

THE PROBLEM OF PRISON OVERCROWDING AND ITS
IMPACT ON THE CRIMINAL JUSTICE SYSTEM

HEARING
BEFORE THE
SUBCOMMITTEE ON
PENITENTIARIES AND CORRECTIONS
OF THE
COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE
NINETY-FIFTH CONGRESS
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THE PROBLEM OF PRISON OVERCROWDING AND ITS IMPACT ON THE CRIMINAL JUSTICE SYSTEM

TUESDAY, DECEMBER 13, 1977

U.S. SENATE,
SUBCOMMITTEE ON PENITENTIARIES AND CORRECTIONS
OF THE COMMITTEE ON THE JUDICIARY,
Wilmington, Del.

The subcommittee met, pursuant to notice, at 10:20 a.m., in court room No. 4, Federal Building, Wilmington, Del., Senator Joseph R. Biden, Jr. (chairman of the subcommittee) presiding.

Present: Senator Mathias.

Staff present: Gerald Doherty, staff director; Michael Gelacak, chief counsel; Reilly Temple, minority chief counsel; Gerald diGenova, legislative assistant; and Edna Panaccione, chief clerk.

Senator BIDEN. The hearing will come to order, please.

I have a brief opening statement. Senator Mathias also has a brief opening statement. Then we will hear from our first witness, whom we will formally introduce in a moment.

The notion of "equal time for equal crime" has gained a great deal of favor in recent years.

Our popularized conception of justice as being blind is, I believe, about to become a reality rather than a myth as we adopt a system of true accountability for criminal acts.

As a result, there has been, and will be, a great deal of debate regarding the role of prisons in our society.

It is in the climate of this ongoing debate that we propose today to examine the need for construction of new and renovation of existing State and local correctional facilities.

The fact is that many of our Nation's prisons are massively overcrowded and this overcrowding has been having a devastating effect on our system of justice.

Studies indicate that the Federal prison system is 28 percent over capacity nationally and, on the average, State prison systems are 11 percent over capacity.

Plea bargaining, sentencing, probation and parole objectives are essentially paralyzed by lack of prison space.

But the problem does not end there.

Combined with a critical lack of funds, overcrowding manifests itself as well through increasingly inhumane conditions within our prison walls.

We build prisons to protect society, rehabilitate prisoners and exact punishment. That we accomplish any of these ends within the framework of our present system appears to be pure happenstance.

When a prisoner is reintegrated with society has little to do with the protection of society. Inhumane conditions breed hostility, contempt and unrest, making rehabilitation an improbable, if not impossible, dream.

Prison population control rather than accountability is becoming the primary determinant of incarceration or release.

I believe we must have adequate space with decent, humane conditions in order to attain our goal of true accountability within our criminal justice system.

For this reason, I believe that Federal funding in this area must be tied to defined minimum standards of human decency in prisons.

We shall hear today from a wide spectrum of people concerned with the question of prison conditions here in Delaware. I would like to digress from the formal statement for just a moment to reemphasize that in today's climate we have both the left and the right, conservatives and liberals, calling for everything from speedy trials to definite sentencing and flat-time sentencing, as well as the elimination of parole and probation.

All of this adds up to one fundamental thing. It means an increase in prison populations. There is no way in which we can have speedy trials the way they should be guaranteed at State, local, and Federal levels, and at the same time institute the concept of just desserts whereby there are minimum mandatory sentences or flat-time sentencing, and not drastically increase the prison population.

I would like to read one paragraph from a study which I asked LEAA to conduct back in 1976.

On October 15, 1976, the Crime Control Act of 1976 was enacted into law. It included a provision specifying the following mandate:

The institute shall, before September 30, 1977, survey existing and future needs in correctional facilities in the nation and the adequacy of Federal, State, and local programs to meet such needs. Such surveys shall specifically determine the effect of anticipated sentencing reforms, such as mandatory minimum sentences on such needs.

In carrying out the provisions of this section, the director of the institute shall make maximum use of statistical and other related information of the Department of Labor, the Department of Health, Education, and Welfare, the General Accounting Office, Federal, State, and local criminal justice agencies and other appropriate public and private agencies in a court.

They go on to write a fairly extensive report which is a little more than bureaucratic regurgitation of facts.

In that report they come to the inescapable conclusion that if we want to meet those mandates, more space is required.

So, folks, we cannot have both. We cannot have sure and swifter sentences and people in jail and not have more prisons.

The purpose of the hearing today is to figure out how we aid States, if we all continue to adhere to those goals as objectives.

Not that the Federal Government is not also in a bind. How do we aid States and provide that the Federal Government does not have these problems as well?

I am hopeful that the result of these hearings will be a set of guidelines for assisting our State and local governments to meet an increasingly complex and unpopular budgetary problem.

The hearings are now open. Our first witness is our very distinguished Congressman Thomas B. Evans.

Before we start with Congressman Evans' testimony—I should point out he spent Sunday in prison, not at the behest of any Democrat; but he did go to prison Sunday. He will comment on that.

But first we will hear from my distinguished Republican colleague from the State of Maryland who is the ranking minority member of the subcommittee. He has had more than a bit of experience in this area. He has probably been in Congress longer than I have been in Government.

Senator Mathias, thank you for coming. Go ahead.

**STATEMENT OF CHARLES McC. MATHIAS, JR., A U.S. SENATOR FROM
THE STATE OF MARYLAND**

Senator MATHIAS. Mr. Chairman, briefly I will say this.

I do not want to delay Congressman Evans' testimony.

I think it is interesting to note that this is the first time that this subcommittee has held hearings outside of Washington, certainly in my memory. I am sure that is true for many, many years.

I think this reflects the initiative of the chairman of the subcommittee and the enlightened policy of Senator Eastland, the chairman of the full Judiciary Committee, who has encouraged and authorized the Judiciary Committee to go around the country. This is an important method, I think; of making it clear that the Federal Government does not exist only in Washington, but is reaching out for ideas and solutions from the grassroots.

I think it also reflects that this prison issue has become a far more serious question in the last few years. With all due respect to the chairman's initiative, he and I are being pushed by the pressure of this problem. It is of very serious concern to the Congress not only with relation to the Federal prison system, but how we should relate to State problems and how we should avoid mistakes.

The Federal Government some years ago went out to Chillicorte; Ohio, and, in an outburst of enthusiasm built a huge, multimillion dollar juvenile prison facility. It was a total bust. They had to give it away to the State of Ohio because it was not a manageable penal institution.

So, by hearings of this sort at the grassroots, in Wilmington, Del., and other places, I think we can at least examine very carefully the various proposals.

Of course I have a parochial interest in this. The State of Maryland is among those States which is having serious prison problems. We have over 8,500 prisoners in Maryland in facilities built for 7,500. That simply is a time bomb. It is trouble. It can defeat the whole purpose of any kind of rehabilitative program.

The Maryland Law Review recently published an article on this in which it said:

To an administrator an overcrowded prison or jail abounds in the many day-to-day practical problems of inadequate facilities and manpower.

To a prisoner, however, overcrowding is a detrimental psychological and sociological impact which, in turn, aggravates the administrative problem. It is widely accepted that unless humans have a certain amount of physical space around their bodies, aggravations and stress result. This territorial phenomenon is largely responsible for heightened tensions in prisons.

I think this is beyond dispute. This is part of the problem of simply managing prisons.

So, Mr. Chairman, I welcome these hearings. I look forward not only to today's testimony, but to the further intensive study that you have planned on this problem.

Senator BIDEN. Thank you, Senator.

I should point out to our witnesses and to those who are attending the hearings that this is the first of several hearings which we will be having within the next month or so.

The staff very much wanted to hold hearings in Florida and Hawaii [laughter], but we opted to stay on the east coast. We will be holding hearings in Maryland and in Philadelphia. Probably in the spring we will be going to the west coast and the Midwest and to other major areas where they are having the same problem.

This is the first of several hearings that we will have on this issue. For those of you who will be attending the hearing today you should know that our first witness will be Tom Evans. Then Governor DuPont will testify. The Lieutenant Governor will then testify.

The Governor has a panel of experts with him who are going to testify on the problem. I will not name them all now. He will introduce them.

At 1 o'clock we will break for lunch. At 2 o'clock we will resume. Our first witness will be John Parkins, an attorney in the attorney general's office. Then we will go with Scott Cowen, executive director of the Delaware Council on Crime and Justice.

We will then hopefully end the hearings, beginning at 4 o'clock with the testimony of Senator Thomas Sharp. Members of the public will also be invited to testify after that point.

Without further ado, we will begin.

Mr. Evans, we thank you for coming. Carry on any way you would like.

STATEMENT OF THOMAS B. EVANS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF DELAWARE

Mr. EVANS. Senator, that trip to Hawaii sounds like a good idea. The only junket I have taken is to ride the ConRail lines down to Seaton, Del.

I appreciate very much your giving me the opportunity to appear here today.

Senator Mathias, we are glad to have you in Delaware. I know of your long-time interest in prisons and in the correction system. It is very much recognized by many around the country.

Mr. Chairman, I thank you again for allowing me to be here. I think we are really addressing a topic of great concern, not only to Delawareans, but people around the country. This hearing certainly is important to Delaware because we have a crisis in our prison system. It is also important to the rest of the Nation as well.

At the outset, Mr. Chairman, let me say that I think for too long Government and politicians generally have tried to sweep prison problems under the rug. It is not a popular issue on which to speak. I congratulate you on the hearings and on addressing the crisis that we have.

The plain and simple fact is that our prisons do face a crisis, whether we recognize it or not, here in Delaware and around the country. It is a crisis of overcrowding and a crisis of purpose.

In hopes of solving the problems of crime we have filed criminals away in our prisons. But the solution to the problem is just not that simple.

Now we have reached the point in Delaware and across the Nation where we simply have no more room to put prisoners.

Criminals are roaming the streets of our country because we have nowhere to put them, and law-abiding citizens are living in fear. I think this situation is appalling.

People who are forced to live in fear of crime are just as much victims as those who are mugged on the streets.

I cannot stand to sit here and say that I have had a long-time interest in prisons. Over a period of 10 or 20 years I cannot say that, but I can say I have been very much interested in our senior journalist in the State of Delaware, Mr. Bill Frank, and his coverage of prisons and the problems that we have. My wife, Mary Page, has been involved in prison work for some time.

My one-time enemy and now good friend, Chuck Colson and I have met on a number of occasions in Washington since I have been there. He now runs the Fellowship House.

Mr. Colson, in my opinion, is doing an outstanding job. He has turned his life in another direction and is, I think, acting very responsibly for his country.

I have not been to a number of prisons. I have been to several. I might also add, as you did at the outset Senator, that I did visit the Delaware Correctional Center in Smyrna this past Sunday and attended church services there. Afterward I toured the prison facilities with the chaplain.

During that visit I spoke with a number of guards who are on the frontlines of our penal system. Believe me, they are faced with real problems. It is they who have to deal, on a day-to-day basis, with the terrible problems of our prisons. I think they handle the problems with a great deal of courage in doing so.

I would hope that this subcommittee—and I am sure you expect to—in your efforts to develop prison legislation, would talk with the guards and receive their comments about the problems in prisons.

Mr. Chairman, I strongly believe that the best deterrent to crime is the sure knowledge by a potential criminal that he is going to be caught and put in jail. Too often the criminal believe that his chances of going to jail are very, very slim—and, in many cases, this is true.

This is, in part, due to the tremendous overcrowding which has occurred in the last few years in our prisons. In the period between 1967 and 1973, there was a dramatic increase in both the number of crimes committed and the number of individuals going to jail.

A recent survey of all Federal and State prisons indicates there has been an increase of over 33,000 inmates between January 1, 1976 and January 1, 1977. This is the largest increase on record.

Criminals must know full well that they will be punished for their crimes. That is why I support mandatory minimum sentences for crimes of violence. Since our sentencing procedures are directly related to our prison facilities, we must be able to house those persons

convicted of crimes if our "get tough" attitude toward criminals is to be successful.

But I think it would be the height of irresponsibility if, I, as a public official or any other public official, were to sit here and say: "Get tough. Put criminals in prison", if we did not address the problem of housing.

I am delighted that you gentlemen are addressing that. I congratulate your subcommittee.

There is another very important element in our penal system which I will not address this morning, which is parole. It is a complex issue. I know your committee will focus some attention on that.

Several factors have contributed to the dramatic rise in our prison population. I certainly do not have all the answers, but I do see several developments that have had a direct effect on this particular problem.

First of all, the so-called baby boom of the post-war period has resulted in a higher number of individuals between the ages of 17 and 29. That is the highest risk category of crime.

Additionally, high unemployment among young people has contributed to increased criminal activity.

There has been intense debate among experts in the field of corrections on just what role our prisons should play. The failure of our penal system to "rehabilitate" individuals incarcerated for a crime is evidenced by the incredibly high rate of repeat offenders. Four out of five crimes, serious crimes, are committed by ex-convicts.

The high rate of crime in our State and in our Nation, and particularly by repeat offenders, underscores the urgency of dealing with our prison problems.

Some prisoners can be rehabilitated; some perhaps cannot. But if four out of every five are repeat offenders, that means that rehabilitation programs are not as effective as they should be. This is not fair to anyone. It is certainly not fair to the law-abiding citizen who is forced to live in fear.

I recognize that State prisons are the prime responsibility of State governments. However, in the past few years Federal judges have issued decrees relating to prisons which have placed serious financial burdens on State and local governments. Therefore, I believe that is time for the Federal Government to help share in the financial burden.

With this in mind, I plan to introduce, in the next session of Congress, legislation which I feel will help solve the overpopulation crisis of our prisons and thereby help to fulfill both the deterrent and rehabilitative role that our prisons should provide.

I am hopeful that the Senators on this panel will join me in support of this bill or another bill similar to it. This bill will make available to the States, through the Justice Department, \$200 million in the next fiscal year and \$300 million for the following year.

This will provide for up to 50 percent of the total cost of the construction, renovation, or acquisition of correctional facilities. A certain percentage funds could be allocated by the States for the improvement of correction programs and practices.

Most importantly, one of the conditions used to determine a particular State's need for funds under this bill will be whether a Federal court order is in effect which mandates a reduction in prison population or otherwise orders added facilities or services.

If Federal courts are going to dictate how our prisons are run, then the Federal Government has an obligation to the States to see that some Federal moneys are available to alleviate the severe financial burden such orders can place on our citizens.

At the present time, almost no Federal money is available to the States for prison construction. If our criminal justice system is to work at all, we must be able to adequately house all those convicted of serious crimes. It is imperative that our penal system be strengthened, not only to deal directly with our crime problem, but also to help restore public confidence.

Thank you.

Senator BIDEN. Thank you very much, Congressman.

I failed to note at the outset that obviously the end result of these hearings is designed to determine which is the best constructed federally assisted program available.

Senator Mathias has an innovative bill which he can outline when he feels it is appropriate.

Without objection, I would like to place a copy of his bill in the record at this point.

[Material follows:]

[S. 28, 95th Cong., 1st sess.]

A BILL to provide for financial assistance to improve the capabilities of units of local government to deal with career criminals, to establish the Office of Repeat Offenders Prosecution Projects within the Law Enforcement Assistance Administration, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be called the Repeat Offenders Prosecution and Prison Improvement Act.

TITLE I—FINANCIAL ASSISTANCE FOR CAREER CRIMINAL PROSECUTION PROGRAMS

PART A—FINDINGS; PURPOSE AND DEFINITIONS

STATEMENT OF FINDINGS AND DECLARATION OF PURPOSE

SEC. 101. (a) The Congress finds that—

(1) criminal recidivists account for a significant proportion of the individuals arrested for serious crime in the United States;

(2) large numbers of criminal recidivists escape identification as criminal repeaters and use their familiarity with the criminal justice system to avoid prosecution and punishment;

(3) increasing the number and speed of convictions of career criminals would have a significant impact on the level and frequency of serious crime in the United States; and

(4) increasing the research efforts relating to the amount of crime committed by criminal recidivists is of prime importance to adequate planning for the criminal justice system.

(b) The Congress declares that it is the policy of the United States to assist units of general local government having populations of at least two hundred and fifty thousand individuals by way of grants and technical assistance to improve the capacity of such units of general local government to deal with career criminal offenders.

DEFINITIONS

SEC. 102. As used in this title—

(1) "Administrator" means the Administrator of the Law Enforcement Assistance Administration;

(2) "Director" means the Director of the Office of Repeat Offenders Prosecution Projects;

(3) "Office" means the Office of Repeat Offenders Prosecution Projects established within the Law Enforcement Assistance Administration; and

(4) "eligible units of general local government" means any such units of general local government defined in section 601 of the Omnibus Crime Control and Safe Streets Act of 1968 having a population of two hundred and fifty thousand or more individuals on the basis of the most satisfactory current data available to the Administrator.

PART B—REPEAT OFFENDERS PROSECUTION GRANTS FINANCIAL ASSISTANCE AUTHORIZED

SEC. 111. The Administrator is authorized to make grants to eligible units of general local government and to provide technical assistance to such units of general local government to assist such units in establishing and operating programs designed to identify and expedite the prosecution and conviction of career criminal offenders.

APPLICATION

SEC. 112. (a) A grant may be made under this title only pursuant to an application submitted to the Administrator at such time, in such manner, and containing or accompanied by such information as the Administrator deems reasonably necessary. Each such application shall—

(1) designate or establish a local agency or office to implement and administer the repeat offender prosecution program for which assistance is sought;

(2) set forth the rate of crime in the area served by the eligible unit of local government including the number of repeat offenders and a detailed description of the existing components of the criminal justice system of the eligible unit of general local government, including but not limited to, police agencies, prosecutors, courts, correctional agencies and public defenders, and how each of the components so described will be utilized, altered, or reformed to implement the repeat offender prosecution program for which assistance is sought under this title;

(3) contain satisfactory assurances of the actual and continuing cooperation of all the components of the criminal justice system of the eligible unit of general local government in such a repeat offender prosecution program;

(4) set forth criteria to be used in the selection of career criminal offenders to be prosecuted under such repeat offender prosecution programs;

(5) provide for the collection of information necessary to identify career recidivists to classify such career recidivists, as career criminal offenders, and to follow the cases of such criminal offenders through the criminal justice system of such eligible unit of general local government subject to the provisions of section 524(b) of the Omnibus Crime Control and Safe Streets Act of 1968;

(6) provide for the collection and submission of such information as the Director may reasonably require;

(7) provide for procedures to protect the rights and privacy of accused individuals and to assure that the information collected regarding such individuals will be used only for law enforcement and criminal justice purposes in accordance with the provisions of section 524 (b) of the Omnibus Crime Control and Safe Streets Act of 1968;

(8) set forth a description of the anticipated impact of the repeat offender prosecution program assisted under this title on detention facilities and a description of actions to be taken by the eligible unit of general local government to address the problems raised by such anticipated impact;

(9) provide an itemized estimated cost for the implementation and operation of the repeat offender prosecution program for which assistance is sought under this title;

(10) provide for continuing coordination between the repeat offender prosecution program assisted under this title and related law enforcement activities assisted under title I of the Omnibus Crime Control and Safe Streets Act of 1968;

(11) set forth policies and procedures which assure that Federal funds made available under this title for any fiscal year will be so used to supplement and, to the extent practical, increase the level of funds that would, in the absence of such Federal funds, be made available by the eligible unit of general local government for the purposes described in the application, and in no case supplant such funds; and

(12) provide for such fiscal control and fund accounting procedures as may be necessary to assure the proper disbursement of and accounting for Federal funds aid to the eligible unit of general local government under this title.

(b) An application by an eligible unit of general local government for financial assistance under this title may be approved by the Administrator only if it meets the requirements set forth in subsection (a) of this section.

(c) Amendments of applications shall, except as the Administrator may otherwise provide, be subject to the approval in the same manner as original applications.

TECHNICAL ASSISTANCE

SEC. 113. The Administrator is authorized to undertake such activities as he determines are necessary to provide either directly or by way of grants, contracts, or other arrangements, technical assistance to eligible units of general local government in planning, developing, and administering repeat offender prosecution programs for which assistance is provided under this title.

LIMITATIONS ON PAYMENTS

SEC. 114. (a) No payment may be made under this title to any single eligible unit of general local government in any fiscal year in an amount less than \$100,000.

(b) No payment for any fiscal year under this title to the eligible units of general local government in a single State shall exceed 12½ per centum of the aggregate payments to all eligible units of general local government in that year under this title.

PAYMENTS

SEC. 115. (a) The Administrator shall pay in any fiscal year to each eligible unit of general local government which has an application approved pursuant to this title for that fiscal year the amount necessary to carry out such application as determined by him.

(b) Payments under this section may be made in installments, in advance or by way of reimbursement, with necessary adjustments on account of overpayments or underpayments.

(c) The Administrator shall give due consideration to providing financial assistance for the continued funding of programs of demonstrated effectiveness which otherwise meet the requirements of this title.

CONSULTATION

SEC. 116. In carrying out the provisions of this title, the Administrator shall consult with the Attorney General and the heads of such other Federal agencies as he determines will assist in carrying out the provisions of this title.

PART C—THE OFFICE OF REPEAT OFFENDERS PROSECUTION PROJECTS

OFFICE OF REPEAT OFFENDERS PROSECUTION PROJECTS ESTABLISHED

SEC. 121. (a) There is established within the Law Enforcement Administration of the Department of Justice, the Office of Repeat Offenders Prosecution Projects.

(b) The programs authorized by this Act, unless otherwise specifically provided in this Act, shall be administered by the Office established under this section.

(c) (1) The Office shall be headed by a Director, who shall be appointed by the President, by and with the advice and consent of the Senate. Under the general supervision and direction of the Administrator, the Director shall exercise all of the functions of the Office under this Act.

(2) There shall be in the Office a Deputy Director who shall be appointed by the Administrator. The Deputy Director shall perform such functions as the Director may prescribe and shall be Acting Director during the absence or disability of the Director or in the event of a vacancy in the office of the Director.

FUNCTIONS OF THE OFFICE

SEC. 122. In order to carry out the purposes of this Act, the Administrator shall—

(1) make grants to eligible units of general local government for special prosecution programs for career criminal offenders in accordance with part B of this title;

(2) provide technical assistance to eligible units of general local government in the planning, establishment and operation of such programs;

(3) provide for the widest practicable and appropriate dissemination of information including an analysis and evaluation of the performance and results obtained from the operation of repeat offender prosecution programs for career criminal offenders assisted under this title; and

(4) prepare and submit a report to the President for transmittal to the Congress at least once each year on the activities of the Office and programs assisted by the office, together with such recommendations, including recommendations for legislation, as the Administrator deems appropriate.

ADMINISTRATIVE PROVISIONS

SEC. 123. (a) The Administrator is authorized, in carrying out his functions under this title, to—

(1) appoint and fix the compensation of such personnel as he deems necessary;

(2) employ experts and consultants in accordance with section 3109 of title 5, United States Code;

(3) appoint one or more advisory committees composed of such private citizens and officials of Federal, State, and local governments as he deems desirable to advise him with respect to his functions under this title;

(4) promulgate such rules, regulations, and procedures as may be necessary to carry out his functions, including the establishment of priorities to be applied in the approval of applications under this title;

(5) utilize, with their consent, the services, equipment, personnel, information, and facilities of other Federal, State, local, and private agencies and instrumentalities, with or without reimbursement therefor;

(6) without regard to section 529 of title 31, United States Code, to enter into and perform such contracts, leases, cooperative agreements, and other transactions as may be necessary to carry out his functions under this title with any public agency, with any person, firm, association, corporation, or educational institution, and make grants to any public agency or private nonprofit organization;

(7) accept voluntary and uncompensated services, notwithstanding the provisions of section 665(b) of title 31, United States Code;

(8) request such information, data, and reports from any Federal agency as the Administrator may from time to time require and as may be produced consistent with other provisions of law; and

(9) arrange with the heads of other Federal agencies for the performance of any of his functions under this title with or without reimbursement, and with the approval of the Attorney General, delegate and authorize the redelegation of any of his functions under this title.

(b) Upon request made by the Administrator each Federal agency is authorized and directed to make its services, equipment, personnel, facilities, and information (including suggestions, estimates and statistics) available to the greatest practical extent to the office in the performance of its functions.

(c) Each member of the committee appointed pursuant to paragraph (3) of subsection (a) of this section shall receive \$120 a day including traveltime, for each day he is engaged in the actual performance of his duties as a member of the committee. Each such member shall also be reimbursed for travel, subsistence, and other necessary expenses incurred in the performance of his duties.

COMPENSATION OF THE DIRECTOR

SEC. 124. Section 5316 of title 5, United States Code, is amended by adding at the end thereof the following new paragraph:

"(137) Director, Office of Repeat Offenders Prosecution Projects Law Enforcement Assistance Administration."

PART D—GENERAL PROVISIONS

WITHHOLDING OF GRANTS

SEC. 131. Whenever the Administrator, after reasonable notice and opportunity for a hearing to any "eligible unit of general local government", finds—

(1) that there has been a failure to comply substantially with any requirement set forth in the application of an eligible unit of general local government approved under section 112; or

(2) that in the operation of any program or project assisted under this title there is a failure to comply substantially with any applicable provision of this title; the

Administrator shall notify such eligible unit of general-local government of his findings and that no further payments may be made to such local government under this title until he is satisfied that there is no longer any such failure to comply, or the noncompliance will be promptly corrected. The Administrator may authorize the continuance of payments with respect to any program or project assisted under this title which is being carried out pursuant to such application and which is not involved in the noncompliance.

REVIEW AND AUDIT

SEC. 132. The Administrator and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit and examination, to any books, documents, papers, and records of a grant made under this title that are pertinent to the grant received.

SAVINGS PROVISION

SEC. 133. Nothing contained in this title shall be construed to prevent or impair the enforcement of any other provision of Federal law.

AUTHORIZATION OF APPROPRIATIONS

SEC. 134. There are authorized to be appropriated _____ for the fiscal year 1978, _____ for the fiscal year 1979, and _____ for the fiscal year 1980.

TITLE II—FEDERAL REGIONAL PRISON SYSTEM

FINDINGS AND PURPOSE

SEC. 201. (a) The Congress finds that—
 (1) there is a critical shortage of prison facilities at the State and Federal levels;
 (2) that such shortage has a significant effect on judicial sentencing policy; and
 (3) the Federal Government is obligated to alleviate the overcrowding of such facilities and to improve living conditions therein.
 (b) The purpose of this title is to meet the obligation of the Federal Government by providing for the construction and operation of five regional prison facilities for State and Federal prisoners.

DEFINITIONS

SEC. 202. As used in this title—
 (1) "Attorney General" means the Attorney General of the United States or his delegate; and
 (2) "Director" means the Director of the Bureau of Prisons.

ESTABLISHMENT OF REGIONAL PRISONS

SEC. 203. (a) (1) The Attorney General is authorized and directed to construct five Federal regional prisons for the purpose of providing suitable quarters for the imprisonment, care, and subsistence of any person held under authority of any Federal or State statute.
 (2) The Attorney General is authorized—
 (A) to select and, where Federal land is not available, to acquire appropriate sites for such Federal regional prisons to best alleviate the overcrowding in State and Federal correctional facilities; and
 (B) to contract with the proper authorities of any State for the imprisonment, care, and subsistence of any persons convicted of an offense against such State in accordance with the provisions of section 204.
 (b) The Bureau of Prisons, under the direction of the Attorney General, shall have charge of and management and regulation of all Federal regional prisons

ASSIGNMENT OF PRISONERS

SEC. 204. (a) The Attorney General may designate as the place of confinement any available, suitable, and appropriate Federal regional prison, where the sentence of any person convicted of an offense against the United States shall be served except that such persons shall not constitute more than 25 per centum of the total number of persons confined in any such prison.

(b)(1) The Attorney General may contract with the proper authorities of any State for the imprisonment, care, and subsistence of any person convicted of an offense against such State, who would otherwise qualify for imprisonment in a Federal medium or maximum security institution, in any available, suitable, or appropriate Federal regional prison. The Attorney General shall have final authority in any decision with respect to the selection and assignment of such persons to such prisons.

(2) Any contract entered into under this subsection shall require such State to pay the Federal Government for the care and custody of such persons on a per diem basis at a rate which reflects the cost of constructing and operating such prison, including the cost, if any, of acquiring the land on which such prison is situated.

TREATMENT OF STATE PRISONERS

SEC. 205. (a) Any person convicted of an offense against a State who is assigned to a Federal regional prison as provided in section 204 shall be subject to the same discipline and treatment as any person convicted of an offense against the United States and assigned by the Attorney General to such prison.

(b)(1) Notwithstanding the provisions of subsection (a), for purposes of awarding or forfeiting good time allowances, final discharge from prison, or release on parole, such persons shall be subject to the same treatment as any person convicted of an offense against the State who is serving a sentence in a State institution.

(2) The Director shall maintain and make available to the proper State authorities accurate records on each person confined in a Federal regional prison pursuant to a contract under section 204.

AUTHORIZATION OF APPROPRIATIONS

SEC. 206. There are authorized to be appropriated for the purpose of carrying out the provisions of this Act, \$10,000,000 for the fiscal year ending September 30, 1978, \$20,000,000 for the fiscal year ending September 30, 1979, and \$50,000,000 for the fiscal year ending September 30, 1980.

Senator BIDEN. I have a less innovative and more standard bill. People will start to talk about us, Tom Evans, because the bill we drafted is essentially the same as your bill. The only difference is in the amount of money. We provide \$300 million.

Mr. EVANS. You are a Democrat and I am a Republican. [Laughter.]

Senator BIDEN. It also provides for 50 percent for new construction and 75 percent for renovation and/or restoration of a different facility.

But that is one of the reasons for going around the country.

Senator MATHIAS. You do not have to apologize for the similarities among the bill. I know of an old lawyer in a county seat in Maryland who specialized in divorce practices. His standard phrase was: "No collusion; just cooperation." [Laughter.]

Mr. EVANS. It indicates, Mr. Chairman, that a bipartisan effort is needed. I think all too often that does not occur. I think in most issues a bipartisan effort is the best way to go.

Senator BIDEN. I would like to ask you a few questions and then turn it over to Senator Mathias.

First of all, Congressman, in the State of Delaware we are going to hear testimony today, as we all know, the State legislature and the Governor are faced with difficult problems which are going to cost the State potentially a great deal of money considering the size of our State.

Even under my bill, which is a little bit more money, in all candor, assuming the bill would pass, with \$300 million every year, Delaware would receive a minimum of \$2.2 million. There is \$150 million in discretionary funds and possibly as much as another \$10 or \$12 million in a single year.

But the practical fact of the matter is this. It is not enough money to deal with the States' problems all across the country.

I am wondering whether or not when you were preparing your legislation you thought about what impact the dollar amounts will have. I wonder if you could tell us roughly why you came up with the figures you did.

Is it mainly because of knowing the constraints that will exist in Washington, or because you think you could get the job done with that?

Mr. EVANS. I do not think this will be the answer to all of our problems in terms of prisons, but I think we have to recognize that you cannot take more of a percentage in taxes out of the working man and woman's dollars that they earn.

I think we also have to recognize that Government cannot do it all.

As far as this particular problem is concerned, if we can help solve the problem of repeat offenses, four out of every five serious crimes which are committed, are committed by ex-convicts—so, if we can reduce that to 3 out of 5 or 2½ out of 5, then we would have made some headway, some substantial headway.

I am pleased that there are people like Chuck Colson in Fellowship House who are working to do just that with private funds and with non-Government funds. We have people who have concerns.

One of the problems we have in Delaware at the Delaware Correctional Center is that the vocational programs and the educational problems that we have there, if you were there for 3 years, you would have run out of programs to take. We do not have the proper follow-through, in my estimation, on a 1-on-1 basis, whether it be from the Government or whether it be from the private sector.

I think the private sector also shares in this responsibility because you can do that without spending the taxpayers' dollars. I think that is the solution that we would have to look to on a long-term basis.

Senator BIDEN. Thank you very much.

Senator Mathias.

Senator MATHIAS. Mr. Chairman, I would like to lobby with the Congressman for a moment on my own bill, which is the concept of the construction by the Federal Government of a series of regional prisons which would be available on a contract or lease basis to the States.

There are pluses and minuses to that prospect. As a matter of fact, the genesis of it, I will tell you frankly, is when the Governor of Maryland asked me to try to lease from the Federal Government the Fort Meade stockade because we had such an urgent need for prison space. Prisoners whose terms had not expired or who were not qualified under the parole system, were simply being put on the streets because there was no room to keep them anywhere in the prisons in Maryland.

I was not able to negotiate any kind of lease use of the Fort Meade Army stockade, but it did give rise to the thought that we could have some facility in which the Federal Government would make available space under these conditions.

It would keep the States from overbuilding prisons. We have overbuilt schools in many communities. We now have classroom space that we no longer need.

I would hope the day would come—maybe that is overly optimistic—when we might not need as much prison space as we do today.

But if you had a regional facility, it would give the States access to adequate room without overbuilding in a given State.

The drawback, of course, is that you remove a prisoner from the community influences of family, church, and other things that have had a strong rehabilitative force traditionally in rehabilitating convicted criminals.

I do not know whether you have had a chance to look at this, but I simply bring that up.

Mr. EVANS. Yes; I have had a chance to look at it. It is a very close question, in my mind, as to which direction you take. There is the sharing and leasing of Federal facilities by the States and some help by the Federal Government to the States in doing that. That is a partial solution.

But I think one of the problems that we have is that we do not have the proper rehabilitation. We do not have the 1-on-1. We do not have the training for a permanent job when an individual gets out of prison. This puts them back in the same lifestyle and the same cycle that turns them back in.

As you properly point out, Senator, there is the concern that family and friends and loved ones show for a prisoner. Everyone seems to think that prisoners are a bunch of animals. They are human beings, too. I think we have to recognize that fact.

Senator MATHIAS. Most of them come back and become a part of society. Whether you like it or not, they are back on the streets.

Mr. EVANS. Yes; that is true. We have to recognize that does, in fact, happen. So, the best way and the best solution, I think, is to do something about rehabilitation and do something about providing jobs and do something in the prisons themselves.

If we do that, I think that is going to be a long-term solution.

But without the concern that a friend cares or a minister or priest or rabbi might have and show them, I think you lose some of that opportunity.

So, it is a very, very close question.

Senator MATHIAS. But you agree with both the chairman and with me that there is a Federal role here?

Mr. EVANS. Absolutely.

Senator MATHIAS. And there is an urgency?

Mr. EVANS. Yes; there is a real urgency. There is a Federal role also. There is also a special Federal role when the Federal Government mandates a reduction in the number of inmates which increases the burden that the States have to bear.

Senator MATHIAS. Thank you very much, Mr. Chairman.

Senator BIDEN. Thank you.

Let me make a brief comment.

As I understand the thrust of your statement, Congressman, although the Federal funding can be helpful and is needed on the short term, what we have to do on the long term is to develop a better rehabilitative framework within our prison system; is that right?

Mr. EVANS. Two things. One is to make certain that criminals, when they commit a crime, are going to spend some time in jail. I think they have to know that. I think that will be a deterrent, certainly on a long-term basis. Maybe that will help reduce the prison population.

But as we do that, I think we have to address the other side the equation. That is rehabilitating those people who are already there so that we do not have a revolving door system of justice where you are constantly going in and coming out and committing a crime and going back in again.

Senator BİDEN. I would like to invite you, if you would, and especially in light of your interest, in the spring to come back and testify before our committee in Washington on a separate subject of rehabilitation.

I have reached the conclusion that we do not have any idea how to rehabilitate. I am ready to scrap it, which I realize is a fairly drastic move. I would like your input on that question.

But that is not the subject today.

Thank you very much. I know you are off to Washington. I appreciate your coming.

Mr. EVANS. I appreciate that, Mr. Chairman. I bid you good day, Senator Mathias.

Senator BİDEN. Our next witness is Gov. Pierre S. duPont. I apologize for holding him up. He is the busiest man in the State.

Everytime I wake up I think: "Oh, God, what am I doing in the Senate?" Then I think I could be the Governor.

I am glad you are the Governor, Governor. I am anxious to hear your testimony. I understand you also have a panel of experts who will appear with you later.

STATEMENT OF PIERRE S. duPONT, GOVERNOR, STATE OF DELAWARE, ACCOMPANIED BY CHRISTINE M. HARKER, EXECUTIVE DIRECTOR, GOVERNOR'S COMMISSION ON CRIMINAL JUSTICE; JOHN PARKINS, DEPUTY ATTORNEY GENERAL; JAMES VAUGHN, COMMISSIONER, DEPARTMENT OF CORRECTIONS; THOMAS QUINN, PROGRAM DIRECTOR, GOVERNOR'S COMMISSION ON CRIMINAL JUSTICE; AND MICHAEL RABASCA, STATISTICIAN, GOVERNOR'S COMMISSION ON CRIMINAL JUSTICE, STATE OF DELAWARE

Governor DuPont. I will, Mr. Chairman. They are here and I believe when I have finished testifying that Lieutenant Governor McGinnis is going to testify. Following that we have four of the people from our correctional system who understand the details of the process and can focus on specific issues that will be of concern to you.

We have Jim Vaughn, our commissioner of corrections who is going to give you some insight into the problems of running a prison under a Federal court order.

John Parkins, the deputy attorney general will comment on the litigation problem. Michael Rabasca of the Governor's Commission on Criminal Justice is going to talk about the subject that Senator Mathias mentioned, and that is, population trends. He has done all of our analysis based on the Maryland models, as a matter of fact, on where prison populations are going.

Finally, we have Tom Quinn, program director of the Governor's Commission on Criminal Justice, who is going to talk about the programs that we have put into place to try to minimize the penetration

into the corrections systems, both to cut costs and reduce the inmate population.

Gentlemen, I would like to spend a few moments, if I might, trying to put the problem of operating a corrections system into prospective from the point of view of the State which, after all, has the primary responsibility of operating that system.

We need planning. We need some financial assistance from the Federal Government, but even if we have both of those, the fact is that running a corrections system is a complex and massive task.

There are many elements to that system. I think if we are going to be successful in coming to grips with the long-term corrections problem, we are going to have to address ourselves to several specific areas in the field of corrections and try to solve the problems in those areas and leave the other things aside for a period of time until we get some of the major questions under control.

I would like to talk briefly about three of those major areas which I think are the most important. First, there is a question of the rate of incarceration, the rate in which we take people into our correctional system.

Second, there is the question of construction of new space, new corrections facilities. And, third, there are the legal and constitutional questions that surround the entire area of correctives, ranging from prisoner rights to proper access to education and training and proper classification and written rules and adequate medical care and so forth.

So, if I might, let me just spend a couple of moments on each of those three areas.

I think the first area, reducing the rate of incarceration, is one where the Federal Government can perhaps be the least help to us. That is basically a local problem and the concern of my office, as well as of the general assembly and of correction officials.

But obviously, we could substantially reduce the cost to the taxpayers of our State and substantially reduce the number of problems we have in our corrections system if we were able to reduce the rate of incarceration.

We have read in the press in recent months about efforts that other States are making to increase the rate of incarceration in their States.

Governor Thompson of Illinois, for example, has put together a very aggressive program of mandatory sentences to deal with some of the more violent crimes that that State experiences.

In Delaware, we have already arrived in that area and we have almost the highest rate of incarceration of any State in the Nation.

The median State in America today incarcerates 72 people per 100,000 population. In Delaware we incarcerate 248 people per 100,000 in population. The mandatory sentences are here. They are working. We are adding people to our prison system at a much greater rate than are other States.

It is important, of course, to keep those people who are dangerous and who belong behind bars, behind bars. But it is my belief that we can solve some of the financial problems of the corrections system, as well as a host of other problems that go with overcrowding, by reducing that rate of incarceration.

If, for example, we were to put into effect a variety of alternatives to incarceration and allow people to work off fines and have halfway houses and court reforms and bail reforms and a variety of projects that would allow individuals to pay the price to society, but not to pay it in one of our main prisons, then we would solve an awful lot of the problems we have.

For example, we have a pilot program that is going to start in the spring of next year on restitution. For those people who have committed crimes against property, like stealing various goods, why not, instead of sending them to jail, if they have not done it in a violent fashion, why not have them essentially work off the value of that merchandise, plus a penalty, and pay it back to the person from whom it was stolen.

That would free up some beds in our prison system.

We already have a bail reform project that is increasing the space available to us. We have made some recommendations to the general assembly about eliminating mandatory sentences.

For example, for second offense drunken driving where the statistics very clearly show that you are much better off to put someone through a detoxification program than you are to put them in jail.

Well, there are innovative things of this kind to reduce the rate of incarceration. In solving the prison problems, it will save the taxpayers money. Primarily I think it is not an area where the Federal Government can be an awful lot of help to us.

But the second area, that of construction of new prison space, is an area where Federal help would be most welcome and, I think, most important. As I know Senator Biden is aware, I proposed in the corrections master plan that was enacted at a special session of our general assembly in November, the construction of two new prisons, a men's prison and a women's prison, to ease the overcrowding problem and to make sure we have space available 15 and 20 years from now to incarcerate the people who need to be incarcerated.

Later today Mr. Rabasca will talk about those population projections.

I do not think I have to tell you how important it is to end the overcrowding problem, but I should stress to you the difficulty of trying to operate a prison system under the order of a Federal court judge.

Senator Biden knows well the judiciary of the Federal Government has a firm grasp on various aspects of life in Delaware from education to hospital planning to prisons. One is tempted to say that if your judges are making the decisions, then your legislature might well help us with the where-with-all to enforce those decisions.

If you should decide—

Senator BIDEN. We are here to help the Governor with his problems.

Governor DUPONT. If you think the Federal judges should not make those decisions, then we abide by that decision as well.

But seriously, for the State of Delaware, just to put it into perspective, on a budget in the area of \$500 million, we have a corrections master plan that is going to cost somewhere between \$15 and \$20 million in capital costs and about \$8 million additional over and above what we are spending today in operating costs just to deal with the problem of overcrowding and putting these various programs into effect.

So for us in Delaware, it is a substantial amount of money. I like the approach that each of you has taken in your legislation in giving us some financial help, primarily with the construction. I think that is the area that we could use the help the most.

I might also add that one of the alarming trends that we are seeing is the tendency of the Federal Congress to cut back on the planning money and the funds that are available to us in the States to do the kind of work that needs to be done to improve our corrections system.

Each year—and as a matter of fact almost every month now—the Attorney General of the United States has indicated that he is going to cut them back further. Each year in the past 2 years they have been cutback. That is a bad trend. That is costing us the analysts that we need to do a proper job in prison planning.

Finally, the third item that I wanted to touch upon is the question of meeting constitutional standards in dealing with the many lawsuits that face us. Deputy Attorney General Parkins will address himself to the actual litigation, but in rough terms there are 70 lawsuits outstanding against our prison officials in Delaware by inmates charging a variety of offenses against their constitutional prerogatives.

As Mr. Vaughn will tell you, it is very difficult to run a prison system from a Federal courtroom. We would like to end those lawsuits and get him back on the job of running the prison systems so that we can do a better job there.

We are trying to do that from our end by putting together, for example, an adequate medical care package which we have essentially accomplished, by preparing better rules and regulations in writing for prison inmates to let them know exactly what the rules are so they have due process, by providing proper access to education programs and training programs and so forth.

But it would be very helpful if you would attempt to define for the Federal judiciary the scope of prisoner's rights that really do exist.

For example, we find Federal judges reading into the Constitution of the United States a square footage requirement for prisoners. I do not know about Philadelphia, if in Philadelphia in 1787 what they were thinking exactly, but I do not have much confidence that they were thinking of defining how many square feet you had to have in a jail cell. Each judge, of course, defines it a little bit differently.

What are the actual requirements that the Federal Government is going to place on us? If you could codify those for us, almost regardless of what conclusion you might come to, then it would be enormously helpful to us to have some guidelines under which to operate.

Senator MATHIAS. I cannot help but say that in 1776 the square footage that a prisoner in the pillary, which was a common form of punishment of that time, occupied was just what he sat on.

Governor DUPONT. I do not know whether prisoners have gotten broader in the last 200 years or not. [Laughter.]

But in any case they are entitled to somewhat more space today than they were then.

Senator BIDEN. I know you have gotten more humorous, Governor.

Governor DUPONT. I have not been around 200 years, Senator. It only seems like that. [Laughter.]

In conclusion, if you could be of some help in attempting to help the Federal judiciary understand what the Congress expects of them, then that would be of tremendous help to us.

So, in summary, we are attacking the problem of corrections in Delaware in three broad areas: Trying to reduce the rate of incarceration which is our responsibility; trying to build adequate space for the future, which I think is a shared responsibility with the Federal Government; and, third, in trying to meet the vague constitutional standards that are being forced upon us by the Federal court system. That is almost wholly your responsibility.

So any help you can be in those different areas, I think would be good in the corrections systems and good for State government in general.

Senator BRIDEN. Governor, I want to compliment you on one of the best statements I have heard in the year I have been involved in chairing this subcommittee. I concur fully with your assessment as to the way to approach the problem and where the responsibility lies.

It may not be political-wise, but I also compliment you very much on your approach to the reduction of the rate of incarceration. We are getting carried away with this. I am a fellow who suggested the "Son of S. 1, with the flat-time sentences," but a flat-time sentence could also mean—and we try to emphasize that—at the Federal level it does not necessarily mean incarceration but a certainty of whatever the sentence is.

If you are going to have to pay back what you have stolen, then that should not be the ability of the judge to say: "You have to pay back. You do not have to pay back." The sentence need not be a prison cell.

Today everyone assumes that sentencing after a conviction means that you must go to prison.

So, I compliment you on what is running a little bit upstream these days and what is not particularly popular to talk about. That is, that you provide alternatives.

Quite frankly, society would be much better if the burglar had to go out and work to pay for the coat or the car or whatever was stolen rather than putting that person in jail where it costs the taxpayer an additional amount of money and the victim not have any recompense for what happened.

So, I compliment you on that.

I also compliment you—and I agree fully—on your assessment as to where the responsibility lies at the Federal level. One of the reasons for these hearings that Senator Mathias and I are taking this troupe on the road is that in the construction area, there is a place where we can help. I think we must help.

Furthermore, the Federal role has, in fact, I think, increased as a consequence of the role of the Federal courts. The only group that has as little control over the Federal courts, as State legislatures, is the U.S. Congress.

But nonetheless, the fact remains that they are, under the Constitution in the lower courts, a product of the Congress. Their authority is derived, in part, from that. I think we have that responsibility.

Lastly, I agree with you fully on the most difficult aspect of this subcommittee's job, now or in the future. That is for us to come up with a formula as to what are the proper standards.

I think when you were in the Congress you shared the same view that we in the Congress delegate too much to the bureaucratic framework what, in fact, the standards should be. Although we allegedly make policy we, in effect, delegate the policymaking to a bureaucratic structure.

Some of that must be done, but I think we could be much tighter in in that regard.

Although I agree with you on the major thesis of what you said, I would like to ask you a few specific questions as to what impact you think each of your categories will have.

I know this is a little bit of guesstimating on your part, but maybe you could get me into the ball park in terms of your thinking.

Assuming that we are able to go forward—and I think at the Federal level we should do the same thing and I have so suggested, that is, your suggestion at the State level with alternatives to incarceration—I should add that I have been informed by staff that we probably have, if not the highest, one of the highest rates of incarceration in the entire world, not just Delaware and the Nation.

The U.S. percentage per 1,000 of incarcerated people is higher than, if I am not mistaken, anyplace in the world. If there are any, there are very few which are higher.

So, we have to reduce that.

But assuming we do, and assuming that you are successful in persuading the legislature and the public in the State of Delaware to move into alternatives to incarceration, but not elimination of responsibility. Of course, that is your idea of restitution and bail reform and eliminating certain mandatories and having alternatives to mandatory sentences.

What percentage impact, Governor, do you think that will have? How much impact do you think this will have? Assuming this went into effect, how much impact do you think it is likely to have on our overcrowding problem?

Even if it were put into effect, would we stay even?

Governor DuPONT. Mr. Chairman, there are two answers to that question. The first concerns the alternatives to incarceration, that is, the working off of the cost of the stolen property, the restitution programs, spending drunken drivers to detoxification programs instead of jail, and that kind of thing.

The impact will be relatively small. I think we would be fortunate to have a total impact of 10 percent of our prison beds.

In Delaware in a corrections facility at Smyrna where we are talking a little over 600 beds, I think if all those programs worked well, then you would be fortunate to free up 50 beds.

Senator BIDEN. That is the point I was after.

Governor DuPONT. However, the second answer to the question is this.

If you design your system to minimize the penetration of the felon into the corrections system and if you only put the really hardened criminal who has been convicted of a crime of violence into a maximum security prison, such as Smyrna is, then you can free up an awful lot of beds.

In order words, if you adopt the philosophy, for example, of 6 months before a person's sentence is to end, then you put him into a halfway house so that he has 6 months of living half in the real world and half in the jail world, then you would free up a large number of beds.

In addition, if you put people who were sentenced to less than a year in a lower security setting, then you would free up an awful lot of beds.

In our corrections master plan facility, which we are going to build somewhere in New Castle County, we hope to provide less expensive, lower security areas, for those kinds of prisoners.

So, in terms of that kind of thing, you can make a tremendous amount of progress.

Senator BIDEN. I would hope that whomever on your panel that has responsibility for the subject we have just discussed would, when they get a chance to testify, expand on that a little bit. I am most anxious to have that theme developed.

Governor DuPONT. That would be Thomas Quinn, the last of the four people today.

Senator BIDEN. With regard to construction, your second area, you heard the numbers that we were discussing in terms of Federal dollars.

One thing that I believe you have been—as long as you have been in politics, the realist. What can be done?

One of the other things we shared in common is to try not to over-promise what the dollar will do.

Assume for a moment that the slightly more ambitious program of the chairman of this committee of \$300 million were passed. You know, by having served in the Congress, that there is no realistic way that we are able to get the small States like Delaware more than a half a percentage point. You know the formulas are much lower than that, generally. That is a big chunk, disproportionate to our population.

But assume we were able to do that.

Then how much help are we likely to be to you in Delaware and to our constituents in terms of their tax burden? You cited about a \$28-million package. The most ambitious—and I look to staff on this—figure that I think is even possible for us to glean out of that \$300 million would be \$2.2 million off the top. Then assuming we got the bulk of the discretionary funds, maybe \$15 million more in a one-shot arrangement.

So, the most ambitious figure might be \$17 million. We will be battling like the devil for that \$15 million with Maryland and every other State, as you know, from your years in the Congress.

What kind of impact will that have? Will that really make a difference for you?

Governor DuPONT. The way it would make the most difference would be, of course, to make available to us the skilled people that we need to design the whole system properly and perhaps some operating assistance to make sure we have skilled people to operate the facilities.

We have skilled people in our correction systems now, but when you add two new prisons to that system, where are we going to get a really topnotch person to head up those new prisons?

Senator BIDEN. I am glad to hear you say that. As you know, it is very much in vogue today to say that the only area where we can effectuate anything—as you know again from your years in the Congress—in the criminal justice system it is easier to be a model in terms of what we set up at a national level and/or provide support services.

It has been very much in vogue today to downgrade the bureaucratic support that the Federal Government can offer in terms of expertise.

So, your argument is that we are moving in the wrong direction federally by cutting back upon these support services in terms of personnel and expertise; is that right?

Governor DuPONT. That is exactly right.

Senator BIDEN. I could not agree with you more.

Governor DuPONT. I have another suggestion. Instead of taking your \$300 million and dividing it among 435 congressional districts and ending up, I suppose, with three-quarters of a million dollars per district, roughly, then why not count your programs in terms of State prison facilities? You can divide the pie then by 50 parts. It helps Delaware substantially.

Then, in addition, since there may be other States that do not run as extensive a statewide prison system as we do, then we might, as a smaller State, qualify for a little more help that way.

Senator BIDEN. You are looking at Senator Mathias when you say that. Keep concentrating on him [Laughter.]

Governor DuPONT. I have not read the text of Senator Mathias' bill, but as I understand the thrust of it, the regional prisons that would be built as an overflow, as a Governor, I think that is a splendid idea.

I can provide you as many prisoners as you want on a day's notice to put into that prison or whatever variety you choose: Age, weight, type of crime, or whatever would be most to your liking.

But I think you will find, if that approach is taken, that those prisons will indeed be full the day that they are opened because my job, under that program, would be to export to you just as many prisoners I could provided you did not make the price prohibitive and as quickly as I could.

So, I would think a better approach might be to provide equivalent construction subsidies for statewide prison systems. If you give us a chance to pass some of our problems along to you, then we will be sure to take advantage of it.

Senator BIDEN. One last area, and then I will yield to Senator Mathias.

Governor, you indicated, I believe, that with regard to the constitutional questions, although we both agree that at the Federal level we could ameliorate the dilemma you find yourself in of not knowing what the standard is by firming up the standard federally, but you also indicated that you are moving in a way that I know that Senator Mathias and I believe the prison system should move.

That is, to decide upon—independently decide upon what constitutes a more humane prison.

We have been concentrating here on how we could put more people in prison and how we keep them in prison and the like, and the cost,

But we cannot ignore the fact that we have to look at it from the prisoners' side also and to make sure we put them in a facility that is humane by whatever standard we define that to be.

Is the State of Delaware, and its executive branch or legislature, or if you are working concurrently, developing specific guidelines with regard to medical care, which you mentioned and what constitutes due process?

I have found that in researching the law in this area, what Federal court judges are doing, and the people in the State of Delaware should know this, that we are not unique in this area where a Federal court has come along and said: "You must do this."

From Alabama straight through a number of Midwestern and Western States, the same kind of thing is being done and is increasing. The prospects of it are looming large in almost every State of the Nation.

In places where States have had a very detailed compilation of what constitutes prisoners' rights within the State, and what medical care a prisoner is entitled to, and what constitutes due process, in those States the courts have tended to, as they do in most instances, believe it or not, yield to the State rather than make the independent judgment themselves.

So, although I agree that we can and should attempt to codify the minimum standards, I would not like to go too far and take away the leeway the States have available to them. I may be mistaken, but I would like your comment.

My feeling is that if the States have done a fairly detailed job, that on the face of it the courts have ruled that it meets the Federal constitutional requirements, then you have it. Usually it is where there has been an absence of specific codification at the State level that the court has stepped in.

So, although I agree that there is Federal responsibility, you may be able to, at the State level, ameliorate much of the interference by a stricter State codification of prisoners' rights, if I can use that euphemism.

Would you comment on that?

Governor DuPONT. We can do at the State level what we think is reasonable. We can make sure that there is basic minimum medical care available to prisoners.

To take the simplest area, we can make sure that the prisons meet the public health code. I do not suppose anybody argues about that anymore. That is an accepted fact. If your prison does not, then you quickly get into trouble and rightfully so.

But my experience is that the Federal judges today are pretty much unfettered in deciding, within their own minds, what is an appropriate standard.

For example, what level of psychological assistance, through psychiatrists and psychologists or whatever, is required constitutionally to be available to prison inmates? I have no idea what the answer to that question is.

We have a program that involves a certain number of psychiatrists being available, but I would not be sure that tomorrow somebody is

not going to successfully bring a lawsuit and persuade some judge that because there is not a certain kind of psychiatrist available, that the program does not meet constitutional standards. We just do not know.

Senator BIDEN. To put this into perspective, and I am not asking you to answer this question, but again I am addressing this to your panel which will come up, I would like to know, either now or for the record, whether there is any place where Delaware, for example, had a specific standard? That is, be the number of psychologists or the number of medical doctors available, or the access to recreational facilities or any standard that has been written and was administratively in place and/or codified by the legislation, where the Federal judge in this State, Delaware, turned around and said: "No; Delaware's standard, which has either been codified or administratively set out, does not meet minimum due process or constitutional requirements."

In this State it would be Judge Schwartz.

My impression is that what the judge said in this area was this. Because there is no specific determination made by the State, then it gave him, or put upon him in his mind the obligation and the requirement to set where they were in certain areas.

So, I would like for your panel to give us, for the record, any indication whether the judge had specifically said: "A Delaware rule is not one which meets the minimum standard."

Governor DUPONT. I think when Mr. Parkins, the deputy attorney general speaks, he will give you that. He is familiar with all these cases. He can readily answer that question.

My impression is that probably you are not going to find very many examples of that because there are so few written rules. That is part of our problem and that is an area where we have got to improve our performance.

Senator BIDEN. Yes; thank you.

Senator Mathias?

Senator MATHIAS. Briefly, let me say, Governor, that the Maryland Chamber of Commerce is going to welcome your testimony here this morning.

When you claim for Delaware the highest rate of incarceration, you dispelled the myth, which I have perceived as widely held all across the States, because wherever I go across the country and I am introduced as a politician from Maryland, there is a question as to why all of us are not locked up somewhere. [Laughter.]

So, there is a feeling in the United States that Maryland certainly has the highest rate of incarceration of politicians.

But your testimony today will mitigate the impact of that.

Senator BIDEN. Please clarify that.

Governor DUPONT. Yes; I would like to clarify that. [Laughter.]

I would not even suggest that we have risen to the tremendous heights of the State of Maryland on that question. [Laughter.]

My comments specifically excluded convicted politicians. I do not know how many there are in Delaware.

Senator MATHIAS. The only difference is that somebody said we catch them.

Governor DUPONT. In Delaware we have caught one from time to time also.

Senator MATHIAS. I do not want to preempt your officials who are going to testify later, Governor, but can you give us these figures? As for overcrowding, what is your capacity as against your present population?

Governor DuPONT. Senator, let Commissioner Vaughn answer that question for you in some detail when the panel is here. The situation is very complicated, largely because we have three different factors working here.

We have a design capacity for the prison, that is, for the prison system. Each building has its own.

We have a classification capacity, which is a different number.

Then, we have a Federal court order which has some further variables in it, like a furlough program, a variety of factors, that ought to be thoroughly explained in presenting those numbers.

So, if I may, I would like Mr. Vaughn to answer that.

Senator MATHIAS. Yes; just as long as we are sure to get that in the record.

Governor DuPONT. He is fully prepared to discuss that in some detail.

Senator MATHIAS. Your views on what can be done to mitigate the prison load, I think, are very enlightening and important. We have the fact that the persons convicted of victimless crimes, for example, are treated in a different way than those convicted of violate crimes. I think that is a necessary point of view to begin not only to perceive, but to act upon.

What the public often does not understand is that you are dealing with large sums of public money when you lock people up unless there is a very good reason to do it.

When someone says: "Lock them up for 20 years", you are talking about a quarter of a million dollars of public taxpayers money. That is a lot of money. It may be necessary. I think taxpayers are willing to spend a quarter of a million dollars if it is necessary.

But it is a waste of public money if it is not necessary. So, I welcome your approach that you have taken on that.

On my bill, for the regional facilities, I would warn you that this is not a Federal giveaway. I would assume that the cost of maintaining that prison would be the cost which the Federal Government would charge to a State for maintaining a prisoner at that State's request.

The current cost of maintaining a prisoner in a Federal institution is about \$12,000 a year.

I note in passing that is almost double what it costs me to send a son to Harvard.

Governor DuPONT. He may be getting a better education in jail, Senator. [Laughter.]

Senator BIDEN. The Governor went to Princeton.

Senator MATHIAS. I will let you know that in a couple of years' time. [Laughter.]

Governor DuPONT. Let me interject, if I may, that the figure you just gave compares with a Delaware figure of about \$7,000 per inmate per year. I am not sure they are totally comparable, but that is our direct cost.

Senator MATHIAS. That was my next question.

I do not know that you are going to leap at this as other than a very necessary degree of flexibility for your prison system. If you can keep a prisoner at home for \$7,000, but you are going to have to pay \$12,000 to board him in a Federal facility, then you will not overuse that facility. It is simply there as a necessary emergency facility to prevent turning dangerous criminals back on the street before their sentences are completed or before a program of rehabilitation is completed.

Governor DuPONT. That would be of a tremendous help to us all by itself. When you look at the choice available to me of building a new prison bed—approximately \$45,000 a bed in capital costs is the figure we are working with and that may turn out to be low—then it may be that my overflow problem could be better met by a temporary use of your facility. Certainly in an emergency situation such as we have had in the past 2 weeks, it would be very helpful to have 50 beds to use for 10 days to solve a specific problem.

Senator MATHIAS. I have one final question.

Your appeal for expert assistance in planning and in programming, I think, is important. I think the full Judiciary Committee should be well aware of your feeling on this subject because I am not sure what the Justice Department intends to do about LEAA. I have discussed it with the Justice Department recently. They talk about the fact that they have no plan to totally dismantle it, that is, LEAA.

But they said there is a reorganization going on and they say it may get a new name, among other things.

Your experience in Washington, I know, would lead you to conclude that it may come out as a very different kind of institution. I think it has been a source, not only in the penal field, but in other fields of law enforcement, of valuable assistance to States.

I think that your emphasis on expert help is important at this moment.

Governor DuPONT. Senator, I am serious when I say we are getting a monthly letter from the Attorney General or his designee indicating that we should prepare for further reductions in funds.

Senator BIDEN. The U.S. Attorney General?

Governor DuPONT. Yes.

Thomas Quinn can perhaps comment on this, but I do not know exactly what they are up to either, which is what makes me more nervous than anything.

Senator MATHIAS. Let me say that this committee which will have some influence on the ultimate disposition of any program, I think, will want to hear from the Governors of all the States and is going to want to look first hand at the results of LEAA operations before we see that program totally dismantled.

Governor DuPONT. If you would like a witness someday in Washington to come and explain exactly what those funds do on the local and State level, I would be happy to come down and testify.

Senator MATHIAS. I think we also want to be very careful about this. I want to be fair.

The Department has said they are not going to dismantle the program. They say they will reorganize and not dismantle.

But I think whatever we do we want to be careful that we do not do it suddenly. It is very tough on a State to have a major program suddenly altered, even if not withdrawn, without giving the State a leadtime in which to budget alternatives.

Governor DuPONT. That is certainly correct. As I say, I would be happy not only to give you a detailed presentation to the committee, but I concur that if you are going to make major changes, then we would like to have an opportunity for some input and a chance to respond.

Senator BIDEN. Governor, I have a number of additional questions. But, first of all, will you be able to stay with the panel, or are you required to leave?

Governor DuPONT. No, sir. I am heading south to Dover and would like to do that.

I would say in defense of the knowledge of the five people involved, myself and the four others, you will get a great deal more specific out of the panel with the backup information and statistics than you will from me.

Senator BIDEN. I think we have gotten a great deal from your testimony, Governor. I wanted to make sure that I had the game plan correct.

In that case, I have one additional question for you which I will again ask of your panel.

You may recall that last year I attempted to eliminate LEAA. The reason why I took that to the floor was not because I do not think the States need a great deal more assistance, but my argument was that the two things we could do best we were not doing.

One was providing you with the expertise in planning. Second was that we were allowing some States, who are less enlightened than you have been in this area, to expend dollars in areas that were a waste, such as buying armored personnel carriers for the police departments insted of dealing with prison problems.

I specifically amended LEAA and was successful and required a certain percentage of the States' dollars to go to prisons and prison planning and construction. The standards within prisons would also be included.

Having been very much involved in that, and having also discussed the issue with the Justice Department at length because I know at least in this administration I am viewed as the least sympathetic member in the Congress for LEAA—and if all goes as is likely to happen—I may very well become, by desire and by somewhat default, the chairman of the committee that controls LEAA in the next couple of weeks.

That is the Criminal Laws Subcommittee of the U.S. Senate Judiciary Committee.

So, I want you to understand that my attempts are not to eliminate the Federal dollars into the States. My attempts are to increase the dollars, but to target them more in areas where there is obviously a clear need and to take, I believe, the pressure off the State Governors and State legislators to spend the money wisely.

I know it is not popular for you to go down and talk about spending a bulk of your LEAA funds on prisoners when you have everyone from the Blades, Del., police department from New Castle to State and city police saying they need more shotguns, automobiles, or whatever.

So, again, I do not think I have ever been as complimentary to you in public for so long a time, but I really do think you are doing a good job in this area.

I want you to know that I will be asking you to come to Washington, assuming I have jurisdiction over that, to emphasize that Governors are looking at the nonpolice department expenditures with regard to equipment and planning. I think that is really important.

Governor DuPONT. Senator, if there is anyone I can speak to in Washington to get you that assignment, I will be glad to do so, because I think you, as chairman of that subcommittee, could do us in Delaware an awful lot of good.

To give you a little bit more background, I will make available to you the set of priorities that was adopted last week by the Governor's Commission on Criminal Justice which sets out 9, I believe, or 10 priorities that we are going to follow in expending our Federal funds. That was just adopted at the end of last week. That gives you a good indication of the order of priorities that we place on things.

I think you will be pleased with that order of priorities.

Senator BIDEN. Thanks an awful lot.

We would now like to have your panel come up together.

Governor DuPONT. Senator, I appreciate the opportunity that you have given us to present our story. We appreciate the interest you have shown, not only on behalf of Delaware, but on behalf of the Federal Congress.

Senator BIDEN. Quite frankly, Governor, other than the question of school desegregation and the impact that has, I know of no other problem that directly impacts on the taxpayer and/or the philosophy of this State's government than the one you are presently grappling with. That is why we are here.

Governor DuPONT. Thank you.

We have Commissioner Vaughn here. He is not only in charge of these nice people, but quite a few not-so-nice ones. Some of them are in institutions.

We have Chris Harker, the executive director of the Governor's Commission on Criminal Justice.

I hope that this lady and gentlemen will be of help to you.

Senator BIDEN. Thank you very much.

Senator Mathias had to excuse himself for a moment. Lieutenant Governor McGinnis is detained, so we will either have his testimony in writing or he will follow you.

I will take the liberty, not because he is of my party, but because of the office he holds that if he does come in, if you do not mind, I will interrupt your testimony and ask him to testify and let him be on his way down to Dover along with the Governor.

Commissioner Vaughn, I would like you to begin. If you have prepared statements, you can proceed, but why not proceed in the way you want to proceed?

Mr. VAUGHN. Thank you, Senator.

I have no prepared statement. I would briefly like to set the stage for where we are in the Department of Corrections in the State of Delaware at this time.

I will start with the Sussex Correctional Institution, which is under court order and has been for 2 years. It is nearing the completion of renovation. Sometime in late spring or June, it should be completed. That facility should meet the standards imposed:

Moving on to the Delaware Correctional Center, about a year ago we were placed under court order to reduce the population at various stages. Since that time we have had a suit entered against the women's correctional institution, although no hearing has been held before the courts.

I would like to return to the Delaware Correctional Center and briefly explain what effect the court order has had in the day-by-day operation of the department of corrections.

At the time of the court order, we had about 750 to 770 inmates. They were in a facility designed for in the neighborhood of 530.

We were ordered to reduce in December to 700. I believe it was in April we were ordered to reduce to 650, and at the end of June to 92 percent of design capacity, which would leave us with a figure of 605 at the Delaware Correctional Center.

It was very difficult to arrive at that figure. It was a day-by-day crisis situation for the administration of the department of corrections, as well as the correctional staff throughout the facilities, and also the inmates involved.

To give an example, last week we had to remove approximately 55 inmates from the pretrial annex. This necessitated moving about 250 inmates throughout the department of corrections from institution to institution and from building to building and things of this nature.

I have been the commissioner of corrections for about 15 months. During that time pretty much the same situation has existed. We have been studied and restudied. We have tried everything that we could to improve the system. I am firmly convinced that the solution to the department of corrections problems lies within the entire judicial system or criminal justice system, I should say rather than within the department of corrections alone.

We need the overall cooperation of the criminal justice system.

Living with the court orders, we have been unable to carry on properly any programing. Prisoners are continuing to be moved through classifications to meet security needs. At the present time, I might say we have not met the housing mandates established by the court.

In the State of Delaware, I think we have a rather unusual situation where we are using two types of furlough programs to meet court-ordered population limitations. If later in the testimony here, I could explain those, I would be glad to.

We have become convinced within the department of corrections that additional housing is extremely necessary. Since the court order was imposed on the Delaware Correctional Center, there have been 130 additional beds made available through construction of buildings that are hopefully going to be prison industry buildings in the future and by taking away one of our vocational bays.

All of this housing was the dormitory type rather than the cell. This, in itself, causes the department of corrections problems as it tends to create an atmosphere whereby assaults of some sorts could occur.

Senator BIDEN. Could or do?

Mr. VAUGHN. I would say could and do.

The program—and I use that word instead of rehabilitation which seems to be disappearing—from the department of corrections setting, but I believe, as I did a year ago, or even longer ago than that, that probably the best hope we have is to improve the educational facilities and the programs.

We have a population that has on an average of about a sixth or seventh grade level. I firmly believe that you must improve the educational programs if you are to improve the vocational programs.

I cannot foresee a man being able to learn to work on an automobile without learning to read the complicated manuals that go with it in this day and time.

I will be ready, Senator, for any questions.

Senator BIDEN. Commissioner, I would like to do this. I would like the panel to introduce yourselves and what your function is so we know who to direct questions to.

Ms. HARKER. I am the executive director of the Governor's commission on criminal justice, which is the State planning agency for the State of Delaware under LEAA.

Mr. PARKINS. I am John Parkins, deputy attorney general. I represent the department of corrections and all of its civil rights actions which are filed against it.

Mr. QUINN. I am Tom Quinn, program director of the Governor's commission on criminal justice. I assisted in the development of the master plan.

Senator BIDEN. What does "Program Director" mean?

Mr. QUINN. It encompasses the planning and evaluation components of the agency.

Senator BIDEN. I will ask you to expand on that later.

Mr. RABASCA. I am Michael Rabasca. I am a statistician with the Governor's commission on criminal justice. I made the prison population projections.

Senator BIDEN. Thank you.

What I would like to do is this. There are a whole range of questions that I think are fairly important for us to have some input on.

Senator Mathias, jump in whenever you feel you want to.

Senator MATHIAS. Fine.

Senator BIDEN. First of all, let me say this. I will let you decide who is the most appropriate person to respond. If you all want to respond, then please do.

You heard the question I asked the Governor about whether or not the Federal court—and I guess Mr. Parkins this will go to you—that is, has any aspect of the Federal court order specifically said that a standard that applied to Delaware is either constitutional or has it been that the Delaware standards are not being met, or what is it?

Mr. PARKINS. To my knowledge, there has been no court order which has held that the Delaware standard is unconstitutional. To the contrary, in the recent overcrowding case of the Delaware Correctional Center, the district court based all of its findings on violations, or what it perceived to be violations, of Delaware law. There were no constitutional findings whatsoever.

Senator BIDEN. That is a very, very important point that should be made in this record. I obviously knew the answer to that. It is very important that the public perceives—and I think it is perceived in

Washington—that the fact of the matter is that we have an inhumane system which has been legislated by the legislature.

It is quite to the contrary. The legislature has, in years past, have they not, come along and said: "We have a classification system."?

You disagree with how the courts interpret that, but it is the State legislature that has the classification system under the Delaware law; is that correct?

Mr. PARKINS. That is correct.

Senator BIDEN. And there are certain design minimums that are objectives, not so much in terms of square feet, but in terms of the way in which we house prisoners and the programs that exist for prisoners; is that not correct?

Mr. PARKINS. That is correct.

I think it is fair to say that at the conclusion of the overcrowding trial, the State was forced to concede that many of the conditions at Smyrna did violate State law.

Senator BIDEN. OK.

Again, the reason I raise that is not to disagree with the Governor, but to put it more squarely at what we really can do. When Senator Mathias and I go back to Washington, we jump into a labyrinth that we may not be able to handle if we, on the Federal level, decide to mandate for every State for Federal judges to interpret what are the minimum standards on everything from classification to furloughing to parole to hospital facilities to psychological care for the State legislatures.

Quite the contrary, I think we should be intruding less, if we can, into those standards as long as the State meet certain standards.

Would you like to comment on that?

Mr. PARKINS. I would suggest, Senator, that I tend to agree with you, but there are areas, I think, in which guidelines on classification may be useful.

I am looking at the moment at the minimum square footage that is required for inmates. In many district courts they have said: "Yes; you have to have a certain minimum square footage for inmates." Those figures range from a minimum of 50 to about 120.

However, the fifth circuit court of appeals this past fall said: "No; we are not going to apply the minimum standards. It is all based pretty much on what you might call the totality of circumstances at any given prison."

Senator BIDEN. How about the third circuit?

Mr. PARKINS. The third circuit, to my knowledge, as never applied the minimum square footage requirements.

Senator BIDEN. So in the Delaware situation, although it may sometime be a problem in terms of what a minimum standard is, that has not cropped up yet as one of the problems?

Mr. PARKINS. Relating to the *Smyrna* case, the court held that the minimum 60-square feet for inmates and inmates in a cell was required by State statute, although it is not specified in a Delaware court.

Likewise, it held that 75 square feet was required for inmates housed in a dormitory.

Senator BIDEN. But that was interpreted as being the interpretation of the State statute which we may disagree with, but the court did not apply that. The court did not say that the Federal constitution had been violated or the Federal statute had been violated.

It said that the violations occurred as a consequence of I, the court, interpreting a Delaware statute; is that correct?

Mr. PARKINS. That is correct. Obviously anything which the Congress could do would not affect that particular determination.

Senator BIDEN. That is a critical point. Again, we do not want to diminish or heighten expectations as a consequence of these hearings. We want it understood, and I quite frankly do not know yet, but we want it ultimately understood what we reasonably can and cannot do.

In this instance, even if we had a Federal standard, that would not have been the controlling standard unless it was viewed that the Delaware standard was subminimal, below the minimum Federal standard level that would, in fact, be, that is, constitute a violation of the Constitution; is that correct?

Mr. PARKINS. That is correct.

Senator BIDEN. I do not mean to be so technical, but, again, for us to proceed we have to understand what we are dealing with in this case.

By the way, one of the reasons we are going to be going around the country is that the Federal courts have not done this necessarily for the same reasons.

My understanding of the Alabama situation, for example, is that they have moved in that direction. I am not certain, but this is my impression. It has been done, not as a consequence of viewing it as viewing strict standards or good standards of the State of Alabama would not be met, but that there would be a lack of standards. There were not any.

So, the Federal court moved in. I may be mistaken about that.

Mr. PARKINS. I believe that is a fair impression.

Senator BIDEN. The second area that I would like to pursue is this.

This relates to the comment, Commissioner Vaughn, that you made. You said that you believe 100 percent of the problem lies within the criminal justice system and not within the correctional institutions.

In other words, the criminal justice system, whether it be the legislature, State or Federal, the executive branch, State or Federal, or the Federal or local court system, have imposed upon you certain mandates which you do not control.

I assume that is what you mean by 100 percent the problem lying within the criminal justice system as opposed to the criminal institutions; is that correct?

Mr. VAUGHN. Yes, sir. I was more or less referring to the court system, the police, and the corrections, the three components here in Delaware generally associated with the Governor's Commission on Criminal Justice.

We have, for example, wrestled with alternatives to incarceration. We have the work referral programs and the community service programs.

There are not that many alternatives to incarceration which have been found. I might relate it to the type of population that we have.

At the Delaware Correctional Center, at the last count, in excess of 100 inmates there were serving life sentences.

Senator BIDEN. How many?

Mr. VAUGHN. In excess of 100.

Senator BIDEN. One hundred out of 700-and-some?

Mr. VAUGHN. Yes.

Senator BIDEN. One out of seven?

Mr. VAUGHN. Yes; there is heavy time there.

Senator MATHIAS. May I interrupt?

What does a life sentence mean in Delaware?

Mr. VAUGHN. It means 45 years. You must serve one-third of it before parole eligibility.

Mr. BIDEN. What has been our experience? The national experience means that life sentence means 11 years in jail.

Mr. VAUGHN. Ours would be 11 years and some-odd months.

Mr. BIDEN. The reason I asked for clarification there relates to the question that I am about to ask now.

A very good friend of mine who is one of the eminent architects in the State of Delaware was discussing this problem with me at my request a week or so ago.

I informed him of the thrust of this subcommittee's endeavors. He raised what I believe to be a very valid question.

He said that some of the better known architectural prison planners, those folks who actually put the brick and mortar up, and actually put this together and operate with you, Mr. Rabasca, as to what the statistical breakdown of the prison population is, and in meeting these needs of the population, are skeptical about the Federal Government being involved.

We at the Federal level know this. I think this is right. We do not go out and tax you and take your dollars, that is, you the citizens of the State of Delaware and then turn around and give that money to another agency without some string attached.

Usually with Federal moneys come Federal standards.

It was argued by this particular gentleman that there is a belief among some that the Federal standards for prison construction are too severe and too tight and are too demanding. And, that they drastically drive up the cost of prison construction that otherwise would not be nearly as high as it would be were the States allowed, had they had the money, to build the prisons they wanted to be built.

That is a long way of getting to the question. Are Federal standards for prison construction higher than, stronger than, or whatever adjective you want to apply, Delaware's prison construction standards? If so, is it an impediment or is it a positive development?

Mr. PARKINS. I really cannot tell you about the relative difficulty of complying with Federal prison construction standards. I do know that we have a general absence of standards in Delaware. Almost by default we adhere to Federal standards as a guideline simply because it is impossible for us to anticipate what will be in the future, so we try to protect ourselves.

I have heard gratuitous comments to the fact that complying with the Federal standards does, in fact, drive up the cost of prison construction.

Senator BIDEN. Again, Ms. Harker, as executive director, when you sit down with the Governor's Commission on Criminal Justice, you end up coming up with a dollar figure.

As the Governor testified, it may be low or high. It is not precise.

But I think the Governor used a figure of \$45,000 per bed per construction.

Obviously if you came up with that figure, it was as a consequence of application of certain costs related to construction standards.

I do not mean the details, but what standard did you use in terms of space and air conditioning and the walls and whatever? What standard did you use to arrive at that \$45,000?

Ms. HARKER. Basically, we tried to comply, in developing the master plan, with Federal standards the best we could and as much as we knew them.

We also used the LEAA publication, "The High Cost of Building Unconstitutional Jails"; \$45,000 is a low estimate, I believe, if you are talking about per cell estimates. That may be correct, but if you are talking about the additional programs and space needed for each inmate, then, of course, it drives it up.

I do not know exactly what the figures are to build prisons one way or another way. This publication that I mentioned indicates that it is cheaper to comply with some standards than with other standards, but the biggest problem is the space allotment and the additional program space allotment per inmate, depending on your level of security.

Also, if you try to apply Federal standards to jails that are in existence already, then it makes them almost not useable because the majority of our jails were built in the 1930's and they do not conform to the standards of today and are very difficult to renovate to make them conform to what are our common standards today.

Senator BIDEN. I would like to pursue this, but understand why I am asking this question. I think you do, but it is essential to know why I ask it.

If any of the legislation, whether Senator Mathias' or mine, or Congressman Evans' or whomever, is going to attach a dollar figure to it to be able to aid the States, then it is important that we have some realistic understanding of how the States arrive at the cost of providing space that they say is needed or the Federal courts say are needed.

If I understand what you said, Ms. Harker, the thrust of your study was one which used as its basic building block existing Federal guidelines so that, in effect, you arrived at that figure not independently, but you arrived at that figure as a consequence of looking at what is set down at the Federal level for the construction of facilities.

If that is high or low, and if you are off by 50 percent, then my coming up with a bill of \$300 million which gives \$2.2 million to Delaware, quite frankly is not worth the effort on the U.S. Senate Floor to get it out of committee.

I might well be working on a different idea. The same is true with Senator Mathias in terms of whether or not he is going to be able to alleviate the construction cost problems. Maybe we should be talking about regional prisons and instead of 4 maybe we need 20.

That is why I ask the question. So, go right ahead, panel.

Mr. VAUGHN. Senator, the Sussex Correctional Institution was built around 1930. Those cells are smaller than the accepted dimensions at this time.

Senator BIDEN. Whose dimensions?

Mr. VAUGHN. The ones that were set down by Judge Schwartz in his court hearing.

Senator BIDEN. As interpreted as Delaware law?

Mr. VAUGHN. Yes. And, standards established by the National Clearinghouse or people of that nature.

Senator BIDEN. I am sorry for these digressions, but I think this is important.

Did the judge say that not only did Delaware standard, as "I, Judge Schwartz, interpret it about the Sussex County facility, but I also have here in my hand the Federal standards which say it must be and therefore I rule that"?

Do you follow what I am driving at?

Mr. PARKINS. I am not quite sure. In the overcrowding suit, the one we are now grappling with, there was no comment made as to the conditions at Sussex. There was a lawsuit involved in Sussex which was settled by consent order prior to the Smyrna litigation.

The court did not say or intimate anything that would intimate that the conditions at Smyrna did violate or did not violate the Federal standards.

Senator BIDEN. OK. Proceed.

Senator MATHIAS. Let me ask a question. What is the relationship proportionately of your pretrial prison population to your convict population?

Mr. VAUGHN. Out of 1,040 we have about 150 or 160 pretrial.

Senator MATHIAS. So, roughly 10 or 12 percent?

Mr. VAUGHN. Yes.

We have somewhere around 110 or 115 at DCC.

Senator MATHIAS. Thank you.

Senator BIDEN. How about the average length of stay, that is, incarceration prior to conviction or acquittal?

Mr. VAUGHN. It would be hard to say, Senator, because of the circumstances that now exist. I would not be able to answer the question.

Senator BIDEN. Mr. Rabasca?

Mr. RABASCA. It is almost impossible to measure this.

Mr. VAUGHN. I might say, Senator, that in the increase in population, the increase has been in the area of sentencing of inmates as opposed to pretrial inmates. Those figures remain fairly constant.

Mr. QUINN. I would address the standards issue which you raised. There are, I think, more than one set of standards which have been used. I think the most useful has been the standards promulgated by the National Clearinghouse of Criminal Justice Planning and Architecture which is funded with LEAA funds out of Urbana, Ill. They have a huge document, several telephone books in length, I imagine, which goes into quite a bit of detail about design specifications for different types of facilities, whether you are dealing with a short-term holding facility or a community-based correctional facility. They have design standards for all of them.

In addition, there is the national standards and goals which were adopted, I guess, 10 years ago which have been recently reviewed and adopted in somewhat revised fashion in Delaware.

I understand that there is also underway a national effort for an accreditation process for prisons, much as exists in the medical field. I

imagine that the set of standards which they are dealing with would be similar to those which now exist.

I think Ms. Harker hit it on the head when she said the most significant problem is the increase in program space. That may be what is driving the cost up.

In terms of materials, I think most of the recommendations indicate that the traditional hardware and reinforced concrete and some of the other designs, architectural designs, may not be required, but that there are other means of controlling and providing security.

But they had in those standards many, many programmatic requirements.

Senator BIDEN. Such as?

Mr. QUINN. I will detail some of the aspects of the proposed new facility in New Castle County which tries to meet the National Clearinghouse design standards.

I emphasize that this is proposed. Currently what we are trying to do is to make some order out of chaos.

There has been a great deal of confusion in the correctional system in the State over the last year as we are rushing about trying to meet the court orders.

In trying to design a new prison, we have taken some substantial amounts of care. There is currently in existence an advisory committee which includes representatives of the police and social service agencies and the courts as well as corrections, in attempting to design that facility so that it meets all of our needs of the criminal justice system.

So, these are the initial design indications. That would include a facility for up to 300 individuals, detentioners and relatively low-term inmates. We attempted to incorporate the advanced state-of-the-art as we know it. It is designed to be secure, but without the traditional bars and hardware.

It is divided into living modules of 24 inmates maximum. The high security inmates would be put in a 12-module section. The National Clearinghouse feels this will eliminate alienation and decrease the number of assaults on prisoners and help to develop more of a feeling of involvement in programs rather than a feeling of being a number in a huge institution.

All of the rooms have an outside view which is requested by the National Clearinghouse. In other words, there is a window to the outside. There are 70 square feet to the cell. There is access to exercise and recreation equipment, including a gymnasium which serves as a multipurpose facility.

There is staff there to provide recreation.

There is an educational program with a staff providing the vocational education, GED, and remedial reading.

There is psychological counseling and availability of a psychiatrist. For both counseling and diagnosis, there is drug and alcohol counselors and availability of counselors for family counseling with space provided if that is appropriate with the wife or husband coming in.

I think the medical area is the one which was alluded to earlier. There is a medical screening process which takes place immediately upon intake. That medical screening, incidentally—although the

contract, I do not believe, as yet has been signed—will, I believe, be the only statewide contracted health system in the United States.

The entire prison system, adult and juvenile corrections, male and female, the health care will be contracted to an outside provider.

Records are a significant problem. You asked a question which we could not answer. We have asked ourselves many questions over the past year which we could not answer because the State record system is extremely deficient. Those answers are needed to move forward in planning and programing.

Consequently, substantial amounts of staff time were taken to bet best estimates.

But there is currently underway in Mr. Rabasca's job, an effort to computerize the criminal justice system and to provide an offender-based transaction system so that information gathered earlier in the process will be available when the offender gets to the institution and will not have to be gathered again and will be available there.

Senator BIDEN. That need not entail capital costs in terms of construction of the facility. You could house that in the beautiful building we have right here; can you not.

Mr. QUINN. There has to be space available for the records department and a computer terminal in the facility.

Senator BIDEN. All you need is a computer terminal. You do not need space. What do you need besides one little room no bigger than what I am sitting in right now?

Mr. QUINN. I think there will have to be an additional intake process. That terminal will not just be getting information out, but will be putting information in. So when someone comes in for intake, additional information above and beyond what has been gathered before will have to be gathered by the intake officers and maintained in the record file and ultimately put on the computer.

There is also space for a library, both a law library and a general purpose library. Of course, there is general maintenance.

Senator BIDEN. I think the law library in a room with a view would go over big. [Laughter.]

We will all hear about that.

Mr. QUINN. The woman's facility is located nearby but not in the same facility so that they may make use of some of the same staff programs.

One last note I might make is this.

The facility, as it is currently being designed, is modular, that is, we are hoping that we can expand, if appropriate in future years if the need arises, without any significant new construction costs.

Senator BIDEN. You had indicated earlier, or someone indicated earlier—and this may still be within your bailiwick, Mr. Quinn—the fact that vocational facilities have gotten the axe in an attempt to find bed space.

Is that correct? In order to find space have we had to put beds—

Mr. VAUGHN. Yes; about a year ago at one building, that is, two bays were used for housing.

Senator BIDEN. In terms of the new facility being planned or whatever ends up actually being done, are the program functions of the prison, whether they be vocationally oriented or libraries or gym-

nasiums or whatever, are they designed with the idea of rehabilitating or to control the prison population and make it more humane while they are there?

Mr. VAUGHN. You are speaking of—

Senator BIDEN. For example, the manual that you are hopefully going to teach the fellow who is going to work on that Buick automobile, you take it apart and retake it apart. Is that vocational program of teaching an inmate how to be a mechanic; is that purpose to control prison population to bring order within a prison so that people are not sitting with time on their hands?

Or is there a belief on your part, or anyone within the correctional system, that you really can rehabilitate and change the attitude of a person and actually provide a skill for that person going out of the prison?

Mr. VAUGHAN. Senator, I think you have to combine the academic end with the vocation. I believe that we need an expansion of our educational programs.

Senator BIDEN. The only thing I did prior to being elected to the Senate was that I was a criminal defense attorney. I remember going through the prison in 1972 with Mr. Frank. The only question in the articles written were about my competency as a defense attorney and how could so many of my clients end up behind bars.

But one of the jokes I felt was this. Maybe we should not be lying to the public at the State or Federal level. But there was the attempt at rehabilitation with regard to teaching vocations.

I see no prospect at all, under the Delaware correctional system as it has been—and I am not assessing blame—that you could teach, for example, anyone at a facility to come out as a qualified mechanic from the facility. I am talking about from its inception. I have been through there. I have been in it, through it, and by it.

I have represented people who have been through it. There is not the remotest possibility, not the remotest possibility, that someone walks out and is going to be qualified to do the job.

Yet, we advertised in the past, and not you people at the table, but in the past we have advertised that that qualification would exist.

So, I think what we have done is to have exacerbated the problem. Let us take a specific example. You have a black client of mine who goes through the program. We convince that client that they have, in fact, really have learned something. Then we convince somebody who may already have a disposition that is not problack and who runs a gas station and he should hire the person who has a card from the prison that says that they have gone through the program.

Then the first thing that happens is that Mrs. Smith brings in her Buick and the prisoner, thinking he knows what he is doing, does severe damage to it.

Then the proprietor of the gas station, who did not want to be part of the program anyway, walks away saying: "See all those blacks? They are all the same."

The prisoner we put out on the street, telling him that he qualifies for something by giving him a card says: "See all those white folks? They are prejudiced against me. Here I was qualified and I did not even get a job."

That is a common thing that I see. When we are planning a new facility, I hope that we will tell people what is remotely realistic about what we are doing within a vocational program.

We have a carpenter's program, a plumber's program. Do you have several washers and dryers down there teaching people how to deal with going out and being qualified to be wahser mechanics and get jobs?

In other words, what I am trying to get at is this. What in the vocational end is realistically going to be done for the dollar figure that has been given to us? What realistically can be done? Can we put anybody on the street, assuming we have them in there for enough time, that upon going through the full spectrum of any planned program, could be qualified to be a technician in whatever field we pick?

Where does that fit into your plan?

Mr. QUINN. I will try to answer that.

Let me go back to your initial question which was: "Are all of these programs designed to provide skills so that they have jobs when they leave the prison, or are they just something to keep them busy while they are there?"

I think the answer is both, if you interpret broadly the first part.

I do not think we are going to be able to give someone a card and have them walk out and be a washer repairman, but I think we may give them some basic skills and, certainly, as the Commissioner indicated, if they cannot read, then we can give them some reading skills so they will be better prepared to find a job and hold it in the future.

I am not sure that we can place him in the specific job we trained him for, but perhaps we can train him for some work habits and provide him with some work habits that will enable him to stay within a job that he obtains on the outside.

Senator BIDEN. I think that is important that that gets advertised like that. One of the reasons that folks out there are so upset with all of us who have been involved with the criminal justice system is that we have really overpromised them.

We have told them that we are going to spend more of their money to rehabilitate this guy and we never really intended that.

Mr. QUINN. The word "rehabilitation"—I think if that were the way the things were sold to the public, that is, that we are putting people in prison to rehabilitate them, then I agree wholeheartedly with you. But that is wrong. I do not believe we put people in prison to rehabilitate them. We put them there to prevent them from doing harm to society and to punish them.

Rehabilitation can be provided many, many other ways without having to provide their meals, their medical care, and 24 hour coverage.

But while they are in there I think it is beneficial to give them access to some programs which, again, may make them or give them a better chance to be a better productive member of society when they leave.

Senator BIDEN. I do not expect it now, but for the record would you submit at a later time the percentage of the overall estimates for the cost of construction of whatever facilities you contemplate?

What percentage of those are of consequence of programmatical design? What percentage of those are related to having to put a library in, a gymnasium, a vocational training center? What percentage

is there? What is the dollar figure and the overall dollar figure that you are giving us that goes to those programmatic things that you have designed into the new construction of the prison facility?

Mr. QUINN. We will attempt to. It will be difficult, but we will attempt to.

Senator BIDEN. Without objection, so ordered.

[The material referred to had not been received when this publication went to press.]

Mr. QUINN. While the programmatic requirements are there to meet the national standards, I do not object to most of those. I think that people agree that some recreation space is necessary. You cannot keep people locked up 24 hours a day.

Senator BIDEN. I agree.

I think one of the travesties of the system that was built in 1968 or whenever it was, was this. I went down to practice law, and although I am a religious man and practice my religion and go to mass every Sunday, I thought it was absolutely proposterous that we built this beautiful chapel at the expense of a gymnasium. It was the most ludicrous thing I could imagine being done. Yet, we did it.

It is absolutely crazy. I get guys down there. They go out and play basketball in subzero weather, which is the recreation they have because of the only outside facility, but they could go into a nice, big, heated place to pray—and it was a beautiful chapel.

I would rather have them pray in their cells and play in the chapel than play in the cells and pray in the chapel. Those are the kinds of things we want to get at in terms of understanding what figures you are using for us to have some feel.

Senator Mathias?

Senator MATHIAS. Commissioner, for the record, how long have you been in prison work?

Mr. VAUGHN. Since October 1976.

Senator MATHIAS. What was your previous experience?

Mr. VAUGHN. I served 20 years with the Delaware State Police and retired.

Senator MATHIAS. So you have been in law enforcement and prison activity really all of your career?

Mr. VAUGHN. Yes; I have been on councils involving corrections over the years between my retirement and coming here to this job.

Senator MATHIAS. Mr. Chairman, just to put this hearing into prospective, we are looking specifically at Delaware problems as problems of importance, but I think it should be noted that more than half of the States are in a similar situation.

More than half the States are faced with court suits which challenge the constitutionality of conditions in the prisons. So, the situation here is, in fact, very typical of the national problem.

In Baltimore the other day Judge Kaufmann, who is one of the Federal judges in the district of Maryland, ordered the city to begin to reduce overcrowding by about 25 percent, which would be a very tough job to do.

Was your court order of that magnitude? What percentage were you dealing with?

Mr. VAUGHN. Yes, sir. I would say so. I would like to add this, if you are interested in where we might be right now, to say this.

I referred to the furlough program earlier. We are in such need for housing or some other means that at the present time we have 134 people on the furlough program.

We started with maybe about a dozen and hoped it would not get any bigger. But it just kept increasing.

Senator MATHIAS. What is your average square footage per prisoner?

Mr. VAUGHN. It would vary from institution to institution. At the Kent Correctional Institution, which was built around 1930, it would be considerably less than at DCC, perhaps 45 or 50 or maybe 40 square feet.

Senator MATHIAS. Per prisoner?

Mr. VAUGHN. Yes.

Senator MATHIAS. That is relatively luxurious by our standards in Maryland. At the Maryland State Penitentiary, it has about 49½ square feet for a two-man cell. That is pretty tight.

Mr. VAUGHN. In our housing since late June, they have been allotted 75 square feet in a dormitory setting.

Senator MATHIAS. Do you think that Parkinson's Law applies in the prison business? In other words, if either out of their own resources or with Federal assistance, the States built larger prisons; are they going to fill up just because the space is there?

Do you, as a commissioner, have a greater incentive to look to the other outlets that the Governor talked about because it is a tight person situation? Would it be easier for you if you had space to lock everybody up in?

Mr. VAUGHN. I earlier said that it would take the entire criminal justice field to prevent that from happening. I am afraid that if it were left entirely to the department of corrections, that very well could happen because we really have no choice in who is sent to us or how or when.

I believe that the situation you talk about could not develop unless it was controlled by the overall system.

Ms. HARKER. If I might interrupt, the Senator has indicated that our situation is typical of the other States that are under court orders. That is not necessarily true in that other States have the luxury, if I might call it that, of shifting around to county jails and just not taking people in State institutions.

But we do not have that ability since we are limited to Smyrna, Sussix, pretrial annex and whatever else we might be able to come up with.

Senator MATHIAS. By "typical" I merely meant that you were subject to this kind of challenge.

Ms. HARKER. I know that, but we have one less answer. We cannot say: "OK, we are not going to take people in State institutions. They are going to stay in the county jail for their term."

That is now resulting in Baltimore County or other county jails coming under the same type of thing.

But at least this gives you enough leatime to try to develop all other alternatives.

Senator MATHIAS. Since that question has come up, have you any precedent for housing State prisoners in Federal institutions? Have you had that experience?

Mr. VAUGHN. Yes; in fact, the general assembly in November of this year appropriated an additional \$84,000—and the bill was signed a few days ago—we would hope to use that money for an inmate who could not make it in one of our institutions or for protective custody or things of that nature.

I am afraid if we got into that area, in order to relieve the overcrowding, then, for instance, some of the people we had on furlough I do not think it would be a wise thing to send those people to another State. I would rather back them into our prisons again and send some of other inmates to another institution.

Senator MATHIAS. But this program and money is designed to allow you to transfer a prisoner to a Federal institution.

Mr. VAUGHN. Yes, sir. At the present time I think you will find that you might have quite a chore in finding one that will be able to take too many prisoners. They are jammed themselves.

Senator MATHIAS. I would agree with that.

But when it happens, do you lose control of that prisoner? I assume that the sentence imposed by the State judge is the one which is carried out, but is it carried out in accordance with State guidelines or Federal guidelines?

In other words, for parole provisions or good time provisions, are they going to be in accordance with State or Federal law?

Mr. VAUGHN. I would say State law.

We have the right to recall or return a prisoner from another institution, at this time.

Senator MATHIAS. How do you decide who will be transferred to a Federal institution if that possibility arises?

Mr. VAUGHN. I would say in most cases it would fall in the area of protective custody or the safekeeping of an inmate who might not be able to make it in one of our institutions due to a number of various circumstances.

Senator MATHIAS. It is just a tough life in prison; is it not?

Mr. VAUGHN. Yes; he could be on somebody's list to be harmed.

Senator MATHIAS. Going back to testimony, both by the Governor and by Congressman Evans, the question arose as you yourself discussed it—and perhaps any other member of the panel might like to comment on this also—but we have to decide who we are going to lock up.

If there are people who break the law, but commit victimless crimes, then perhaps we ought to treat them in a different way. You have the alcoholic who is one example.

But who, in your judgment, should we be locking up? Who should be incarcerated?

Mr. VAUGHN. Of course, you have homicides and burglars and robbers and sexual assaults and rapes.

Senator MATHIAS. Crimes of violence?

Mr. VAUGHN. Yes; and incidentally that is to a large degree what we have in the Delaware Correctional Center at this time. We do not have the records capability to keep an updated list, but in March the list was surprising as to the offense and to the length of sentence. Perhaps this week we will have another list. It does not appear to be changing that much.

Senator MATHIAS. I said that was my last question, but one more does occur to me.

If you are dealing with a prison population which is largely a population guilty of crimes of violence, which is what you have just told us, then what about the system of parole under which we have been operating?

Mr. VAUGHN. We, at the present time, have about 3,500 or 3,600 people on parole, that is, they are on probation. We have about 500 on parole. That figure has also increased by leaps and bounds. It probably has increased at least an equal rate and maybe more than the incarceration rate.

Senator MATHIAS. Have your supervisory personnel for people on parole or probation increased proportionately to that population?

Mr. VAUGHN. Yes; but not to a sufficient number. Governor DuPont; in his master plan, emphasizes the need for more probation and parole officers.

In some cases, at the present time, we are carrying a caseload in the neighborhood of 120 where I believe the Federal Government, the last time I talked with one of their men, they were around 45.

So we have a very heavy caseload in that area.

Senator MATHIAS. Would you prefer to continue with a parole system, or would you go to the system which has been discussed in connection with the revision of the Federal Criminal Code, which is to attempt to have a more definite system?

Mr. VAUGHN. You are talking about determinate sentencing?

Senator MATHIAS. Yes; we had a good example of it the other day in a court. I have forgotten what State it was. But a court imposed a sentence of over 1,000 years.

Senator BIDEN. That was the State of Indiana.

Senator MATHIAS. That brings the whole system, I think, into ridicule.

Mr. VAUGHN. I talked with the warden at San Quentin. They have determinate sentencing.

He said in the beginning the population decreased, but then for some reason it steadily increased.

I am not sure, but I think it may be New Hampshire that has recently gone to that.

There is quite an article in the corrections magazine about 2 or 3 months ago. When you finish reading the article, you really have a problem to decide which was the best.

Senator MATHIAS. You lose flexibility in dealing with the size of your population; do you not?

Mr. VAUGHN. Yes.

Senator MATHIAS. If you commit yourself.

Mr. VAUGHN. At the end of incarceration you lose control of the individual because there would be no parole.

Senator MATHIAS. Thank you very much, Commissioner.

Mr. Chairman, the Baltimore Sun on Sunday, December 4, had a very interesting article on the subject.

I would like to submit that for the record.

Senator BIDEN. Without objection, that will be placed in the record at this point.

[The material referred to follows:]

[From the Baltimore Sun, Dec. 4, 1977]

THE MORE PRISONS WE BUILD THE MORE WE FILL

(By C. Fraser Smith)

Are Federal judges pushing the states so hard on prison reform and construction that, when the overcrowding crisis is past, the horizon will be interrupted frequently by abandoned prisons?

Will residents of the Orangeville neighborhood in East Baltimore have to endure the ultimate irony of learning that the 890-bed prison they opposed in vain was, as some of them still insist, unneeded?

If national policy on prisons or scientific analysis of trends in crime were the only indicators available the answer would be difficult.

A recent study commissioned by the Federal Law Enforcement Assistance Administration says there is no national prisons policy, nothing firm to use as a guide for planning. And prison demographers caution that they are pioneers, groping in a wilderness of changing and unknown variables.

Unfortunately for those who would like to use this argument against the state's plans, however, new prisons are needed and the need is unlikely to fade. Historically, with few exceptions, prisons are not decommissioned until they are patently unfit for human habitation, and frequently not even then.

Alcatraz in California, closed in 1963, is one of the few exceptions to the rule that is illustrated by the Ohio State Penitentiary: It closed in 1973, but re-opened later in the year and now houses 981 prisoners. Prisons hailed as replacements often merely supplement.

Prince Georges county opened the first section of a new detention center in December of last year—and the old jail, with a capacity of 190 beds, was almost immediately acquired by the state to be used until July of 1979, at least.

A spokesman for the Federal Bureau of Prisons said last week that three of the largest and best known prisons in the federal system—McNeil Island off the coast of Washington state, the U.S. penitentiaries at Leavenworth, Kan., and Atlanta—are unfit for habitation and should be closed.

But on January 1, 1975, there were 22,361 inmates in the Federal prison system. The most recent count shows 30,116, not including 1,000 Federal prisoners recently sent to halfway houses.

During the two-year period, the population grew by more than 8,000 persons, while three new facilities with space for 1,500 came into service. So, it is unlikely that the three Federal pens will be closed in the near future despite the bureau's candid appraisal of their condition.

Mark A. Levine, commissioner of corrections in Maryland, has a list of his own, but will not offer it for publication, preferring not to invite trouble.

Mr. Levine and the national spokesman say there is almost no possibility that proposed new prisons will serve only to meet a temporary crisis—the way schools did in response to the baby boom—and then become surplus real estate.

Even if the population projections with their public policy variables prove inaccurate and the demand actually falls dramatically, they say, there will be no surplus prison space because they will take the opportunity to close the places that are not fit to live in.

The more cynical—or realistic—view is that there is a law of expanding requirements for prison space: If the beds are there, they will be filled by judges responding to law and order politicians who are responding to the fears of their constituents.

Led by social scientists like James Q. Wilson of Harvard, a number of experts have begun to insist that prisons must be used simply as a means of taking the offender off the street to remove any opportunity to further offend. "Determinant" sentences, in which conviction guarantees imprisonment for a specific period of time, are a part of this approach.

Such a policy, it is observed, will tend to increase or sustain the prison population even after baby booms or similar population phenomena are at an end. Since 1970, for example, longer sentences have meant a 20 percent decline in the rate at which prisoners have left the correctional system in Maryland.

On the other side of this general prison policy debate are those who say prisons have never worked—have always served to cement a criminal view of society and to polish the criminal techniques. Advocates of this view often urge a moratorium on new prison construction until the policy alternatives are more thoroughly considered.

Barbara Knudson, a professor of criminology at the University of Minnesota and a staff member of several national crime commissions, says the community-oriented rehabilitation approach has never been given a decent chance in this country.

"It's like sending in one doctor to deal with the disease of 10 million people and, when he fails, saying, 'Well, modern medicine doesn't work,'" she says. Her view: build prisons only for those offenders who show they are threats to others, incarcerate them and never let them out.

For the others, she says, community oriented programs are best: halfway houses, probation and parole programs, and the like.

But after several times around the reform track, she has little hope that any real attempt will be made to deal with the prisons, largely because prisoners have no constituencies.

The trial and error of recent years, with the fairly dominant trend toward get-tough policies in criminal justice, have created some odd bedfellows, Dr. Knudson says. The conservatives, who want jail sentences used punitively and the liberals who want equity or uniformity in sentencing, end up in favor of the "determinant" sentencing often—and, therefore, in support of the trend toward larger prison populations.

In Maryland several years ago, the corrections planners "pinned their hopes" on a network of community corrections programs. But, according to the state's master plan for corrections, "It was obvious by January 1976, that the program, designed to reduce the population in the prisons by 40 per cent, was foundering on the rocks of local resistance. Fewer than 150 of a projected 2,100 beds were established.

And opposition has diminished very little, if any, since then. Many efforts are being expended and theories propounded, for example, to defeat the Continental Can Project.

At a community meeting last week, Councilman Nathan C. Irby, Jr., (D., 2d) said the state ought to stop sending numbers runners, delinquent fathers and drunk drivers to fail. If that kind of offender could be dealt with in some other way outside of prison, he suggested, the prisons wouldn't be so crowded and the need to build new ones in residential neighborhoods would go away.

Prison population characteristics do not support Mr. Irby's view, however.

Department of Corrections statistics show only 9 individuals are now incarcerated for domestic crimes; only 5 for gambling of all kinds, including numbers writing and running; and, still a minimal figure relatively, only 147 persons are serving jail terms for all motor vehicle violations.

The demand for prison beds comes from men and women guilty of murder, assault, drug violations, breaking-and-entering, weapons violations and kidnaping. And most of the offenders in these categories are being sent to prison for longer periods of time—in Maryland and throughout the nation.

Maryland's experience with these categories of offenders over the last six years is roughly parallel to the national experience: Of the persons committed to prison here in 1970, 53.2 percent had committed a serious crime of the type mentioned above; in 1976, the percentage had increased to 61.5 percent.

More crucially for the over-crowding crisis, the mean or average sentence for those coming into prison in 1976 was 49.5 months as compared to 33.4 only 6 years earlier.

With indicators of this dramatic magnitude, it is not surprising to learn that on December 1, 1976, the state Division of Correction had 7,087 inmates in facilities with a "desirable" capacity of 5,025. To help accommodate the demand, the state has done a number of things. It has put a second bunk in 1,410 single-man cells and 652 extra beds in dormitory areas.

In the State Penitentiary in Baltimore, cells with 49.5 square feet of space house two men. The American Correctional Association calls for a minimum of 50 square feet for one man and other authorities put the requirement at a still higher level.

Similar situations have prompted extraordinary orders from Federal judges in recent years. The first widely publicized court-ordered overhaul of a prison system came in Alabama, where Judge Frank M. Johnson found that overcrowding and other poor living conditions "not only makes it impossible for inmates to rehabilitate themselves, but also makes debilitation inevitable."

He ordered a ban on the state system until the population had been reduced from 5,100 to 2,600.

In Rhode Island, Judge Raymond J. Pettine, found that the state's maximum security facility, built 100 years ago to house 55 prisoners, had for the last 5 years held an average of 420. The prison is an imminent health hazard, Judge Pettine ruled, and ordered it closed within a year.

And in Baltimore, Judge Frank Kauffman recently ordered the city to begin reducing overcrowding in the City Jail by about 25 percent. About 750 of the jail's 1,950 inmates are state prisoners—backed up there because the state has no place to house them. The jail was designed for less than half the number of inmates now housed there.

Thus, the immediate pressure from court orders and the pressure from many other quarters forces the state to forecast its needs for the next 10 to 15 years and hope the forecasts are reasonably accurate.

"Essentially what the statisticians tell us is that by the mid-1980's we might begin to see a leveling off of the need. They also tell us," says Commissioner Levine, "that when that levels off, we'll have a high level of general population and a need for more beds than are now available."

Currently, more than half the states face court suits challenging the constitutionality of conditions in their prisons. They must act on the basis of the best available information.

And that shows in Maryland, according to the master plan, that if nothing at all were done to provide additional space, the state would have a "deficit" of 4,319 beds by 1982.

The state plans to squeeze beds out of as many locations as it can find. It planned to acquire nine trailers, of which seven would be available to the state, adding 50 to 70 minimum security beds; it hoped to be able to find 382 community-based beds by January, 1979; it planned a 182-bed medium security prison at Hagerstown by January, 1978; it hopes to have the Continental Can building ready by September, 1979; and it plans to build a medium security prison at Jessup by January 1, 1979.

If all goes well, the deficit would be cut from 4,319 to 1,379. This "deficit," according to the plan, is relative to the American Correctional Association standards. And, since the current over-crowding exceeds those standards by 1,932, the 1982 situation is improved almost 600.

The law enforcement administration study suggests that the states would be better able to deal with their problems if there were a coherent national policy. With such a policy it might be possible, for example, to determine what is an appropriate prison population size for any single jurisdiction.

Among the variables that might be programmed into predictions of the future populations, the report says, are mistakes made with present prison populations. To the extent the problems are poorly handled, repeat violations may be increased. "Imprisonment problems that will occur in the next few years," it says, "are the legacy of policy choices that [are being made now]."

Senator BIDEN. I have a few more questions. I will try to make them pointed.

Mr. Rabasca, you have been given the job of projecting. There are lies, damn lies, and statistics. You are caught with that problem, are you not?

Mr. RABAŠCA. Yes.

Senator BIDEN. Have you made projections of Delaware's prison population? Have you gotten into that at all?

Mr. RABAŠCA. Yes; I have.

Senator BIDEN. Could you share those with us?

Mr. RABAŠCA. You want the specific figures? Are you interested in the technique I used or the rationale?

Senator BIDEN. The figures. The results. What are we faced with going down the road? I doubt if Delaware is significantly different in terms of direction.

Mr. RABAŠCA. Let me point out, first of all, that prediction, of course, is a risky business. To try to predict 5, 6, and 10 years into the future based upon 2 or 3 years of data is sheer folly.

We can project what we think the trends are going to be and given that things will continue the way they are today, it almost assures that death and taxes, of course, and the prison population will increase as the State population increases.

So, we have projected, within the simple parameters of what we think the population of the prisons will be in the next several years, this.

On that basis for the year 1977 we projected a range of somewhere between 948 and 1114.

Senator BIDEN. What are we starting with? What was it in 1976?

Mr. RABASCA. In 1976 we had a population of 836 as an average daily population, plus some 130 or 140 detainees. It is a very slight increase on a continuing basis.

As I say, Senator—

Senator BIDEN. How far did you go?

Mr. RABASCA. I projected it out to 1990, simply because we had population figures projected out to 1990. Anything over the next 12 months from now I would not want to be associated with.

If we would arrive at those parameters, we would be fortunate. It would indicate that nothing had occurred within the system to change the relationships and the variables. We are essentially saying that 3 to 4 years from now we will have an increase of about 300. This was the figure we went with.

Senator BIDEN. So what you are really saying is that we really do not know. We cannot project with any degree of accuracy from the year 1985 or 1990?

Mr. RABASCA. That is correct.

Senator BIDEN. I have another question.

Excuse me, Senator Mathias?

Senator MATHIAS. It is demographic question alone. It is a question of how, that is, what the criminal laws are going to be and how they are going to be enforced and what improvements there might be in techniques of preventing crimes and reaching criminals before they commit acts; is it not?

Mr. RABASCA. Absolutely.

Senator MATHIAS. Hopefully maybe the educational system will grab hold.

Mr. RABASCA. One of the residual benefits of prediction is that it not only helps to see what is going to happen in the future, as the Commissioner indicated, it is not only the corrections problem, but it is the criminal justice systems problem.

So, as far back upstream in the system we can go in order to capture as much data as we can about what occurs in the system, the better we can forecast what is going to occur when the sentenced prisoner arrives at the prison.

Senator MATHIAS. The school population problem on which we all went off and made mistakes was a demographic problem. That shows just how tough the projections are.

Mr. RABASCA. Yes; but the only agreement is that somewhere in the 1990's, the young male adult population will peak out. We can expect a turnaround at that point. The prison population, again all things remaining equal, will, at that point, probably start to decrease.

Senator MATHIAS. Simply because the potential criminal population has decreased?

Mr. RABASCA. There have been some attempts and the Congressional Budget Office made one of them, to link unemployment to the prison population. To what extent that is a better measure than the adult male population, since they are normally the unemployed population anyway, we do not know.

Senator MATHIAS. What about the growth of female prisoner populations?

Mr. RABASCA. The type of crimes seem to be changing. I have not seen too much of it. Perhaps the Commissioner has. They tend to be incarcerated at a lower rate than the male does.

To what extent this has influenced us in Delaware, I have yet to measure.

Mr. VAUGHN. Senator, the type of offense for which women are detained at our women's correctional center are of a minor nature or of a lesser nature than that of the men's.

For instance, I believe we only have one or two up there for homicide.

Senator BIDEN. The national statistics, although I cannot cite them with any degree of accuracy other than to cite the trend, shows that although the numbers are not vastly increasing, the percentages are vastly increasing because they were so low. I am talking about violent crimes.

This is being committed by women. The percentage of women, in other words, who have been arrested for violent crime and/or convicted, has markedly changed over the years.

But that is a little misleading because it does not necessarily reflect a drastic increase in numbers because of where we started.

Ms. HARKER. There are a lot of other factors coming in. Last year in Delaware we had a women who went to jail for 30 days for loitering, but that has not happened this year. You are going to go to jail for a more serious crime, whereas in the past years women have gone to jail at a lesser rate, but also for lesser crimes.

That has always been the case with juvenile females.

Traditionally they have had a lower rate of incarceration, but they have spent more time in jail for lesser offenses.

Senator BIDEN. The only point I am trying to make is this. According to the FBI statistics, more women are packing guns, literally. There is a greater percentage of women who are likely to walk into a bank and stick a revolver at the teller than there were 10 years ago, in just raw percentages.

Again, that is misleading because it does not reflect a great crime wave of women going out and packing guns. But the character of the type of incarceration that you would like to have to provide, according to the national statistics, if the trend increases, when you plan women's prisons 15 years ago, the degree of maximum security cells that were required are going to be less than you will have to plan for in the future, if the national statistics are correct.

I guess we are just highlighting what Mr. Rabasca has made clear. It is a difficult business to project what is going to happen with regard to prison population, even if all things remain the same in terms of our attitude toward whom we incarcerate and for what crimes and the degree of incarceration.

I would shift briefly now to a question that has caused a great deal of furor here in the State of Delaware.

That is, where there has been a Federal court order or one pending for the discharge of a significant number of prisoners from the system because of conditions in the prison in the eyes of the Federal judge. That is this.

In Delaware it is alleged and it is broadly accepted by the population at large that two of the more celebrated offenses that have occurred in the last year, the gentleman—and I use the term lightly—who was accused of multiple rapes, I believe was on furlough. The accused killer—and I emphasize the “accused”—a very prominent civic leader here in Delaware was allegedly on furlough totally as a consequence, and only as a consequence of the court order. Had there been no order he would have been out.

Again, without commenting on whether or not either of the accused are, in fact, guilty, do you feel a pressure in terms of who you are releasing? Are you having to put on furlough, as a consequence of the court order, people whom you would otherwise not put on furlough, all things being equal?

If space were otherwise available, and if there were no court order, would you be putting the same people on the street through furlough programs?

I realize you have two of them, as you indicated. How much impact has the court order had on how you approach the furlough system?

Mr. VAUGHN. It has had quite an impact. I would say that in the beginning when we began using what we call the extended furlough program, people were placed in that who had previously been on furloughs through the regular system.

For instance, to visit their family or things of that nature are under that system.

In the beginning, we started with about maybe a dozen.

Senator BIDEN. This is a work furlough?

Mr. VAUGHN. No; this is an extended furlough where, because we have no prison space to house the man, we will send him out of the prison for a few days and then return him.

In some cases this occurs time and time again.

In the Wilmington instance, that was the most serious, and I might say the only serious occurrence.

As time went by, the type of offense for which somebody was serving and also for which he was being placed on extended furlough, increased.

I would like to say that the institutional release classification board now rules on all people who are placed in this furlough program.

As the population increased at Smyrna, the increase in extended furloughs followed. However, they were OK'd and approved by the institutional release classification board. Eventually we reached a point where the release classification board felt that they could not approve a sufficient number in order to comply with the court order.

Even though I am now sitting in Federal court, I must say that we are above the 605.

The parole board has also used the accelerated parole selection, and this is the other offense that Senator Biden speaks of. They were on parole. This tends to slow down that process.

So, the department of corrections at the present time is working through parole. It has gone farther than I think they would have gone under ordinary circumstances. The extended furlough certainly has people out there now who would not have been there had we had housing facilities.

Coming from a law enforcement background, it makes me shudder sometimes to think of what we do have out there.

But I would like to emphasize that they have been carefully screened, and you have to take a chance with somebody.

We have been rather fortunate in that program. But I would hope, as the Commissioner of Corrections, that we would not have to live with that forever.

Senator BIDEN. What you are saying is that you carefully screen to get the lowest risk but even at the lowest risk they are a high risk, even under ordinary circumstances?

Mr. VAUGHN. Yes; at times you have to consider risks regardless of offense.

Senator BIDEN. Right. I see your point.

I hope you do not have to live with that for much longer. I am sure the population at large hopes you do not have to live with that difficult position that puts you between the rock and the hard spot.

It is hard enough under ordinary circumstances to make the right projection.

I have listed this. I have avoided asking some questions relating to the attorney general's office. I thought, Mr. Parkins, that you were coming back later this afternoon.

So, I will not have time to develop the questions between now and 1 o'clock when we break for lunch, but I would like to tell you what they are and maybe you can give me your response in writing or at a later time you could fill me in.

The things I would like to find out with regard to the operation of the attorney general's office, I think, impacts upon the area that we are investigating here. They are:

One, what impact has the Federal court order had on plea bargaining? That is the process I am intimately familiar with. What you had to do? Have you had to do at the attorney general's office this? I see one of our more prominent solicitors, John Sheridan, our city solicitor, sitting out there. Has the city solicitor's office had to take action that they would not otherwise have taken in terms of plea bargaining because they know if the conviction is had there is still no place to send the person?

No. 2, what impact has it had on the Attorney General's recommendation of sentence after a presentence report has been conducted? Is the attorney general's office now recommending sentences that are shorter or on sentences at all where they otherwise would have recommended something different?

No. 3, not directly related to those two items, but what percentage—and I realize that you cannot give me precise figures but at least you can give me a feel—of people prosecuted in the State system could have been prosecuted in the Federal system? I am talking about drug offenses, for example.

I know one of the things that we constantly have to deal with is the U.S. attorney's office and the attorney general's office making

decisions that although they may have concurrent jurisdiction over a particular offender, then they would opt not to prosecute and letting it ride with one and not with the other.

Has that had any impact in terms of shift of criminal case load?

Then also, what factors has the attorney general's office felt in this area? In other words, has the pressure of the overcrowding question in prisons impacted upon the attorney general's office the operation of the attorney general's office with regard to juvenile offenders?

I used to spend a lot of time in family court. One of the more heinous crimes was expected and you could be sure that the Attorney General would be down there in the family court suggesting my client does, in fact, qualify under the law and in light of the offense to be moved up to superior court.

Are you more reticent to do that today because of what it means, assuming you get a conviction?

Lastly, in any area that I have not thought to ask, what impact, in a general sense, do you believe, beyond these areas, this court decision and the lack of available prison space has had upon the operation of the criminal division of the attorney general's office in the State of Delaware?

I know there is no way in the 4½ minutes remaining that can be answered. Maybe you cannot even answer it in the time we had allotted for you.

But, again, I think it is important for us to know those things in determining whether or not the degree to which we must move and what must be the Federal input and whether or not we can positively impact to ameliorate the problems that exist, not only in the operation of the correctional institution and the planning aspect that Ms. Harker and her commission have, but in terms of the day-to-day operations of the criminal justice system in the State of Delaware.

Mr. PARKINS. Mr. Chairman, what I suggest doing, since I am not a member of the criminal division, I would not really be in a position to answer the questions you have raised. I agree with the chairman that they are important questions which must be considered.

Senator BIDEN. It is my mistake for not making the specific request of the attorney general's office. I am sorry to put you in that spot.

Ms. HARKER. I would like to add this, Senator. I would like to make a plea about what LEAA is doing now.

One of the biggest problems that the commissioner has and the entire system has had is the lack of information on the specific defendant at each stage. The sentencing judge, that is, the sentencing is based on available information from a presentencing report and diagnoses decisions and furlough decisions and parole decisions. All of these are based on information available at the time.

It is amazing how we have made such good decisions on the lack of information. Through LEAA money, mostly discretion money, we have developed the CDS system. We have been working through CLUES. We have improved the information system statewide, so that aspect, at least, has the system trying to work as a whole on the impact of these decisionmaking processes as we go through the system.

The Governor also alluded to the planning and the use of expertise. I have heard of your reasons for opposing LEAA. I can understand

that, but the impact of people who have been attacking LEAA in one form or another is that we are losing a lot of the expertise.

The Attorney General of the United States has submitted a budget for LEAA, part B, which is the money that supports our agency, which is 40 percent less next year, next fiscal year than it was this year, and 50 percent less than it was 2 years ago.

If we look at the corrections master plan in the State of Delaware, for which we applied for discretionary funds, and we are turned down, that plan was developed through the commissioner's office and the Governor's office. The input of that on all of us, who are in whole or in part are federally funded, is deeply felt.

That is the type of expertise that we need. We need to develop that expertise within the State itself but because of State priorities that is not always possible.

So, the impact of attacks on LEAA has been that the expertise is diminished. I have lost 20 percent of my staff in the last year due to layoffs and had to layoff a person who was a halfway house expert who had run one for years.

The problems in the criminal justice system are rampant. We are attacking them. We have never bought an armored car in the State of Delaware.

Senator BIDEN. I know that.

Ms. HARKER. Across the Nation that type of thing has not really been done as it was in the initial stages of LEAA in 1968, 1969, and 1970. We are really getting into systems planning.

At this time when we are getting into systems planning and impacting on all these phases, and now we have to fund corrections, because really a lot of the activities of LEAA have contributed to the problems of corrections, so let us leave the expertise there that has been developed and address the problems that the systems have.

I would like to invite you or your staff to see what we do and to see what the system does and if we do have hearings on the future of LEAA or the National Institute of Justice or whatever it turns out to be, then we will testify and we will give you statistics which we have been giving for years, but LEAA never communicates to Congress anyway. We will be happy to help you make whatever decision has to be made.

Senator BIDEN. I appreciate that. I guarantee you that there will be hearings. Whether or not I chair the subcommittee or not, I do not know. I think your input would be valuable.

Senator MATHIAS. Mr. Chairman, let me comment on Ms. Harker's statement.

We referred earlier to S. 28, which is the bill that I have introduced and under title II provides for regional prisons which would be available for States.

But title I addresses the very question that you raise now, that is, the question of identifying problem prisoners, career convicts or whatever you want to call them, repeat offenders, and assigning priorities in dealing with them.

I will not take a long time now to describe title I and what it does, but I will be happy to see that you have a copy of it.

Ms. HARKER. I would appreciate that.

Senator MATHIAS. I think it is right on target to the kind of problems that you are describing and the kind of help that you are asking for.

Senator BIDEN. I would be delighted, Ms. Harker, by the way, as a consequence, despite my attempts to eliminate the LEAA, that LEAA will eliminate the problems I am concerned about. Then I could support it strongly.

Maybe we will meet somewhere in the middle on that.

I thank you all.

Before we adjourn for lunch, there are a number of distinguished people in the audience, some of whom I will miss, but this relates to the area.

I would like to acknowledge the chairman of the Senate Judiciary Committee, Senator Frances Kerns, who is in the audience.

The gentleman from the city solicitor's office, John Sheridan is here; and a very distinguished Delawarean, Norma Handloff, former mayor of Newark and former director of the Delaware Agency to Reduce Crime.

I am sure there are others of you who have had an impact in this area who are here today.

I do not see him now, but I believe Al Plant, a member of the House of Representatives, is here. They are involved in this area.

I thank you all for your attendance. We will resume at 2 o'clock with Judge Bifferato of the Superior Court, and assuming that Mr. McGinnis is available, the Lieutenant Governor, we will go to him.

Then we will go to Scott Cown. I would like to ask Scott Cown to be prepared, if he is here, to move up his testimony considerably. It is scheduled for 3:30.

The Attorney General's office will not be testifying because of my mistake. So, we can move Mr. Cown up.

I hope we can contact Senator Sharp to see if we can move him up also. Then we will open the testimony to anyone who would like to testify. We would limit that testimony to 10 minutes, if possible. We will go from there.

Again, thank you very much.

Mr. VAUGHN. Senator, will there be any need for me to remain?

Senator BIDEN. No; there will be no need for any of you to remain. We welcome your presence. We will be back in contact with you all as this process proceeds. We will ask for clarification and we will appreciate any comments you have with regard to any of the legislation discussed here or thoughts you have after the fact or things you would have liked to have brought out that I was not sharp enough to pinpoint for you.

We would like for you to respond in any way you want to.

We will have the record open for at least 2 weeks, if I am not mistaken, and it will probably be open for considerably longer in light of the fact that this is the first of a series of hearings.

So, we would welcome any comments you have beyond what you have made today.

We will recess until 2 o'clock.

[Recess taken.]

AFTERNOON SESSION

Senator BIDEN. The hearing will please come to order.

The reason for the delay in convening is that our 2 o'clock witness is not able to be here. Judge Bifferato, I am told, is in a murder trial and will not be able to appear.

Our 2:30 witness is the Honorable James McGinnis, Lieutenant Governor of the State of Delaware.

Please pull up a seat and proceed in any way you feel most comfortable.

STATEMENT OF JAMES MCGINNIS, LIEUTENANT GOVERNOR, STATE OF DELAWARE

Mr. MCGINNIS. Senator, I do not think it would be wise for me to proceed without questions.

Senator BIDEN. Well, we have been pursuing this with Governor DuPont and the executive branch's expert witnesses. There were several general areas.

The first was, not necessarily in this order, but Senator Mathias has a bill that he has introduced in the U.S. Senate. He can explain it better than I, but it calls for the construction of regional Federal penitentiaries, 25 percent of whose space would be reserved, that is, up to 25 percent for State inmates who were sent to the Federal facility because of overflowing conditions in their own State.

It would be a per diem basis. It would not be a free ride that the Federal Government would offer, but it would be a pay-as-you-go, so to speak.

There is a bill that will be introduced by me which has been drafted and which calls for the expenditures of \$300 million in its first year and \$300 million for two following years for a total of 3 years for a total of \$900 million for prison construction.

The State of Delaware, for example, being one of the five smallest States in population, would have, I guess, a somewhat disproportionate share, but up to one-half of 1 percent of the total expenditure, which at its maximum would be \$2.2 million. There would be discretionary funds available within that \$300 million that could be assigned to Delaware or any other State based on a particular need at a particular time.

So, those were the two general approaches. But I guess the first and most fundamental question to ask you is this.

Is this an area where you, as the Lieutenant Governor feel that the Federal Government should or has an obligation to be involved; that is to help finance prison construction and prison programs?

Mr. MCGINNIS. Senator, I do feel that the Federal Government has an obligation specifically when they point out that we are overcrowded. They make certain mandates to the State. It is always nice to have a facility that we can use for temporary housing of prisoners while we construct whatever we need.

But on a permanent basis I think that only happens once every so often. We are in an overcrowded situation now and we are about to alleviate the problem. I think the State is very capable of handling its own problems.

We always look to the Federal Government to borrow money or utilize any funds you want to give away.

But many times when the Federal Government gets involved, they give you a mandate and then list the things you have to do. Then it becomes a Federal program, and, of course, all we do is dangle by the chain and keep answering to the Federal Government.

Many people from the State of Delaware are not overly pleased with that type of operation.

You know the relationship between State Government and Federal Government. We talk about it often.

I have looked at the heading of your hearing. The problem of overcrowding is obvious. Bill Frank told me earlier that in Delaware we are so small we do not have city prisons and county prisons. We just have the one facility.

So, when the Federal Government looks at it, they are looking at it as a State prison, but it is all-encompassing from the traffic offenders to drunk drivers to murderers and so on.

But I think Governor duPont and his master plan addressed that problem. I think we will be able to solve it. We will probably need Federal funds.

Senator BIDEN. We do not like to give it away unless you ask for it. We are not anxious. We want to share the responsibility of taking the taxpayers' money.

Mr. MCGINNIS. The real problem of overcrowding is that we are growing in the State. No. 2, the code is being expanded for white collar crimes and things of that nature. There are more possibilities of arriving in jail than there ever was before.

Of course, the State has been leaning toward a mandating sentencing. You put a man for 3 or 4 years mandated and he will be there a lot longer than under normal circumstances.

So, our problem has been twofold. It is a problem that the State legislature and the Governor really have to solve. That is where the responsibility lies.

Senator BIDEN. What responsibility, if any, do you think the Federal Government has with regard to the particular problems that exist in the State of Delaware?

Mr. MCGINNIS. The only responsibility I thought you had in the beginning was that when it was mandated and that we were overcrowded, we let so many out. I thought the Federal Government would make available Federal prisons on a temporary situation basis until the problem was solved.

But the Federal Government did not do that.

Senator MATHIAS. The Federal Government did not have it.

Mr. MCGINNIS. Maybe you could build one of those revolving units and then have it available for everytime the courts mandate a new situation. You could give them the extra rooms.

Senator BIDEN. So, from your prospective, the general approach, without asking you to commit on the specifics of either of the bills, the approach of Senator Mathias of the four regional prisons, which would have a portion of the space available for States is a better approach than a 3-year \$900 million program to physically aid the States by bringing Federal moneys directly into the State for construction purposes of State prisons with Federal moneys; is that right?

Mr. McGINNIS. I would have no objection to your plan for the Federal dollars, but I am sure there is something tied to it. We would have to do it the way you want it done.

Senator BIDEN. Do not worry about criticism. The reason for the hearings is that I have an approach, and Senator Mathias has an approach. My approach is one way. The reason we are going around the country holding these hearings is that we want to find out whether or not it makes sense the way I am suggesting it.

I am not married to that approach. I can very well be convinced of the point of view of the regional concept. But, to make any of it work, we have to understand what we many times do not take the time to understand. That is, what do the States want.

That is why I am pursuing the issue with you.

I think maybe you are being polite with me with regard to my bill. Do not worry about that.

Mr. McGINNIS. To answer your question of what the States want, they want to keep a little bit of their autonomy and solve their own problems. Naturally, when funds are short, we look to the Federal Government, just like I used to look to my father-in-law and mother-in-law, but when you look to them and tie too many strings to it, then it really is not enjoyable borrowing the money.

So, I would like Senator Mathias' approach of a regional-type prison to be used in the event of an emergency which means we would not have to use it, but we could use it and it would be available. That is fine.

Senator MATHIAS. I throw out the caveat that it probably will be more expensive to use it.

Mr. McGINNIS. When you use it?

Senator MATHIAS. Yes; so there would be an incentive not to overuse it.

Mr. McGINNIS. I am inclined to agree.

Your proposal, Senator Biden, is fine. If there are no strings attached, that would be OK. But I am sure that your proposal would have strings.

Senator BIDEN. Yes; it would have strings.

Mr. McGINNIS. It would probably have so many strings that it would increase the bureaucracy and frustrate most of the people in Delaware. It is hard for us to conceive of doing things the way the Federal Government likes a lot of it done.

Senator BIDEN. One of the things that I raise for your observation, and not necessarily a comment—I would like to correct what I said earlier.

I said \$2.2 million. That is not correct. It is \$1.5 million, which would be the minimum amount that would be forthcoming for Delaware. Then, anything that came from the discretionary portion of it would be there. But it would be \$1.5 million there.

The question I raised earlier was this. I have been told by a prominent architect here in Delaware, who has been involved in the prison construction side and the specifications of prison construction, that there is a school of thought among architects, consistent with what you have stated, that is, that the Federal standards of constructing a prison includes everything from the type of electric wiring to the design for space.

It is more than is necessary. The cost is higher than it should be and if the State goes along with those standards, then they are bringing upon themselves a standard which is not warranted and is going to end up tying strings.

Is it fair to say that is the same kind of concern that you have about a program which would have a funding formula for States for the construction of State prison facilities?

Mr. MCGINNIS. That is exactly right. Plus the other problems that you bring with it, you mandate how many people on the job and you mandate everything from beginning to end.

Once you start a system, then you do that. Every time you feel we have done wrong, then you pull a string and we are out of business.

Senator BIDEN. I see.

Senator Mathias.

Senator MATHIAS. One aspect of my bill deals with the regional prisons. There is another aspect of the bill and that is to try to develop the priorities as to who goes into prison.

We look at the career criminal and the repeat offender.

Do you feel that there should be a greater emphasis on repeat offenders or other identified categories of criminals when we look to high cost of imprisoning?

Governor DuPont said that a prisoner in Delaware costs in the neighborhood of \$7,000 a year. The generally accepted figure for a Federal prisoner is around \$12,000 a year. Either figure is very high. Either figure, if a prisoner was actually sentenced to 20 years and served his sentence, then you are talking about \$140,000 up to \$240,000.

These are enormous sums of money.

In light of that, do you feel that there should be a better system of identifying the priorities for incarceration?

Mr. MCGINNIS. Certainly I do. I have said in the legislature and have supported mandated sentencing. I am now the president of the board of pardons. I am finding out that I have made an error in a few of my thoughts.

I am sure we can always improve on the priorities, but I am not a jurist. I do not want to debate the issue, although I agree with you that we could improve that situation.

If you have guidelines, then send them to us.

Senator MATHIAS, I will be sure that you will get a copy of the bill.

Mr. MCGINNIS. Thank you.

Senator BIDEN. I really have no other questions. I appreciate your coming.

Upon reflection, if you would like to submit anything for the record, we would be happy to have it. We are looking forward in Delaware to see where that \$28 million will come from and see where you are going to place those prisons which you do build. I am glad it is a decision you are making and I am not.

If there is any help that we can be in that regard, we would be happy to do it.

Mr. MCGINNIS. Thank you.

Senator BIDEN. Our next witness is Mr. Scott Cown, executive director of the Delaware Council on Crime and Justice.

Welcome, Mr. Cown.

STATEMENT OF SCOTT COWN, EXECUTIVE DIRECTOR, DELAWARE
COUNCIL ON CRIME AND JUSTICE

Mr. COWN. Thank you, Senator.

Senator BIDEN. I notice you have some notes before you. You may deliver that if you would like. Proceed in any way you prefer.

Mr. COWN. Thank you.

I might add that I am glad that Lieutenant Governor McGinnis did come this afternoon. Just before our lunch break when you said that Judge Bifferato was in trial, and Lieutenant Governor McGinnis was tied up, I was afraid I was going to be here by myself.

I have a relatively brief statement, so I thought we might have a short afternoon.

The first thing I want to do is to applaud your bringing this timely issue to the public forum. I did sit in on this morning's session and found it very educational.

The Delaware Council on Crime and Justice appreciates the opportunity to present its viewpoint on prison overcrowding. As you may know, the council is a community-based private United Way agency concerned with improving Delaware's criminal justice system.

The policy for our agency is set by a volunteer board of directors. I have attached a list of this board to the statement that you have.

As I say, I have a brief prepared statement to read concerning prison overcrowding and the possibility of Federal assistance to States to help relieve the problem.

It is a general statement. I have not included facts or statistics, mainly because I think these have been ably addressed by Governor duPont's staff this morning.

The council recognizes that prison overcrowding is currently a serious problem in several States, including Delaware. As mentioned by Senator Mathias this morning, I think he said it was in over half of the States in the country that do have a problem with prison overcrowding.

Also, many States have limited fiscal resources to devote to improving their correctional systems. Therefore, the council strongly supports the concept of increasing Federal financial and technical assistance to States to help alleviate correctional problems.

Adequate prison space is necessary to insure public safety. For example, no one can reasonably choose the absence of prison beds as a proper criteria for granting furloughs or paroles.

As Commissioner Vaughn talked this morning, that has been happening in Delaware and I think it is very unfortunate.

However, as States and the Federal Government seek the solution to solving prison overcrowding problems, the Delaware Council on Crime and Justice questions whether or not extensive programs of constructing major new prisons offer the sole long-range solution.

The council believes that a well-planned comprehensive State correctional program, such as Governor duPont's recent master plan for the department of corrections in Delaware, if adhered to, can offer the best hope for solving the prison overcrowding problem and impacting upon the recidivism rate.

By the way, Senator, I agree wholeheartedly with your statement this morning. I think Governor duPont is to be commended for his

efforts in this area in Delaware. I think he is doing a very good job, he and his staff.

Such a comprehensive program should include not only adequate prison space, but also such things as adequate community based facilities and programs, meaningful training and program industry programs, expended pretrial diversion, and functional community work service for some less serious offenders.

The addition of substantial new prison space without adequate programing or diversion methods will not reduce recidivism among offenders.

Even in the construction area, there are meaningful choices. The Federal Government could help by encouraging the innovative use of facilities and the building of specialized facilities, such as facilities for severely mentally ill inmates.

Workable solutions to prison overcrowding should ideally be cost effective. If major new prison facilities are constructed with the aid of Federal dollars, it should be remembered that it will be the States who must bear the burden of staffing and operating the institutions, virtually in perpetuity.

Prison overcrowding is not a new problem, in Delaware and elsewhere.

Senator Mathias did allude earlier to Parkinson's law. I think that is very true in many cases when it comes to prisons. If facilities are built, then they probably will be filled.

With the cost of corrections, especially prisons, rising each year, correctional officials should be encouraged to seek cheaper and more effective nontraditional solutions to over-crowding problems.

To repeat, the Delaware Council on Crime and Justice supports providing additional Federal financial and technical assistance to States to help relieve correctional problems, including prison overcrowding.

However, while constructing new prison facilities must remain as one of the many elements of solving the overcrowding problem, and while it may indeed appear to be an easy and immediate solution, it should not always be considered in isolation.

The council feels that increased Federal assistance to States would be most beneficial if directed toward supporting a comprehensive State program, including the element of correctional alternatives, modernizing existing facilities, and stressing flexibility, the good evaluation, and cost effectiveness, in addition to prison construction.

So, to summarize the main points of what I have said, we support increasing Federal aid to States to help solve correctional overcrowding problems, but we would also like to caution that if emphasis is placed only on building new prisons, then the problems we are facing right now may be back with us in the not-too-distant future.

If there is no comprehensive correctional program, then that will be the case. Of course, I think Delaware has that now.

The Federal Government should encourage states to develop and adhere to these comprehensive programs and perhaps the Federal Government, even though we have talked about strings being attached, can play some type of evaluation role in corrections in this country.

That is my statement, Senator. If you have any questions, I will be glad to answer them.

Senator BIDEN. I have some specific questions for you, but I would like to first try to clarify a few things.

As I am sure you are aware, the Federal Government, and in my capacity of jurisdiction over this area, cannot mandate that a State have a comprehensive plan with regard to how felons, convicted felons, are determined whether or not they get their prison or whether or not only felons go to prison or whether or not there are alternatives to prisons.

We can create the carrot and the stick approach to some degree. But, for example, assume that we have what I believe to be the way the Federal Government should go in the criminal justice system with a certainty and less extreme sentences and alternatives to incarceration, such as restitution for nonviolent crimes.

Assume that the Federal Government has within the present system, that is, within the present prison system, which it does not to the degree necessary now, a more enlightened approach toward what we call rehabilitation, or whatever phrase you want to use to make the convicted felon a better person when he leaves than when he came in.

Assume we do all those things. That does not mean that the State of Delaware or any other State or any other State legislature will do that.

So, when we are talking about the relatively limited question here of whether or not States like Delaware, faced with an immediate problem that people are walking the streets who should not walk the streets, even while we are working on better solutions to deal with those persons who were once inside prison walls, then we are at a loss to directly affect what happens.

People write to my office. Because of what I did before, and since I have been in the Senate, I have been interested in the criminal justice system, people will write and say: "Mugging has increased in the suburban parking lots in Wilmington. What are you going to do about it, Senator Biden?"

The only honest answer I can give them is that there is not anything Senator Biden can do about that unless what they do is mug you, steal your car and take it to Pennsylvania.

When that happens it becomes a Federal offense. They crossed the State line and then the laws which we have passed in the U.S. Congress can impact upon what happens to that person who does the mugging.

But if they mug you and do it all within the State of Delaware and you are not a State official and you are not carrying Federal property, then it is a State problem.

So, I think starting with the Nixon years, the Federal Government has pretended it could have some impact in an area which it cannot have an impact on. It is a bunch of malarkey for Federal officials to tell you that they can stop crime in the streets in Wilmington or out in Brandywine or in Smyrna. We cannot do it.

But the thing we can do is that we can provide assistance moneys. We can supply expertise and what works best if we know. Those experts that everyone talked about, they want us to continue to send, are there. It is unusual to hear someone to say that they want the Federal Government's help.

There is the old joke: "I am here from the Federal Government. I am here to help you." That is not one that is usually met with smiles. It is like, "Oh, God, here they come again."

Also, we can construct models and hopefully, if they work at the Federal level, then the State legislator will say: "Hey, that is working. Why do we not do the same kind of thing?"

So, when we talk about what we can do with regard to the prison system in Delaware, it is not within our capability to have a master prison program for Delaware. All we can do now is send you planners, experts in the area, whose information you can use and/or money. There is nothing else we can do at all.

Far be it for me to tell Senator Sharp what he should do in the State legislature. The U.S. Congress can, to a person, come down with a position and the State legislature can ignore it.

In the bill which I have introduced, there are nudgings that we can provide. There are strings attached to Federal dollars. There are strings attached to any dollar.

I think we are beyond the day when I sat in county council and used to be amused at people saying: "How much does that cost?", we would turn and say: "Oh, that does not cost anything."

They would ask again: "How much does this cost?" and you say "It will cost \$14 million."

You finally found the answer. It was not county money. It was Federal money. Therefore, it did not cost anything. It did not cost anybody anything because it was not county money being spent.

So, there are strings attached. Some of the strings that we have attached to the bill that I am talking about are these. I will read several of them to you:

Assurances that utilization of the funds will be solely for the purpose of this act. Assurances from the State that State agencies will have control of funds paid to the States under this act and that the title to the real and personal property derived therefrom will be in a public agency.

Assurances that the funds other than those received from the Federal Government under the statute shall be used to pay the State or local share of the cost of the program or project described in the plan. Establishment of a plan or priorities and assurances of innovations in the correctional institutions and programs included by the States. Assurances that juvenile offenders will be separated from adult offenders.

Those are strings. Some States do not want that. They want to have the option to put them together.

Assurances that Federal funds be used to supplement rather than supplant State and local funds. Procedures that applications to the States for allocations of funds through local units of government shall not be disapproved without reasonable notice.

And there are other things. So, there are strings.

There will be strings to any Federal program.

Mr. COWN. I did not mean, Senator, for the Federal Government to come in and set up a State correctional system or dictate to a State, but rather the same type of thing that you are talking about, setting standards, providing technical assistance, and also helping States share information, acting as a clearinghouse.

I think this is coming about.

Senator BIDEN. I think that is coming about.

One of the criticisms is this. Although I think Governor duPont has taken the right approach conceptually to this, one of my criticisms is that I am going to have difficulty, as a U.S. Senator, in convincing my colleagues in the country that this State and other States around the Nation who are in need now warrant the amount of help that is suggested.

Quite frankly I was not quite impressed with the data and information presented this morning, and basing the judgment of how much money was needed. It sounded more like what I get from Federal agencies. They do not know what they are talking about, quite frankly, in my opinion. They talked about \$45 million and \$28 million and \$45,000 per bed.

When I asked the questions of how did they arrive at that, well, they did not know. They have some big book out there and they look through it. I am obviously overstating and oversimplifying, but I do not think anyone could argue—persuasively argue that they are based on real, hard, well thought out defined precise plans that we really know what we are going after.

That is one of the additional problems that we have federally. Maybe that is why we should go the approach suggested by Senator Mathias which is that we know what we want to build. We may be wrong, but we know.

If the States want to opt in, then they pay-as-you-go. You do this to alleviate the need to have the pell-mell rush toward the construction of facilities that may not be best for the States. You would give the States more time to think about it.

But, at some point we must be able to develop in the hearings that we hold around the country and in Washington on the subject harder data as to whether or not the figures being bandied about are ones that appropriately reflect the ability to impact upon the problem.

You indicated—and I will not try to tie you down because I realize it is not your function or within the scope of your agency's expertise or at least I do not think it is, to provide me with hard, specific, detailed figures—but you indicated that more Federal money was welcome.

I would like to ask you this. I would like to ask you to get copies of both pieces of legislation that we are discussing and take time to review them and comment more specifically on whether or not either of the types of funds or access to the substitute for funds. That is, the bed in regional prison, is the kind of help and the kind of Federal funds that your agency would recommend that the State seek and that the State would be able to take advantage of.

I am very, very worried about impact that any plan for prison construction is going to have on Delaware. It is not directly my bailiwick. Some of my State legislature friends may say it is none of my business or I should be quiet. But I do not know how, with about a \$500 million budget that the State has, that you are going to be able to spend \$28 million on that which is not the most popular thing to do.

There is another item, another \$25 million, which I hope is an inflated figure for the State cost of transportation of children. This potentially increases the State budget \$50 million on the short term for things that the public cannot see direct benefit from. Quite frankly, they are likely to have very strong feelings against these.

I do not see how you can pull that off. I hope that can be done. That is one of the things that propelled, in a very parochial and pragmatic sense, my moving in the direction of trying to provide funding to help alleviate those costs. The costs are higher than I thought, in light of what I have been reading and based upon what the Governor said this morning also.

Mr. COWN. I might add that Senator Mathias, I thought, had a good point this morning when he drew the analogy between schools and this. I think you are alluding to that also.

As a Delaware taxpayer, I have concerns also about establishing new bureaucracies and such where you have to get the staff and the operation going. You are setting things into motion that are not easily gotten rid of. I do not think there is any doubt right now that there is a need for additional prison space in Delaware. Again, as I pointed out in my position paper, massive construction programs, I think, have to be questioned.

Senator BIDEN. Do you agree that we are at the point now where we have to tell the public, the State has to tell the public, and the Federal Government has to tell the public, if it goes in the direction the States have gone that if, in fact, they agree with it and want us to pursue minimum mandatory sentences that there is no way that can be done within the scope of things as they are without drastically increasing the prison population?

Mr. COWN. I do not know. That is a hard question. This whole area of mandatory sentencing has advantages and disadvantages to it.

My own feelings—and I will give you my own opinion right now—as far as enacting mandatory sentencing in Delaware, it would probably be best to take a wait-and-see attitude to see what happens. In some of the States who are experimenting with this to see if it does indeed drastically increase the prison population.

It may turn out that the increment in population is not that much. Then again, it may be.

I do not know if anybody knows right now.

Senator BIDEN. Just in terms of numbers, assuming we do not do the other things which I think we should do, such as providing alternatives as part of a sentence for incarceration the tone of the State legislatures and the Federal initiatives have not been to make it a package deal.

For example, in the package of a series of 20-some amendments that I introduced to the so-called Son of S-1, a rewrite of the criminal code, most of which were defeated, I called for a flat-time sentencing, but only in conjunction with such things as a drastic reduction in maximum sentences.

We are now in a situation where for robbery, for example, at the Federal level, we have 25 years. That would be an absolute travesty to codify a minimum sentence of 25 years.

So, my original attempt was to drastically cut that. First, cut it by two-thirds. When I realized I was not going to have much luck in doing that, I then moved to try to cut it essentially in half.

Those who are willing to go along with me on the grounds that we had to inject certainty into the system—parenthetically I should note that I have a strange coalition supporting me, the American Civil Liberties Union on the one side and some of the more conservative

elements of our political spectrum on the other side for totally different reasons—one of the reasons I feel so strongly about nondiscretionary sentences is this.

I think they work to the detriment of people who are young, black, and from the city. They get nailed. If you are white and from suburbia and can claim to have some connection with the outside world, then you do not get treated as harshly. That is one of my main reasons for the certainty side of it.

Mr. COWN. I agree with that, incidentally.

Senator BIRDEN. But the long and short of it is that, absent those additional moves which do not seem to be present, States are moving and the Federal Government is moving toward certainty in the sentencing system.

I know of no way, by any extrapolation of figures, where you do not end up with at least an increase, if not a drastic increase, in prison population.

Or the speedy trial bills. We have said to the Federal courts: "We want you * * *"—and I notice a Federal court judge in the back of the room here today—"when you get somebody up here we say we want you to try them right away and get on with it. Justice delayed is justice denied."

Then at the same time we do that, we sped up the system and we clogged the courts and we do not have judges and we do not have enough courtroom space in many jurisdictions. We do not have enough prisons to put people, even if they are convicted.

So, what I am trying to get across to you is that I hope that your agency and others who are involved in this problem in the State of Delaware will assume the public is as bright as I think they are. They can understand the complexities of it. They can understand that you cannot have a stronger, tougher criminal system that moves people along and through and to the point of conviction of guilty and at the same time not cost them more money.

I think we are beyond the age of telling people that we are going to give additional service without it costing additional money. I think we politicians and bureaucrats make a big mistake if we tell people we can do it for less. That is not true. We cannot do it for less.

I think if we want Government off our back we have to take our hands out of their pockets. If we do not take our hands out of the Government's pockets, then do not ask it to do less. It does not work that way.

That is the only point I am trying to get across here. It is going to cost more money. We had better be prepared to tell the people it is going to cost more money in order to not just do what a Federal judge says, but as I tried to point out this morning—and that is the reason for my questions—I wanted to do it by the socratic method rather than the direct method. Apparently, I did not accomplish it very well, because some of the members of the press wondered what I was asking.

The Federal judge ordered that there be compliance with Delaware law, essentially. That is why I was asking the Assistant Attorney General about the details of the order.

As I read the order, and the decision, he is saying essentially: "Delaware said there should be such things as * * * and you have

not done it. You have not complied with your own law. Therefore, I order that you do the following things."

But yet I will bet you that the public at large believes that here we have some meddling frittering justice sitting up here. He is from the Federal Government and he is coming in and telling the State what the State has to do instead of letting the State mind its own business. He is attaching Federal strings. That is just not true. Somehow that message has to get across, not just in Delaware, but in Alabama and Kansas and California and the State of Washington and all of those other States.

That was a speech rather than a question, but I would like to submit these bills to you.

Our next witness—and I would like to thank him very much for coming on the notice that he has come is Mr. Charles Oberly from the attorney general's office of the criminal division.

I sincerely appreciate your coming. I think you had about an hour and a half notice.

**STATEMENT OF CHARLES M. OBERLY, STATE PROSECUTOR,
DEPARTMENT OF JUSTICE, STATE OF DELAWARE**

Mr. OBERLY. Yes; approximately.

Senator BIDEN. I do not expect you to have a statement.

Mr. OBERLY. No; I do not have a statement. I tried to catch up with John Parkins this morning, but I could not reach him, so I do not have any particular statement to make. I am in the position to answer any questions that you might have, although I have not done a lot of research.

Senator BIDEN. Mr. Oberly, let me communicate to you what the subcommittee would like to know about Delaware and many other States. That is this.

I asked these questions of your colleague, whom I am sure will pass them on to you, but if you are able to respond to them in detail, please do so. If not, I would like you to submit them for the record, if you would.

The first question I asked was this. What impact has the Federal court's decision had in reducing the inmate population in our prison facilities? What impact, if any, has that had on the plea bargaining at the attorney general's office?

Mr. OBERLY. I would assume Mr. Parkins did not answer that.

Senator BIDEN. No; he did not answer any of these questions.

Mr. OBERLY. To say that it has had a discernible impact, I do not think I could say that. I do not think anybody's pleas or the way he handles an individual case, at least as far as the end result is concerned, has been influenced by Judge Schwartz' decision.

I think what it has done is to effect possibly some of the enthusiasm on some of the prosecutor's part. It has affected some witnesses in cases where they say: "Why should we even bother going to court? Why should we come in? The people are not going to be punished anyway."

I think we have to be as brutally honest with these people as we can. The result is that we can predict, with reasonable assurance, that certain people will not be punished. We have to tell people that the

expectation is that we cannot make promises unless we have an excellent chance of putting someone in prison for even a home burglary now. So, we tell people that.

But to say that somehow we can become more lenient because of that opinion, I do not think that would be true. There may be individual cases that if you researched them, you could find them.

But I do not think it has affected us in that manner.

Senator BIDEN. Has it affected, in your opinion, dealing with the law enforcement agencies which you do on a daily basis? Has it affected their enthusiasm at all? Do you note any discernible difference in the morale? A house burglary gets called in. A year ago did they pursue it with more fervor than it is pursued now?

Mr. OBERLY. No; I think probably it is the so-called enjoyment of the chase. They do as good a job now as they did a year or two ago. I think they expressed the same concerns. They often are disappointed by the results especially when you turn somebody out time and time again. I do not think they have expressed great dissatisfaction that somehow they are not going to do the job or bother to make arrests. I think they are doing as good a job now as they did 2 years ago.

Senator BIDEN. How about when you get to the sentencing stage where the attorney general makes a recommendation or a plea to the court as to what the sentence should be for certain offenses? Are there any offenses that you either no longer are asking for incarceration on or are there diminished requests, that is, less than you would have made prior to the court order for other offenses?

Mr. OBERLY. It is hard for me to speak for each individual deputy, because each individual deputy makes a decision with regard to the case that he handles.

I would think that more of the deputies subscribe to the thinking of what Judge Longobardi said, that is, that the decision will not affect the sentencing decisions. That is not to say there have not been cases.

I had a case myself that was written up in the newspaper quite critically involving a robbery where we had mandatory sentencing. The individuals did not go to jail and because two did not go to jail, there was a third one—and there was a series of complicated factors which I do not think necessary to go into here—but the result is the way that it appeared is that we did not want them to go to prison because the prisons are crowded.

There was some truth to that, but you had to consider that in relationship to the two other individuals who were not going to jail. This third guy did no more than they did.

But, I do not think it has had a substantial effect on our recommendations. I think we still go on and recommend the same type of sentence, although in the back of your mind you know you probably are not going to get it.

Senator BIDEN. Let me pursue that a bit more. As a public defender and depending on the judge before whom I was standing with a client who had already pled or a client who had been convicted, I could pretty well guess what the degree of fervor of the plea by the deputy attorney general was going to be.

That depended on who the judge was. There were certain judges for certain offenses. They took sterner action. There were certain

other judges who had a different philosophy, which is understandable. I am not criticizing that, but I am acknowledging it.

If, in fact, we are before a judge who obviously had a disposition toward probation for a particular offense, the attorney general would not attempt to use up all of his currency with that judge and would not come forward with what he might have done had he been before another judge.

There might be a difference of degree, but nonetheless, it was observable.

Does not that same kind of thing happen now, knowing that the judge is strapped somewhat?

Mr. OBERLY. There is definitely a difference between some of the judges, yes. There are a couple of judges, one in particular, who does not even let the State have an opportunity to speak, and I think consequently we do not speak very much regardless of what comes before him. He moves right into the sentencing immediately.

There are some judges who sentence more severely, I think, and uniformly.

I think it is a possibility that there could be some chilling effect on minor cases. I doubt if it would work on the serious cases because I think in the serious cases when you are talking about robberies, you have the home burglaries and rapes and murders. I do not think there is that much difference among the judges. I have not studied it, but I think it is a fairly uniform sentence. There may be some difference between 15 years. One judge might give 15 years and another might give 25. But the effect on the defendant on the amount of time he serves is probably negligible.

The answer to your question is, yes, there probably are certain judges that the deputies may not be quite as vociferous before, but I do not think it has anything really to do with the fact that the prisons are overcrowded. It is the makeup of the judge and his dealing with that particular judge.

Senator BIDEN. Have you noticed the difference in terms of the superior court judges in the sentences that they are meeting out for offenses subsequent to the Federal court ruling?

Mr. OBERLY. I do not think anybody has done a survey or a study pre-Judge Schwartz' ruling as opposed to an after ruling.

I know for a fact it has occurred. I have had a judge who indicated to me that he has not sentenced somebody to jail because of the overcrowding conditions in the prisons. The particular case I referred to is one where I went out on a limb and I was absolutely 100 percent confident that regardless of how crowded the prison was, this person would go to jail because it was at least the third or fourth burglary this individual had been in and the second home burglary within a year and committed while he was on probation.

The victim was reluctant to go to court for the very reason that she stated to me when I interviewed her in her place of employment: "Why should I come to court? He is not going to go to jail even if he is on probation." It was a house burglary. Sure enough, even though I thought for sure he was going to go to jail, the judge ended up giving him a probation on top of his probation. It is at least the fourth felony conviction and he has never been to jail.

So, it has had some effect. I am convinced on some of the judges it has.

One has been honest enough to tell me it had an effect on him in that case. One told me it has had absolutely no effect on him. He sentences the same way, regardless of whether there are 1,000 people down there. It will not affect his sentencing.

Senator BIDEN. Do you see any direct relationship between the stiffer legislative proposals with regard to mandatory or minimum sentences that the State legislature has passed and present population?

Or, at least sentences that carry with them prison terms?

Mr. OBERLY. That is a hard question to answer. We have always had minimum mandatory sentences for rape—when I say “always,” I mean at least during my time, we have had people who have committed murder and generally always have gone to jail. It might have been for a shorter period of time.

We have a large number of people in Smyrna who are serving the equivalency of life sentences. I forget the exact number.

The question is: Has the minimum mandatory sentencing under the possession of deadly weapon during the commission of a felony and a robbery, first degree, significantly increased the population?

I do not know. I do not think our prison population is any larger in relationship to the population as the other States in this country. I have seen some figures. Most States do not have minimum mandatory sentences for robbery. It is left up to the judge's discretion.

We also have the toughest law, I believe in the country, for the possession of a deadly weapon in the commission of a felony which is 5 years without probation or parole. We do not have more people in jail disproportionate to what the States are experiencing in the growth of their prison populations without these.

So, I do not think I can say they have increased the number of prisoners just because we have those laws on the books.

They have made it surer that you will go to prison, I think, and there is less of the situation which you posed when I first walked in here concerning that if you are young and black you might go to jail and if you are young and white and live in the suburbs you will not go to jail.

The minimum mandatory sentences have taken away that discretion largely. I would say that I am in accord with you, probably. It is silly to have sentences on the books which provide minimum mandatory 25-year jail sentences for a drug offense without probation or parole, when you can probably accomplish the result by having, in most cases, 1- or 2-year sentences without probation or parole.

You do not need these tremendously long sentences, I do not think, in most cases.

For murder and rape, I think you need the life sentences, but you can accomplish what you want, I think, with 2- or 3-year sentences. I would rather see short sentences and sentences you know that are going to be served that would be imposed quickly and the process would be completed quickly rather than having the way it works now. Sometimes it takes months just to get to court. Then you do not know what is going to happen. I would rather see short uniform sentences.

Senator BIDEN. How long have you been with the attorney general's office and how long have you been in your capacity as the chief prosecutor?

Mr. OBERLY. I came to the attorney general's office in February 1975 from private practice with one of the largest corporate firms in the State.

In June of 1976 I was asked to become a State prosecutor. I have remained in that capacity ever since.

Senator BIRDEN. There are several studies which I will not bore you with, but one is the Carnegie-Mellon University study of September 10, 1977. There was an analysis and projection of State prison populations in Pennsylvania.

There was an attempt to identify main factors, cause in the growth in prison populations between 1970 and 1976 and to predict future prison populations.

We touched briefly on that this morning.

The preliminary factors identified were the change in population shifting toward the crime-prone age, that is, more people between the ages of 17 and 29 than there has been in the past. There is a change in criminality. The arrest rates have sharply increased.

Thirdly, there has been a change in the processing of criminals, with probably the arrest being made, that is, sentencing is becoming more constant than it has in the past with fewer discrepancies.

Then there are the changes in the length of time served. The average time served on most offenses remains stable.

The conclusions reached by the study are that the population of the State will increase in the year 2000 and arrests will begin to decline between 1975 and 1980, prison reception will increase from 5 to 10 years and then decrease between 1980 and 1985.

The prison population will increase 15 to 40 percent by 1985 and then decrease.

Again, they do not have the minimum mandatory or flattime sentencing and no discretionary provisions that are being considered by the Federal Government and by me.

So, it is an open question as to precisely what will happen. If all States had the equivalent of a Federal speedy trial legislation, and a requirement that the person be set free if he is not tried by a certain time, and assuming that upon conviction, then there would be a flattime served with no parole and no probation and no discretion, that is, with limited discretion and a set of 0 to 25 years for most offenses.

The same offense would be 9 to 11 years. The judge could have discretion there.

Mr. OBERLY. The study you are referring to mirrors what I have just said. We had the mandatory sentences for several years now, but everywhere else prison populations have mushroomed. There are very few cases where we have defendants over the age of 30. The vast majority of the crime is committed by people under the age of 30, probably the largest percentage of those are under the age of 25. There is certainly correlation with the population. When the population begins to decrease, the number of people in that age bracket will decrease. I will fully expect that you will see something like the elementary schools now are experiencing in the country, which would be somewhat of a decrease in crime.

I agree with that.

Senator BIRDEN. I have no further questions. I appreciate your coming over.

Mr. OBERLY. Thank you.

Senator BIDEN. Our last witness of the day who was not absolutely positive he could make it in the first instance, apparently will not be able to testify. That is Senator Thomas Sharp.

So, we have no other scheduled witnesses.

But at this time I would like to open to the public the chance for anyone to come and comment. Do not feel constrained. You do not have to have a formal presentation. If anyone would like to comment, we would be happy to hear from anyone at this time.

Please come forward and identify yourself and your occupation and any comments you would like to make.

**STATEMENT OF FREDERICK KESSLER, MANAGING ATTORNEY,
COMMUNITY LEGAL AID SOCIETY, INC., WILMINGTON, DEL.**

Mr. KESSLER. I am a managing attorney with the Community Legal Aid Society of Wilmington and have been for the past 2 years.

My appearance here today is strictly extemporaneous. I had not planned to attend. I did not even know until sometime late this morning that this hearing was taking place.

As the Senator well knows, we have been involved in prison litigation within the State, and particularly the Sussex and Symrna prison suits which led to the highlighting of the overcrowded conditions within the State prisons in Delaware.

Currently I am involved in a women's prison suit which, as you know; I am bound by the professional code of responsibility and professional code of ethics which prohibits me from commenting publicly.

I would prefer to appear before this hearing today as a private citizen rather than as an attorney for Legal Aid Society since I have not been authorized to speak on their behalf.

Senator BIDEN. Fine.

Mr. KESSLER. What concerns me most about this hearing and the topic is this. I have not read Senate bill 28, nor your bill. So what concerns me is not so much the procedure that led to criminal defendants being incarcerated, but rather what happens after they arrive. That is my chief concern. Incidentally, as you well know, legal aid is only involved in civil cases as opposed to criminal cases.

I think it is interesting to note that you are going to take your so-called traveling show on the road. It might be interesting, not only to include public officials from the various States, and I note in your agenda that most of the people who spoke today were public officials with the exception of Mr. Scott Cown from the DCCJ, but it may be interesting to hear from the people who are going to be impacted or affected upon by your legislation. It may sound like somewhat of a radical suggestion, but maybe you might want to take your show into a prison or prisons.

Senator BIDEN. We have had testimony in Washington from former prisoners and heads of two organizations that represent Federal prisoners. We have scheduled hearings in late January and early February whereby we are having persons presently serving time in Federal prisons to come to testify on these and other questions.

So, I think that is a good suggestion. I am glad to see someone thinks it is not a radical departure.

Mr. KESSLER. I do not know how the prisoners are selected and who does the selecting as to who is going to speak.

Senator BIDEN. As you well know, first of all, there are organizations across the Nation in Federal prisons that represent prisoners and prisoners within the prisor system who are voted on and supported by their inmates as to representing their point of view.

For me to go out and randomly pick out of the Federal prison system, who in any system would be the one to testify would be a difficult task.

It was considered and has not been totally discarded, that we might actually move into a maximum security prison in Marion, Ill., which is the maximum security prison in America. We would actually go in and hold hearings in the prison in Marion, Ill.

The reason why that was discounted was that it might be read the wrong way. It would obviously get a lot of publicity. It would get all kinds of people to turn on cameras and come. I am afraid what it might very well do is that it might prejudice the credibility that this subcommittee is attempting to establish as being just what I facetiously referred to as a "road show," and in trying to gain national publicity rather than dealing in a methodical way with the issues that confront the subcommittee.

Mr. KESSLER. What I was suggesting, Senator, is that a fairly unstructured open hearing by other than handpicked people may have some interesting results in terms of at least honest, candid comments on proposed legislation. That is merely what I was suggesting.

I understand some people may view that as a grandstand play on behalf of the committee, but I think the benefits of such a hearing may far outweigh whatever the disadvantages of adverse publicity may obtain.

Senator BIDEN. We have had staff meet and speak with—and I have met with—such notable figures as the fellow whose name I cannot remember now. He was a five-time offender and a five-time loser who is now in the State of Arizona and is presently on release from Federal prison with the concurrence of Mr. Carlson, who heads up the National Prison System.

He is working on a particular program designed to move, that is, to make the prison system more amenable to the needs of people who are incarcerated.

I should point out this. This is probably the kiss of death, but there is the endorsement of not this bill, but my amendments with regard to flat-time sentences and reduction of sentences and elimination of parole and other measures that have been endorsed by several of the national organizations. They in fact, are designed and they so state that they speak for the inmate population, some of whom are still inmates.

Mr. KESSLER. I have a couple of other brief comments.

I note that most of the suggested legislation regarding corrections, whether it is State legislation or Federal legislation, typically is reactionary. They are reacting to a problem that has occurred.

Usually the problem has to deal, for example, in the State of Delaware and also nationally, with overcrowding. So, most of those bills seem to be addressed to the brick and mortar rather than to substance of really what goes on inside prisons.

So the reason I suggested what I did really is in order that you might listen to the horse's mouth and to the prisoner's complaints and concerns about the substantive practices within prisons, which may contribute to the recidivism in the so-called career criminal offender. You have the warehousing of criminals as opposed to truly "rehabilitated" people.

I hate to use that word because it has been bastardized around the country.

But I would like to see some legislation addressing itself to some of the standards, if you will, that take place within prisons regarding the care, treatment, and maintenance of prisoners. Most of the problems that occur, at least in the prisons that lead to litigation, occur not because—one is because of overcrowding and also the substantive practices within the prisons.

Senator BIDEN. There is no reason why you would know this, but the scope of this hearing was precisely limited to the immediate question of overcrowding. The legislation and the hearings that this subcommittee has held this past fall and is continuing to hold, which we laid to the question of rehabilitation, recidivism, the conditions within prisons, and the standards that should be set, whether or not we go to flat-time sentencing and the role of parole and probation and halfway houses and alternatives, are all items that fall under the scope of a completely different thrust than that we have today.

There are States that are faced with the immediate problem right now, right today, with having neither the funds on the one hand, nor the room on the other to house persons immediately.

There are lawyers like you, and good lawyers like you, who are taking your clients' cases before the bar and convincing the court—and I suspect rightly so if the court so judges—that, in fact, the amount of space available or the lack of it, in and of itself, and the way they are housed physically, the brick and mortar aspect of that housing, warrants their being released or the population diminished.

It is to that particular question that this set of hearings is addressed.

We would be delighted to send you and ask you to come to testify about those other things. We can send you a copy of transcripts of previous hearings where we have dealt with the recidivism and the conditions of prisons. We can make you aware of the future hearings on that very subject. We can invite your comments on them.

But again, I would like you, if you can, to address yourself specifically to this. What right now, today, tomorrow, and in January when the Senate goes back into session, and what can I, as a U.S. Senator, recommend to the Congress to be passed into law that can help the States with the single precise issue of what we do about a Federal judge having to say: "You must release from the confines of the brick and mortar a number of prisoners." What do we do about that? That is the specific issue.

Mr. KESSLER. We could discuss it all day, I am sure.

As you know, the point of our litigation was to get immediate relief for the plaintiffs and the class of prisoners that they represented.

Senator BIDEN. That is the point of these bills, that is, immediate relief.

Mr. KESSLER. But it was not just overcrowding. It was not to get larger and better prisons. But the secondary idea was to force people to look at alternatives besides prisons and larger prisons.

It has been roughly 6 years or so since Smyrna was built and became operational. At that time it was hailed as one of the most progressive and advanced institutions in the country. Now what has it turned out to be 6 years later? Another warehouse with overcrowded conditions.

If you build another prison you will have the same problem.

Until somebody addresses themselves to the substance of what goes on within the walls of those prisons, and how those prisoners are treated and why they are becoming recidivant, then you will not get anything.

I know you have opened this to the public——

Senator BIDEN. Is there anyone else who would like to comment from the public?

[No response.]

Senator BIDEN. Go ahead, Mr. Kessler. You can continue.

Mr. KESSLER. I will be brief.

I also worked roughly 4 years in juvenile corrections in this State. I know that this has nothing to do with what you are talking about today, at least your bill and Senator Mathias' bill, but it seems to me it is about time that somebody looked at the juvenile justice system and how that relates to the adult correction system and how many of those people graduate from juvenile criminals to adult criminals.

All the emphasis today, the majority of it, is being placed on adult criminals. Many people cannot be saved, of course, given their criminal experience. But very little attention is being placed on the juvenile correction system, and particularly how it relates to the adult correction system.

I think it might be interesting from a national level, and from a State level as well, for somebody to look at the current prison population and who is in there now and what their experience has been in the juvenile justice system.

I can almost predict what it will be.

Senator BIDEN. We can provide that for you at the Federal level. We passed legislation federally that deals with the Federal system. As you know, we have absolutely no impact on what the State does, none. We have the status offenders legislation, which is legislation that deals with requiring segregating juvenile offenders and programs available for juvenile offenders.

The hearings that we recently held were on the question of recidivism. We explored how many graduated, as you said, and how many moved from small time to big time and from juvenile to adult crime and how many of those become the criminal repeater that everyone, to a person, has given up on and calls the hardened criminal.

We have studies coming out of our ears on that and legislation that may not have been responsive enough, but it is being dealt with.

Again, it may be useful for us to send to you copies of that legislation and also the text of the hearings that were held in order to breathe some fire and hopefully some light into the State legislative action and the recommendations of Governors as to what should or should not be done.

But, again, I come back to the point. What do we do now?

Let me ask you this. Do you believe there are people out on furlough today who should not be walking the streets?

Mr. KESSLER. Of course. I would be a fool if I did not think that.

Senator BIDEN. What do we do about them?

Mr. KESSLER. I do not have the answer. I do not pretend to have the answer. I am suggesting that for those people who are experts in that area, that they should take a hard look at the practice over the years. They have not changed that much. But why things are not working should be questioned—if you looked at the juvenile practices within this State, it does not differ that much from any other juvenile correctional system throughout the country.

With some modification, they are not doing anything substantially different from what we were doing 25 or 30 years ago. There are some modifications, but they are very slight.

Nobody has really stopped to take a hard look as to what we are doing and why it is not working and why we are turning out more and more recidivists. Who is doing it? Maybe the studies were done, but somehow they are not filtering on down.

Senator BIDEN. The studies are showing, in my opinion, that after some of the hard looks have been taken—and we have differences on the committee as to why—but one of the conclusions that I am rapidly reaching is that many of them are far beyond the capability of any criminal justice system to deal with.

They deal with such fundamental things as whether or not the child grew up in a split home and to what the chemical imbalance is that existed in the child's physical structure. It is as basic as that.

Any program designed within a Federal prison system or a local prison system would be—if not incapable—but would have difficulty dealing with it.

There is an increasing question that maybe one of the questions—and no one knows for sure—that there has been an increase. One of the reasons they have "moved on" is because of the lack of accountability that was demanded for the offense that was committed, as trivial as it may have been.

The fundamentalist idea is that if, in fact, Johnnie walks across the street when he was told not to and Mommy says to Johnnie: "Do not do that. You might get killed." And does nothing more, then Johnnie continues to walk to across the street.

But when Johnnie is kept in his room and punished and not physically beaten but having something denied to make him accountable for his actions, then Johnnie will not walk across the street.

One of the problems that we have is this. We have little data to know whether or not the lack of imposing accountable standards, whether it be not to walk across the street or pay back for the window you broke or reimburse the person whose car you messed up, we wonder whether it works.

We are also finding that nobody knows where the measure comes. I did the kind of work that you are doing now. I was not with the Legal Aid Society, but I used to know how to counsel people to go before parole boards. I knew what to tell them. The same thing you would tell them: "Be a supplicant. Be a Colson. How could I have done what I did?"

That is likely to get you more results than anything that even remotely relates to whether or not you have been rehabilitated.

One of the problems is this. Some of the studies are coming up with conclusions that guys with backgrounds like yours and mine do not

like tough stuff, we are finding. We so-called liberals have commissioned the studies. We do not like the results. We have commissions and people up in Harvard and Yale and all over the country in the liberal institutions doing these studies. They are finding out that we do not know. We just do not know.

So, I am also concerned about the increase in reaction. That is why I was so worried about it when I went for the flat-time sentencing approach to put in that accountability aspect for two reasons.

I found that people wanted simultaneously to increase the sentences.

I wanted to have for every 1 day of good time you got, that is, for every 1 day in jail you got 2 days' reduction in your sentence. They wanted not only to eliminate the question of whether or not you go with flat-time sentencing, but wanted to eliminate good time and wanted to eliminate every avenue.

I am worried about that, but I am having trouble coming up with any answer that anyone can give me with any degree of certainty. I am really perplexed and concerned about losing the thing we need more than anything else which is the base of public support for tax dollars or whatever the program is, whether it is a psychiatrist and/or brick and mortar, or any alternative in between.

But the folks are not willing to do it these days because we promised them a lot. We told them that we had some inkling of how to rehabilitate. They now know that we do not know that.

But we continue to tell them that we know when rehabilitation occurs, even if it occurs as a consequence of nothing we did. That is also a lie.

We do not even know when it occurs. We do not even know if it has occurred. So what do we do?

Mr. KESSLER. I have one final comment.

I do not know who we so-called liberals are and I do not even know if I count myself among them.

Senator BIDEN. Those who believe that brick and mortar is not the answer. Forget the label "liberal."

Mr. KESSLER. I do not pretend to know the answers. I am not even sure I understand the problem. But I do know that the old answers, the answer of warehousing people for extended periods of time has not worked. It is time to look at something else. That is all I am suggesting.

Senator BIDEN. The only thing I am suggesting is this. We have not warehoused them for extended periods of time. That is a lie that exists within the system. Statistics and the facts point out that there are not extended periods of time on the average for incarceration.

The statistics indicated that first-time offenders, even for greivous crimes, do not serve long sentences, or even certain sentences.

The facts indicate that those, in fact, who are talking about warehousing oftentimes never even get near the warehouse.

So, we sit and we say that the old answers do not work and the tough system does not work and that certainly may not produce it. Yet, it does not do that. We tell people that we have life sentences. We do not have life sentences in America. The reason why, in my opinion, the public is clamoring for the death penalty—which I have opposed and will continue to vote against in the U.S. Senate—is because there is no certainty in terms of a life sentence, none whatsoever.

The average time served is 11 years. You have the preposterous result that the Senator from Maryland pointed out with a young man and two people stopped to assist the young man to change his tire. He ends up killing them both and taking their wallet. He gets sentenced and the judge says:

I not only sentence you to life, but 3,000 years. You will be eligible for parole after 7 years.

The gentleman who killed all those nurses—he has already been up for parole. It was denied, but he has already been up for parole.

The public out there, I think, falls into the hands of the George Wallaces who say:

What we have got to do is bring back the whipping post, start to hang them, and let us eliminate them.

We say we need a more enlightened approach, but we turn around and say that we have to rehabilitate. They say:

Fine. Given the choice of going with your rehabilitation and how well that works and George Wallace and hang them high. I will take George Wallace and hang them high.

That is why when I vote against the death penalty down there, the lid blows off in our mail because I do not care about people.

Anyway, the facts are missing in the discussions of the criminal justice system. I am not suggesting that I know the answers. Unfortunately in the Senate you do not get to vote maybe. You do not get to vote: "I am not sure I know." When in doubt you take a shot. If I do not have a shot to take, then you might as well take a shot with somebody else. You might as well get somebody else to take the shot.

I think that I am conversant, at least, or cognizant of the problem without knowing any answers.

One of the problems that I have found in the hearings that I have held this last year on the question of recidivism and sentencing is that there is a great misconception as to whether or not we have warehoused people.

We have, in an overall sense, put more people in prison than any other country in the free world. In Delaware, it was brought out today, which we were also aware of, they probably have the highest rates of incarceration in the United States of America.

But one of the things we are having trouble finding out is whether or not the people who are incarcerated are incarcerated for times certain that reflect the crime that they committed, to some degree, or whether or not we just send everybody to jail for a little time. We do not know the answers. That is what we are trying to find out.

Mr. KESSLER. I am reminded somewhat of a study of the Japanese industrialist system. I think it was by Harvard University. Somebody tried to find out why the Japanese were so successful in marketing their products, particularly in this country and throughout the world.

As I recall, the essence of that study concluded that before the Japanese introduced a product into the market, out of the 100 percent of time they spent roughly 90 percent of that time was spent considering the problem and what the public wants. So it was 90 percent on planning and 10 percent on solution, and comparing that to the industry in this country we find mostly the reverse statistics. About 10 percent are planning and 90 percent are solutions.

Hopefully, maybe this hearing will spend a little more than 10 percent of the time on planning and less time on the solution.

Senator BIDEN. I think that is a criticism that is well taken.

I would like to close the hearing with another study. Sweden has done all you suggested and more. Sweden has been looked to as the citadel of criminology virtue. Sweden has everything from conjugal visits to no bars. Sweden has been the single most enlightened prison system in the world. Sweden has incorporated almost every major recommendation made by the nonbrick and mortar people that have been made in the United States.

Sweden just got finished conducting a 5-year study of their own present system. It chargined me and many others who thought many of the features would impact upon the rate of recidivism. It has concluded there is no impact. They have just as high a rate of recidivism as we, in fact, do in the less enlightened countries.

I do not think that we should limit our experience to, and our search to, and our research to, before we come up with the solutions merely to what happens in the United States.

Emerson once said:

Society is like the wave. The wave moves on, but the particles remain the same.

God ain't made a new brand of man in a long, long time and the Swede ain't no different than a U.S. citizen and what motivates them.

They have tried all of the so-called innovative things that have been mentioned. To oversimplify the report—and you might be interested for your gratification to look at it—and my staff has been insisting that I send them to Sweden to investigate it. But as a practical matter we are going to have to send someone to Sweden, seriously, as a practical matter, to look at it first hand. There will probably be bloodshed as to which of the staff goes. [Laughter.]

Senator BIDEN. It is shocking to find out that all of the innovative approaches have been tried and they have just as high a rate of recidivism as they had before.

The conclusion I have begun to reach is that it is not within the prison wall. It is not within the sentencing structure. It is within the basic things that some of my friends in the black community have been saying for a long time: "It is in the economic system and the structure of what happens."

I do not care how you rehabilitate someone in a prison. I do not care if Mr. Wynsett or anyone else learns how to repair washers. If there is no job when he walks out and if there is not anyone going to hire him and guarantee him where he is going to go, then the young kids say:

He will not get his head together. He will not be able to provide for his family. He will not be able to have any part of his self-esteem. He probably is going to end up back in jail.

That has not a bloody thing to do directly with what happens inside those walls.

So, we must make the prisons more humane. We must make them places where we can be judged as a society that we, in fact, respect human life.

But we must also, I think, throw out all of the euphemisms that are used on both sides, the George Wallaces on one side and some of the Swedish euphemisms that we have used around this country for a long time on the other side.

But that was not the purpose of this hearing.

I respect Mr. Kessler's opinion. I mean that sincerely. I would like very much to have input and to share with you, because you are on the firing line in Delaware. You are right on the line with what is happening. I am not. These folks up here helping me are not. The U.S. Attorney's Office is not. All the experts are not. You are on the firing line.

We would like to share with you some of the information we have. You are so busy we cannot expect you to take it all and read it all, but we will distill some of it and at least make you aware of some of the things we have done.

Your criticisms are justified. We have responded to some of them. The one place where you have made me rethink is that maybe we should go right into the prison system and "Publicity be damned. Go ahead and do it and take the flack for saying that we are seeking a media-forum." Television will love it. They will think it was great. The commentator of the program will talk about how we selected it. We are not always above selecting the media-forum. It is not below us.

Mr. KESSLER. Thank you for this opportunity to appear today.

Senator BIDEN. Those of you who have sat through this, we thank you very much.

The hearing is adjourned. We will resume in Baltimore, Md.

[Whereupon, at 4 p.m., the subcommittee adjourned.]

PREPARED REMARKS OF THOMAS J. QUINN

Approximately one year ago, the federal court found that conditions in the Delaware Correctional Center at Smyrna were overcrowded. The court set a limit on the number of people that could be incarcerated at Smyrna. It became clear that some major and drastic steps would have to be taken in short order to deal with that problem. The situation was chaotic, but it would have been poor judgement to attempt to solve the problem in one swift stroke using only one approach. And that was not done. To be sure, some steps were taken immediately. But in order to resolve the problem, a long standing one, a great number of people in the corrections system and elsewhere in the criminal justice system in the state of Delaware took a long hard and deliberate look at the causes of the over-crowding problem. What resulted was the Governor's Corrections Master Plan, an attempt to bring order out of chaos. A great deal of care went into designing that master plan.

The item of the master plan which has received the most press, and indeed it is a major item in that plan, is the proposed new facility. As a prison, it reflects an advanced state of the art. It will house detentioners and relatively short-term low-risk inmates. It will be at a site in northern New Castle County where most of the offenders in the state live, since most of the population is in this area. It is designed to be secure but will not utilize traditional bars and hardware which are more expensive and which are not necessary given the sophisticated means of surveillance and electronic security now available. It meets the best known national standards including:

Living units of 24 people maximum, to limit alienation; an outside view will be provided to help maintain a sense of contact with the outside world; each cell will be at least 70 square feet; there will be access to exercise and recreation equipment and a staff to supervise; a gym will be provided which will also function as a multi-purpose room for other activities; an educational program will be available with

staff, including vocational training, GED, and remedial reading; psychological and psychiatric counseling as well as other types of counseling such as drug and alcohol and family counseling will be provided; medical care will be as good as exists in any prison system in the U.S. The entire health care of the prison system is being contracted to an outside health care provider, Sacred Heart Hospital of Chester, Pennsylvania. To our knowledge this is the only state-wide contracted prison health care contract in the U.S.; records will be up-dated and available by computer, if an anticipated LEAA grant is forth coming; volunteers will be coordinated and outside contact with community groups will be encouraged; visiting will be provided for without sacrificing security; and a library, both general and law, will be provided.

It should also be noted that a new women's prison is projected to be located adjacent to this facility so that the women may make use of many of the same programs afforded the men. Additionally, this facility will be modular; that is, in the future we feel there is a need to expand the space to house additional inmates, it can be done at a minimum of cost.

While this prison does reflect the advanced state of the art as we know it, it is much more than a prison. To understand its role you must understand the entire master plan. Most correctional systems have nothing to say about who comes to their door, but the overall criminal justice system does. We in Delaware recognize that the system historically has operated as if there were individual entities, independent of each other, and often inconsistently. We also recognize that the system can work together to improve the efficiency of justice. We hope to influence who comes to the door of the prisons. We are applying a systems approach to what began as a corrections problem. For example, we have taken steps to change to bail procedures in the JP courts. A Justice of the Peace who does not have adequate information upon which to make the bail decision may very well place a high secure bond on an individual who may be a low risk. He may then take up bed space which could more appropriately be used for a hardened criminal. This new facility will provide space for a Justice of the Peace to conduct initial appearance hearings for offenders. Since these hearings are currently scattered about four sites in New Castle County, this will enable bail personnel to be placed at this one facility where the caseload will be high enough to justify it, and the Justice of the Peace will be able to make a more informed bail decision. Some steps we have taken has already resulted in a decrease in the number of detention beds at Delaware Correctional Center. Since this initial appearance will occur in this same facility as the new prison, it much more than a prison.

It is a multi-purpose post-arrest, pre-incarceration processing center. Besides pre-trial release staff, there will be a public defender, a deputy attorney general, drug and alcohol abuse counselors, and perhaps even a victim services advocate. Having this staff at this site will ensure that the offender is processed quickly, is represented fairly and if appropriate, screened out early. For those who are to be incarcerated, the prison is more than a holding tank. It will serve as a diagnostic and classification center for entire adult correctional system in the state. After testing and review many of those who are brought into the facility may be able to be referred to less secure and less costly options, such as intensive supervision by probation officers, in or out patient drug and alcohol programs, half-way house, work release, community work service, or a restitution program. Many of these exist and will be expanded; others must be developed. The placement in programs or within the various institutions will be based on the length of sentence, offender's educational or other program needs, and the risk factor as determined by previous record and psychological testing. Offenders incarcerated will be able to work themselves from a high-security environment to one less onerous over time. Ultimately, we hope to increase the options and standardize procedures so we have a logical set of increasingly restrictive environments, consistently applied. We hope to minimize the offender's penetration into the system (consistent with the protection of society), which will minimize costs; minimize the negative impact to the offender; minimize the need for the tax payer to support the offender's family and the offender if jobs are lost; and maximize the offender's productivity.

I might briefly, at this point, note that the federal government has been helpful in assisting Delaware in correctional improvements. The LEAA funded National Clearinghouse for Criminal Justice Planning and Architecture has provided us with publications and technical assistance; LEAA Part B funds provide for GCCJ staff which assisted in the development and implementation of major portions of

the master plan; and LEAA block funds have helped implement programs new to Delaware (such as work release, begun with LEAA funds and now in the state budget). Unfortunately, LEAA funds are less now than in previous years, and are projected to further decrease. GCCJ central staff professionals have been laid off due to the decrease in funding, and some innovations have been delayed indefinitely because funds were not available for innovative programs. If the sub-committee could somehow reverse this trend, it would assure Delaware of continue improvements in corrections as well as elsewhere in the criminal justice system. Funds for other correctional improvements such as construction or education, would likewise be helpful and could be administered under the bureaucracy existing for LEAA.

Thank you for the opportunity to share our views and experiences with the subcommittee.

PLANNING A MULTIPURPOSE PRISON FACILITY IN THE WILMINGTON AREA

PREPARED FOR THE HON. PIERRE S. DU PONT, GOVERNOR OF THE STATE OF DELAWARE

This report is designed as a working document with which we can work with an architect to develop line drawings and cost estimates.

It should be noted that even after we achieve consensus on the program, when we begin dealing with the architect on further planning and programming there will be many areas which will require additional meetings and decision. These "job meetings" or "change meetings" will probably continue up to the point where we have the line drawings and the estimates. When this process is completed, we will be ready to contract for architectural and engineering drawings and after that, to go out for bid.

If all goes well as we can expect, we are somewhere between 33-40 months away from housing our first prisoner in the new prison. Of course, we can "fast track" but only after planning and programming. This long delay will be a serious problem for us if the prison population continues to increase. The problem then becomes: what do we do with sentenced prisoners if there is no cell space? The 64 bed maximum security addition at DCC will relieve some of the population pressure, but the final answer is the prison outlined in this program document.

If we are required to release prisoners before their regular terms are up, or to refuse to accept minor offense sentences, the hue and cry will rise up to the skies. The harsh reality of the population count in our system gives us little reason to believe there will be a dramatic decline in number in time to help us.

Copies of this document have been made available to the following:

Pierre duPont, IV, Governor
 James Vaughn, Commissioner
 Milton Horton, Adult Bureau Chief
 David Swayze, Counsel to the Governor
 Chris Harker, Exec. Director, GCCJ
 Thomas Quinn, Programming and Eval., GCCJ
 Nathan Hayward, Director, Management, Budget and Planning
 Daniel Herrman, Chief Justice
 Richard Weir, Attorney General
 Lawrence Sullivan, Public Defender
 Patricia Schramm, Secretary of Health and Social Services
 Wm. Brierley, Police Chief, Newark, Delaware
 James Nestor, Corrections Advisory Council
 National Clearinghouse for Criminal Justice Planning and Architecture

The most recent guidance is to develop planning and programming, site selection, and cost estimates and to develop schematic sketches and renderings of the new facility to present to the General Assembly when they return in January. The next step is then the selection of an architect to work with us.

THE PRISON: MISSION AND PHILOSOPHY

The prison will hold all male detentioners, short-term sentenced prisoners, and protective custody prisoners. It will comply with LEAA National Clearinghouse Standards in planning and construction.

All programs at the prison will be designed to best serve the needs of the detentions and short-sentenced prisoners.

Construction will be modular in concept. This will enable the prison to grow without major renovations to public areas such as dining area, gym, program space, etc., by adding to the existing public areas as new modules for living space are added.

The prison will be a secure facility using appropriate construction materials. (Which will ensure that it is secure). Pages 19-21 of the LEAA booklet "The High Cost of Building Unconstitutional Jails" discusses comparative costs of traditional and alternative construction. Whenever possible, alternative construction materials will be used.

Throughout the planning and programming, the architect selected will be directed to use the consultative services provided by the National Clearinghouse.

The prison will not be designed as a campus with several separate buildings, but will be one building which makes greater control and security possible. The prison will be surrounded by a 12-foot fence, topped with barbed wire. It will be lighted with the bottom concreted to a depth that prevents digging out. The design of the fence will be such that the entire fence will be viewed by two guards in darkness outside beyond the range of the fence lights. Each outside guard will be able to see the fence area while being unseen. The guard will be armed and have an attack dog with him. Lighting will be such that the fence and inside the fence is illuminated, while leaving the outside areas in darkness. Care must be taken to avoid the light pollution inside the facility by fence lighting. Anyone attempting either to climb the fence or dig out will be seen by the guards day or night with appropriate action taken, while the outside dog and handler remain in the darkness.

The design of the prison will provide for maximum inmate jobs inside the prison consistent with reasonable standards of economy. The more inmates that work, the better.

Because of the largely short-term nature of the prison population, treatment and rehabilitation efforts will be directed towards re-entry into society. While prison industry is certainly desirable, the particular industry should be carefully chosen with the nature of the population in mind.

Because of the nature of the population and because the prison will be in the Wilmington area, there will be a greater influx of social workers, volunteers, lawyers, and visitors than experienced at DCC. The planned Judicial Center, in which it is proposed to hear certain court cases, will add to the visitor traffic. The Intake Center will also greatly increase the prison activity.

Classification for the entire prison system will be at this prison. A centralized records system supporting each institution's internal record keeping will make this prison the keystone of the system.

For all of these reasons, the selection of the Superintendent and his staff is particularly important. A young, trained, prison administrator must be found who can handle the considerable challenges offered by such a facility.

The reorganization of functions outlined in the Master Plan must be kept in mind during the design of this facility. DCC will incarcerate long-term (5 years to life), SCI will incarcerate for terms of from 4-year to 5-year prisoners, while work release centers, halfway houses, and a variety of alternatives to incarceration all aid in reducing the number of inmates incarcerated. The new prison facility is only a part of a total system approach which attempts to hold down the number of prisoners while providing adequate, humane, treatment for the incarcerated population.

Delaware is at a point where it can literally "turn around" the dismal crisis condition that has beset the prison system for several years. The technical advice is available to us—free. While the building of new prisons is expensive, it most certainly is called for in our present crisis situation. It would be desirable to "hold off" building new bedspace while we are trying to improvise and renovate our fragmented system with its many sub-standard housing areas, but this would merely condemn prisoners to remain in dormitory style housing such as at DCC and PTA while continuing the frightful waste and expense of duplicating facilities and manpower at several different locations.

Just as important, the fragmented system makes it very difficult and expensive to provide programs and services for the inmates. The almost total lack of programs at PTA, WCI, and the Dover Annex provide striking evidence of this.

WILMINGTON AREA PRISON

For planning purposes, the figure of a prison population of 276 men and 60 women will be used. These numbers are the best estimate of the population needs in 1981.

Men's prison:

Pretrial detention.....	150
Short sentences.....	116
Maximum security.....	10
Total beds.....	276

FACILITY COMPONENTS

- | | |
|--|---------------------------------------|
| (1) Intake unit. | (14) Barber shop. |
| (2) Judicial center. | (15) Mailroom. |
| (3) Counseling services. | (16) Library. |
| (4) Classification and assignment for the prison system. | (17) Commissary. |
| (5) Education program area. | (18) Maintenance. |
| (6) Community liaison. | (19) Vehicle maintenance and control. |
| (7) Contact visit area. | (20) Administrative areas. |
| (8) Medical suite. | (a) Lobby. |
| (9) Multi-purpose chapel, auditorium, gym. | (b) Superintendent's office. |
| (10) Dining room. | (c) Secretary's office. |
| (11) Kitchen and storage. | (d) Deputy office. |
| (12) Supply service. | (e) Business department. |
| (13) Clothing room and laundry. | (21) Security department. |
| | (22) Records department. |
| | (23) Living spaces. |

ACTIVITY TAKING PLACE	RECOMMENDED SPACE ALLOCATION AND SPECIAL REQUIREMENTS	PERSONNEL REQUIRED
<p>1. <u>INTAKE DIAGNOSTIC UNIT.</u></p> <p>a. <u>Reception Area.</u> When there is an arrest, the arresting officer will transport the arrestee to the prison. The arresting officer and arrestee will pass through the fence gate and into a parking lot outside the Intake Diagnostic Unit. The arrestee is taken from the car into the Intake Unit entryway. Before being admitted, the arresting officer must put his weapon in a gun locker adjacent to the door, lock the gun locker, and retain the key. The arresting officer then pushes a buzzer which sounds inside. The intake area outside door will be a metal security door with an electric lock. Officer and arrestee then pass into a sally port and close the door behind them. The lock on the second door will not open until the first door is locked. The Commitment Officer will then admit the arresting officer and arrestee. If the arrestee has been book at another location, the arrestee will begin intake processing. If the arrestee has not been booked at the local police station, he will be booked and then begin intake processing.</p> <p>This initial contact takes place in a reception room which contains space for a desk and chair and a cell area for temporary holding. Delaware law requires arraignment within 24 hours. (weekends and holidays not included).</p> <p>After the Commitment Officer has determined whether the arrestee has already been arraigned or if he is in need of booking, the arrestee will be searched, unhandcuffed, and placed in the holding cell. At that point, the arresting officer is allowed to leave.</p> <p>b. <u>Intake Holding Area.</u> Following initial reception, the new commitments will be held in holding cells for periods up to 72 hours. The usual period will be 48 hours. During this period functions are carried out which are designed to process the inmate into the</p>	<p>1. <u>INTAKE DIAGNOSTIC UNIT.</u></p> <p>a. <u>Reception Area.</u></p> <p>(1) 600 square feet.</p> <p>(2) 2 security doors with sally port (air lock) between them. Outer door electrically locked. Doors arranged so that only one can open at a time.</p> <p>(3) Steel gun locker for 10 handguns with individual keys located adjacent to outer door.</p> <p>(4) Two-way "press to talk" communications between outside and inside inner door.</p> <p>(5) One cell (70 square feet) with viewing panel and metal clad door.</p> <p>b. <u>Intake Holding Area.</u> See attached LEAA Publications: (1) Design Criteria for Short-term Holding; (2) Cleringhouse Transfer, St. Louis County Intake Center.</p>	<p>1. <u>INTAKE DIAGNOSTIC UNIT.</u></p> <p>a. <u>Reception Area.</u></p> <p>1 Commitment Officer per shift. 3 shifts per day. 365 days a year or a total of 5..</p> <p>b. <u>Intake Holding Area.</u></p> <p>Intake Correctional Officer</p>

<p>administrative, sanitary, and medical routine of the prison and to prepare the inmate for assimilation into the general population. These functions are as follows with recommended space allocations shown in Column II.</p> <p>(1) <u>Shower and Search Area.</u> Inmate strips and showers while clothing is searched. If not arraigned, the man is allowed to retain his civilian clothes.</p> <p>(2) <u>Personal Effects Room.</u> Inmates personal effects, clothing, etc. are stored.</p> <p>(3) <u>Clothing Room.</u> Uniform and items such as sheets, pillow cases, blankets, etc., are issued and stored. Stocks will be maintained to handle 25 inmates.</p> <p>(4) <u>Identification Room.</u> Contains camera, fingerprint equipment, filing equipment, and work areas. The inmate is photographed and fingerprinted as a part of his prison record.</p> <p>(5) <u>Medical Examination Room.</u> Contains examination table, 2 filing cabinets, desk and chair, and chair for patient. Medical personnel will take medical history and vital signs and keep records. There must be 2 locked cabinets for records and emergency supplies.</p> <p>(6) <u>Detention Cells (25).</u> Each cell will be 70 square feet.</p>	<p>(1) 400 sq. ft. 2 showers, 1 lavatory, dressing room.</p> <p>(2) 100 sq. ft. Room has shelves on 2 sides from floor to ceiling for storage. One large metal cabinet for valuables.</p> <p>(3) 300 sq. ft. Room has storage shelves, a counter to serve the incoming inmates and a dirty laundry area.</p> <p>(4) 160 sq. ft. Camera, lighting fingerprint equipment, 2 filing cabinets, work area.</p> <p>(5) 200 sq. ft.</p> <p>(6) Total of 1750 sq. ft. Metal clad doors that open out with large lexon glass viewing panel. All cells capable of being locked or unlocked from central control and having a device that prevents the door from being slammed open to strike a guard. Each cell will</p>	<p>per shift for a total of 5.</p> <p>be 70 sq.ft.</p>
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ACTIVITY TAKING PLACE	RECOMMENDED SPACE ALLOCATION AND SPECIAL REQUIREMENTS	PERSONNEL REQUIRED
(7) <u>Holding Tanks.</u> This will be used to hold several incoming prisoners who arrive at the same time as the result of a raid, fight, etc. It will only be used as a temporary holding area for up to 5 prisoners and only until prisoners are processed.	7. 300 sq.ft.	
(8) <u>Office.</u> This will be used by the Intake Officer who administers the unit.	8. 100 sq.ft. desk, 2 chairs, filing cabinet. Wall locker	One Intake Officer
(9) <u>Office.</u> This will be used by the secretary of the Intake Officer.	9. 150 sq.ft. Typing desk, file cabinet and closet storage. Adjacent to Intake Office with a connecting door.	Administrative Intake Unit Secretary
(10) <u>Interview Rooms - (4).</u> This will be used by attorneys, public defenders, parole, and bail personnel. Contact visits for protective custody prisoners will be held in Intake. The Education Coordinator and Counselors will use these offices for necessary interviews with intake unit prisoners.	10. Wooden doors with large lexon viewing panels. Table and 3 chairs in each room. 60 sqft. each. 240 sq.ft. total	
(11) <u>Supply and Work Room.</u> Includes areas for duplicating equipment, copier, etc.	11. 150 sq.ft.	
(12) <u>Restrooms.</u> Contains toilet and lavatory in each.	12. 60 sq.ft. each	

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ACTIVITY TAKING PLACE	RECOMMENDED SPACE ALLOCATION AND SPECIAL REQUIREMENTS	PERSONNEL REQUIRED
<p>2. JUDICIAL CENTER.</p> <p>The inclusion of a Judicial Center at the new prison makes it a multi-purpose facility. The functions include booking, arraignment, preliminary hearing, pre-arraignment processing to include bail and release on own recognizance (ROR) interviews, and interview by drug and alcohol counselors to identify arrestees with those problems for possible transfer to the State Hospital de-tox center.</p> <p>The concept of a Judicial Center in a prison complex raises many design problems. The Judicial Center must be outside the secure area of the prison to allow the public free access. The Intake Unit and the treatment section will be a vital part of the Center, but must be in the secure area of the prison while having easy access to the Judicial Center.</p> <p>The Attorney General must have an office for a Deputy Attorney General to screen cases for appropriate recommendations as to disposition. The Public Defender should have an office for the deputy to provide early representation to those who require it. Because the diagnostic and classification unit for the correction's system will be based in the new facility, their services are readily available for the judiciary for sentencing as well as their primary responsibility to classify prisoners for housing and program assignments.</p> <p>The total administration of the Judicial Center aspect of the new facility will be complex because the prison will house prisoners from all three counties and because the detentioners will arrive in various stages of the criminal justice process. Some will be booked at local police stations, some will not. Some will be arraigned by other magistrates and some will require arraignment at the facility. Some few will</p>		

ACTIVITY TAKING PLACE	RECOMMENDED SPACE ALLOCATION AND SPECIAL REQUIREMENTS	PERSONNEL REQUIRED
<p>have had their preliminary hearing in other areas (Sussex) before they arrive. Listed below is a breakdown of functions and recommended space allocation and special needs.</p> <p>a. <u>Courtroom.</u> Standard courtroom layout with seating for the public.</p> <p>b. <u>Judges Chambers.</u></p> <p>c. <u>Office for Judge's secretary</u></p> <p>d. <u>Office for Deputy Attorney General.</u></p> <p>e. <u>Office for Secretary to Attorney General.</u></p> <p>f. <u>Office for Public Defender.</u></p> <p>g. <u>Office for Secretary to Public Defender</u></p> <p>h. <u>Office for bail personnel.</u></p> <p>i. <u>Office for secretary for bail personnel.</u></p>	<p>a. 600 sq.ft. Must have an outside entrance open to the public without going through prison security. Entrances to court room from the secure areas of the prison such as from the Intake Center must meet security requirements.</p> <p>b. 100 sq.ft. Desk, 3 chairs, clothes closet, private toilet and lavatory.</p> <p>c. 100 sq.ft. Typing desk, 2 filing cabinets, chair. Adjoining door to bathroom above.</p> <p>d. 48 sq.ft.</p> <p>e. 48 sq.ft. with adjoining door to d above.</p> <p>f. 48 sq.ft.</p> <p>g. 48 sq.ft. with adjoining door to f above.</p> <p>h. 48 sq.ft.</p> <p>i. 48 sq.ft. with adjoining door to h above.</p>	<p>a. 1 Judge</p> <p>c. 1 secretary</p> <p>d. 1 Deputy Attorney General</p> <p>e. 1 secretary</p> <p>f. 1 Deputy Public Defender</p> <p>g. 1 secretary</p> <p>h. 1 bail personnel.</p> <p>i. 1 secretary</p>

ACTIVITY TAKING PLACE	RECOMMENDED SPACE ALLOCATION AND SPECIAL REQUIREMENTS	PERSONNEL REQUIRED
<p>j. <u>Staff Restrooms.</u> Contains one toilet and lavatory in each</p> <p><u>note:</u> diagnostic and classification unit, while not an actual part of the judicial unit should be located in an area with ready, secure, access to the courtroom and the various associated office suites. A design that allows them access to the courtroom area through the Intake Unit would suffice.</p> <p>k. <u>Waiting Room.</u> This area should contain space for 30-40 people to wait. The room should be accessible to the public from outside the prison without going through secure prison areas. On one side, the room should have access to the Courtroom and the other two sides should be lined with the offices noted above except for the Judges chambers. They should be located to the rear of the Courtroom in the conventional manner, together with the secretary's office. If possible, the Judge should have a private entrance from outside to his chambers. Lawyers and others wishing to interview prisoners will interview them in one of the four interview rooms in the intake unit. The various office suites and the courtroom are not secure areas and the security in a normal courtroom will be in effect within the courtroom, waiting room and office suite complex.</p> <p>l. <u>Public Restrooms.</u> These areas should be available from the waiting room.</p>	<p>j. 30 sq.ft. each. Should be located where staff has access but not to the general public.</p> <p>k. 400 sq.ft, have drinking fountain benches and chairs for 30-40 people</p> <p>1. 2 at 180 sq.ft. each. Male is 1 urinal, 2 toilets, 2 lavatories. Female is 2 toilets, 2 lavatories. Toilets have privacy stalls.</p>	

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ACTIVITY TAKING PLACE	RECOMMENDED SPACE ALLOCATIONS AND SPECIAL REQUIREMENTS	PERSONNEL REQUIRED
<p>3. <u>COUNSELING SERVICES.</u></p> <p>An efficient and effective counseling system requires that it be located centrally and in close proximity to the general population. It should be separated by a security buffer that will permit convenient access to it by residents and to the jail itself by counselors. This section is charged with supporting the population with counseling services and the Criminal Justice Center with appropriate reports.</p> <p>A. <u>Counselor Complex.</u></p> <p>1. <u>Offices (6).</u> Counselors will interview new admissions and make recommendations on housing modules assignment, transfers in housing, admission to programs, work release, furloughs, parole, and general problem solving assistance to the resident. They will have input to the classification and assignment section. They will also do family counseling (prisoners and wives) to help with the many problems facing a prisoner upon his return to society. They will also counsel houthful offenders and parents.</p> <p>2. An Office for 2 clerk-typists for counselors.</p> <p>3. <u>Offices (2) Pre-Trial Counselors.</u> Will work with Criminal Justice section to interview arrestees before arraignment and to make referrals.</p> <p>4. <u>Workroom for counseling services.</u> Could be combined with typists office. Will be used for storage of forms and tests, mimeographing, and copying.</p>	<p>1. 100 sq.ft. each. Total 600 sq. ft. Each with a desk 30"X50", chair, two side chairs, filing cabinets and storage closet.</p> <p>2. 2 typing desk, 2 chairs, 150 sq.ft. 2 filing cabinets</p> <p>3. 100 sq.ft.</p> <p>4. 200 sq.ft. Supply storage room to include counter cabinets and wall cabinets, duplicating and copying equipment, work table, male and female toilet with lavatory.</p>	<p>6 counselors</p> <p>2 clerk-typists</p> <p>2 Pre-trial Counselors</p>

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ACTIVITY TAKING PLACE	RECOMMENDED SPACE ALLOCATIONS AND SPECIAL REQUIREMENTS	PERSONNEL REQUIRED
5. Conference Room. Will be used by Counselors, Educators, and various boards, such as Classification and furlough boards.	5. 200 sq.ft. Table and chairs to seat 10 with blackboard, bulletin board and projection screen	
4. <u>CLASSIFICATION AND ASSIGNMENT FOR THE STATE PRISON SYSTEM.</u>		
a. 1 office for the Sacred Heart Psychiatrist. This man will have his office at the prison, but will be required to travel to all institutions to conduct examinations as required. He will be concerned with evaluations for court purposes, commitments to the State Hospital and some limited treatment.	150 sq.ft. Desk, chair, 2 soft chairs, filing cabinet.	1 psychiatrist (provided for under medical contract with Sacred Heart Hospital)
b. <u>Psychologists (2)</u> . These men will evaluate data compiled by pre-trial counselors, regular counselors and conduct evaluations of appropriate referrals. Residents who do not stay long enough for an effective program will be referred to the appropriate outside educational agency.	100 sq.ft. for each office - total 200 sq.ft. Desk, chair, filing cabinets.	2 psychologists
c. <u>Clerk-typist.</u>	48 sq.ft.	1 clerk-typist
NOTE: These offices should be near the Counselor complex offices. A classification board will be created from membership of counselor staff and the classification and assignment staff to assign residents to a prison upon sentencing and to consider transfers from prison to prison recommended by the in-house classification boards at WCI, SCI, and DCC.		

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ACTIVITY TAKING PLACE	RECOMMENDED SPACE ALLOCATIONS AND SPECIAL REQUIREMENTS	PERSONNEL REQUIRED
5. <u>EDUCATIONAL PROGRAM AREA.</u>		
The educational programs sponsored by the prison are a significant part of the rehabilitation process. To operate most effectively under the leadership of the Educational Coordinator, the educational facilities should be located close together and the educational complex near the counseling complex. Regularly scheduled classes in a variety of subjects will be conducted in areas where previous testing has shown to be of the greatest need. Emphasis will be on Adult Basic Education (up to 8th grade), GED (High School Diploma), and remedial reading. Every convicted inmate assigned to the prison will be tested and evaluated to determine the most appropriate program for him. Emphasis will be on the basic education and high school programs. The educational complex must be in a secure area and yet must allow for an entrance from the outside in the event female residents from WCI use the facilities on a regularly scheduled, segregated from males basis to take advantage of the program offerings.		
a. <u>Classrooms (4)</u> . Standard classrooms	a. 660 sq.ft. each, equipped with 3'x10' blackboards, cork board, 3'x6' book shelves closet for storage and projection screen with desks and chairs.	a. 4 teachers
b. <u>Learning Laboratory</u> . Will be used for remedial reading and contain specialized equipment.	b. 660 sq.ft. equipped as in a above, plus corals for specialized equipment such as remedial reading devices, copying machine.	b. 1 teacher
c. <u>Business Education Classroom</u> . For typewriters, business machines, etc.	c. 660 sq.ft. equipped as a & b above plus floor outlets for business machines and other equipment.	c. 1 teacher
d. <u>Storage Room</u> . Used for storing supplies, audio visual equipment, etc.	d. 300 sq.ft.	
e. <u>Law Library</u> . This area will be supervised by education personnel. A copying machine and a typewriter will be available in the law library. The LEAA publication, "Planning a Legal Reference Library for a Correctional Institution" will be used by the architect	e. 200 sq.ft. with shelves for law books as required by federal and state law. A copying machine should be in the room. It should have 4 small tables and chairs.	

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ACTIVITY TAKING PLACE	RECOMMENDED SPACE ALLOCATIONS AND SPECIAL REQUIREMENTS	PERSONNEL REQUIRED
<p>f. <u>Office for Educational Coordinator.</u></p> <p>g. <u>Office for Teachers.</u></p>	<p>f. 60 sq.ft., desk chair, filing cabinet</p> <p>g. 4 at 48 sq.ft. each. desk, chair, filing cabinet</p>	<p>1 Educational Coordinator</p>
<p>6. <u>COMMUNITY LIAISON.</u></p> <p>The Community Liaison section should be located close to the Prison Administration section but should be accessible to the inmates as well. The function of the section will be to coordinate all of the community service agencies and volunteers to support the programs offered by the institution. Church groups, Thresholds Inc., special programs by community service agencies all require coordination and scheduling. This office will also assist in referrals to jobs for those inmates approaching parole. These functions, while being primarily centered in the new prison will also extend to DCC, SCY, and WCI.</p> <p>a. <u>Office for Director of Community Services</u></p> <p>b. <u>Office for Clerk-typist.</u></p> <p>c. <u>Meeting Room.</u> This should be large enough for 25 persons. Small groups will meet with inmates for special purposes; i.e., religious services; Thresholds, Inc.; special presentations, special classes taught by lawyers, etc.</p> <p>NOTE: This must be a square area.</p>	<p>a. 100 sq.ft., desk, 2 chairs, filing cabinet</p> <p>b. 48 sq.ft., typing desk, 1 chair, filing cabinet.</p> <p>c. 600 sq.ft., equipped with tables and chairs for 25.</p>	<p>1 Director, Community Services</p> <p>1 clerk-typist</p>

CONTINUED

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ACTIVITY TAKING PLACE	RECOMMENDED SPACE ALLOCATIONS AND SPECIAL REQUIREMENTS	PERSONNEL REQUIRED
<p>7. <u>CONTACT VISITATION COMPLEX.</u></p> <p>a. <u>Visitation Area.</u> Because 75-80% of all arrests occur in the greater Wilmington area and because this facility will be the detention center for the State and because the prison is located within a reasonable distance of Wilmington, it is expected that there will be a heavy, daily influx of visitors. In view of the many court decisions which tend to conclude that a detainee retains all the rights of a bailee except the right to come and go as he chooses and because we want to allow the detentioneer and the short-sentenced prisoner to retain close family ties, the contact visitation area is a key feature in the design of the prison.</p> <p>b. <u>Strip and Change Room.</u></p> <p>Entrance for the resident should be from his secure living area to a secure room. This is the strip room. Residents enter in prison uniforms. They strip and put on a one-piece, no pocket, zippered jumpsuit from a stock in shelves in the room. Their prison garb is hung on a hook. The prisoner then enters the visitation room and greets his guests.</p> <p>c. <u>Exit Change Room.</u> After the visit is over, the resident enters the exit change-room. He is stripped, searched and his clothing placed in a laundry box after it is search. The man then goes through a connecting door to the strip and change room where he is issued his prison garb and returned to his module.</p> <p>d. <u>Visitor Entrance to Contact Visiting Area.</u> The visitor either alights from public transportation or personal car in visitor parking lot. Visitors proceed from parking lot to a pedestrian gate in the chain-wire fence. A guard in a metal guard-box building checks the people in by using</p>	<p>a. 6,000 sq.ft., furnished with sofas, overstuffed chairs, tables and chairs grouped as in a lobby of a hote. The setting should be as informal as possible to enable the resident to see his visitors in a relaxed, informal, atmosphere.</p> <p>b. 300 sq.ft. Contains shelves for storage of jumpsuits - and hooks for hanging up prison uniforms.</p> <p>c. 100 sq.ft., table and chair for guard and large laundry box.</p> <p>d. (1) guard shelter, metal with concrete floor, 48 sq.ft.</p>	<p>1 guard note: Personnel requirements for contact, visiting vary depending on the number of days</p>

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ACTIVITY TAKING PLACE	RECOMMENDED SPACE ALLOCATIONS AND SPECIAL REQUIREMENTS	PERSONNEL REQUIRED
<p>authorized visitor file and requiring positive identification. The visitors proceed to a door to the waiting room. They are seated and the guard notifies the appropriate block that the resident has visitors. The visitors then proceed to the visitation area search-room located between the waiting room and the visiting area. They go through a "pass through" metal detector and females enter a female search-room and males a male search-room. A guard of the appropriate sex will then search any visitor as indicated by the metal detector. After the search, visitors enter the visitation room and conduct their visit.</p>	<p>(2) Waiting room - 300 sq.ft., benches similar to church pew benches.</p>	<p>and number of hrs. per visit. It is likely that a 4th shift of guards for contact visiting and program supervision will be required. To supervise contact visiting:</p> <ol style="list-style-type: none"> (1) 1 guard-box guard (2) 2 guards for waiting room (3) 1 female guard for female search-room (4) 1 male guard for male search-room (5) 3 guards to observe contact visit area. (6) 2 guards for the inmate strip and change room. (7) 1 guard for the outgoing inmate strip room. <p>Total: 10 guards for contact visiting. These guards will have other duties to occupy an 8 hour day, such as program security, dining room supervision, etc.</p>
<p>e. Special Area for Closed or Non-contact Visits. There will be times when, for security reasons, or because of violations of contact visitation rules, inmates will be denied contact visiting and allowed only visits in a closed, non-contact environment. There will be 10 small booths, with room for a chair. There will be a lexon panel between inmate and visitor and communication will be by telephone only.</p>	<p>e. 10 small booths for inmates and 10 for visitors. A lexon panel between, and a telephone on each for communication. (20 telephones and 10 lexon panels). The entire area should be in a secure area. Visitors should go through same entrance and security precautions as contact visitors and then go to the closed visitation area. Inmates need not change clothes and may go directly</p>	<p>e. 1 guard to watch the area.</p> <p>to the booth.</p>

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ACTIVITY TAKING PLACE	RECOMMENDED SPACE ALLOCATIONS AND SPECIAL REQUIREMENTS	PERSONNEL REQUIRED
<p>8. <u>MEDICAL SUITE.</u></p> <p>The Medical Suite should meet the following requirements.</p> <ol style="list-style-type: none"> 1. Centrally located in a secure area and accessible to the population 2. Away from loud noise areas 3. Away from heavily used traffic areas 4. Easily accessible to exits in the event of emergencies requiring evacuation 5. Provide a safe, secure, storage area for instruments, drugs, etc. 6. Provide a ward area for 15 beds supervised by a lexon enclosed nursing station. 7. A dental examination area. 8. A quarantine room for 3 beds 9. A records storage area within the nursing station <p>Sick call will be held daily, Monday through-Friday. Inmates requiring sick call will go to the waiting room. The doctor will examine them privately in the examination room. Patients requiring observation, but not outside hospitalization will be assigned a bed within the ward as medically required. The initial physical exam consisting of the recording of medical history and vital signs will be accomplished in the medical room of the Intake Center. Before the inmate is released to general population he must see the doctor at regular sick call. A routine dental exam will be conducted in this area on all incoming inmates. Dental treatment will be at a location as specified by the health care provider. Medical records will be maintained and emergency life support equipment stored here. Psychiatric care will be conducted in the Classification and Intake Center psychiatrist's office. This care will be examinations for classification or legal reasons. Psychiatric problems beyond examinations and referrals will be referred to the State Hospital.</p>	<ol style="list-style-type: none"> a. Waiting room, 200 sq.ft. b. Nursing station for Nurse/Paramedics. 150 sq.ft. Lexon enclosed to provide observation of entire area (ward). This area must include a records storage area c. Examining room, 150 sq.ft. with metal examination table, cabinets, etc. d. Dental office equipped with dental equipment sufficient to do a complete dental examination. e. Hospital area for 15 beds, ward style, 1000 sq.ft. f. Quarantine room, 200 sq.ft., 3 beds g. Lavatory with 1 bathrub and 2 showers h. Toilet room with 2 urinals, 2 commodes i. Storage Closet, 3'x6' deep j. Isolation toilet room and lavatory, 1 shower, 1 commode adjacent to quarantine room. k. 2 toilet rooms (male and female) for staff. 1 toilet, 1 lavatory in each, located in area in vicinity of examination room and nursing station. 	<p>1 guard per shift for total of 5 guards for security of Medical Suite.</p> <p>Medical personnel provided by outside health care provider. Probably a nurse (RN) M-F during duty hours and round-the-clock paramedics to staff the ward and provide emergency medical care, 1 per shift.</p>

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ACTIVITY TAKING PLACE	RECOMMENDED SPACE ALLOCATIONS AND SPECIAL REQUIREMENTS	PERSONNEL REQUIRED
<p>9. <u>MULTI-PURPOSE CHAPEL, AUDITORIUM, GYM.</u></p> <p>This area should be in a secure area and be designed to perform the three functions noted. The area should have the capability of a basketball court, volleyball court, handball, squash, etc. There should be thought given to Nautilus type equipment in an exercise area set apart from the team sport areas. Weight lifting equipment should be in this area.</p> <p>When events such as motion picture or live entertainment are scheduled, chairs will be set up and a temporary stage erected. A built in sound system should be included. If possible, this area should have a rapid change of function capability.</p>	<p>6000 sq.ft. total</p> <p>a. large multi-purpose court area. b. weight lifting and other body building exercise area. c. office for the Recreation Director d. office for the various Chaplains to share e. storage room for equipment f. toilet room with 2 urinals, 2 toilets 1 lavatory</p>	<p>1 Recreation Director</p>
<p>10. <u>DINING ROOM.</u></p> <p>The dining room should be located in a secure area convenient to the living modules, the kitchen area and supply services. It should be bright and cheerful and have furniture such as tables that have chairs attached to them as in modern fast-food restaurants. The area need not be big enough to feed the population at one sitting. Meals can be served at several sittings. A cafeteria style serving line to include beverage service should be in the design.</p>	<p>3000 sq.ft.</p>	
<p>11. <u>KITCHEN AND STORAGE AREA</u></p> <p>The kitchen prepares and serves the food and the supplies to be used during that particular day. The supplies are stored in the kitchen storage area. A walk-in refrigerator and metal storage cabinets for breads, cakes, etc.</p> <p>a small office for the steward to contain a desk, a chair and a filing cabinet.</p>	<p>1500 sq.ft., modern facilities, dishwasher, steam tables, ovens, grilles, sinks, etc. arranged to serve cafeteria style. The storage area should adjoin the kitchen and provide secure storage for materials to be served in that 24 hour period and include a walk-in refrigerator and metal cabinets.</p> <p>48 sq.ft. located where steward can observe both kitchen and storage area.</p>	<p>5 cooks (1 steward, 4 cooks)</p> <p>The bulk of kitchen help will be paid inmate labor.</p>

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ACTIVITY TAKING PLACE	RECOMMENDED SPACE ALLOCATIONS AND SPECIAL REQUIREMENTS	PERSONNEL REQUIRED
<p>12. <u>SUPPLY SERVICE AREA</u></p> <p>This area is responsible for all supplies needed to maintain the prison. It must be able to meet the needs of a full population. The area should be at the first floor level and provide for easy transport of supplies from loading dock to storage area to the proper department. The area must be secure and provide internal security to prevent theft.</p>	<p>250</p> <p>This area should provide the following: a. Storage area for non-perishable goods; b. Storage area for perishable goods; 1. cold boxes 2. freezer boxes c. A receiving dock for the delivery and off-loading of supplies d. An office for the director of supply in the main storage area (glass type enclosure). e. A large sally port, capable of accepting a tractor-trailer and capable of enclosing the vehicle during unloading behind a chain-wire fence, topped with razor wire. The truck backs in, the outer gate is locked and the inner door opened to unload the truck. The sally port must be within the secure area.</p>	<p>1 Supply Director</p>
<p>13. <u>CLOTHING ROOM AND LAUNDRY.</u></p> <p>a. <u>Clothing Room.</u> This area stores and issues prison uniforms, bedding, sheets, etc. to incoming prisoners and to accept it from discharged or transferring prisoners. It also stores civilian clothes for detentioners and issues them for court appearances.</p> <p>b. <u>Dressing Room.</u> Inmates will change clothes in this room after issue and prior to turn-in.</p> <p>c. <u>Laundry Room.</u> Modern commercial washers and dryers to do prison laundry. Commercial pressers and a clothing repair area with several sewing machines, work tables, etc., for clothing and bedding repair.</p> <p>d. <u>Bull-Pen Area.</u> Prisoners to be transported out for court, medical appointments, etc., will be held in this area while awaiting escort. They will be handcuffed and shackled in this area.</p>	<p>a. 400 sq.ft. This area should have a long counter and 150 lockers for storage of civilian clothes. Other items should be stored in cabinets.</p> <p>b. 100 sq.ft. A room with benches where inmates may change clothes.</p> <p>c. 400 sq.ft. This area contains commercial washers and dryers and pressers for a 300 population. The laundry should be close to the clothing room.</p> <p>d. 300 sq.ft. A secure room near the exit to hold departing and arriving prisoners.</p>	<p>1 Clothing Officer Inmate labor does the work, supervised by the Clothing Office</p> <p>1 Laundry Officer. Inmate labor does the work, supervised by the Laundry Officer</p>

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ACTIVITY TAKING PLACE	RECOMMENDED SPACE ALLOCATIONS AND SPECIAL REQUIREMENTS	PERSONNEL REQUIRED
<p>14. <u>BARBER SHOP.</u></p> <p>The barber shop will be manned by inmate barbers. There will be 2 chairs and a waiting area for 5. The barber shop will also have a capability to have one barber cut hair on the various modules when required.</p>	150 sq.ft. 2 barber chairs. Benches for waiting area. Located in secure area.	inmate barbers
<p>15. <u>MAIL ROOM.</u></p> <p>The mailroom will have a safe for stamps, money orders, etc., and locked metal cabinets for storage of mail pending distribution. The area should be in the administrative area.</p>	150 sq.ft., secure door in administrative area	part-time employee
<p>16. <u>LIBRARY.</u></p> <p>In a secure area with easy access from living spaces. There will be book carts to move books to living spaces for sign out.</p> <p>a. Librarian's Office. This office will be the headquarters for the new position, Correction's Librarian. This librarian will be responsible for all libraries in all correctional institutions. The librarian will coordinate all volunteers, order all books, coordinate with the Director of Education to support programs and supervise the paid inmate librarians in all institutions.</p>	200 sq.ft., lined with shelves and have standing metal shelves. There must be room to store several book carts. 48 sq.ft., desk, chair, filing cabinet	1 librarian to supervise and coordinate all institutional libraries
<p>17. <u>COMMISSARY.</u></p> <p>A facility to sell items to prisoners. It can be a strong morale factor and an adequate commissary, properly run and opened at proper times, helps reduce tensions. It should be located in a secure area for easy access and be a secure room itself to prevent theft.</p>	900 sq.ft., contains freezer, refrigerators, show cases. Shopping carts for inmate runners to pick up orders from living spaces on restriction, or closed for some reason.	1.5 employees of business office.

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ACTIVITY TAKING PLACE	RECOMMENDED SPACE ALLOCATIONS AND SPECIAL REQUIREMENTS	PERSONNEL REQUIRED
<p>18. <u>MAINTENANCE AREA.</u></p> <p>This service maintains the physical plant. The area must be designed to meet the following requirements:</p> <p>a. A secure area to prevent theft of tools and equipment. b. The maintenance group must be kept together. (This does not include vehicle maintenance). c. The various sections must be able to share tools and equipment. d. They should be able to move equipment inside and outside the secure area of the prison. e. The Director of Maintenance must be located with his group. f. There are 3 main shops: electrical, plumbing, and carpentry.</p> <p>The concept of maximum use of inmate labor, supervised by maintenance personnel both reduces costs and provides meaningful work for inmates. The maintenance area includes:</p> <p>a. Office, Director of Maintenance b. Toolroom. To accommodate all tools in all maintenance areas. The room must be secure. Tools will be checked in-and-out daily under supervision of the Maintenance Foreman. It needs to be close to the shops. c. Maintenance Supply Room. This room must be secure and will store all maintenance supplies, such as pipe, plumbing fixtures, lumber, wire, nails, parts, etc. d. Electrical shops. e. Plumbing shop. f. Carpentry shop.</p>	<p>a. 250 sq.ft., desk, 2 side chairs, 2 filing cabinets, blueprint cases and a storage closet b. 600 sq.ft., secure room. Appropriate shelves and racks for tools, wall hangers for indexing tools. c. 600 sq.ft., shelves to store supplies. d. 375 sq.ft., power tools and work benches, as required. e. 450 sq.ft., same as d above f. 600 sq.ft., same as d & e above</p>	<p>a. 1 Director of Maintenance b. 1 Maintenance Foreman d. 1 Electrical Maintenance Man. e. 1 Plumbing Maintenance Man. f. 1 Carpentry Maintenance Man</p>

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ACTIVITY TAKING PLACE	RECOMMENDED SPACE ALLOCATIONS AND SPECIAL REQUIREMENTS	PERSONNEL REQUIRED
<p>19. <u>VEHICLE MAINTENANCE AREA.</u></p> <p>The motor pool area should not be located in the main prison compound. It should be in a separate building outside the fenced area. It should include an office, tool, supply and storage areas.</p> <p>a. Motor Pool Building.</p> <ol style="list-style-type: none"> Office. For the motor pool supervisor. Tool and supply storage area. Gasoline dispensing area and pump. <p>b. Motor Pool Parking Area. For ten vehicles with controlled entrance and exit located apart from the visitors and employees lot.</p>	<p>a. This building should include a small 48 sq. ft. office, a tool and supply storage area and a gasoline dispensing area.</p> <p>b. The area should be hard-surfaced, have a controlled entrance (gate or chain) and have space for 10 vehicles.</p>	<p>1 motor pool supervisor Maintains dispatch records, parts control vehicle log books.</p>
<p>20. <u>ADMINISTRATIVE AREA.</u></p> <p>This area should be divided into manageable, functional units. These units include: fiscal management, personnel administration, fiscal planning operations, program planning and operation, community relations.</p> <p>a. Lobby Area. An attractive lobby area should present a good impression. A receptionist, possibly a telephone operator, greets visitors and directs them to appropriate offices. The lobby should have several attractive plants, pictures on the walls and lounge furniture for waiting. Toilet facilities should be available in the lobby area. There should be a clothes closet for visitors.</p> <p>b. Superintendent's Office. Consistent in decor to that of a chief administrator of an office of this kind. Two doors should lead into this office - one from the secretarial area and one from the adjacent conference room.</p> <p>c. Conference Room. To be used for staff conferences, briefings, disciplinary hearings, etc.</p>	<p>a. Waiting Room - 400 sq.ft. Lounge type furniture. Reception desk with telephone operator equipment. Male and female toilets with wash basin opening off the lobby.</p> <p>b. 250 sq.ft., executive desk and chair, several chairs for interviews. Should have private toilet with wash basin adjacent to office</p> <p>c. Conference room - 400 sq.ft., able to enter it from superintendent's office and from a hallway. Equipped with conference table, chairs for 15, bulletin board, chalk board,</p>	<p>a. 1 telephone operator/receptionist during normal duty hours.</p> <p>b. 1 Superintendent</p>

ACTIVITY TAKING PLACE	RECOMMENDED SPACE ALLOCATIONS AND SPECIAL REQUIREMENTS	PERSONNEL REQUIRED
<p>(Administrative Area, cont., item c)</p> <p>d. Superintendent's Secretary's Office</p> <p>e. Deputy Offices. Offices for various directors and deputies, should be 150 sq.ft. Each should be equipped with a storage closet and bookshelves for 50 volumes. Adjacent to each office is a room for a secretary where secretaries are indicated. These areas are to be 150 sq.ft. with desk, chair, 3 side chairs, filing cabinets. All should open from a common hallway.</p> <ol style="list-style-type: none"> Deputy-Operations and Training Secretary Deputy - Treatment Secretary Deputy for Administration Secretary Community Liaison - discussed previously <p>f. Business Department.</p> <ol style="list-style-type: none"> An office for the business manager with closet storage. This room is glass enclosed leading into a larger room - that accommodates a pool of 5 workers with desks, filing cabinets, etc. Adjacent to the office pool and accessible to all personnel located in the administrative area is the workroom. This room is equipped with counter cabinets, wall-hung cabinets, hot and cold water, and open shelving for supplies. Duplicating equipment and a bookkeeping machine will be operated in this area. General features for the administrative area are lavatories for men and women appropriately placed. There should be a small kitchen unit with stove, refrigerator, tables and chairs to use for lunch, breaks. 	<p>projection screen, book space for 100 volumes, and ample closet space.</p> <p>d. Located directly adjacent to the superintendent's office. Area should include at least 4 filing cabinets, desk, chair and chairs for 4 to wait.</p> <p>100</p> <ol style="list-style-type: none"> 150 sq.ft. 150 sq.ft. 150 sq.ft. 150 sq.ft. 150 sq.ft. 150 sq.ft. 150 sq.ft. <ol style="list-style-type: none"> 150 sq.ft. 400 sq.ft. office pool. workroom - 200 sq.ft. kitchen unit - 400 sq.ft. 	<p>1 secretary for superintendent.</p> <ol style="list-style-type: none"> 1 deputy - O/T 1 secretary 1 deputy 1 secretary 1 deputy 1 secretary NA <ol style="list-style-type: none"> 1 business mgr. 5 business office employees

ACTIVITY TAKING PLACE	RECOMMENDED SPACE ALLOCATIONS AND SPECIAL REQUIREMENTS	PERSONNEL REQUIRED
<p>NOTE: In the total administrative area (Administration, Business, Superintendent and Deputies), lavatories for men and women should be appropriately placed. Closets should be located for clothes for visitors and staff. The small kitchen unit will be used for coffee breaks, snacks for staff when they cannot go out, etc.</p> <p>21. <u>SECURITY DEPARTMENT</u></p> <p>The supervision and control of the population is the responsibility of the Security Department. It should be located between the administration and the secure area of the prison. The Security Officer has his office in this area, with his staff.</p> <p>a) Deputy for Security Office. Located within secure area.</p> <p>b) Internal Affairs Office. Located with secure area.</p> <p>c) Secretary's Office for Security Section. This is located between Deputy for Security and Internal Affairs Office. Connected to each by a door.</p> <p>d) Office for Shift Commanders. This is to be used by all shift commanders. Office to accommodate a desk and chair, 2 side chairs, file cabinet and storage closet. Bulletin board 4'x6' on wall for schedules, notices, etc. Connected to each guard post by a "push to talk" intercom system.</p>	<p>a) 150 sq.ft., located within the secure area - desk, chair, 2 chairs for interviews Storage closet. Small conference table and 3 chairs.</p> <p>b) 150 sq.ft. - desk, chair, 2 side chairs, file cabinets and storage closet.</p> <p>c) Typing desk, chairs, 3 side chairs, cabinets. Secretary will service both offices. 48</p> <p>d) 150 sq.ft.</p>	<p>a) 1 Deputy for Security</p> <p>b) 1 Internal Affairs Officer</p> <p>c) 1 Secretary</p> <p>d) 5 Shift Commanders. (Lieutenant)</p>

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ACTIVITY TAKING PLACE	RECOMMENDED SPACE ALLOCATIONS AND SPECIAL REQUIREMENTS	PERSONNEL REQUIRED
<p>e. Locker Room. (outside the secure area, but adjoining it.) Officers reporting for duty at the beginning of each shift will congregate in the locker room. The entrance to the locker room should be separate from that which enters the main administrative section. Officers can report in civilian clothes, change clothes at their personal locker in the locker room. Leading off from the locker room is a lavatory and shower room for officers leaving the prison after their shift.</p> <p>f. Armory. This is for storage of firearms, ammo, and other security items such as chemical agent containers.</p> <p>g. Clothing Room for Officers. Officer uniforms will be stored in this area and issued by supply personnel. Should be adjacent to the locker room.</p> <p>h. Storage Closet. This is for storage of security equipment, other than firearms and chemical agent equipment.</p> <p>i. Assembly Room. This area should be within the secure area of the prison. It should be entered through two security doors that only open one at a time. Once inside the assembly room, the officer is searched and subject to dismissal if in possession of any unauthorized items. Officers will form for inspection prior to going on duty and receive any special orders. Any officer entering or leaving the secure area of the prison must go through this "air lock" process and be inspected by the Shift Commander or his representative.</p> <p>j. Officers Dining Room. Located off kitchen area, separate from Inmate Dining Room. Small area capable of serving 10 officers at one time. Officers will be fed in shifts to avoid premium pay. Good management will allow certain officers to be relieved to eat at the Officers Dining Room.</p>	<p>a. Locker Room. Rows of lockers, back to back, each 9"x12" and 6' high. A hat box area, 9"x12" is located above each unit. Locker rows are 6' apart with a bench in center row. Leading off the locker room is a lavatory and shower area with 4 urinals, 2 closets, 3 lavatories and 3 shower heads. 300</p> <p>f. Vault area for secure storage (100 sq.ft.) Room equipped with metal cabinets capable of being locked, racks for weapons, etc.</p> <p>g. 400 sq.ft. - equipped with clothing racks, storage bins, file cabinet, desk, chairs, and counter to serve officers.</p> <p>h. Secure storage area 80 sq.ft. for gas masks, leg irons, handcuffs, body armor, riot helmets, billy sticks, etc.</p> <p>i. Assembly room - 900 sq.ft. benches for 30 men Blackboard, 4'x6", projection screen, storage cabinets.</p> <p>j. Room of size to accommodate 3, 4-man tables and chairs. 150</p>	

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ACTIVITY TAKING PLACE	RECOMMENDED SPACE ALLOCATIONS AND SPECIAL REQUIREMENTS	PERSONNEL REQUIRED
<p>k. Records Department. The records department will serve a dual function. It will maintain records for the residents of the Wilmington prison itself, and maintain duplicate records of all adult institutions on an on-going basis. Obviously, the present inefficient hand system will not suffice. There still have to be regular files, of course, but only to give us the capability to microfilm all items. With a prison population of approximately 1000 and the turnover of up to 600 a year, it is an absolute requirement that we go to microfilming and a mini-computer recall capability. There are many systems on the market and it could probably be done for less than \$150,000. If we are going to have a capability to really classify our inmates and make decisions based upon actual performance, not subjective evaluations of guards, we have to install such a capability. It could easily be compatible with CLUES. Inmates should have some ability to know what is in their files and the records office must have the ability to answer questions and counsel inmates on them. Although I do not know of a records management plan in corrections, the new prison will solve the present crisis in records.</p> <p>The responsibilities of the records system extend into all major functions of the prison. The operation involves the residents themselves, the administration, treatment services, internal discipline and all other agencies of the criminal justice system.</p> <p>A centralized location among other functions of the prison where easy contact can be maintained with the prison administration, treatment, security, residents, and attorneys, is essential. To enable the records office to deal with residents there must be a capability to counsel residents in a secure environment close to the records area.</p> <p>The records room itself should accommodate 6 desks and chairs, 80 4 drawer file cabinets, and the microfilming and computer recall and print capability. There must be a smaller room for inactive storage (5 years after discharge.) Access to records will be limited to official use only under federal guidelines for privacy of information. Under</p>	<p>k. A large room - 1200 sq.ft. which provides space for 6 desks and chairs, 80 metal file cabinets, microfilm equipment to microfilm, a computer recall system with a print capability.</p> <p>1. a 48 sq.ft. office for Records Officer (active records). There must also be a 500 sq.ft. room for inactive files (up to 5 years after discharge). After 5 years, the file is retired to a central records storage area outside the prison, but within the correction system.</p>	<p>k. 6 Records Clerks.</p> <p>1 Records Management Officer</p>

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ACTIVITY TAKING PLACE	RECOMMENDED SPACE ALLOCATIONS AND SPECIAL REQUIREMENTS	PERSONNEL REQUIRED
<p>this concept, DCC, SCI, WCI and any other existing adult facilities would only maintain records for their population. They would send duplicate copies of all record transactions to the new prison where central records are kept. Records would essentially be in three areas (1) legal, (2) internal discipline, and (3) other (treatment notes, program participation, educational progress, etc.) The administrator of each facility would thus have the information for internal decisions on housing, program participation, inhouse inmate job assignments, etc., and would make recommendations to the central classification board at the Wilmington prison on furloughs, parole recommendations, transfers within the system, work release, educational release, etc. The central classification board at the new prison would handle these matters. The records department in the new facility must support this concept.</p> <p>22. <u>LIVING SPACES.</u></p> <p>The living spaces in the new facility are to be modular and limited to 24 inmates each. The cells are to be 70 sq.ft. each and the use of traditional jail hardware will be avoided. Each cell will have an exterior orientation with an outside window. There will be no still liners or bars. Each module will have its own dayroom space of at least 35 sq.ft. for each of the 24 cells. This does not include circulation space. The multi-purpose dayroom will include a lounge area, and TV area. There will be a capability for feeding the residents on the module during emergencies or if a tactical situation requires it. The cells should have metal-clad doors with a viewing panel. All cell doors may open outward and will have appropriate restraining devices to prevent the prisoner from slamming them open with great force to injure officers or inmates. Each dayroom should include a large sink with hot and cold running water and a storage closet for cleaning materials. Each module will be secure and will be constructed of the alternative construction materials as outlined in pages 19-21 of the LEAA Booklet, "The High Cost of Building Unconstitutional Jails."</p>	<p>11, 24-man modules with dayroom.</p> <p>1, 12-man maximum security module</p> <p>1 special outdoor exercise yard for maximum security.</p> <p>Outside recreation area for 276 men, surrounded by double fence, and lighted. The recreation area should include a hard-surfaced area large enough for 3 multi-purpose basketball, volley ball courts, a combination grassy area for softball and a soccer field.</p>	

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ACTIVITY TAKING PLACE	RECOMMENDED SPACE ALLOCATIONS AND SPECIAL REQUIREMENTS	PERSONNEL REQUIRED
<p>Each module will be supervised from a guard room with a large lexon viewing panel enabling a single guard to observe both modules. All cell doors must be capable of being centrally locked or unlocked from the guard room. Limiting modules to 24 would give a capability of 264 in 11 modules. This would give prison classification a wide range of choices in determining appropriate housing. There will be one module of 12 for maximum security prisoners. Because of the new maximum security building at DCC, 12 maximum security bays are deemed sufficient. These cells will be exactly the same as the other cells but will have a separate guard room and meals will be served in the day room. To prevent movement within the prison by these maximum security inmates, there will be a Nautilus-type exercise device in the dayroom. This maximum security module should have its own outside exercise area separate from the main prison exercise yard. The exercise yard itself should be divided into 2 areas to prevent inmates from attacking each other.</p> <p>The cells are all furnished alike with a metal cot fastened to the wall and floor, a vandal-proof metal combination wash basin and toilet. A small table fastened to the wall and floor, and a chair on a hinged bar fastened to the table. There should be a double electrical plug in each cell. Each cell should have an individual circuit breaker to prevent the inmate from shorting out the entire module. Each cell should be wired for a 4 station radio system requiring a plug-in cord speaker. This will keep the blocks quiet and the inmate can choose his own radio station. A metal locker, capable of being locked, completes the cell furniture. The two electrical plugs are for a small desk high-intensity lamp and for a TV, if the inmate chooses. Personal TV's with ear plug or headset earphones only, will be permitted.</p> <p>Each module will have a "collect call only" public telephone in the dayroom. This is necessary because the bulk of the population is detentioners.</p> <p>It is difficult to staff a facility until the drawings are complete, but it is estimated that it will take 95 officers to staff the facility. A detailed staffing breakdown will be made when the preliminary drawings by an architect is completed.</p>		<p>95 Correctional Officers</p>

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ACTIVITY TAKING PLACE	RECOMMENDED SPACE ALLOCATIONS AND SPECIAL REQUIREMENTS	PERSONNEL REQUIRED
<p>23. <u>ACCESS ROAD, PARKING LOTS, LANDSCAPING.</u></p> <p><u>SUMMARY:</u></p> <p>Areas of the prison that are not secure will be of regular building construction materials. Secure areas will be of the alternative materials as outlined on pages 19-21 of the LEAA publication "<u>The High Cost of Building Unconstitutional Jails.</u>" These pages are attached as enclosures.</p> <p>The LEAA publications "<u>Design Criteria for Short-Term Holding</u>" and "<u>Transfer 6, St. Louis County Intake Service Center</u>", have also been attached.</p> <p>All these publications offer guidance which we will follow. It is our intention to follow the guidance except for "<u>Transfer 6</u>". The design of the facility has merit, but for the carpeting and other luxury living features. It is our intention to include the functions noted in our new facility. The architect is therefore directed to use the standards as outlined in these and other LEAA publications and to use the services of the National Clearinghouse for Criminal Justice Planning and Architecture in initial planning and throughout the project.</p> <p>The facility will have a fire alarm system that includes alarm boxes in critical areas, a central indicator, automatic notification of the Fire Department, appropriate heat and smoke sensors in remote areas of the prison.</p>	<p>As required by site, building configuration, etc.</p>	

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ST. LOUIS COUNTY INTAKE SERVICE CENTER

STRUCTURING A NEW APPROACH TO INTAKE

During the early 1970's, the St. Louis County Jail, like many other county jails, suffered from sharp increases in arrests and from inadequate booking facilities. Intake processing was handled in an extremely small area of the County Jail on the fourth floor of the Government Center. Numerous problems resulted. Adequate segregation was impossible as traffic violators and drunks, along with persons accused of serious crimes, were all herded up a single elevator to a crowded and inflexible booking area. No matter what the charge or the circumstances of their arrest, all persons experienced the stark and depressing surroundings of an antiquated county jail. Inadequate facilities and the corresponding lack of intake services resulted in dangerous and demoralizing conditions.

To overcome these difficulties, the County Jail administration proposed major changes. In 1973 a specially designated intake staff began to handle all booking for both county and city detainees. At the same time, there was a concerted effort to improve intake services, so that maximum use of diversion and alternative to incarceration programs could be attained.

It was soon obvious that improvements to the fourth floor booking area would have to be made if the intake services were to be overhauled. However, space limitations on the fourth floor of the Government Center made it impossible to renovate any portion of the existing jail to improve intake services. In addition, it was felt that an easily accessible location should be secured in order to realize the full potential of advanced practices in intake services.

An underused portion on the ground level of the Government Center was studied and ultimately selected as the most suitable location for the St. Louis County Intake Service Center (ISC). The new ground level location would make it possible to physically separate intake processing from the jail setting. Equally important, a majority of the persons diverted from incarceration would not become a part of the jail's day-to-day operations, helping to relieve the pressure on the overcrowded jail. However, for those requiring incarceration, the County Jail was immediately accessible.

INTAKE SERVICES

Opened in June, 1975, the St. Louis County ISC has functioned autonomously as a booking, classification, and release center. Located on the ground level of the Government Center in Clayton, Missouri, the ISC is an integral part of St. Louis County's governmental services, with immediate access to the Courts, County Police, County Jail, and the Prosecuting Attorney. In that Clayton is the county seat, other vital services such as the County Hospital, and mental health, family and employment services are located only a few blocks away.

The St. Louis ISC is distinguished by its emphasis on providing timely pretrial services. Early intervention in the criminal justice system works positively in two ways. The individual is helped to deal with the system in the least disturbing manner, with the attainment of pretrial release encouraged. In turn, the system benefits by avoiding costly or unnecessary incarceration. In 1975, for instance, of the approximately 17,500 persons processed through the ISC, more than 5,334 were released by the Pretrial Release (Recognizance) Program. Monthly, the relatively small staff of 32 is responsible for all booking, processing, and release of 1400 to 1600 offenders.

The staff is comprised of administration, ISC officers and supervisors, social workers, and clerical staff. The ISC officers and supervisors are trained to book, fingerprint, photograph and, if necessary, administer the Breathalyzer test to those arrested. Twenty-four hour staffing is provided, with a supervisor on each of three shifts. Technical training enables the staff to use the Regional Justice Information System (REJIS) for booking. This computer data terminal runs a check to see if the individual is wanted in connection with other criminal charges. Information can be fed into REJIS by both police and corrections officials, saving considerable time and paperwork. The ISC officers are also responsible for security classification of those offenders who must be remanded to the County Jail.

Social workers at the ISC perform recognizance investigations, presentence investigations, bond reduction studies, and crisis intervention services. A major responsibility of the social workers is to refer offenders to public agencies such as

the State Hospital, Children and Family Services, and the State Department of Welfare. Referrals are made by the ISC social workers after a problem has been identified and the courts sanction the diversion from jail.

Opportunities to establish eligibility for the Pretrial Release Program are maximized. Unlike the prior policy of one phone call for each offender, the ISC policy permits as many calls as are reasonably necessary. In addition, the social workers concentrate on bringing eligible offenders to the attention of the courts for them to be considered for pretrial release programs.

Another important function of all ISC staff is to provide the offenders with information about their legal status and about their further processing in the criminal justice system. The time and place of court hearings are carefully explained, and help is given to relatives coming to post bail. In general, the ISC staff assume many roles in order to best provide the range of technical and social services needed by an offender upon intake.

SECURITY WITHOUT BARS

Carpeted and painted in three shades of brown, the ISC is furnished with comfortable seating and decorated with large potted plants. Background music is played from a radio. Four glass-front detention rooms are available if an offender's behavior dictates the need for separation from the open seating immediately adjacent to the booking clerk, but the detention rooms are not often required. In the few cases when an offender is excessively unruly or needs special restraint, ISC officers immediately transfer him to the fourth floor County Jail holding areas, where conventional maximum security holding cells are available.

While firearms, bars, and other expected signs of security are missing, the ISC provides adequate security. Closed circuit television cameras watch the drive and entry, and all locks are operated from behind the booking desk. A proper emphasis on adequate staffing and the careful monitoring of all activity within the center provide a secure setting without requiring steel bars.

RESPONSES TO THE ISC

The St. Louis County ISC is a striking innovation, and it is not surprising that some of its programs and physical features are controversial. Some critics have called the Center "the Holder Hotel lobby," and "Lockup Lounge," and have predicted that the carpeting and attractive furnishings of the Center will be destroyed. Probably the most pointed objections have been voiced by law enforcement personnel, who sometimes must wrestle with abusive detainees only to leave them in the "plush" and accommodating atmosphere of the ISC. However, though some police are sometimes critical of the ISC, they have strongly supported the move to assign all intake responsibilities to a neutral agency. As for the ISC staff, themselves, the response to the new Center has been highly favorable. The social workers have found that the ready accessibility of the detainees makes them much more effective in their pretrial release screening and their important classification responsibilities.

The St. Louis County ISC was cited in 1976 by the National Association of Counties for a special Achievement Award as a newly developed program designed to enhance and expand St. Louis County services to citizens, and as an example of an innovative program other counties can follow. The underlying concept of the ISC is to treat pretrial detainees with consideration and respect. As in every county jail, a large majority of the persons booked in the ISC are not hardened criminals. The ISC staff has noted a marked improvement in the detainees' behavior in the new Center. As summarized by an administrator of the St. Louis County Department of Welfare-Corrections, "There's no jail trauma here, no steel doors slamming behind prisoners. The majority of persons arrested become outwardly calm and relaxed while awaiting processing. The colorful setting, chairs, ashtrays, carpeting, and the absence of bars obviously assist in alleviating the fears of those persons arrested."

The St. Louis County Intake Service Center is National Clearinghouse project no. 942. Technical assistance was provided by the National Clearinghouse for Criminal Justice Planning and Architecture through the auspices of the Missouri Council on Criminal Justice, and the Law Enforcement Assistance Administration Regional Office in Kansas City, Kansas.

DESIGN CRITERIA FOR SHORT-TERM HOLDING

NATIONAL CLEARINGHOUSE FOR CRIMINAL JUSTICE PLANNING AND ARCHITECTURE

These design criteria have been developed to provide basic information to all components of the criminal justice system which have short-term holding needs. All three holding categories (see chart) should be included: in the intake area of a sheriff's facility; for holding prisoners in a courthouse prior to arraignment, preliminary hearing, or trial; and for all police holding needs. These criteria resulted from a specific need for information on police holding environments, but they are equally applicable to the courts and corrections components.

In the field of criminal justice, it is generally recognized that police agencies should not duplicate correctional programs which are normally administered by those appointed by the courts to mete out justice or to help in rehabilitation: the local sheriff and state or federal departments of corrections. Most police jurisdictions do not have the staff, money, space, medical facilities, or security to detain persons adequately for other than short-term periods.

The police, however, do need space to hold arrestees prior to their being released or transported to the county jail. In many jurisdictions, a four-hour holding will suffice, since field experience indicates that the vast majority of those arrested are released within four hours. Those who may be detained for more than four hours, or who are belligerent and uncooperative, should be transported immediately to the nearest high-security detention facility. However, some police agencies, because of their remote location or the overcrowded conditions in the local county jail, are obliged to hold all types of prisoners for extended periods. Whereas most holding requirements are for 24 hours or less, police holding should normally never exceed 72 hours—the equivalent of a long weekend.

These design criteria are based on the fact that no assumption of guilt should be made of an arrestee. An appropriate holding environment must be provided to protect constitutional rights, to maintain dignity, and to promote respect for law and order. In addition, because all arrestees are potentially dangerous, good design will help insure the safety of law enforcement officers. Commitment to a proper holding environment requires not only adherence to these design criteria, but also reasonable and continued maintenance of the facility.

Based on the type of arrestee and the length of time to be spent in holding, criteria for different types of short-term holding are presented. For Alternative A (0-4 hours, multiple occupancy), separation of offenders by sex and age is required. These rooms are dual-purpose and can be used not only for secure holding of arrestees, but also as interview rooms by the investigative and uniform components of the police department.

For persons being held beyond 24 hours (Alternatives B and C), adjacent multipurpose rooms should be provided. These rooms serve as dayrooms and offer program space. In these rooms accessory services (see chart) can be provided. Access to multipurpose rooms by predictably destructive persons (Alternative C) is at the discretion of the holding agency.

All police agencies will not require all holding types, but a variety of holding environments within each category will accommodate the expected range of arrestees. More economical construction is possible in a range of short-term holding is provided, as opposed to the more traditional maximum-security cells which usually require costly, all-steel construction.

PREPARED REMARKS OF MICHAEL RABASCA

Senator BIDEN—Senator MATHIAS:

I have been asked by Governor duPont to discuss briefly the prediction of prison populations in general and the application of prediction techniques to Delaware specifically.

In my opinion, one of the most important developments of the Law Enforcement Assistance Administration attempt to influence criminal justice planning in the United States, has been to persuade State administrators, legislators and planners to adopt a "systems" approach to the management and administration of their criminal justice components. Since corrections officials cannot control offender intake into the corrections pipeline, it would appear logical that we need a better system of determining the future population, which analyzes the events farther back upstream in the criminal justice system, than we had in the past.

Traditionally, prison projections have relied on limited data on the existing incarcerated population. The effects of total population changes, socio-economic conditions and public attitudes about crime and punishment are assumed to be reflected in the in and out flow of prisoners. This simple technique of straight line projection is modified by the gut feel of experienced corrections experts and works quite well during periods of great stability. However, prison populations have increased substantially nationwide. While the underlying method in the various techniques of predicting prison population in use today relies heavily on the extrapolation of past trends, the techniques serve an extremely important additional need—that of recognizing the interrelationships of all the variables which ultimately result in the appearance of a sentenced prisoner at the gates of the prison. To rely totally on traditional methods and ignore these variables indicates that we are ignorant of the very factors which result in incarceration.

Mr. Andrew Rutherford, Project Director of an LEAA study on prison populations recently stated, "It is important to stress that there is no technology that will provide precise predictions of prison populations. Even over the short run, the task is both complex and pioneering."

The method we have used in Delaware was pioneered by Mr. Stephen Stollmack, in an article in the journal of research in Crime and Delinquency. We were directed to Mr. Stollmack's work by Michael Lettre, Director of the Maryland Statistical Analysis Center, who used the Stollmack technique in his projection of Maryland prison populations.

This technique sets forth a model for predicting the number of inmates as a function of arrest, indictment, conviction and sentencing. While the principal purpose is to predict or forecast future populations, it serves an additional and valuable function. Because it shreds out the variables, it allows us to use it as a "policy sensitive model". Thus, we can simulate the probable impact of such things as changes in average length of sentences, changes in judicial attitudes toward incarceration, mandatory incarceration, decriminalization, probation and parole practices, and other facts over which the criminal justice system or the government can exercise control. What is required is a sound understanding of the past, what events are to be used in determining trends, the strength of their relationships, how they are identified and how far into the future the relationships are to remain constant or will adhere to predictable change.

In the absence of knowing what will happen in the future, we are forced to assume that today's relationships will remain constant. We have some confidence in the area of total population, however, based on birth rates, and demographers have projected anticipated populations several decades hence. Since historically the young male adult accounts for the vast majority of our crime and thus our prison population, this uncontrolled variable is used in most projections.

The effects of unemployment have been explored by the Congressional Budget Office in its January 1977 Budget Issue Paper: Federal Prison Construction: Alternative Approaches, and a Pennsylvania study linked high unemployment to a failure of its prison population to level off in 1975. The conclusion is that a major link exists—whether it is a better link than the young male population remains to be seen. We intend to look at this.

The key to success in a system of prediction which starts with arrest and ends with incarceration is information. As indicated earlier—we now recognize that we have an interdependent criminal justice system. We must be able to collect data at every point in the system. Where in the past, all we needed to know is how many prisoners we had, we now must know what the probability of indictment given arrest is; the probability of conviction given trial; the probability of incarceration given conviction, to name a few decision points, and in addition, if we can do it by age, sex, race, and crime type we can (1) plan the allocation of our resources and (2) simulate the downstream impact of anticipated, proposed or simply contemplated changes. Obviously, broadening the scope of the projection model to include all decision points increases the data requirements. The offender-based transaction system (OBTS), part of the comprehensive data system (CDS), being developed as the Delaware Justice Information System (DELJIS) with LEAA funds stands today as our only means to accomplish this. The relevancy, accuracy, and timeliness of the information is vital. In Delaware, we have been able to achieve our "first generation" predictions given a limited amount of this data. The short range success of our projections, and I emphasize short range, attests, I believe, to the validity of the assumptions we made regarding the

relationships of the variables in Delaware. It is time, however, to test the forecasting procedure again. To do this, we have obtained a computer program developed by the Council of State Government entitled "Simulation of Populations from Arrest to Corrections Exit" (SPACE) based on Mr. Stollmack's work.

This is a "second generation" attempt at forecasting. It is a simplified computer simulation of very complex process. It will provide us with incarceration, probation and parole data for both short range operational and longer range (possibly to a year and a half) planning use. As our Comprehensive Data System gears up, we can add to space the myriad of decision points and probability factors discussed earlier.

In summary, there is no lack of guidance in the form of theory, ideas, or hypotheses on how to project the population. In Delaware, we are committed to the philosophy that the prison population prediction process is inescapably linked to the law enforcement and judicial process. What we need to achieve success is reliable, valid information on what happens within our criminal justice system and the ability to detect or measure what happens outside the system which may ultimately effect it. Those involved in this prediction process with whom I have talked and those whose works I have read, recognize the complexity of this process. While there is not 100 percent agreement on what the variables are in the determination of future population, there is a commitment to providing to administrators, legislators and planners the best information within the state of the art.

Thank you for your attention.

DARC 1978 GOALS

(As endorsed by DARC Supervisory Board November 18, 1976)

TARGET GOALS

1. Improve the capability of the criminal justice system to plan for and evaluate programs.
2. Provide crime control operations and equipment aimed at reducing the incidence of robbery and burglary, and harden these targets.
3. Minimize the time elapsing during each phase of the judicial process from arrest to final disposition.
4. Support and coordinate programs which prevent juvenile delinquency and divert youth from further processing in the juvenile justice system.
5. Provide a coordinated multi-channel police communications system.
6. Improve the response of the criminal justice system to victims and witnesses.
7. Enhance diagnosis, screening, security and treatment.

PRIMARY GOALS

8. Improve the statewide network of state and local criminal justice agency computer systems.
9. Increase public awareness and understanding of the criminal justice system.
10. Provide a coordinated police/community effort that will help alleviate problems resulting from the desegregation order.
11. Provide an in-state advanced integrated training capacity for criminal justice personnel.

GOALS FOR FISCAL YEAR 1979

(Adopted by Supervisory Board Dec. 8, 1977)

The Governor's Commission on Criminal Justice considered, over a two-month period, possible goals for FY '79. A system of prioritization resulted in the following target (first priority) and primary (second priority) goals. Goals within each group are equal in priority. These goals provide the direction for the planning process and ultimately result in specific programs and objectives for FY '79.

TARGET GOALS

1. Enhance diagnosis, classification and treatment of inmates in the correctional setting, including the use of community-based alternatives.
2. Increase public awareness of and involvement with the Criminal Justice System to prevent crime.

3. Improve the management efficiency of criminal justice agencies by undertaking such efforts as (a) establishing a coordinated information system capable of supplying statewide operationally useful data, and, (b) providing an in-state, advanced, integrated capacity for criminal justice training.

4. Coordinate and improve the response of the Criminal Justice System to victims and witnesses.

5. Improve the capacity of the Criminal Justice System, to plan, monitor, and evaluate programs, including the development of plans within agencies and components.

PRIMARY GOALS

6. Provide the Criminal Justice System with the means where-by the incidence of robbery and burglary or other specific offenses can be reduced, targets hardened and the quality of arrests and adjudication increased.

7. Minimize the time elapsing during each phase of the judicial process from arrest to final disposition.

8. Support and coordinate programs which divert youths from further processing in the Juvenile Justice System using established criteria and provide alternatives to detention and incarceration.

9. Provide a coordinated multi-channel communications system.

10. Create and support multi-jurisdictional law enforcement activities.

