$4 million.

ASSEMBLYMAN OTLOWSKI: Excuse me. I just can't accept that that justifies the expenditure of \$16 million for a temporary solution, when it is argued in some cases that the life is seven years, and in other cases ten years, and when the contractor himself says that the life of that project is from ten to fifteen years. We're talking about spending that kind of money, again, for a temporary facility. So, I just wanted to bring that into focus.

MR. TON: Since you mention that point, I firmly believe that these facilities will last a minimum of fifteen years.

ASSEMBLYMAN HAYTAIAN: That's right.

MR. TON: We have designed the utility systems to last that period of time. If you have occasion to go down to Leesburg, and I invite you down, sir, to visit them -- and I'm sure the Commissioner will also invite you down there -- if you see the construction, the quality of those trailers, you will be convinced, as I am convinced, that the life of those facilities will be a minimum of fifteen years.

ASSEMBLYMAN OTLOWSKI: The other alternative you had, while still staying within the modular system -- what difference did that project in money, and what difference did that project in life expectancy?

MR. TON: Could you repeat the question, please?

ASSEMBLYMAN OTLOWSKI: You had another proposal for a model with a greater life expectancy, a more durable life expectancy. What was the difference in price?

MR. TON: I am not prepared to address that issue; I have not gone through that study. I have a representative of CUH2A here, the architect who participated. Do you remember that number?

UNIDENTIFIED CUH2A REPRESENTATIVE: The study was predicated on one eighty-man housing unit. The difference in cost, from a projected cost that Arthur Industries supplied us for an eighty-man prefabricated unit, was, I believe--

ASSEMBLYMAN OTLOWSKI: Wait a minute; we'll get that from you when you get up here. Let's just keep this orderly. We'll get that later.

MR. TON: I think it was about 10% to 15% higher for conventional construction, as opposed to the--

ASSEMBLYMAN OTLOWSKI: (interrupting) How much higher?

MR. TON: About 10% to 15% higher, as I remember it.

UNIDENTIFIED CUH2A REPRESENTATIVE: It was 10%.

MR. TON: Ten percent higher? It was 10% higher for the conventional construction, versus the--

ASSEMBLYMAN OTLOWSKI: And, with a greater life expectancy?

MR. TON: Yes, a greater life expectancy.

ASSEMBLYMAN OTLOWSKI: And yet you made the decision to take this?

MR. TON: As I mentioned, I think the decision that was made to go to prefabs as opposed to conventionals, hinged around several factors. One was cost, which we are discussing now. Another was time, having the facilities available much sooner. We're having basically 1,000 beds, almost 1,000 beds, that will be on line within a one-year period. Going the conventional method, it would have taken much, much longer.

ASSEMBLYMAN OTLOWSKI: How much longer?

ASSEMBLYMAN HAYTAIAN: Overcrowding was important here too.

MR. TON: Right.

ASSEMBLYMAN OTLOWSKI: Yes, but how much longer?

MR. TON: Going conventional, we estimated it would have taken probably between one and a half and two and a half years longer to get a facility of this size.

ASSEMBLYMAN OTLOWSKI: But, how about the other modular system that was being considered? There was another modular system too that was being considered, wasn't there, that had a longer life expectancy?

MR. TON: No.

ASSEMBLYMAN OTLOWSKI: There was not? The only things you considered then were the temporary one and the permanent one?

MR. TON: Yes.

ASSEMBLYMAN OTLOWSKI: The permanent one would have cost you 10% or 15% more, and it would have taken you a year and a half or longer to get--

MR. TON: A year and a half to two and a half years longer.

ASSEMBLYMAN OTLOWSKI: All right. Assemblyman Pelly, do you have any questions?

ASSEMBLYMAN PELLY: I just have one or two brief questions, and they deal with the modular units, once again, at Southern State I and II. Who was the architect for Southern State I?

MR. TON: It was the same architect for both units, CUH2A.

ASSEMBLYMAN PELLY: Both units?

MR. TON: Both units, CUH2A.

ASSEMBLYMAN PELLY: I see. What were the architectural fees for I and II?

MR. TON: A little over \$400,000 for each facility.

ASSEMBLYMAN HAYTAIAN: Which is approximately what percent, if I may ask, of the total cost?

MR. TON: Three percent, I think.

ASSEMBLYMAN HAYTAIAN: Three percent.

UNIDENTIFIED CUH2A REPRESENTATIVE: Two and a half to three percent.

ASSEMBLYMAN HAYTAIAN: Two and a half to three percent--

ASSEMBLYMAN OTLOWSKI: Why don't we ask the architect that question when he gets here; we can get the percentage from him.

ASSEMBLYMAN HAYTAIAN: Thank you.

ASSEMBLYMAN OTLOWSKI: Is there anything else?

ASSEMBLYMAN HAYTAIAN: I'm sorry, I just wanted to get an idea, because I'm sure Assemblyman Pelly is thinking the way I think, and that is, how much is it going to cost us to get a design, versus the total cost of the projects? One of the areas I think constantly comes up, and I think it should be stated over and over again, is the

difference from the original cost of \$12.6 million on II versus \$16 million. But, the total cost difference here is because we went from 448 beds to 560 beds. There was also the cost that we talked about in these questions here, as to the \$130,000 and why that was put in. There it was a matter of bringing a firm in at a later time and asking that firm to come in at an earlier date, because originally, if I understand you correctly, you said April would be the target date, and now we're talking about February 1, 1984, which is approximately nine weeks shorter. The contractor who was chosen at \$130,000 more was brought in approximately a month later than when the original contract was given out. So, if you put all these numbers together, I think logically we could come down to a situation where, if there is a question, it is a question of principle in the construction area, meaning prefab versus permanent. I have seen some Army barracks that were considered prefab temporary which are still being used for housing today, and they are probably one of the strongest types of construction we have, versus some of our contractors who are doing work today and some of the time and materials that are being put into effect.

So, I think when we start talking about permanent versus temporary, prefab versus conventional, I have seen, especially in the areas I have looked at -- as I indicated earlier, I am an engineer -- I think I have a pretty intimate knowledge of the kind of construction that will and has taken place. I think all we have to do possibly is look at some of the experiences we have had in our Justice Complex, where that is permanent, and with all of the problems associated with that, versus what we are talking about, which is getting inmates out of a county system on an emergency basis so we can get a life span of fifteen years plus, because I do not believe it is seven and a half years, personally. It is my own private opinion that if it is anything, it is going to be a minimum of fifteen years, because I have seen, as I indicated, prefabs better than permanent construction.

Thank you, Mr. Chairman. I appreciate the time.

ASSEMBLYMAN OTLOWSKI: Thank you very, very much. Did we get the name of your predecessor for the record?

MR. TON: It was Mr. DiDonata who made the decision on Mid-State.

ASSEMBLYMAN OTLOWSKI: Yes, thank you very much. May we have Mr. Kenneth Blair? Mr. Blair, you're the Group Supervisor, Division of Building and Construction, Department of the Treasury?

K E N N E T H B L A I R: Yes, sir.

ASSEMBLYMAN OTLOWSKI: What was your role in both of these projects, Fort Dix and Leesburg?

MR. BLAIR: My overall responsibility at the present time is for all Corrections' projects, design through construction. I came to the DBC in July, 1982, so my firsthand knowledge begins at that point in time. I have very little knowledge about Fort Dix; however, I have been involved with the two Southern State projects to a considerable extent.

ASSEMBLYMAN OTLOWSKI: Isn't it a fact that many people in your position, a position of expertise in this field, feel that prefabricated facilities are the quickest and most expensive method of approaching this problem? Would you say that is a fair question?

MR. BLAIR: On the time factor, I would agree with you. Regarding the most expensive per se, it depends on the situation. Are you making specific reference to Leesburg?

ASSEMBLYMAN OTLOWSKI: Well, no. For example, I'm talking about, you know, spending \$5 million for a three-year lease, just for the rehabilitation. I'm talking about Leesburg, spending \$16 million for the life of a project that is debatable. We hear the differences of opinion. On that basis, a temporary project, indeed, is an expensive project.

MR. BLAIR: To some extent, you are correct. The word "temporary," of course, has different definitions in different people's minds. As a point of clarification, I think it might be advisable to say that the facilities at Leesburg, although they are prefabricated as such, the site work, the fencing, the roads and everything else are, in fact, permanent, and represent perhaps 60% or 70% of the cost of the project.

ASSEMBLYMAN OTLOWSKI: What do the buildings represent in cost, how much money?

MR. BLAIR: On both projects?

ASSEMBLYMAN OTLOWSKI: No, take one, Leesburg.

MR. BLAIR: Southern State I or Southern State II? I'll take both. Southern State I -- the contract for the prefabricated modular units was \$5.1 million, the base contract. The base contract for the site work on that particular project was \$5,600,000, I believe. Those were base contract amounts. On the second facility--

ASSEMBLYMAN OTLOWSKI: (interrupting) And the site work included -- what did you have to do at the site that you got into that kind of money?

MR. BLAIR: The site work essentially included everything but the prefabricated modules, that is, all the roads, the very elaborate fence system, several preengineered buildings, which are different than the prefabricated buildings, the utility systems, electrical service -- a wide variety of all the utilities.

ASSEMBLYMAN OTLOWSKI: Yes, but if you were going into permanent construction, your site costs would still have been the same, and you would have had a permanent building. This is what I mean about these temporary buildings being very expensive.

MR. BLAIR: Well, I would tend to say also that I agree with the minimum of fifteen years, and what happens fifteen years from now may be an investment in monies to replace the floor tile, one or two mechanical units, and so forth. So, I do not totally agree with you that it was the wrong way to go, if that is what you're saying.

ASSEMBLYMAN OTLOWSKI: The delay of a year, or thereabouts, for permanent facilities didn't mean anything to you? Did you feel that this was the better way to go?

MR. BLAIR: I have a personal opinion on it, but, frankly, the Division of Building and Construction makes recommendations insofar as cost, time and technical issues on such matters and, although we certainly give our opinions on it, I believe once we have given those alternatives, others in State government make the decision as to whether or not something is an emergency, or must be built within certain time constraints. We gave the various options for both projects. Take for example the second one. We ran out the time options and spoke to many individuals about it, and the conclusion was reached that because of the urgency of the February 1 date, that had precedence over other reasons.

ASSEMBLYMAN OTLOWSKI: What was the magic figure about February 1, or why was that a magic date?

MR. BLAIR: Other than the fact that that number came from the Department of Corrections, I have no personal knowledge about that.

ASSEMBLYMAN OTLOWSKI: Assemblyman Pelly?

ASSEMBLYMAN PELLY: I have no further questions.

ASSEMBLYMAN OTLOWSKI: Assemblyman Haytaian?

ASSEMBLYMAN HAYTAIAN: I have no questions.

ASSEMBLYMAN OTLOWSKI: Thank you very, very much. Is Karen Spinner here? (affirmative response) Karen, you're the Director of Citizen Action, New Jersey Association on Corrections?

K A R E N S P I N N E R (from audience): That's right. Mr. Weeks is with me, and he is going to speak. He is the Interim Executive Director, New Jersey Association on Corrections.

ASSEMBLYMAN OTLOWSKI: What kind of a contribution do you have to make to this Committee that will be helpful? How much money are you going to save us?

T I M O T H Y W E E K S (from audience): How much money?

ASSEMBLYMAN OTLOWSKI: Yes.

MR. WEEKS: If I were to make some suggestions, I might be able to save some money. We have prepared a statement, if you don't mind.

ASSEMBLYMAN OTLOWSKI: Let me just ask you this, please. Would you identify yourselves for the record?

MR. WEEKS: I am Timothy Weeks, Interim Executive Director of the New Jersey Association on Corrections. To my right is Karen Spinner, who is Director of Policy and Public Education.

ASSEMBLYMAN OTLOWSKI: You've heard the testimony that has been given here this morning. Do you feel you have some testimony to offer that would be helpful to this Committee, and to the Legislature in their overall view of the construction of prison facilities?

MR. WEEKS: Yes, we do. In terms of the overall view of the construction of prison facilities, well, I'll make my comments brief and sort of go over with the Committee what we have in these printed comments.

Basically, in the past, the Association has taken somewhat of a negative view or position regarding the building of additional prison sites. Last year, after the Governor's overcrowding plan was introduced, we moderated our stance somewhat and supported the recommendations that the Governor made. One of the things we found is that since 1975, the State of New Jersey has acquired almost 2,000 new cells. These resulted, of course, from the modification of the Fort Dix stockade and, also, the prefabricated facilities, which, of course, have an average life span, we hear now, of approximately five to fifteen years.

One of the things we have done is to take a look at the Department of Corrections' utilization of the construction bond issue. One thing we feel is that there has been a lack of clear direction concerning some of the long-term goals. In 1976, the voters authorized a \$41.5 million bond issue, which originally included \$30.2 million for a new prison. In 1977, part of that money was diverted to pay for Phase I of improvements at Trenton State Prison. At the same time, the new prison, of course, was still on the drawing board.

In 1978, the voters were asked to approve another bond issue for \$30 million. This time the major portion of the money, \$23 million, was allocated to Phase II at Trenton State Prison. In 1979, plans for the new prison were postponed, and all available monies were directed to the Trenton project. Again, in 1980, a construction bond issue for a new prison was proposed, and in 1982, because of the overcrowding crisis, the public again said, "Go ahead. Let's build a new prison."

It would be nice if we could point to the Department of Corrections and put the finger of blame on them for the sad situation that corrections face in New Jersey. However, that Department is just one actor in this continuing drama affecting the lives of over 10,000 State prisoners, plus over 5,000 county prisoners, whose conditions are made worse by the presence of nearly 1,000 State prisoners housed in the jails.

Two of New Jersey's prisons are antiquated, having been built prior to the turn of the century. I think if any of us have visited

the Rahway Prison or the Trenton Prison, we have seen the antiquatedness at both of these facilities.

One of the factors which has contributed to the overruns in construction, of course, has been the inability to choose a site for a new prison in a timely fashion. We know about the political considerations, and the fact that the prison which went into Camden was due to what we can basically characterize as political dealing, that is, helping Camden out of its physical crisis in exchange for the prison.

As I said, the blame for the crisis in corrections must be shared. I think there has been, throughout the years, a lack of comprehensive planning. Public officials have tended to cater to the public's clamor for increased protection from crime, and have enacted a tough criminal code which has filled the jails and prisons, but then they failed to back that up by failing to provide additional space.

ASSEMBLYMAN OTLOWSKI: Excuse me. How much total money was put into bond issues for prisons? You had the figures there -- the total amount.

MR. WEEKS: Okay. In 1976, the voters authorized \$41.5 million in bonds. In 1978, \$30 million was authorized, and in 1982, approximately \$61 million was authorized.

ASSEMBLYMAN OTLOWSKI: One hundred and thirty-one million dollars?

MR. WEEKS: It's slightly more than that, I think.

ASSEMBLYMAN OTLOWSKI: Is it more than that? Don't you have the total there?

MR. WEEKS: I do not have the total.

ASSEMBLYMAN OTLOWSKI: Okay. That began in what year -- that \$41 million?

MR. WEEKS: That began in 1976.

ASSEMBLYMAN OTLOWSKI: In 1976. In 1982, you said the total was about \$131 million?

MR. WEEKS: Yes, counting the various bond issues. It was \$41 million in 1976, \$30 million in 1978, and approximately \$61 million in 1982.

ASSEMBLYMAN OTLOWSKI: To sum up your recommendation, your recommendation is what?

MR. WEEKS: Basically, we are suggesting that we look to some of the alternatives as recommended in the Governor's plan. Of course, we know that the life expectancy of the prefabs is possibly five to fifteen years. If we look at some of the recommendations and put into place some of the alternatives, along with a possible revision of the criminal code, that may give us the opportunity to study the effectiveness of some of those, thereby reducing the overall prison population. I think the Governor--

ASSEMBLYMAN OTLOWSKI: (interrupting) What would you do, have these people out on the street then? Would you reduce the efficacy of the criminal code?

MR. WEEKS: Well, when I say reduce the efficacy of the criminal code, what I am suggesting as a possibility is putting back in the discretion that the judges might have, and in some respect not having to face the situation now where nearly 40% of those sentenced to prison are--

ASSEMBLYMAN OTLOWSKI: (interrupting) Physically, what are you suggesting?

MR. WEEKS: Physically -- moving into expanded usage of halfway houses. The expanded use of community-based prerelease services and, in some respects, reducing the overall prison population, freeing up beds that are now being used, so that those who are newly coming into the system can use those beds without the construction of new.

ASSEMBLYMAN OTLOWSKI: Wouldn't that produce a revolving door? Wouldn't that system produce a revolving door?

MR. WEEKS: I suggest not, because studies have shown basically that the community-based programs, as well as the prerelease programs tend to reduce significantly those numbers of people returning to prison, in the overall sense.

ASSEMBLYMAN OTLOWSKI: All right, thank you very, very much. Assemblyman Pelly, do you have any questions?

ASSEMBLYMAN PELLY: I have no questions.

ASSEMBLYMAN OTLOWSKI: Assemblyman Haytaian?

ASSEMBLYMAN HAYTAIAN: Thank you, Mr. Chairman. Mr. Weeks, I would agree with one of your statements, and that is, that there was a major problem, and that Governor Kean's overcrowding plan was but the first step in resolving the crisis because he, in essence, inherited that crisis. I think we all understand that. But, I tend to disagree with your alternatives. That is really an area that I just cannot agree with, and please don't become enraged with "do-gooders" in our community, who think that there are alternatives. There are alternatives in certain cases. But, my experience, and I think the experience of the public at large, is that if we do not incarcerate these people, we are going to have continual problems. It is great to say, "We have alternatives," but I guess the question I would ask you is, can you prove your alternatives will be satisfactory to the public safety and welfare?

MR. WEEKS: Let me be very clear--

ASSEMBLYMAN HAYTAIAN: (interrupting) One of the things I heard recently on a radio talk program, and I am very involved in those things because I have one of my own, is that there are a lot of people who talk about capital punishment as not being a deterrent, but one of the persons, and I have forgotten whether it was James Lofton or someone along that line, a member of a very conservative element of our society, indicated that he knows for sure that when a person who murders 150 people is put to death, there will be a situation where that person will never commit murder again. Therefore, at least we have prevented one person, in the future, from committing those additional murders he may have committed if he were out after serving "X" number of years.

So, I guess the question I have is, do we have alternatives that have proved worthwhile in our community?

MR. WEEKS: Let me be very clear at the outset. We are not advocating that no one be incarcerated. Let me be very clear about that. We feel that in many situations there is a need to separate certain individuals from society, and the best way to do this, I guess, as proven throughout history, is through imprisonment. What we are looking at is a limitation on the growth of the prison population, that is, the number of needed bed spaces, through alternatives.

One of the problems we tend to have is, as Assemblyman Otlowski referred to, the revolving door, individuals going in and then coming out. For various reasons they return to prison, generally because they do not have a good transition from the prison population into society. We feel that the alternative we are suggesting here, and also as someone suggested in the Governor's report, is to provide that transition. If this means only 40% do not return, that is 40% that we do not have to worry about taking care of in the future. What we are suggesting is that with time, by increasing the number of people who are coming out of prison whom these services are available to, we will have the opportunity to provide these supportive services. For example, the State of Pennsylvania provides nearly 400 beds for community-based prerelease services, whereas the State of New Jersey provides less than 200. That means that a number of people who are potentially eligible for these types of services are not receiving them. Therefore, that transition is not provided; the door is opened and they are out, but when do they come back?

ASSEMBLYMAN HAYTAIAN: All right. Would you agree -- and I agree -- that the penal code should not be revised, as the Chairman indicated, because I believe we need the strict penalties we have under the present penal code? Do you agree, based on your information and experience, that the increased overcrowding crises situations that we have experienced are due to the new penal code since, I guess, 1981?

MR. WEEKS: We saw a dramatic increase in the number of people who were incarcerated and, to some extent, it is felt that it was the result of--

ASSEMBLYMAN OTLOWSKI: (interrupting) Also, there has been a decrease in crime on the streets as a result.

ASSEMBLYMAN HAYTAIAN: Right, that is correct, and that is the point, the public's health and safety. I think really, as legislators, we should be concerned about that, and I am glad we are concerned. Thank you very much.

MR. WEEKS: If I may, just with regard to the decreasing crime, I do not think we have gotten to the situation where the first wave of those who have been incarcerated under those statutes have come

out and, as a result, we do not have the experience to show they will not become a part of the revolving door.

ASSEMBLYMAN OTLOWSKI: Thank you very, very much, Mr. Weeks. We really appreciate your coming.

MR. WEEKS: You're welcome.

ASSEMBLYMAN OTLOWSKI: Is Harold Kees here? (affirmative response) Do you want to testify? You're one of the subcontractors, are you sure you want to testify?

H A R O L D K E E S: That depends on what kind of questions you are going to ask. (laughter)

ASSEMBLYMAN OTLOWSKI: Okay, come on up. You're not kidding. Let me ask you this -- I'm asking this question purely out of innocence. You know, I'm in love with the Anglo-Saxon system of justice and jurisprudence. Did you consult an attorney before you came here?

MR. KEES: Yes, sir, I did.

ASSEMBLYMAN OTLOWSKI: You did, all right. May we have your name for the record?

MR. KEES: My name is Harold Kees.

ASSEMBLYMAN OTLOWSKI: And you're the subcontractor on the Mid-State -- I always think of carnivals when I hear the word Mid-State. What does Mid-State mean here?

FROM AUDIENCE: That's Fort Dix.

ASSEMBLYMAN OTLOWSKI: Why don't they say Fort Dix? (inaudible response from audience) You're a subcontractor at Fort Dix, in what kind of work, electrician, plumber, what?

MR. KEES: Fencing.

ASSEMBLYMAN OTLOWSKI: Fencing?

MR. KEES: Yes, sir.

ASSEMBLYMAN OTLOWSKI: Let me ask you this. The fencing contract was for how much money? Do you want to answer that question?

MR. KEES: Total?

ASSEMBLYMAN OTLOWSKI: Yes, the total amount of the fencing project there. Let me rephrase the question, if you are going to answer it. What was the original estimate on the fencing contract, and what was the ultimate price on the fencing contract?

MR. KEES: The original estimate -- I don't have my records, but if I remember correctly, it was in the neighborhood of \$480,000.

ASSEMBLYMAN OTLOWSKI: When you came in on that fencing project, did you give them any price?

MR. KEES: At which point? We were consulted as far as pricing in December, 1981, and through January, February and into March, 1983.

ASSEMBLYMAN OTLOWSKI: Excuse me. You were the fencing contractor. Is that correct? I am going to withdraw that question, because I just don't feel comfortable since this is under investigation by the Attorney General. Let me ask you this question. What irregularities were noted in the construction work by the Costanza Construction Company on the Fort Dix project?

MR. KEES: Well, I didn't note any irregularities as far as the construction work was concerned.

ASSEMBLYMAN OTLOWSKI: You did not see any irregularities?

MR. KEES: Well, do you mean as a norm in our trade?

ASSEMBLYMAN OTLOWSKI: Yes.

MR. KEES: There were some irregularities.

ASSEMBLYMAN OTLOWSKI: What would you say they were?

MR. KEES: The biggest irregularity was that we had quite a few deviations from the original plans or specifications that we went in with and the way it ended up being done. There were quite a few changes during the period of time when we started construction.

ASSEMBLYMAN OTLOWSKI: But, those changes, from your point of view as a contractor -- with how many years experience in the business?

MR. KEES: Twenty-five years.

ASSEMBLYMAN OTLOWSKI: With your experience in the business, were those changes, changes that were urgent, changes that had to be made for the good of the project, in your opinion?

MR. KEES: Considering the security, I would say, "Yes."

ASSEMBLYMAN OTLOWSKI: They were necessary. And, when we are talking about the difference between \$3.9 million and \$5.2 million -- again, speaking from your experience -- were those kinds of changes necessary in your opinion?

MR. KEES: I have no information on figures; I have to just answer questions pertaining to the fence contract itself.

ASSEMBLYMAN OTLOWSKI: So, you have no opinion on that?

MR. KEES: I have no opinion, because I have no knowledge.

ASSEMBLYMAN OTLOWSKI: Because of the fact that you don't have the information?

MR. KEES: Yes, sir.

ASSEMBLYMAN OTLOWSKI: From your experience -- I am not going to get into the fence thing, because that is one of the main thrusts of the Attorney General, and I am not going to get into that. I don't think it would be fair to ask you any more questions really. Do you have any questions, Assemblyman Pelly?

ASSEMBLYMAN PELLY: No questions.

ASSEMBLYMAN OTLOWSKI: Assemblyman Haytaian?

ASSEMBLYMAN HAYTAIAN: No questions.

ASSEMBLYMAN OTLOWSKI: Mr. Kees, I am going to stop you, unless you want to make a statement to the Committee of your own free will. I am going to take the position that I will stop you if I think you are going off the deep end.

MR. KEES: Well, no, sir. I just came to answer any questions I thought might help the Committee. I have no input.

ASSEMBLYMAN OTLOWSKI: Thank you for making yourself available. We really appreciate it.

MR. KEES: Thank you, sir.

ASSEMBLYMAN OTLOWSKI: Thank you very, very much, and I mean that. We appreciate the fact that you made yourself available. May we have Mr. Richard Stuart? Mr. Stuart, will you tell us who you are and what you do?

R I C H A R D S T U A R T: My name is Richard Stuart, and I am Executive Coordinator of Citizens for Community Corrections, which is a non-paying position. Otherwise, I am--

ASSEMBLYMAN OTLOWSKI: It's made up of volunteers?

MR. STUART: Yes. Let me say first that I'm glad I came down here, even if I don't have a chance to speak to you, just to hear a legislative group that is concerned with what sometimes in reading the

papers we think of as "pittances." I am glad that you are really concerned with amounts like \$1 million, \$2 million, \$5 million, because so many times they say, "Oh, that is just another \$5 million," and I keep looking at what is coming out of my paycheck every two weeks. I know where those millions are coming from.

ASSEMBLYMAN OTLOWSKI: I think all of us here are great admirers of Benjamin Franklin, who said, "A penny saved is a penny earned." I hope that will always be part of the American tradition, and sometime I hope we will get back to it.

MR. STUART: Let me also state that I was interested in your confusion with the institutions' names. To the best of my knowledge, the Governor hasn't signed the bill yet that would authorize these changes. I hope he never does sign it. I believe it started out with the idea of changing the name of Rahway Prison, which could be justified since it isn't in Rahway. But, they carried it from there, and I have been trying to figure out what they are going to call the three Leesburg--

ASSEMBLYMAN OTLOWSKI: We'll never change it to Woodbridge, because Woodbridge is in my district. (laughter)

MR. STUART: Right. But, I'm trying to figure out what they are going to end up calling the three Leesburg Prisons and the two Newark Prisons, you know, how they are going to work this out. They are going to have to become pretty skillful, and it will serve no purpose for the public. Just as you say, "Mid-State, what's that?" I'm not sure what they are calling Trenton now. Then, when I looked at the cost of changing all the guards' badges, I thought, "Here again is another ridiculous figure."

Coming to the subject you are discussing, the one thing I feel I can say that is pertinent -- well, let me touch just a couple of light bases here. There has been some discussion here about non-violent offenders in connection with releasing. I have always been puzzled by this term, because I have never known, when I have listened to reformers speak about non-violent offenders, exactly what one is. Other than in a purely technical sense, I guess it is someone -- I can see it only as someone who has never been convicted of a physically

violent crime. But, to me, projecting, or really taking a look at the prison population and trying to decide who is violent and who is non-violent -- many of them who might be in there for burglary are only non-violent on the records because they were never apprehended for a violent action in connection with the burglary, and many of them become violent the minute someone comes home and catches them in the act of burglary, and you could have a violent offender on your hands.

So, I think that all borders on the ridiculous. I think it is more important to think in terms of minimum custody as applied to the length of a sentence still to be served. To me, this is the only legitimate issue, how much time has the man still got to serve? This comes up frequently in connection with Rahway Prison when we have these discussions about escapes. Right away it is complained that the person who escaped was a murderer, or something. Personally, I am not interested in what he was convicted of. I am only interested in how close he is to parole, and whether he should legitimately be in a minimum facility. I think this Committee would be wise, one of these days when you have time, to look into the classifications for minimum. Look at the situation, which I believe is prevalent, of people serving long sentences, who have served five years of a life sentence, for instance, and who are transferred to minimum, where they are going to have to possibly spend the next ten years occupying a minimum bed, before they become eligible for parole in terms of fourteen years, eight months, or roughly fifteen years, the requirement for life sentence parole eligibility.

I don't think those people should be out in minimum time. I believe those minimum beds, particularly since we only have a limited number, should be occupied by the people who are bordering on release. This brings me to a subject on which I share and don't share common ground with Mr. Weeks. Going back to the correctional master plan, which was used by the Department of Corrections for all the mileage they could get to justify cells, the construction of new cells, that correctional master plan also called for thirty-five prerelease centers to be developed and managed by the State. Regarding those thirty-five prerelease centers, if we had gone along with the correctional master

plan, if we had used what I figure is an optimum figure of thirty-six beds per center, we would have been talking about 1,260 beds, which we would have had long ago, and which would have helped all during this period, and the prerelease centers could have been developed at much less cost.

ASSEMBLYMAN OTLOWSKI: You're talking and advocating that the Legislature take a look at the incarceration of maximum and minimum security--

MR. STUART: How they are classified, how the Department of Corrections is classifying some of these people.

ASSEMBLYMAN OTLOWSKI: So, the basic thrust that you would make is to get into that area to see what could be done to provide for more immediate release?

MR. STUART: No, no. I'm saying that you should look at that, because it could possibly solve part of the problem that we have right now of people coming from medium or maximum security to the street, because there are no prerelease beds. There are minimum beds available for all of the people. The figure used to be approximately 4,000 prisoners a year coming out of the prisons. As I believe Mr. Weeks mentioned, there is a possibility of 200 beds. I don't think the State has 200 beds up in its Newark facility for people coming out onto the street.

ASSEMBLYMAN OTLOWSKI: Excuse me, I want to cut you off at this point because I want to terminate this meeting. This meeting, primarily, was to deal with Leesburg and Fort Dix, and the costs on those projects, and I want to keep it on that. You're talking about a whole different subject. You're talking about, you know, the broader look down the road. I am not going to get into that. As a matter of fact, I am not going to let you get into that because you are going to get us away from the purpose of this meeting, and I want to terminate this meeting with one more witness, who I want to keep on this subject. Save the story you have for another day; we may call you back sometime when we get into that area.

MR. STUART: I would hope so, because you are talking about facilities. As you have been emphasizing today, you are talking about

facilities which are only going to be three years at Fort Dix, and maybe ten years or so down at Leesburg.

ASSEMBLYMAN OTLOWSKI: But, you're talking about a broader approach.

MR. STUART: This is something you need to begin to look at now, because it wasn't looked at since the correctional master plan was issued.

ASSEMBLYMAN OTLOWSKI: You're right, and we are going to take a look at it, but not at this meeting. As a matter of fact, for you to be here today to put us on notice of that, and to be part of the record, is good, because it is going to bring us to this point in the very near future.

MR. STUART: There definitely have been, and still are alternatives to spending the kind of money you are spending on temporary facilities.

ASSEMBLYMAN OTLOWSKI: Mr. Stuart, thank you very, very much.

MR. STUART: Thank you.

ASSEMBLYMAN OTLOWSKI: May we have Winifred Canright, from the Coalition for Penal Reform?

WINIFRED CANRIGHT: I know you are all getting hungry, so I will drop most of the notes I made, for brevity's sake. I am concerned, as you all are, with the problem of temporary versus permanent solutions. I hope you see the permanent prison population problems as something more than just the material structures we are working on.

ASSEMBLYMAN OTLOWSKI: Winifred, excuse me. Again, as I told Mr. Stuart, we are primarily concentrating on two institutions. The subject that you evidently want to talk about is a subject that must be talked about. This Committee wants to hear that, but not at this time. I am going to ask you to save that for another time, when we will call another meeting to go into the areas you're talking about.

MS. CANRIGHT: Okay.

ASSEMBLYMAN OTLOWSKI: And, listen, you're the best thing that has happened to us today, and I don't want to cut you off short. But, the fact of the matter is, I would like to save that for another

day. I want to wrap up what we are dealing with. Let's hold up on what you're talking about, and what Mr. Stuart is talking about. There will probably be other people who have some ideas in this area. I think what we wanted to do today, was get into discussing these two institutions. Winifred, thank you very much.

MS. CANRIGHT: Thank you. I know why you said I was the best thing, because I promised to be very brief. I sort of expected this, so I brought along some of the information. I don't have all of it, but I am going to put this material over on the table. This will give you all the background that you may or may not have found.

ASSEMBLYMAN OTLOWSKI: Winifred, you know what impressed me about you? Your gray hair and your facial appearance. Winifred, thank you. May I call on the next witness? Can we get a hold of John Forker, Chief of the Bureau of Institutional Support Services, Department of Corrections? Mr. Forker, would you tell us about your position? What does it entail, what does it mean, you know, in Noah Webster's language?

J O H N F O R K E R: I administer the support services for the Department of Corrections, which includes maintenance construction capital planning, medical, dental, psychological, psychiatric, farms, food service--

ASSEMBLYMAN OTLOWSKI: Do you have anything to do with capital construction?

MR. FORKER: Yes, maintenance construction capital planning. I administer the funds which are utilized in order to construct new prisons or, as in the case--

ASSEMBLYMAN OTLOWSKI: (interrupting) Let me ask you this question. You made a deal at Fort Dix, which now is going to cost \$5.2 million for a three-year lease, with no option to renew?

MR. FORKER: Well, in the lease it indicates that we are only to use it for a three-year period. What the Governor's response to that is going to be, I don't know.

ASSEMBLYMAN OTLOWSKI: But, the lease doesn't provide any option to renew, when you are going to spend this kind of money?

MR. FORKER: Well, we were in a situation in April, 1982, when the Governor's report on overcrowding came out, in which we were aware of the stockade being vacant at Fort Dix. We, in turn, asked--

ASSEMBLYMAN OTLOWSKI: Did you press for an option to renew?

MR. FORKER: Yes, we pressed for a longer period of time. This is what the Department of the Army was willing to agree to at the time. It was 500 beds very quickly for what we considered to be a small cost, especially in view of the 1,500 backup we had in the county jails at that point.

ASSEMBLYMAN OTLOWSKI: A small cost for three years?

MR. FORKER: Well, I'm looking at it strictly -- and you explained it before -- from the standpoint of \$10,000 per bed, for something that was readily available at that point. That was the quickest facility that was available to us that could be constructed to handle that magnitude of inmates, in order to assist us in alleviating the overcrowding, which was very critical at that point.

ASSEMBLYMAN OTLOWSKI: Do you know offhand if the State Treasurer -- I wouldn't expect the Governor, but certainly I'm just wondering if he gave the State Treasurer any instructions about Fort Dix, or about pressing for a real hard bargain, when you are spending the kind of money you are spending and, or even at this point, opening negotiations to see if you could get an option to renew?

MR. FORKER: I can't speak to the option to renew at this point, because that would be handled by the Governor's Office. However, I suspect that they will be looking into that possibility.

ASSEMBLYMAN OTLOWSKI: What relationship do you have with the Treasurer?

MR. FORKER: Other than the transfer of funds with respect to monies involved -- just a monetary relationship.

ASSEMBLYMAN OTLOWSKI: Do you talk to him?

MR. FORKER: I do not speak directly to him, but I deal with the Division of Building and Construction, which, in turn, is directly under the State Treasurer.

ASSEMBLYMAN OTLOWSKI: I'll tell you what I am going to do, and I think the Committee will agree with me. I am going to write him

a letter on behalf of this Committee, and I am going to ask him to open negotiations and press for an option to renew, because of the kind of money this has now cost us.

MR. FORKER: I agree.

ASSEMBLYMAN OTLOWSKI: Are there any questions? (no response) Then that concludes this meeting. Thank you very, very much for being so helpful.

(MEETING CONCLUDED)



WILLIAM H. FAUVER
COMMISSIONER

STATE OF NEW JERSEY
DEPARTMENT OF CORRECTIONS
P. O. Box 7387
TRENTON, N. J. 08628

October 21, 1983

The Honorable George J. Otlowski, Chairman
Assembly Corrections, Health and Human Services Committee
State House
Trenton, New Jersey 08625

Dear Assemblyman Otlowski:

I have received your letter of October 18, 1983 requesting that I appear before a special meeting of your Committee on October 24, 1983 to discuss cost overruns on construction projects at the Mid-State Correctional Facility - (Fort-Dix) and Southern State Correctional Facility.

As I indicated in our telephone conversation of October 19th, I will be glad to appear before the Committee but am somewhat limited in my ability to respond to your specific concerns regarding the above noted projects since there is a pending investigation of the company by the New Jersey Attorney General's Office. Mr. John Forker of my staff contacted Mr. Eugene Sullivan, Assistant Attorney General, regarding your request for testimony and was advised that due to the pending investigation the Department's response should be limited. We have prepared and attached a fact sheet with this limitation in mind.

Accordingly, attached for your information is a fact sheet developed in cooperation with the Attorney General's Office and the Division of Building & Construction in response to the five questions in your letter. Any further information you may require will be verbally responded to during the Committee Meeting of October 24th.

Very truly yours,

William H. Fauver
Commissioner

WHF:jam
att.

FACT SHEET

October 21, 1983

SUBJECT: Answers to questions raised in the October 18, 1983 letter from Assemblyman George J. Otlowski, Chairman, Corrections, Health and Human Services Committee

PREPARED BY: Department of Corrections
Division of Building & Construction
Attorney General's Office

1. Why was a contract for construction work at Leesburg State Prison awarded to Costanza Construction Company on a non-bid basis?

On July 18, 1983, Costanza Contracting Company and four other firms (R.M. Shoemaker Company, Joseph T. Moscarelle, Inc., Roland Aristone, Inc., Merrell & Garaguso, Inc.) were considered for award of a contract to manage the construction of the Southern State II facilities. To meet the extremely tight completion dates established by the DOC for the facility, the DBC determined it would be necessary to engage a Construction Manager (CM) to expedite the work. The CM was given authority to competitively bid the work and engage the contractors who would be performing the construction.

On July 19, 1983, the DBC Selection Board selected Costanza as their top rated firm based on an evaluation of their capabilities, past performance and fee proposal. (See attached memo dated July 26, 1983 Smith to Forker.) An appropriate waiver of advertising was approved by the State Treasurer to award the contract to Costanza.

2. Why was that contract cancelled?

The Division of Building and Construction did not proceed to award the contract with Costanza Contracting Company to manage the Southern State II construction project on advice from the Attorney General's Office due to the investigation being performed on the Mid-State Construction project.

3. Why was that contract then given to R. M. Shoemaker Company for an increased cost of \$130,000?

The contract was awarded to the R. M. Shoemaker Company since they were the second highest rated firm of the A/E

Selection Board. Further, despite the delay in their selection, Shoemaker was able to guarantee that the Department could begin operation of the facility by February 1, 1984, the date originally proposed by the Costanza Contracting Company.

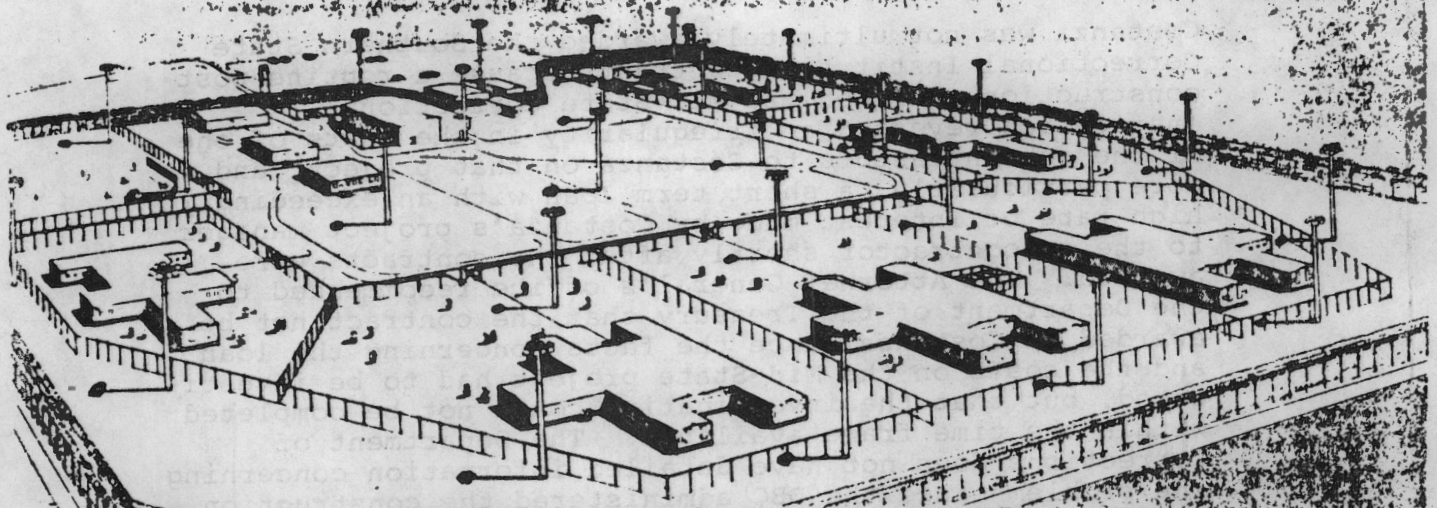
4. What "irregularities" were noted in the construction work by the Costanza Construction Company on the Fort Dix project?

Costanza was not ultimately awarded the Southern State Correctional Institution contract because a routine post construction audit on the Mid-State Correctional Institution revealed an irregularity in the costs of one of the subcontractors to Costanza on that project, and more particularly, a short term loan with an exceedingly high rate of interest made by Costanza's project manager to the subcontractor shortly after the contracts were awarded. The Attorney General's office recommended to the Department of the Treasury that the contract not be awarded to Costanza since the facts concerning the loan and the costs on the Mid-State project had to be investigated, but that the investigation could not be completed within the time frame available. The Department of Corrections does not have detailed information concerning the problem since the DBC administered the construction project, but it understands that the basic facts available at the time were set forth in papers filed in court by the Attorney General's office in response to an appeal by Costanza from the decision not to award the contract.

5. What is the estimated life span of the 448 prefabricated prison cell units to be constructed at Leesburg State Prison?

The architectural firm of CUH2A who was responsible for the design of the Southern State Facilities has indicated that the Prefabricated Units have a minimum life span of 15 years.

How did CUH2A Save the State of New Jersey \$18,000,000 on the New Jersey Southern State Correctional Facility?



By designing a prefabricated modular correctional facility. This 448-bed addition to the New Jersey prison system includes housing, all ancillary services, security systems and utilities. It is the nation's first facility of this size and scope, and represents a significant new approach to design for criminal justice.

When compared to conventional methods, the advantages of prefabricated modular construction are evident.

- Cost: \$24,000 per bed, vs. \$40,000 to \$70,000 for conventional facilities.

- Completion: 6 months from contract award to occupancy, vs. 18 to 24 months for conventional facilities.

- Security: availability from minimum to maximum levels.

New Jersey's Southern State Correctional Facility has been so successful in meeting its goals of function, schedule, and cost, that the State has asked us to design a second similar unit of 480 beds.

CUH2A can provide timely and economical solutions to your requirements for expanded prison facilities, accomplished within the guidelines of the American Correctional Association.

May we present our credentials?

CUH2A

600 Alexander Road
CN-5240
Princeton, NJ 08540
609-452-1212

Collins Uhl Hoisington Anderson Azmy
Architects Engineers Planners

COUNTY ASSISTANCE PROGRAM

SUMMARY OF GOVERNOR'S PLAN FOR OVERCROWDING

<u>Source of Funds</u>	<u># of Projects</u>		<u># of Beds</u>		<u>Project Costs</u>	
	<u>Original</u>	<u>Current</u>	<u>Original</u>	<u>Current</u>	<u>Original</u>	<u>Current</u>
1980 Bond Issue	5	5	1,057	1,057	37,211,000	34,582,115
1983 Capital	5	5	752	720	13,004,000	15,116,793
1982 Bond Issue	14	11	2,710	2,885	134,000,000	109,693,781
County Assistance - Phase I	6	6	250	250	38,439,762	28,439,762
County Assistance - Phase II	10	10	448	442	36,000,000	36,204,958
Totals	40	37	5,217	5,354	248,654,762	224,037,409
			+ 137		- 24,617,353	

COUNTY ASSISTANCE PROGRAM

I. Phase I - 1980 Bond Issue

<u>County</u>	<u># of Beds</u>	<u>Amount of Assistance</u>	<u>Estimated Completion Date</u>
Camden	50	10,089,762	9/85
Gloucester	0	950,000	11/83
Middlesex	50	6,200,000	1/84
Mercer	50	2,860,000	9/85
Passaic	50	3,600,000	12/83
Union	50	4,740,000	11/85
Totals	250	28,439,762	

II. Phase II - 1982 Bond Issue

<u>County</u>	<u># of Beds</u>	<u>Amount of Assistance</u>	<u>Estimated Completion Date</u>
Atlantic	50	4,983,023	6/84
Bergen	50	3,930,729	3/85
Cumberland	40	2,950,500	3/86
Essex	72	4,615,318	3/85
Gloucester	20	1,382,360	11/83
Hudson	50	6,000,000	1/87
Monmouth	50	3,960,000	1/85
Morris	40	2,156,676	10/84
Ocean	40	4,762,800	5/84
Passaic	30	1,463,552	7/85
Totals	442	36,204,958 *	

* The estimated overrun beyond \$36 million will be funded from the balance of Phase I County Assistance Funds.

SUMMARY OF GOVERNOR'S PLAN FOR OVERCROWDING

1980 Bond Issue

<u>Project</u>	<u># of Beds</u>		<u>Project Appropriations</u>		<u>Completion Date</u>
	<u>Original</u>	<u>Current</u>	<u>Original</u>	<u>Current</u>	
Leesburg Prefab	80	80	775,000	1,122,093	7/82
Mid-State	500	500	4,625,000	4,497,336	5/82
Juvenile Reception	29	29	450,000	-0-	6/82
Annandale Prefab	48	48	361,000	-0-	7/82
<u>County Assistance</u>					
Camden	50	50	10,089,762	10,089,762	9/85
Gloucester	0	0	950,000	950,000	11/83
Middlesex	50	50	6,200,000	6,200,000	1/84
Mercer	50	50	2,860,000	2,860,000	9/85
Passaic	50	50	3,600,000	3,600,000	12/83
Union	50	50	4,740,000	4,740,000	11/85
<u>New Medium Security Prison-</u>					
Camden	400	400	31,000,000 ⁵	28,457,589	9/85
Totals	1307	1307	65,650,762	62,516,780	

1. Total project cost is \$5,002,433. Additional funding (\$505,097) taken from FY 1979 Capital Appropriation.
2. Project completed by Institutional Staff.
3. The total Appropriation for both Units is listed under Leesburg.
4. Bed spaces provided by Gloucester are identified in 1982 Bond Issue Appropriation for County Assistance.
5. \$1,000,000 of this Appropriation is taken from 1976 Bond Issue.

Fiscal Year 1983 Capital Appropriation

<u>Project</u>	<u># of Beds</u>		<u>Project Appropriation</u>		<u>Completion Date</u>
	<u>Original</u>	<u>Current</u>	<u>Original</u>	<u>Current</u>	
Yepsen Unit,					
Johnstone	128	128	1,564,000	260,290	1 10/83
Vroom Building	80	0	440,000	-0-	Deleted
Clinton Rehab	0	48	-0-	371,959	1 4/84
Southern State I	448	448	10,000,000	12,120,511	2 7/83
Wharton Tract (Prefab)	48	48	500,000	38,350	6/84
New Lisbon (Prefab)	48	48	500,000	38,350	6/84
Totals	<u>752</u>	<u>720</u>	<u>13,004,000</u>	<u>12,829,400</u>	

1. Additional Funding Supplied from 1982 Bond Issue.

2. Additional Funding Supplied from 1980 Bond Issue.

1982 Bond Issue

Project	# of Beds		Project Appropriation		Completion Date
	Original	Current	Original	Current	
Wings 1 7,Trenton	226	0	3,000,000	-0-	Deleted
Renovate Drill Hall & Hospital, Trenton	105	0	1,000,000	-0-	Deleted
Renovations,Trenton	0	876	-0-	7,000,000	3/85
Renovate Textile/Store Buildings,Rahway	240	0	2,220,000	-0-	Deleted
Annandale Renovations	0	200	-0-	-0-	7/83
Willow Hall	100	0	790,000	-0-	Deleted
Yardville Prefab	80	48	775,000	500,000	4/84
Bordentown Prefab	80	48	775,000	500,000	4/84
Southern State II	448	560	12,600,000	17,743,781	2/84
McCray Building	200	0	3,200,000	-0-	Deleted
High Point Prefab	48	48	1,020,000	1,000,000	4/84
Arneytown Prefab	48	0	920,000	-0-	Deleted
Jamesburg Detention Unit	0	16	-0-	900,000	6/84
Rahway Camp	80	0	500,000	-0-	Deleted
A.D.T.C. Prefeb	0	48	-0-	350,000	4/84
Annandale Seg. Unit	55	24	1,200,000	1,200,000	4/84
Clinton Seg. Unit	0	17	-0-	600,000	2/84
Clinton Prefab	0	0	-0-	500,000	4/84
Yepsen Unit	0	0	-0-	2,046,533	10/83
Medium Security Prison Newark	1000	1000	100,000,000	80,000,000	4/85
County Assistance					
10 Counties	448	442	32,000,000	36,204,958	
Totals	3158	3327	160,000,000	148,545,272	

1. Project compelled by Institutional Staff.
2. Supplemental Funding for project initiated with FY 1983 Capital Appropriations.
3. Originally two (2) separate 500 bed facilities.

Project Summaries

1. Yepsen/Allen Renovations

DBC C194-01,02

The construction contracts were awarded on July 7, 1983 for Yepsen and on May 26, 1983 for the Allen Building. Estimated completion date for beneficial occupancy for Yepsen is late October 1983 for the Allen Building it is November 1983. When completed Yepsen will add 128 medium security beds. Allen will provide space for displacement of Human Services residents presently residing at the Yepsen facility.

2. Southern State Correctional Facility

DBC C183

The Department accepted beneficial occupancy in July. 448 inmates are now being housed at this medium security institution.

Additional work added to the original scope includes 12 detention cells and additional medical/dental space. Construction is expected to be completed on the above by December 1, 1983.

3. Southern State Correctional Facility II

DBC C199

The contract for the Construction Manager was awarded to R. M. Shoemaker Co. Construction began in September and is estimated to be completed in February 1984. The facility will provide 480 medium security beds and 80 minimum security beds.

4. Annandale Segregation Unit - 24 Beds

DBC C202

Design work is complete. Final bid packages are expected by early October. Construction will start in November 1983 and be completed in April, 1984.

5. Jamesburg Segregation Unit - 16 Beds

DBC C213

Design work is complete. Unexpected soils problems in the area are causing some delays due to additional testing requirements. Final drawings are anticipated to be complete and a bid package prepared by the end of October. Construction will start in November 1983 and be completed by June 1984.

6. Clinton Dormitory - 48 Beds

DBC C195

Design work is complete. Bid documents for both conventional and modular construction will be reviewed and advertised for bid by early October. Upon receipt of these bids, a decision will be made as to what type of construction will be utilized at Clinton. This prototype will then be used at the remaining dormitory sites at Yardville, Bordentown, Highpoint, Avenel, and possibly New Lisbon and Wharton.

7. Wharton Dormitory - 48 Beds

DBC C189

A development application has recently been submitted to the Pinelands Commission for their review and approval. Based on their comments and the outcome of the Clinton bid, we will proceed with either module or conventional construction. Estimated occupancy date is June, 1984.

8. New Lisbon Dormitory - 48 Beds

DBC C189

A development application has recently been submitted to Pinelands Commission for their review and approval. Based on their comments and the outcome of the Clinton bid, we will proceed with either module or conventional construction. Estimated occupancy date is June, 1984.

9. A.D.T.C. Dormitory - 48 Beds

DBC C211

Initial site investigation is complete. The Clinton prototype will be implemented. Estimated occupancy date is April, 1984.

10. High Point Dormitory - 48 Beds

DBC C212

Initial site investigation is complete. The Clinton prototype will be implemented. Estimated occupancy date is April, 1984.

11. New Medium Security Prison, Camden

DBC C129

Contracts for Phase III (completion phase) have been awarded. This two year construction phase will be underway within the next few weeks. Completion is estimated for September, 1985.

12. Yardville Dormitory - 48 Beds

DBC C215

Initial site investigation is complete. The Clinton prototype will be implemented. Estimated occupancy date is April, 1984.

13. Bordentown Dormitory - 48 Beds

DBC C214

Initial site investigation is complete. The Clinton prototype will be implemented. Estimated occupancy date is April, 1984.

14. New Medium Security Prison - 1,000 Beds

DBC C219

The Department of Transportation is currently in the process of finalizing acquisition of the nearly 60 acre site in the City of Newark. The A/E will be selected by October, 1983. Construction is anticipated to begin by April, 1984, and be completed by August, 1986.

15. Trenton State Prison - 876 Beds

DBC N117

The Department received beneficial occupancy of Phases, I, II, III. Renovation of Wing #7 will proceed but with a reduced scope of work due to funding restrictions.



State of New Jersey

**DEPARTMENT OF THE TREASURY
DIVISION OF BUILDING & CONSTRUCTION**

WEST STATE AND WILLOW STREETS

TRENTON, N. J. 08625

**JAMES G. TON, P.E.
DIRECTOR**

REPLY TO:

CN 235

TRENTON, N.J. 08625

TEL: (609) 292-5000

July 26, 1983

M E M O R A N D U M

**TO: Mr. John Forker, Chief
Bureau of Institutional Support Services
Department of Corrections**

FROM: Dale B. Smith *Dale B. Smith*
**Assistant Group Projects Manager
Division of Building & Construction**

**SUBJECT: Southern State Correctional
Facility II
Medium Security Prison
DBC C199-02**

This memorandum will record the discussion and decision of the meeting which was held to select the construction manager for the Southern State II Medium Security Prison. This meeting was held on July 19, 1983 and was attended by the panelists who previously interviewed the construction managers. These panelists were: C. Stuart Townshend, Joseph Perone, Jan Svoboda, Russell Montgomery, Marvin Jacobson, Kenneth Harms, Joseph Maisto, and Dale Smith. Also in attendance were Kenneth Blair and Mark Bryant.

The fees submitted by the five construction managers are as per the attached bid sheet. The scores as per the ratings of the interviewers are also attached.

It was unanimously decided that Roland Aristone would be eliminated due to his high fee; it was also determined that Muscarelle would be eliminated due to his low score on his interview. The second low fee bid was Costanza Contracting Company. Costanza also had the second highest rating for his interview. The panel voted 7-to-1 to accept Costanza's proposal.

A contract has been drafted for Costanza's C.M. services and has been forwarded to members of your Department. It is anticipated that as soon as the waiver has returned and funding is complete, the construction management contract will be consummated.

If you have questions in this regard, please call.

DBS:pas

Attachment

New Jersey Is An Equal Opportunity Employer

cc: All present, C. File 12x

Project: SOUTHERN STATE 194

MEDIUM SECURITY PRISON

LEESBURG, N.J.

ACT. NO.: _____

A/E: C4H2A

CALENDAR I

Grade: CONSTRUCTION MANAGEMENT

BID REC'D.: JULY 19, 1983

COMPLIE

/E ESTIMATE: _____

MODERATOR: DAN DILL

[illegible]

13x

MEMORANDUM

TO Dale Smith

Trenton ☐

..... Project Architect

Newark ☐

FROM Ron Wengerd

..... A/E Selection

SUBJECT Selection of Construction Manager.
Southern State II
DBC C199

Date July 13, 1983

As requested, I have compiled the scores submitted to me by the nine evaluators of the five firms interviewed on July 8, 1983, for construction management services at the referenced facility.

The following list identifies the firms in order of their ranking by total points scored:

<u>Firm Name</u>	<u>Total Points (of 900)</u>	<u>First Place Votes (of 9)</u>
1. R. M. Shoemaker Co.	810	4.5
2. Costanza Contracting Co.	786	2.5
3. Merrell & Garaguso, Inc.	682	0
4. Roland Aristone, Inc.	667	2
5. Joseph L. Muscarelle, Inc.	619	0

cc: A/E Files



State of New Jersey

**DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF LAW**

**RICHARD J. HUGHES JUSTICE COMPLEX
CN 112**

TRENTON 08625

TELEPHONE 292-1956

**IRWIN I. KIMMELMAN
ATTORNEY GENERAL**

**MICHAEL R. COLE
ASSISTANT ATTORNEY GENERAL
DIRECTOR**

**Michael R. Cole
FIRST ASSISTANT ATTORNEY GENERAL**

October 21, 1983

**George J. Otlowski, Chairman
Assembly Corrections, Health and Human
Services Committee
CN-042
State House
Trenton, New Jersey 08625**

Dear Mr. Otlowski:

This will acknowledge your letter of October 18, 1983 to the Attorney General asking the Attorney General and Director Donald Belsole to attend a special meeting of the Assembly Corrections, Health and Human Services Committee on October 24, 1983, which is being conducted to investigate cost overruns on construction projects at the Mid-State Correctional Facility and the Southern State Correctional Facility. It would be inappropriate for us to attend the meeting because our only knowledge of the subject before the Committee is an irregularity on an audit on the Mid-State Correctional Facility which is presently the subject of a criminal investigation.

We ask you to accept this letter in lieu of our appearance and, because we appreciate your interest in the subject of cost overruns, we are furnishing such information as we feel is appropriate given the criminal investigation. The audit irregularity and the resulting decision by the Attorney General to recommend that a contract not be awarded to Costanza Contracting Company on Southern State only pertains to the second of the five questions in your October 18 letter. Costanza was not ultimately awarded the Southern State contract because a routine post construction audit on the Mid-State Correctional Institution revealed an irregularity in the costs of one of the subcontractors to Costanza on that project, and more particularly, a short term loan with an exceedingly high rate of interest made by Costanza's project manager to the subcontractor shortly after the

contracts were awarded. The Attorney General recommended to the Department of the Treasury that the contract not be awarded to Costanza since the facts concerning the loan and the costs on the Mid-State project had to be investigated, but that the investigation could not be completed within the time frame available.

The basic facts which were available to the State at the time of the decision not to award the Southern State contract to Costanza were set forth in a brief and affidavit filed in the Appellate Division by this office in response to an appeal by Costanza from the decision not to award the contract. Because these documents are a matter of public record we are making them available to the Committee and they are attached.

As indicated above, we feel constrained not to furnish any additional information because of the pending criminal investigation. We hope that the enclosed will be satisfactory for your purposes and trust that you will appreciate our concern and our decision that it is not appropriate for us to appear at this time.

Very truly yours,

IRWIN I. KIMMELMAN
Attorney General of New Jersey

By Michael R. Cole
Michael R. Cole
First Assistant Attorney General

tc

Encs.

cc: Director James G. Ton
John Forker

**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO.**

COSTANZA CONTRACTING COMPANY,)

Appellant,)

Civil Action

vs.)

**JAMES G. TON, DIRECTOR, DIVI-)
SION OF BUILDING and CON-
STRUCTION, DEPARTMENT OF)
TREASURY, STATE OF NEW JERSEY,)**

**On Appeal from a Final Decision
of the Director of the Division
of Building and Construction**

Respondent.)

**BRIEF AND APPENDIX IN OPPOSITION TO THE MOTION FOR A STAY
PENDING APPEAL ON BEHALF OF THE RESPONDENT
DIVISION OF BUILDING AND CONSTRUCTION,
DEPARTMENT OF TREASURY, STATE OF NEW JERSEY**

**IRWIN I. KIMMELMAN
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Respondent,
Division of Building and
Construction
Richard J. Hughes Justice Complex
CN 112
Trenton, New Jersey 08625**

**ROBERT T. LAWLESS
JOSEPH L. YANNOTTI
Deputy Attorneys General
On the Brief**

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STATEMENT OF FACTS

This matter involves a challenge by a contractor, Costanza Contracting Company, to the State of New Jersey's discretionary decision not to award a contract to Costanza in a setting where the statutory requirement that no public contract be entered into without public advertisement for bids had been waived by the State Treasurer.

10

In June 1983 the Department of Corrections contacted Mr. James G. Ton, the Director of the Division of Building and Construction (hereinafter "the DBC") and advised him that the Department of Corrections contemplated the construction of facilities to house an additional 480 inmates at the Southern State Correctional Facility in Leesburg, New Jersey. This proposed project was one of several wherein Corrections installed additional bed space at existing prisons and county jails to help overcome the current prison overcrowding crisis (Affidavit of Director Ton, ¶12). The Department of Corrections informed the Director of the severity of the overcrowding crisis and explained that because of several court orders which mandated the removal of state-sentenced inmates from the county jails, the additional bed space at Leesburg was needed by February 1, 1984. In fact, Director Ton was advised that Corrections consented to the entry of these court orders on the expectation that the additional beds would be available by this time (Affidavit ¶13-5).

40

Corrections asked the DBC whether or not this timetable could be met. After studying the work which had to be performed on the project, DBC staff advised Corrections that in their opinion

the February 1984 deadline could be met if the statutory bidding requirements were waived and a contract was entered into quickly between the State and a Construction Manager, who would be responsible for all of the work and would secure the necessary subcontractors to perform the actual construction work. The DBC had employed the Construction Manager concept on previous projects wherein additional bed space had been constructed for the Department of Corrections and the results had been satisfactory (Affidavit, ¶6). A written waiver of the mandatory advertisement for bids was secured from the State Treasurer (Affidavit, ¶6).

Informal proposals were received from five construction management firms, Costanza being one of them. After consideration of the various proposals the DBC determined to award the Construction Manager's contract to Costanza, partly because it had acted in this capacity on a DBC project wherein additional bed space was constructed at the Mid-State Correctional Facility at Fort Dix (Affidavit ¶7).

During this time period the DBC was conducting an audit of the amounts paid to Costanza on the Mid-State project. From this audit it was learned that Costanza's project manager on the Mid-State project, Jack Kurtz, appeared to loan one of the subcontractors on the project, Harold Kees and Sons, Inc, \$32,000 and Kurtz had been paid \$65,000 in return a month later. The audit also revealed that Costanza might have been paid about \$100,000 more than it was entitled to for the work performed by Kees (Affidavit ¶8). The \$100,000 included \$33,000 of the \$65,000 that Kees paid to Kurtz (Ra6).

Subsequent to the issuance of a notice to proceed to Costanza to start work on the Leesburg project, and prior to the execution of a written contract between the State and the contractor, Director Ton of the DBC called a meeting so that Costanza and Jack Kurtz could explain the unusual transaction revealed by the audit. At this meeting Kurtz confirmed that a \$32,000 loan had been made to Kees and that \$65,000 had be paid back to him on that loan. Kurtz explained that in light of the substantial profit to be made by Kees on the Mid-State project and the fact that it needed the loan to finance its operations, the handsome return on his money was justified. (Affidavit ¶10)

These facts were reviewed by the Attorney General's office, which advised the DBC not to enter into a formal contract with Costanza until a complete review of the matter could be undertaken. Upon the recommendation of the Attorney General's office the DBC sent a telegram to Costanza directing it to cease all operations on the Leesburg project. In this same telegram Costanza was advised that it would not be awarded the Construction Manager's contract for this project. This telegram prompted the filing of this appeal and the application for a stay presently before this court.

ARGUMENT

THE MOTION FOR A STAY PENDING APPEAL SHOULD BE DENIED BECAUSE THERE IS ABSOLUTELY NO MERIT WHATSOEVER IN THIS APPEAL, THE APPELLANT HAS FAILED TO DEMONSTRATE THAT IT WILL BE IRREPARABLY HARMED BY DENIAL OF THE REQUESTED RELIEF AND BECAUSE ENTRY OF A STAY WILL FORECLOSE THE STATE FROM AWARDING A CONTRACT TO AMELIORATE THE CONTINUING SHORTAGE OF AVAILABLE SPACE IN THE STATE'S PRISONS

10 The Supreme Court of New Jersey has stated, "The opportunity to apply for a stay to preserve the subject matter or res of the suit is implicit in every appeal which can be taken as a matter of right." Landy v. Lesavoy, 20 N.J. 170, 175 (1955). However, the grant or denial of a stay pending appeal is within the sound discretion of the Court. As the Supreme Court of the United States
20 noted in Virginian Railway Corporation v. United States, 272 U.S. 658, 672-3, 47 S.Ct. 222, 228, 71 L.Ed. 463, 471 (1926):

A stay is not a matter of right, even if irreparable injury might otherwise result to the appellant. [Citation omitted] It is an exercise of judicial discretion. The propriety of its issue is dependent upon the circumstances of the particular case.

30 The criteria by which to determine the propriety of granting emergent relief such as a stay pending appeal are well established. In Crowe v. De Gioia, 90 N.J. 126 (1982), the Court restated the principles that govern a determination on an application for temporary relief. An injunction should not issue unless necessary to prevent irreparable harm. Relief should be withheld if the legal right underlying the movant's claim is unsettled. A preliminary
40 showing must be made that the applicant has a reasonable probability of ultimate success on the merits. The harm to other parties by grant of the injunction must be considered. Id. More-

over, in matters affecting the public generally, the public must not be injured by issuance of an injunction. Whitmyer Bros., Inc. v. Doyle et al., 58 N.J. 25, 37 (1971).

10 In this matter, Costanza Contracting Co. appeals from a final determination of the Director of the Division of Building and Construction that Costanza would not be awarded a contract for the performance of construction management duties in connection with a project calling for the construction of additional inmate housing at the Southern State Correctional Facility. Appellant seeks reversal of this determination and an ultimate ruling on the merits mandating that the DBC award the contract to Costanza. During the pendency of the appeal, Appellant asks the Court to enter an order
20 enjoining the State from awarding the contract to any party other than Costanza. Notwithstanding the Appellant's arguments to the contrary, there is absolutely no merit in either the underlying appeal or in the instant application for temporary relief.

It is important to state at the outset that the Appellant does not contend that the DBC's issuance of a notice to proceed to
30 Costanza on August 3, 1983 represented a formal award of this contract. Although that notice indicated the Division's intent to execute a contract with Costanza, no contract was executed by the parties. Were the Appellant to take the position that the August 3, 1983 notice resulted in a contract between the State and Costanza, the DBC's notice of August 11, 1983 would be no more than
40 a termination of the agreement. If that were the case, dismissal of this appeal would be necessary. Costanza would be required to assert any claim it may have against the State in accordance with

the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1 et seq., and such actions must be instituted in the Law Division rather than the Appellate Division. Frapaul Constr. Co. v. Transportation Dep't of N.J., 175 N.J. Super. 84 (App. Div. 1980).

Thus, as the issues have been framed by the Appellant, this action represents an effort to compel the DBC to award the subject contract to Costanza. As indicated in the attached affidavit of Director Ton of the DBC it was the Division's intention to award the contract on an emergency basis without formal advertisement for bids. Pursuant to N.J.S.A. 52:34-8, the Director of the Division of Building and Construction is, with the written approval of the State Treasurer, empowered to award a contract without public bidding if the subject matter of the contract is that described in N.J.S.A. 52:34-9, or is awarded under the circumstances described in N.J.S.A. 52:34-10. Public advertisement for bids may be waived when "the public exigency requires the immediate delivery of the articles or performance of the service." N.J.S.A. 52:34-10(b).

There can be little question that the contract in question was one that could be awarded on an emergency basis without formal advertisement for bids. In June 1981, Governor Byrne issued Executive Order No. 106 wherein the Governor invoked his emergency powers under the Civil Defense and Disaster Control Act, N.J.S.A. App. A:9-30 et seq., to meet the crisis presented by the potentially disastrous overcrowding of inmates in state and county correctional institutions. The order conferred upon the Commissioner of the Department of Corrections the power to direct that prisoners

sentenced to state institutions be housed in county facilities. The Order was extended through January 20, 1982 by Executive Order No. 108 (Ra11).

10 In Worthington v. Fauver, 88 N.J. 183 (1982), the Supreme Court held that both Executive Order 106 and Executive Order 108 were valid exercises of power by the Governor under the Disaster Control Act. The overcrowding of the State's prison facilities presented a potential for substantial destruction of property and loss of life. The Court concluded that the prison overcrowding was an "emergency" within the meaning of the Disaster Control Act. As Justice Pashman wrote for a unanimous Court:

20 There is sufficient evidence in the record to sustain a finding that the problem of prison overcrowding in New Jersey has reached dangerous proportions, and that there is a substantial likelihood of a disastrous occurrence in the near future. We therefore hold that the current crisis of prison overcrowding is an "emergency" under the Disaster Control Act and is a proper subject of emergency executive action. [Worthington v. Fauver, supra. at 197]

30 On January 20, 1982, Governor Kean issued Executive Order No. 1 (Ra12). The Governor noted that the State's correctional facilities remained seriously overcrowded, and that the conditions specified in Executive Order No. 106 issued by Governor Byrne continued "to present a substantial likelihood of disaster." The Governor declared a continuing state of emergency and ordered that Executive Orders No. 106 (Byrne) and No. 108 (Byrne) remain in effect until May 20, 1982. Governor Kean thereafter issued Executive Order No. 8 (Ra13), Executive Order No. 27 (Ra14), and Executive Order No. 43 (Ra15), extending the effective date of the previous orders to January 20, 1984.

The retention of state prisoners in county facilities, as authorized by Executive Order No. 106, has resulted in serious overcrowding in the county institutions. This, in turn, has led to litigation in both the state and federal courts. The Department of Corrections has taken steps to expand the State's correctional facilities in order to accomodate a greater population of inmates. The project at the Southern State Correctional Facility involves the construction of additional space to house approximately 480 inmates. It is necessary to move expeditiously to commence and complete this project in order to allow for the transfer of inmates from the County facilities. The Department has established a February 1, 1984 deadline for completion of the expansion of the Southern State facilities. This deadline was established with a view towards meeting the terms of court orders requiring the transfer of inmates from county to state institutions, terms which the Department agreed to on the assumption that expansion of the state prisons would be achieved at the earliest possible date.

Given the clear and indisputable power of the DBC to award the contract for construction management services in connection with the Southern State project without formal advertisement for bids, there is no legal basis upon which Costanza could compel the award of the contract to itself nor is there any legal basis upon which Costanza could challenge the award of the contract to another construction management firm. Under N.J.S.A. 52:34-8, the Director of the DBC is given the complete discretion to select the State contractor. With the approval of the State Treasurer, the Director may award this contract without public bidding "in any

manner which [he] may deem effective to promote full and free competition whenever competition is practicable." N.J.S.A. 52:34-8. Here, the Director sought cost proposals from five construction management firms on an informal basis. Clearly, under the governing statutes, the Director was required to do no more. The ultimate selection of the contractor was a matter committed to the complete discretion of the Director.

10

In its brief, Costanza appears to contend that the State was legally compelled to award the contract to Costanza and that the State could not award the contract to another firm unless Costanza were given a hearing to challenge the basis for the Division's decision. However, there is absolutely no legal requirement that the Division of Building and Construction afford hearings to contractors who do not secure contracts for which public bidding is not required. It has been held that a low bidder on a publicly advertised contract is entitled to be heard before his bid is rejected. Arthur Venneri Co. v. Paterson Housing Authority, 29 N.J. 392, 402 (1965). See also Commerical Cleaning Corp. v. Sullivan, 47 N.J. 539, 550 (1966). A low bidder is said to have a "status" that will entitle him to be heard. The hearing is granted not to permit the low bidder to advance his own interests but rather to ensure that "the public will obtain all that is due it in the procurement process." Trap Rock Industries, Inc. v. Kohl, 59 N.J. 471, 480 (1971). The rationale for granting a hearing under these circumstances "derives from the basic policy of the bidding laws i.e. the encouragement of competition, which in turn works to protect the public coffers and prevent chicanery and

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fraud in public office." Arthur Venneri Co. v. Paterson Housing Authority, supra at 402-403. This rationale clearly has no application to contracts that may be awarded without formal public bidding because the Legislature has determined that, as to these contracts, there is no need for competition.

10 Costanza also suggests that a hearing was required because the Division's refusal to award it the contracts is tantamount to a debarment. But Costanza does not stand barred from doing business with the State of New Jersey. In this matter the Division of Building and Construction has determined only that a contract for which no public bidding is required will not be awarded to Costanza. A refusal of a State agency to enter into a
20 purely discretionary contract with a contractor simply cannot be equated with a decision that would foreclose a contractor from bidding upon or performing any contract with that State agency. Whatever hearing requirements might apply in the case of a debarment simply have no application to this matter.

30 Costanza states that the DBC chose not to award this contract to it on the basis of "a mere suspicion of wrongdoing by a Costanza employee on or previous project" (Ab3). The facts ascertained by the DBC can hardly be characterized as "mere suspension of wrongdoing." The DBC's audit of amounts paid to Costanza in connection with a previous contract at the Mid-State Correctional Facility disclosed that one of Costanza's subcontractors had
40 received \$32,000 from Jack Kurtz, Costanza's project manager at Mid-State. The subcontractor paid Kurtz \$65,000 in return within a month. The audit also disclosed a possible overpayment to Costanza

of approximately \$100,000. (Affidavit of Director Ton, ¶8 and ¶10)
The subcontractor, in a letter dated August 2, 1982, disputed the
auditor's findings as to the overpayments, arguing that the \$33,000
paid to Kurtz as "interest" on the loan was a proper item of cost
which could be passed on to the State. The subcontractor stated
further that the \$33,000 represented a "horrendous interest pay-
ment." (Ra6).

10

A meeting was held with Costanza in order to review the
facts concerning this loan. Kurtz conceded that the loan had been
made. Kurtz conceded that the subcontractor had repaid the \$32,000
loan plus \$33,000 "interest." Kurtz justified this highly unusual
transaction by stating the subcontractor needed capital and without
the capital he could not perform the subcontract work. The inter-
est repaid represented what Kurtz called "profit". He stated that
it was his expectation that the subcontractor would make \$100,000
on the project and that in light of the fact that the subcontractor
could not perform without the loan, Kurtz wanted a return on his
investment (Affidavit of Director Ton ¶10).

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Given the broad discretionary authority of the DBC
Director to award this contract without formal public bidding,
these facts warranted a determination not to engage Costanza as the
construction manager on the Leesburg project. The Director simply
could not ignore the facts disclosed by the audit and confirmed at
the meeting with Costanza. Certainly, there was ample justifica-
tion for the Director to refuse to award the contract to Costanza,
especially since the \$33,000 "horrendous" interest payment had been

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passed along to the State as a cost of performing a previous State contract (Ra6).

10 It is clear therefore that there is absolutely no merit whatsoever in the contentions underlying this appeal. There is little likelihood that Costanza will prevail. What is more, Costanza has failed to demonstrate that it will be harmed by denial of the request for relief. Costanza assumes that it is entitled to this contract as a matter of law but there is absolutely no legal basis upon which Costanza can compel the State to award it this contract. Even so, Costanza now urges the Court to stay the rejection of the Costanza proposal and to foreclose the State from proceeding to contract with another firm until the Court has ruled
20 on the merits.

The relief sought by Costanza flies in the face of the well established principle reaffirmed in Trap Rock Industries, Inc. v. Kohl, supra at 479, that

30 . . . [t]he purpose of a procurement program is not to advance the interest of those who want the State's business. On the contrary, the purpose is to serve the State's interest as purchaser.

40 In contending that the State's efforts to act to meet the emergency presented by the serious overcrowding in the state and county correctional facilities should be brought to a standstill until Costanza is heard on this utterly frivolous claim to the contract, Costanza is endeavoring to advance its own interest at the expense of the State and the public generally. Entry of an order barring the State from awarding this contract to another firm will impose substantial irreparable harm upon the State, the counties and the

general public. The State will be unable to proceed expeditiously to expand the facilities at the Southern State site. This will delay the completion of the project, and the ultimate transfer of inmates from the severely overcrowded county correctional institutions. Clearly, the motion for a stay pending appeal should be denied.

10 Finally, it should be added that the Appellant has suggested that this appeal is one appropriate for summary disposition pursuant to R.2:8-3(b). That rule states:

20 ... The court may deny the motion; may grant it by affirming, reversing or modifying the judgment or order appealed from on the record before it or on such further record as it may direct; or may take such other action in respect of limitation of the issues or otherwise as it deems appropriate. The court may summarily dispose of any appeal on its own motion at any time, and on prior notice to the parties.....

Were the Court to consider ruling on this appeal in summary fashion, the only appropriate result would be a summary affirmance.

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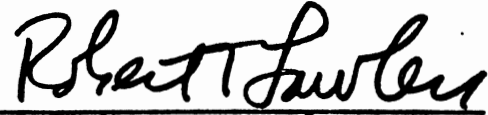
CONCLUSION

For the reasons stated herein, it is respectfully submitted that the motion for a stay pending appeal should be denied.

Respectfully submitted,

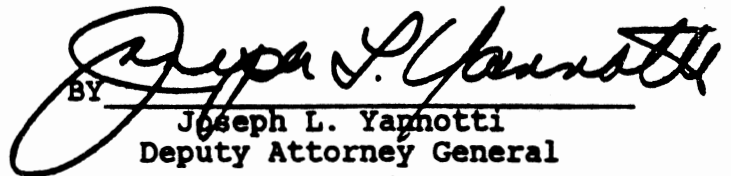
IRWIN I. KIMMELMAN
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Respondent,
Director of the Division of
Building and Construction,
Department of Treasury

BY



Robert T. Lawless
Deputy Attorney General

BY



Joseph L. Yannotti
Deputy Attorney General

Dated: August 17, 1983

AFFIDAVIT OF JAMES G. TON

STATE OF NEW JERSEY)
)
COUNTY OF MERCER) SS.

JAMES G. TON, of full age, upon his oath deposes and says:

1. I am the Director of the Division of Building and Construction (hereinafter the DBC) in the Department of the Treasury, State of New Jersey. The DBC is charged by law with the duty and responsibility to contract for the performance of construction work on all State buildings.

2. On or about June 24, 1983, I was advised by the Department of Corrections that construction work was required for purposes of the construction of housing for approximately 480 additional inmates at Leesbury State Prison in Leesburg, New Jersey. The Department of Corrections indicated that the additional housing was needed by February 1, 1984, and inquired as to whether the Division of Building and Construction could meet this deadline.

3. The Department of Corrections advised that during the past several years, there has been a dramatic increase in the number of individuals committed to the State's correctional facilities. Since 1978, the number of inmates in the State prison complex has increased 42 percent, in the Youth Complex 32 percent and the total State correctional population has increased 67 percent, increases which have resulted in the adult institutions operating at 18 percent above design capacity. In addition, the number of state sentenced inmates confined in the county jails has risen from 70 in December 1978 to 1,584 in December 1982, an increase of over 2,000

percent. This has resulted in numerous lawsuits against the Department of Corrections in State and Federal Courts.

4. Orders entered in these proceedings have required the Department of Corrections to remove state sentenced inmates from the county jails despite the fact that the State facilities are already overcrowded. The Department of Corrections has indicated that in Atlantic County, Corrections is required to remove 24 state sentenced inmates per month. In Camden County all state sentenced inmates, approximately 54 per month, must be removed from the county facilities within 15 days of sentencing. A similar order, affecting approximately 39 inmates per month, exists in Union County. In Essex County the Department must by the end of July remove a sufficient number of inmates to bring the total population down to 600.

5. The Department of Corrections advised the DBC that if the Leesburg project could be completed by February 1984 it will be able to meet the various court mandates. In addition, the Department indicated that it had consented to the terms of the court orders on the expectation that the additional bed space would be available at Leesburg. I was further advised by Corrections that if this bed space is not available, state sentenced inmates will have to be shifted to those county jails which are not at the present time overcrowded, thereby forcing those counties to obtain court orders when their facilities become overburdened.

6. The DBC reviewed the work required to complete the project and determined that in order to meet the February 1, 1984 deadline, the contract would have to be awarded immediately on an

emergency basis without formal advertisement for public bids. In addition, it was determined that it would be necessary to award a single contract to a construction manager who would oversee all of the work required and engage all subcontractors to perform the work. The use of a single construction manager who was responsible for all of the work had been used previously by the DBC and had proved to be satisfactory. A waiver of public advertising was subsequently approved by the Treasurer, thereby authorizing the DBC to enter into a contract with Costanza to act as Construction Manager on the Leesburg project without the need for public advertisement for bids.

7. In July 1983, the DBC received cost proposals on an informal basis from five construction management firms. The Division determined to award the contract to Constanza Contracting Co. Costanza was selected, in part, because it had acted as construction manager for similar work at the Mid-State Correctional Facility at Fort Dix and on projects wherein trailer complexes were built on the grounds of various State prisons and county jails.

8. The DBC, as it was authorized by its contract to do, was at the time in the process of conducting an audit of the amounts paid to Costanza in connection with the Mid-State project. As part of that audit, it was learned that one of the subcontractors engaged by Costanza, Harold Kees and Sons, Inc., had received \$32,000.00 from Jack Kurtz, the project manager for Costanza at Mid-State, during the period when the work was proceeding. It was further ascertained that Kees had paid Kurtz \$65,000.00 within one month of its receipt of the \$32,000.00. In addition, the audit

suggested that Kees had been paid approximately \$100,000.00, more than it should have been paid in connection with the work performed by Kees at the Mid-State project. Since the audit, Kees has disputed the amount which the State claims was overpaid for the work performed by it. (A copy of Kees' letter disputing the finding of the audit is attached hereto as Exhibit A).

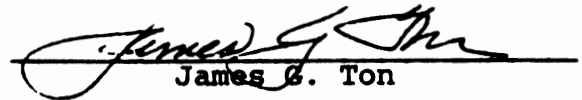
9. On or about August 2, 1983, the DBC issued a notice to proceed to Costanza in connection with the work at Leesburg. On the following day, a meeting was called by me to review the circumstances concerning the facts ascertained in the audit of the amounts paid to Costanza in connection with the Mid-State project. Kent Taylor and Jack Kurtz from Costanza were in attendance at the meeting, as was members of the DBC staff and a representative of the Attorney General's office.

10. When asked to explain the \$32,000.00 payment to Kees, Jack Kurtz stated that the payment was a "loan" out of his personal funds to provide financing of Kees' operations at Mid-State. Kurtz further stated that the \$65,000.00 received represented repayment of the loan plus an additional \$33,000.00 which he called "profit." When asked to explain why he made such a "loan" to Kees, Kurtz stated that it was his expectation that Kees would make a profit of at least \$100,000.00 on the Mid-State project but that without the loan Kees would be unable to perform. Kurtz indicated that, in light of these facts, he wanted a return on his money. Neither Mr. Kurtz nor Mr. Taylor explained whether this "loan" arrangement was offered to all contractors on the Mid-State project and the DBC

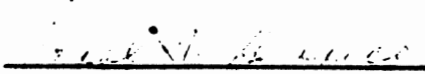
does not know whether such loans were in fact offered to other subcontractors.

11. On August 5, 1983, I was advised by the Attorney General's office not to execute any formal contract with Costanza because that office was reviewing the facts disclosed at the meeting of August 4, 1983. Based upon advice from the Attorney General, a telegram was sent to Costanza on August 11, 1983 which directed Costanza to cease all operations on the Leesburg project and to make no commitments for construction work. The Department of the Treasury also advised Costanza in the same telegram that it would not be awarded a contract for the Leesburg project.

12. If a stay is entered by the Court, the DBC will be unable to award a contract to another construction manager. While at this time no determination has been made concerning a possible award, if a stay is entered and the State is unable to award a Construction Manager's contract, there will be substantial delays beyond February 1, 1984 for the completion of the Leesburg project established by the Department of Corrections.


James G. Ton

Signed to and Sworn
before me this *10th*
day of August, 1983.


CAROL A. DERRICO
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires Dec. 4, 1984

DANIEL S. HOCHBERG
Accountant & Auditor

RECEIVED
D.B.C.

83 MG-9 A9:11

30 NEW COURT, LONG BRANCH, N.J. 07740
(201) 229-7000

August 2, 1983

Mr. Stanley J. Maziarz
Chief, Internal Audit Bureau
Division of Building & Construction
CN 235
Trenton, NJ 08625

RE: H. Kees & Sons, Inc.

Dear Mr. Maziarz:

Pursuant to our meeting with yourself, Mr. Kees, and I in attendance, we believe the assessment of \$95,738.16 should be further reduced as to the allowable ten and tens under the contract on the \$102,361.04 material, which was purchased and money advanced by Castanza Contracting Co., on behalf of H. Kees and Sons, Inc. This would further reduce the liability by \$21,495.81.

We feel that this adjustment is in line with the contract and that failure to do so would be further penalizing Mr. Kees for a lack of capitalization for which the horrendous interest payment of \$33,000.00 has been disallowed in payment to Kurtz Construction.

Mr. Kees, via this letter, is further asserting his claim to 10% of the aggregate costs: for designs, specifications, plans and renderings from the inception of this construction asserting the normal architect's fees and direct costs of \$250,657.61, per your analysis, in conjunction with the \$102,361.04 of material expended by Castanza Contracting Co.. This should be a further reduction of \$36,001.81.

Again, to reiterate, we are not satisfied with the matter of \$33,000.00 interest payment to Kurtz Construction and continue to seek reduction based on these payments, which you have previously verified.

Since we are representing H. Kees & Sons, Inc., not as attorney, in fact, on these matters, we have had the Corporation acknowledge this letter as it's own statement.


Daniel S. Hochberg


President, H. Kees & Sons, Inc.

DIRECTOR	
TOWNSHEND	
FAULKNER	
OSHYA	
BLAIR	
PODOCH, N.J.	07740
ROSEN	
LEVITAN	
WENSLEY	
SHOLETTE	
WENGEND	
ELLSWORTH	
QUITNER	
PERCINE	
MAZIARZ	
SINGER	
LEWIS	
CERMELE	
NINI	
GENERAL FILE	

Attachment A
ATTORNEY GENERAL'S LIBRARY
JUN 2 1981

EXECUTIVE ORDER NO. 106

WHEREAS, the State Prisons and other penal and correctional institutions of the New Jersey Department of Corrections are housing populations of inmates in excess of their capacities and are seriously overcrowded as a result of unusually large numbers of commitments to the State institutions and commitments for terms of years which are longer than heretofore imposed; and

WHEREAS, the Department is physically unable to accept from the Sheriffs of the various counties the custody of inmates sentenced to the custody of the Commissioner of the Department of Corrections, as mandated by N.J.S.A. 2C:43-10(e); and

WHEREAS, many county penal institutions of the various counties are also presently overcrowded and are housing inmate populations in excess of their capacities while other county penal institutions have available space for additional inmates; and

WHEREAS, there is a need to efficiently allocate inmates of state and county penal and correctional institutions to those institutions having available space in order to alleviate overcrowding; and

WHEREAS, the New Jersey Correctional Master Plan recommends the coordination of resources for jail operation and services by the State, while the jails remain under local jurisdiction; and

WHEREAS, these unusual conditions endanger the safety, welfare and resources of the residents of this State, and threaten loss to and destruction of property, and are too large in scope to be handled in their entirety by regular operating services of either the counties or the New Jersey Department of Corrections;

NOW, THEREFORE, I, BRENDAN T. BYRNE, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and laws of the State of New Jersey, do hereby DECLARE a state of emergency and ORDER and DIRECT as follows:

1. I DECLARE, that a state of emergency exists in the various State and County penal and correctional facilities by reason of the facts and circumstances set forth above.

2. I invoke such emergency powers as are conferred upon me by the Laws of 1942, Chapter 251 (N.J.S.A. App. A:9-30; et seq.) and all amendments and supplements thereto.

3. I hereby DIRECT that the authority to designate the place of confinement of all inmates confined in all State and/or County penal or correctional institutions shall be exercised for the duration of this Order by the designee of the Governor.

4. I hereby designate the Commissioner of the Department of Corrections to effectuate the provisions of this Order.

5. The Commissioner may designate as a place of confinement any available, suitable, and appropriate institution or facility, whether owned by the State, a County, or any political subdivision of this State, or any other person, for the confinement of inmates confined in the State and/or County penal or correctional institutions.

6. When it appears to the satisfaction of the Commissioner that an inmate should be transferred to a penal or correctional institution or facility of the State or the various Counties more appropriate for his needs and welfare, or that of other inmates, or the security of the institution in which he has been confined, he shall be authorized and empowered to designate the place of confinement to which the inmate shall be transferred.

7. This Order is intended to be temporary and to remain in effect only during the duration of the prison and jail overcrowding crisis.

8. I further ORDER that the authority of the Commissioner to designate the place of confinement of any inmate may be exercised when deemed appropriate by the Commissioner regardless of whether said inmate has been sentenced or is being held in pretrial detention, except that only persons sentenced to a prison or committed to the custody of the Commissioner may be confined in a State Prison.

9. The Commissioner of the Department of Corrections shall have full authority to adopt such rules, regulations, orders and directives as he shall deem necessary to effect the above provisions.

10. The Commissioner of Corrections shall develop an appropriate compensation program for the counties.

11. It shall be the duty of every person in this State or doing business in this State, and the members of the governing body, and of each and every official, agent or employee of every political subdivision in this State and of each member of all other governmental bodies, agencies and authorities in this State of any nature whatsoever, fully to cooperate in all matters concerning this emergency.

12. Any person who shall violate any of the provisions of this Order or shall impede or interfere with any action ordered or taken pursuant to this Order shall be subject to the penalties provided by law under N.J.S.A.App.A:9-49.

13. This Order shall remain in effect for a period of ninety days from the date of execution.

14. This Order shall take effect immediately.



GIVEN, under my hand and seal
this 19th day of June,
in the year of Our Lord,
one thousand nine hundred
and eighty-one, and of the
independence of the United
States, the two hundred
and fifth.

/s/ Brendan Byrne

GOVERNOR

Attest:

/s/ Harold L. Hodes

CHIEF OF STAFF, SECRETARY

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

EXECUTIVE ORDER NO. 108

WHEREAS, the conditions in our State Prisons and other penal and correctional institutions of the New Jersey Department of Corrections specified in Executive Order No. 106, signed June 19, 1981 continue to endanger the safety, welfare and resources of the residents of this State; and

WHEREAS, Executive Order No. 106 expires on September 16, 1981.

NOW, THEREFORE, I, Brendan Byrne, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and laws of the State of New Jersey, do hereby declare a continuing state of emergency and Order and Direct as follows:

1. Executive Order No. 106 shall remain in effect until January 20, 1982 notwithstanding any section in it stating otherwise.
2. This order shall take effect immediately.

GIVEN, under my hand and seal
this 11th day of September
in the year of Our Lord, one
thousand nine hundred and eighty-
one, and of the independence of
the United States, the two hundred
and sixth.

/s/ Brendan Byrne
BRENDAN BYRNE
GOVERNOR

[seal]

Attest:

/s/ Harold L. Hodes

HAROLD L. HODES
CHIEF OF STAFF, SECRETARY

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

EXECUTIVE ORDER No. 1

WHEREAS, the State Prisons and other penal and correctional institutions of the New Jersey Department of Corrections continue to house populations of inmates in excess of their capacities and remain seriously overcrowded; and

WHEREAS, these conditions continue to endanger the safety, welfare and resources of the residents of this State; and

WHEREAS, the scope of this crisis prevents local governments from safeguarding the people, property and resources of the State; and

WHEREAS, Executive Order No. 108 (Byrne) of September 11, 1981 expires on January 20, 1982; and

WHEREAS, the conditions specified in Executive Order No. 106 (Byrne) of June 19, 1981, continue to present a substantial likelihood of disaster.

NOW, THEREFORE, I, Thomas H. Kean, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and laws of the State of New Jersey, do hereby declare a continuing state of emergency and Order and Direct as follows:

1. Executive Orders No. 106 (Byrne) of June 19, 1981 and No. 108 (Byrne) of September 11, 1981 shall remain in effect until May 20, 1982 notwithstanding any sections in them stating otherwise.
2. This order shall take effect immediately.



GIVEN, under my hand and seal,
this *20th* day of *January*
in the Year of Our Lord, one
thousand nine hundred and eighty-
two, of the Independence of the
United States, the two hundred
and sixth.

/s/ Thomas H. Kean

GOVERNOR

Seal

12 a

/s/ Lewis P. Thurston III

45x

Ch. STAFF, SECRETARY

E.O. 8, 1982

EXECUTIVE ORDER NO. 8

WHEREAS, the State Prisons and other penal and correctional institutions of the New Jersey Department of Corrections continue to house populations of inmates in excess of their capacities and remain seriously overcrowded; and

WHEREAS, these conditions continue to endanger the safety, welfare and resources of the residents of this State; and

WHEREAS, the scope of this crisis prevents local governments from safeguarding the people, property and resources of the State; and

WHEREAS, Executive Order No. 1 (Kean) of January 20, 1982 expires May 20, 1982; and

WHEREAS, the conditions specified in Executive Order No. 106 (Byrne) of June 19, 1981, continue to present a substantial likelihood of disaster.

NOW, THEREFORE, I, THOMAS H. KEAN, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and laws of the State of New Jersey, do hereby declare a continuing state of emergency and Order and Direct as follows:

1. Executive Orders No. 106 (Byrne) of June 19, 1981, No. 108 (Byrne) of September 11, 1981, and No. 1 (Kean) of January 20, 1982 shall remain in effect until January 20, 1983 notwithstanding any sections in them stating otherwise.
2. This order shall take effect immediately.

GIVEN, under my hand and seal,
this 20th day of May
in the Year of Our Lord, one
thousand nine hundred and
eighty-two, of the Independence
of the United States, the two
hundred and sixth.

/s/ Thomas H. Kean

GOVERNOR

[seal]

Attest:

/s/ W. Cary Edwards

Chief Counsel

13a

46x

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

EXECUTIVE ORDER NO. 27

WHEREAS, the State Prisons and other penal and correctional institutions of the New Jersey Department of Corrections continue to house populations of inmates in excess of their capacities and remain seriously overcrowded; and

WHEREAS, these conditions continue to endanger the safety, welfare and resources of the residents of this State; and

WHEREAS, the scope of this crisis prevents local governments from safeguarding the people, property and resources of the State; and

WHEREAS, Executive Order No. 8 (Kean) of May 20, 1982 expires January 20, 1983; and

WHEREAS, the conditions specified in Executive Order No. 106 (Byrne) of June 19, 1981, continue to present a substantial likelihood of disaster.

NOW, THEREFORE, I, THOMAS H. KEAN, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and laws of the State of New Jersey, do hereby declare a continuing state of emergency and Order and Direct as follows:

1. Executive Orders No. 106 (Byrne) of June 19, 1981, No. 108 (Byrne) of September 11, 1981, No. 1 (Kean) of January 20, 1982, and No. 8 (Kean) of May 20, 1982 shall remain in effect until July 20, 1983 notwithstanding any sections in them stating otherwise.
2. This order shall take effect immediately.

GIVEN, under my hand and seal,
this 10th day of January
in the Year of Our Lord, one
thousand nine hundred and
eighty-three, of the Independence
of the United States, the two
hundred and seventh.

/s/ Thomas H. Kean

GOVERNOR

[Seal]

Attest:

14a

/s/ W. Cary Edwards

Chief Counsel to the Governor

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

EXECUTIVE ORDER NO. 43

WHEREAS, the State Prisons and other penal and correctional institutions of the New Jersey Department of Corrections continue to house populations of inmates in excess of their capacities and remain seriously overcrowded; and

WHEREAS, these conditions continue to endanger the safety, welfare and resources of the residents of this State; and

WHEREAS, the scope of this crisis prevents local governments from safeguarding the people, property and resources of the State; and

WHEREAS, Executive Order No. 27 (Kean) of January 10, 1983 expires July 20, 1983; and

WHEREAS, the conditions specified in Executive Order No. 106 (Byrne) of June 19, 1981, continue to present a substantial likelihood of disaster.

NOW, THEREFORE, I, THOMAS M. KEAN, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and laws of the State of New Jersey, do hereby declare a continuing state of emergency and Order and Direct as follows:

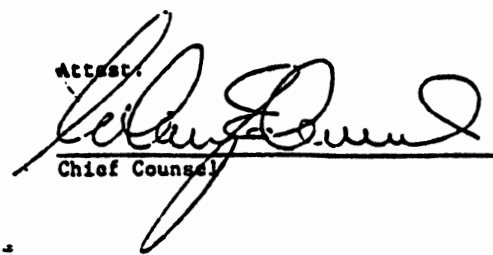
1. Executive Orders No. 106 (Byrne) of June 19, 1981, No. 108 (Byrne) of September 11, 1981, No. 1 (Kean) of January 20, 1982, No. 8 (Kean) of May 20, 1982, and No. 27 (Kean) of January 10, 1983, shall remain in effect until January 20, 1984 notwithstanding any sections in them stating otherwise.
2. This order shall take effect immediately.



GIVEN, under my hand and seal,
this 15th day of July
in the Year of Our Lord, one
thousand nine hundred and
eighty-three, of the Independence
of the United States, the two
hundred and eighth


Governor

Attest:


Chief Counsel

FILED
JUL 15 1983
Jane Burgio
Secretary of State

NEW JERSEY DEPARTMENT OF CORRECTIONS

WILLIAM H. FAUVER, COMMISSIONER

RESIDENT POPULATION COUNTS BY QUARTERS

MAJOR CORRECTIONAL INSTITUTIONS	RESIDENT LAST DAY POPULATION COUNTS BY QUARTERS ENDING:																			
	DEC 1978	MAR 1979	JUNE 1979	SEPT 1979	DEC 1979	MAR 1980	JUNE 1980	SEPT 1980	DEC 1980	MAR 1981	JUNE 1981	SEPT 1981	DEC 1981	MAR 1982	JUNE 1982	SEPT 1982	DEC 1982	MAR 1983	JUNE 1983	SEPT 1983
TOTAL JURISDICTION	6410	6570	6643	6517	6490	6746	6666	6199	6542	7084	7940	8299	8722	9230	9942	9985	10737	10869	10872	11084
COUNTY JAIL WAITING LIST	70	105	93	40	31	100	150	75	200	360	470	650	945	1232	1174	1234	1584	1316	1138	887
JUVENILE WAITING LIST	-	-	-	-	-	-	-	-	-	-	-	-	-	-	136	110	83	77	87	13
COUNTY JAIL TRANSFERS	-	-	-	-	-	-	-	-	-	-	-	48	50	60	72	80	111	129	119	79
TOTAL RESIDENT	6340	6455	6550	6477	6459	6646	6516	6124	6324	6724	7470	7601	7727	7938	8560	8561	8959	9347	9528	10105
PRISON COMPLEX	3787	3787	3820	3755	3793	3833	3722	3450	3585	3827	4155	4259	4351	4427	5006	5098	5384	5609	5752	6260
YOUTH ADULT CORR. COMPLEX	2082	2096	2084	2075	2058	2121	2118	2014	2101	2197	2528	2536	2557	2672	2692	2671	2761	2851	2861	2941
JUV. TRNG SCHOOLS RESID/TRMNT CNTRS	471	582	646	647	608	692	676	660	656	701	787	806	819	839	862	792	814	887	915	904

49x

COMPARED TO INSTITUTIONAL COUNTS ON SEPTEMBER 30, 1980 RESIDENT COUNTS ON SEPTEMBER 30, 1983
INCREASED BY 3981 OR 65% FROM 6124 TO 10,105. THE COUNT IN THE PRISON COMPLEX INCREASED
BY 2810 OR 81% FROM 3450 TO 6260. THE YOUTH COMPLEX EXPERIENCED A 46% OR 927 OFFENDERS
FROM 2014 TO 2941. THE COUNTY JAIL WAITING LIST INCREASED FROM 75 ON SEPTEMBER 30, 1980
TO 887 ON SEPTEMBER 30, 1983.

