M I N U T E S

JOINT COMMITTEE ON SPECIAL CLAIMS AGAINST THE STATE

September 5-6, 2007
Room 514-S, Statehouse

Members Present

Representative Steve Huebert, Chairperson
Senator Phillip B. Journey, Vice Chairperson
Senator Terry Bruce
Senator Mark Gilstrap
Senator Dennis Pyle
Senator Mark Taddiken
Representative Virginia Beamer
Representative Pat Colloton
Representative Bob Grant
Representative Broderick Henderson
Representative Rob Olson
Representative Dale Swenson

Staff Present

Amy Deckard, Kansas Legislative Research Department
Cindy Lash, Kansas Legislative Research Department
Mike Corrigan, Revisor of Statutes Office

Others Present

Shelly Starr, Special Assistant Attorney General, Kansas Department of Corrections
Jean Boline, Kansas State Board of Technical Professions
Representative Ron Worley
Roberta Sue McKenna, Kansas Department of Social and Rehabilitation Services
Mark A. and Pam Jordan
Lana Walsh, Office of Judicial Administration
Steve Phillips, Office of the Kansas Attorney General
M.J. Willoughby, Office of Judicial Administration
Tom Drees, Ellis County Attorney

September 5, 2007
Morning Session

The meeting of the Joint Committee on Special Claims Against the State was called to order at 10:10 a.m. by Representative Steve Huebert, Chairperson. He then called the Committee's attention to the minutes of the July meeting. Representative Swenson moved to approve the minutes of the minutes of the July 10-11, 2007, meeting of the Joint Committee on Special Claims Against the State, seconded by Senator Pyle. The motion carried.

Representative Huebert opened the telephone hearings on claims filed by inmates at El Dorado Correctional Facility (EDCF), Claims Nos. 5927, 5929, 5934, and 5937.

Ryan Pinkston, EDCF, discussed his Claim No. 5927 against EDCF in the amount of $20.73 for the loss of his headphones. He explained that he taped two wires on the headphones simply to hold them together; however, on January 4, 2007, shakedown officers considered the headphones to be altered and confiscated them. Instead of completing a shakedown report form showing that the headphones were removed from his cell, the officers placed the headphones in the property removal box located in the office of his unit team. The headphones disappeared later, and the unit team could not locate them; therefore, he filed a facility property loss claim. The claim was denied because there was no documentation to prove that staff took possession of the headphones. Mr. Pinkston further explained that he refused to sign a property removal sheet for the headphones the day after they were taken because he did not plan to send them out due to the fact that they were in good working condition and actually had not been altered.

Shelly Starr, legal counsel for the Kansas Department of Corrections (KDOC), informed the Committee that officers are always required to give inmates a property confiscation sheet listing items taken from their cell for any reason. She acknowledged that an inmate property receipt form showed that Mr. Pinkston received the headphones on April 20, 2005. She confirmed that there was no documentation showing that the facility ever took possession of the headphones. Having found no evidence to substantiate that the facility ever had possession of the headphones, Ms. Starr recommended that the claim be denied.

Following discussion, the Joint Committee recommended that Claim No. 5927 be allowed in the amount of $17.00. (See section captioned "Committee Action and Recommendation".)

Lester Thomas, EDCF, explained his Claim No. 5929 against Larned Correctional Mental Health Facility in the amount of $5,000.00 for personal injury. He claimed that an unrestrained inmate attacked him as he stepped out of a group therapy conference room to go to the restroom. He explained that he was restrained as he attempted to defend himself and that his back was injured when he slipped on some water on the floor near the conference room. He complained that there was no security staff present as required when restrained and unrestrained inmates are in the same area. He emphasized that he was where he was supposed to be; therefore, he should have been properly monitored by security staff. He argued that, if the area was properly secured, he would not have been forced to defend himself.

Shelly Starr, KDOC, informed the Committee that the narrative report on the incident prepared by Tonia Taylor, a social worker who was the group therapy facilitator, indicated that, as she was sitting in the conference room with Mr. Thomas waiting for other inmates to arrive, Mr. Thomas got up, ran out of the room, and attacked an inmate. The two inmates scuffled, and both were on the floor when staff subdued them. Mr. Thomas' hands were out of his therapeutic restraints at the time he was subdued. In addition, Ms. Starr reported that Mr. Thomas' medical records showed that the clinic nurse who treated him noted that he had a red area above his upper eye and around his nose, and he had a small scratch on his forearm. The nurse also noted that the scratch was cleaned and treated and that he denied further pain or injury. Ms. Starr pointed out that there was no mention of water on the floor or injury to Mr. Thomas' back in the narrative report or in Mr. Thomas' medical records. In light of her investigation, she recommended that the claim be denied.

Following discussion, the Joint Committee recommended that Claim No. 5929 be denied. (See section captioned "Committee Action and Recommendation".)

Kenneth Toynbee, EDCF, discussed his Claim No. 5934 against EDCF in the amount of $350.00 for the loss of a pair of prescription eyeglasses with wire frames. Mr. Toynbee began by complaining that he was not given a chance to respond to the evidence presented by Shelly Starr, KDOC, at the hearing on his Claim No. 5888 at the July meeting. He complained further that he was not given a reason for the denial of that claim, and there was no appeal process available to him regarding the Committee's decision to deny the claim. He went on to say that Claim No. 5934 involved the loss of two pairs of eyeglasses which an officer confiscated as dangerous contraband after finding them wrapped in plastic in his cell locker. Mr. Toynbee explained that an earpiece screw was missing from one pair, but the other pair was brand new. He called attention to a copy of the facility property removal form regarding the destruction of one pair of eyeglasses. He noted that the form was incomplete as it had not been signed and dated by staff at the bottom of the form. In conclusion, Mr. Toynbee commented, "It's just incredible. I learned a lot on my last case so I have little faith even though I have solid evidence as I had in my last case. Without the staff signature, and this whole form is the only form I got, it's bogus. It's incomplete. I don't know what else to say. I would like the money for my glasses. They were a very expensive pair of glasses. I only had one usable pair, and that was them. The issue about the write up; I got that resolved. But the issue of my best pair of glasses being taken and destroyed, which I never authorized; it was ludicrous to think that I would have a pair of $350.00 glasses destroyed." In response to questions from a committee member, Mr. Toynbee confirmed that the facility replaced the destroyed eyeglasses with state-issued eyeglasses with plastic frames. He complained that the quality of the state-issued eyeglasses was low.

Noting that Mr. Toynbee did not provide any documentation regarding the purchase or possession of the eyeglasses, Shelly Starr, KDOC, recommended that the claim be denied. She explained that, pursuant to IMPP 12-120, inmates are allowed to have only one pair of eyeglasses, with replacement limited to the value of eyeglasses issued by the Health Authority. She provided a copy of the intake property form completed at EDCF which showed that Mr. Toynbee had one pair of eyeglasses valued at $50.00. In her written response to the claim, she noted that eyeglasses with

wire frames are extremely dangerous when taken apart or broken, and Mr. Toynbee did not indicate why the eyeglasses with the missing screw had not been repaired.

Following discussion, the Joint Committee recommended that Claim No. 5934 be denied. (See section captioned "Committee Action and Recommendation".)

Carlois Major, EDCF, summarized his Claim No. 5937 against Lansing Correctional Facility in the amount of $389.73 for the loss of his Nike shoes, color television, AM/FM cassette player, headphones, 12 cassette tapes, surge protector, extension cord, and gym shorts. He noted that he had the television for only 13 months. He explained that the property was taken when his inmate level was reduced to Level 1. He claimed that, due to the negligence of Lansing employees, his property was donated or destroyed without his knowledge or consent between February and August 2006 when an appeal was pending. He emphasized that he checked on the status of his property several times, and each time, Lansing officers told him that his property was in storage. However, the day he was transferred to EDCF, he was told that his property was gone.

Shelly Starr, KDOC, pointed out that Mr. Major's shoes and shorts were listed on the property inventory sheet he signed as accurate when he was transferred to EDCF, and there was no note on the inventory sheet indicating that the shoes and shorts were not returned to him. She went on to explain that electronics are not stored during an appeal process but must be sent out or donated by the inmate. She further explained that this was Mr. Major's third return to level one; therefore, in accordance with an IMPP, his electronics had to be sent out. As to Mr. Major's claim that he never received a notice concerning his electronics, she argued that he was charged with knowing the facility rules and should have known that his electronics would not be stored. With this, she recommended that the claim be denied.

Following discussion, the Joint Committee recommended that Claim No. 5937 be denied. (See section captioned "Committee Action and Recommendation".)

Representative Huebert opened the telephone hearing on a claim filed by an inmate at Ellsworth Correctional Facility (ECF), Claim No. 5918 by Michael Perdue against Winfield Correctional Facility in the amount of $32.01 for property loss. Mr. Purdue explained that he was not allowed to lock up his locker before he was taken from his dormitory setting at Winfield for a strip search. Contraband (tobacco) was found when he was searched, and he was immediately taken to the segregation unit. When his property was brought to him later that day, he discovered that several consumable items he purchased at the canteen, a pair of prescription eyeglasses, and a pair of arch supports issued by the facility clinic were missing.

Shelly Starr, KDOC, explained that, because Mr. Purdue was suspected of having contraband, staff did not allow him to secure his property because that would have given him an opportunity to dispose of the contraband before being strip searched. Noting that inmates own property at their own risk, Ms. Starr recommended that the claim be denied.

Following discussion, the Joint Committee recommended that Claim No. 5918 be denied.

(See section captioned "Committee Action and Recommendation".)

Representative Huebert opened the telephone hearing on a claim by an inmate at Hutchinson Correctional Facility (HCF), Claim No. 5906 by Larry D. Braun against Lansing Correctional Facility in the amount of $39.41 for property loss. Mr. Braun claimed that officers did not list all the property in his cell on a property inventory sheet when they packed out his property after he was placed in segregation for disobeying orders on October 31, 2006. He explained that he was not given an inventory sheet to sign on October 31 because writing materials are not provided for inmates in the segregation unit. Consequently, he did not know that several consumable items, including several postage stamps, were missing until his property was given to him on November 6. He noted that he attached copies of receipts for the missing items to his claim. He claimed that, during the hearing on his disciplinary report, an officer stated that he saw the stamps and the other missing items after they were taken from his cell. Mr. Braun surmised that the pack-out officers threw away or consumed the missing items and kept the stamps for themselves.

Shelly Starr, KDOC, contended that the missing items would have been listed on the inventory sheet if they were in Mr. Braun's possession when officers packed out the property in his cell. With regard to the missing stamps, she suggested that they may have been somewhere inside his 21 envelopes of paperwork. Noting that Mr. Braun owned property at his own risk and that he could not establish that he had the consumable property in his possession at the time he was packed out, Ms. Starr recommended that the claim be denied.

Following discussion, the Joint Committee recommended that Claim No. 5906 be denied. (See section captioned "Committee Action and Recommendation".)

Representative Huebert opened the telephone hearing on a claim by an inmate at Norton Correctional Facility (NCF), Claim No. 5920 by Jack Hires against NCF in the amount of $170.00 for the loss of ten handicraft necklaces, which he had completed and prepared to be shipped out for sale. Mr. Hires explained that, in addition to craft materials, nine necklaces made with semi-precious stones and silver beads and one choker necklace made with silver and fossil beads were seized during a shakedown. He filed a facility property loss claim which was approved in the amount of $50.00 ($5.00 per necklace); however, he refused to accept payment because that amount did not cover the cost of the craft materials missing after the shakedown ($221.29). He estimated that he used approximately $140.00 worth of materials to make the necklaces. He explained that he usually sold necklaces for $20.00 to $30.00 each, but he decided to use a base line of $17.00 per necklace when he filed his claim. He noted that he had accumulated ten necklaces because he preferred to send out several at one time rather than sending them out one at a time.

Shelly Starr, KDOC, pointed out that the ten finished necklaces should have been confiscated as contraband before the shakedown. She explained that IMPP 10-133 states that craft items must be sent out immediately after they are finished, IMPP 12-120 states that unauthorized and unregistered property items are contraband, and K.A.R. 44-5-111 states that inmates forfeit contraband property. She went on to say that KDOC policy allows inmates to send out confiscated handicraft items. Because Mr. Hires was prevented from sending out the confiscated necklaces due

to facility staff misplacing them, she recommended that the claim be allowed in the amount of $50.00.

Following discussion, the Joint Committee recommended that Claim No. 5920 be allowed in the amount of $100.00. (See section captioned "Committee Action and Recommendation".)

The Committee's attention was turned to claims on the agenda against KDOC filed by Dennis Eugene Shaw III, an inmate at Larned Correctional Mental Health Facility (LCMHF), Claims Nos. 5949 and 5950. Amy Deckard, Kansas Legislative Research Department, informed the Committee that Mr. Shaw stated in a letter to the Committee dated July 2, 2007, that he wished to withdraw his Claim No. 5949 in the amount of $1,000,000.00 for the loss of medical records because the records he sought had been turned over to the Department of Veterans Affairs (VA).

Following discussion, the Joint Committee recommended that Claim No. 5949 be denied. (See section captioned "Committee Action and Recommendation".)

Representative Huebert opened the telephone hearing on Claim No. 5950 by Dennis Eugene Shaw III, LCMHF, against KDOC in the amount of $500,000.00 for the intentional omission of medical evidence. Mr. Shaw contended that a claim he filed with the VA for service-connected disability benefits was denied because a physician with the Kansas State Reception and Diagnostic Center reported that he was not taking any medication and that he had no serious medical problems. Mr. Shaw claimed that his complete medical records would have reflected that the facility provided him treatment and medication for migraine headaches, a sleep disorder, and a nervous condition. In his opinion, the VA would have approved his claim if this medical information had been provided by the facility, and he would have been receiving monthly payments of $100.00 to $1,000.00 since May 1994.

Shelly Starr, KDOC, recommended that the claim be denied. She explained that Mr. Shaw had been incarcerated since May 1980, and he was not eligible for the benefits he sought because VA service-connected disability payments discontinue once an individual is incarcerated for 60 days or more.

Following discussion, the Joint Committee recommended that Claim No. 5950 be denied. (See section captioned "Committee Action and Recommendation".)

The meeting was adjourned for lunch at 11:55 a.m.

Afternoon Session

Senator Journey called the meeting to order at 1:10 p.m. at which time he opened the telephone hearings on claims filed against Lansing Correctional Facility by a former inmate, Jerome R. Scott, Claim No. 5911in the amount of $40.00 and Claim No. 5924 in the amount of $134.47.

After two unsuccessful attempts to reach Mr. Scott at his home, Ms. Deckard left a message on his answering machine indicating that he would receive correspondence from the Committee regarding the disposition of his claims. With regard to Claim No. 5911, Ms. Deckard explained that Mr. Scott claimed that food and postage stamps were taken from his cell when an officer mistakenly opened his cell door while he was away from is cell. With regard to Claim No. 5924, Ms. Deckard explained that Mr. Scott ordered a color television which he did not receive before getting a disciplinary report resulting in his inmate level being lowered from Level 3 to Level l. Due to the reduction in inmate level, he was not allowed to have the television when it was delivered. Property room staff donated his television. He claimed that he never received any notice that the televison would be donated. He indicated that he would have sent the television to his family if he had received a notice that the television must be removed from the facility.

Shelly Starr, KDOC, recommended that Claim No. 5911 be denied on the grounds that officers are charged with guarding inmates, not inmate property. Furthermore, she noted that Mr. Scott owned property at his own risk, and he could have locked his property in his cabinet.

Following discussion, the Joint Committee recommended that Claim No. 5911 be denied. (See section captioned "Committee Action and Recommendation".)

Ms. Starr also recommended that Claim No. 5924 be denied. She reported that Mr. Scott was sent two notices regarding the disposition of his television, and she had verified that the cell number on the forms were correct. She noted that, regardless of whether or not he received the notices, Mr. Scott should have known that, pursuant to IMPP 12-120, he could not retain his electronics after a second drop to Level 1 within a five-year time period.

Following discussion, the Joint Committee recommended that and Claim No. 5924 be denied. (See section captioned "Committee Action and Recommendation".)

The Committee's attention was turned to claims on the agenda under the heading, "No Hearing Requested," Claims Nos. 5887, 5917, 5923, 5939, and 5955.

Claim No. 5887 was filed by Hubco, Inc., against KDOC in the amount of $1,310.13 for damage to a Freightliner truck. Ms. Deckard explained that the damage occurred at Hutchinson Correctional Facility when an officer inadvertently pulled the wrong lever as Hubco's driver was passing through a sally port gate. Shelly Starr, KDOC, confirmed that the accident occurred and recommended that the claim be allowed in the amount of $1,310.13, the cost to repair the truck.

Following discussion, the Joint Committee recommended that Claim No. 5887 be allowed in the amount of $1,310.13. (See section captioned "Committee Action and Recommendation".)

Claim No. 5917 was filed by Michael T. Gritz, ECF, against EDCF in the amount of $159.00 for the loss of his contacts. Ms. Deckard explained that Mr. Gritz brought a year's supply of contact lenses with him along with his eyeglasses during the intake process, but he was not allowed to keep both. He chose to keep the eyeglasses and send out the contact lenses to his family, but his family

never received them. The amount of his claim was for the cost of the contacts. Shelly Starr, KDOC, reported that there was no documentation showing that the contacts were sent out. Having found that the contacts were lost while they were in the Department's possession, she recommended that the claim be allowed.

Following discussion, the Joint Committee recommended that Claim No. 5917 be allowed in the amount of $159.00. (See section captioned "Committee Action and Recommendation".)

Claim No. 5923 was filed by Danny Pickerill, an inmate at Lansing Correctional Facility, against KDOC in the amount of $45.25 for the loss of his sweats and television cable cord. Ms. Deckard explained that Mr. Pickerill claimed that the items were lost after he was taken to administrative segregation at HCF. Shelly Starr, KDOC, noted that the sweats were in the laundry the day his property was packed out, and unfortunately, they were not returned to him prior to his transfer to Lansing. She noted that a television cable was not listed on his inventory sheet when he was packed out; therefore, there was no way to verify that a television cable in his possession when he was taken to the segregation unit. She recommended that the claim be allowed in the amount of $18.00, the depreciated value of the sweats.

Following discussion, the Joint Committee recommended that Claim No. 5923 be allowed in the amount of $18.00. (See section captioned "Committee Action and Recommendation".)

Claim No. 5939 was filed by Mary E. Cox against NCF in the amount of $149.00 for reimbursement of medical expenses relating to a sprained ankle. Ms. Deckard explained that Ms. Cox claimed that she turned her ankle as she was carrying a cooler and stepped off a sidewalk when she was visiting NCF. She noted that Ms. Cox indicated in her claim that she did not submit the medical bill to her insurance company. Shelly Starr, KDOC, noted that Ms. Cox did not notify the facility at the time the accident allegedly occurred, and she also did not submit a facility claim. Because there was no way to verify that the accident occurred and because there was no indication by the claimant that the facility was negligent, Ms. Starr recommended that the claim be denied.

Following discussion, the Joint Committee recommended that Claim No. 5939 be denied. (See section captioned "Committee Action and Recommendation".)

Claim No. 5955 was filed by Harshman Farms, Inc., against the Kansas Department of Agriculture in the amount of $1,500.00 for a refund of a fee for an inspection of a dam on November 9, 2006. Ms. Deckard explained that the claimant contended that the 2006 Legislature passed a law providing that there would be no charge for inspection of dams. She noted that the Secretary of Agriculture recommended in his written response to the claim that the claim be denied because the statute was not changed as alleged by the claimant. The Secretary further explained that the Legislature now provides funding to the Department of Agriculture to conduct dam inspections, and the Department now informs owners that dam inspections will be performed at no cost to the owners. This additional funding was not available to the Department when the claimant's dam inspection report was due, and most other owners complied with the law and paid the inspection fee when required. The Secretary argued that allowing the claimant to recover the inspection fee

because dam inspections are now provided at no cost to the owner would invite claims by the other owners who complied with the law before the additional appropriation was available.

Following discussion, the Joint Committee recommended that Claim No. 5955 be denied. (See section captioned "Committee Action and Recommendation".)

Representative Huebert opened the telephone hearings on claims of inmates at Topeka Correctional Facility (TCF), Claims Nos. 5932 and 5941.

Melissa Minor, TCF, discussed her Claim No. 5941 against TCF in the amount of $1,000.00 for inadequate medical care. She explained that she had an epileptic seizure on May 9, 2006, and she has experienced many seizures since that time. She was given effective medication for five days after the seizure on May 9; however, she has not been given the medication since that time even though she has continued to have seizures. She complained that the facility clinic has repeatedly refused her requests for medication and an appointment with a doctor.

Shelly Starr, KDOC, informed the Committee that, although Ms. Minor's symptoms are not typical symptoms but appear to be seizure-like behavior, she recently brought the claim to the attention of the KDOC contract monitor, which includes a group of doctors and nurses who oversee the Department's health care provider. The contract monitor recommended that Ms. Minor be tested appropriately so that a diagnosis can be made. Ms Starr requested that the claim be carried over because the tests had not yet been completed.

Following discussion, the Joint Committee recommended that Claim No. 5941 be carried over to the November meeting. (See section captioned "Committee Action and Recommendation".)

Dotty Ingold discussed her Claim No. 5932 against TCF in the amount of $1,000.00 for failure to provide a handicap accessible shower for her use. She explained that the facility handicap accessible shower on her floor at TCF was in need of repair when she had surgery in May 2007 to remove foot tumors. Although several work orders were completed by her counselor after the surgery, the shower was never repaired. She noted that she had to use a wheelchair because she could not stand up; therefore, it was very difficult to go to the handicap accessible shower on another floor. She complained that staff did not help her dry off after showering or help her replace the bandage on her foot.

Shelly Starr, KDOC, reported that Ms. Ingold filed a grievance at TCF on May 18, 2007, regarding her issues with showering. Subsequently, she was given an elevator pass and allowed to shower on another floor in a handicap accessible shower. Having found that Ms. Ingold received appropriate accommodations for her recuperation from foot surgery, Ms. Starr recommended that the claim be denied.

Following discussion, the Joint Committee recommended that Claim No. 5932 be denied. (See section captioned "Committee Action and Recommendation".)

Representative Huebert opened the telephone hearings on claims filed by inmates at Lansing Correctional Facility (LCF), Claims Nos. 5884, 5902, 5903, 5907, 5915, 5916, 5921, 5931, 5933, 5935, 5942, 5943, and 5944.

Todd Rassell, LCF, discussed his Claim No. 5903 against KDOC in the amount of $125,000.00 for medical problems resulting from exposure to high levels of carbon monoxide at the screen print shop at Impact Design, his place of employment. He also complained that the two furnaces in the building were not vented as required by building codes. He claimed that a heating and air conditioning company found a high level of carbon monoxide in the building and that an engineer was consulted in an attempt to solve the problem. He maintained that the medical treatment he received for severe headaches over a six month period was due to the toxic environment at Impact Design. He also claimed that he was having periods of dizziness and was losing his vision due to exposure to carbon monoxide.

Shelly Starr, KDOC, called the Committee's attention to copies of the results of two inspections of Impact Design's screen print medium security facility as requested by LCF staff in response to Mr. Rassel's complaints. One inspection was conducted by the Industrial Safety and Health Division of the Kansas Department of Labor in March 2007, and the other was conducted by Fire District One of Leavenworth County in November 2006. Ms. Starr noted that the inspections revealed that the levels of carbon monoxide and carbon dioxide in the Impact Design work area were within an acceptable range. She further noted that, as she investigated the claim, she discovered that exposure to carbon monoxide does not cause long-term effects. Having found no evidence to show that Mr. Rassell's health problems were directly related to the work environment at Impact Design, Ms. Starr recommended that the claim be denied.

Following discussion, the Joint Committee recommended that Claim No. 5903 be denied. (See section captioned "Committee Action and Recommendation".)

Daniel L. Fitzpatrick, LCF, discussed his Claim No. 5884 against HCF in the amount of $5,000.00 for an injury to his finger. He explained that the injury occurred while he was working in the HCF cabinet shop. As he used a table saw without a guard to cut pieces of thin wood for window parts, the wood he was cutting began to rise off the surface of the table. As he placed his left hand on the wood on the surface of the saw blade to prevent the wood from hitting his face, the saw grabbed the wood and pulled his finger onto the blade. The blade cut through the bone at the end of his left index finger. He complained that the bone did not heal properly, causing his finger to be deformed with very little mobility. He contended that the injury would not have occurred if the safety guard had been in place as required by OSHA.

Shelly Starr, KDOC, confirmed that Mr. Fitzpatrick was injured as he described. She clarified that he was using a push stick, but the wood began to rise off the table so he used his left hand to try to push it back down. She pointed out that, when initially interviewed by the shop supervisor, Mr. Fitzpatrick said he was a housebuilder and had extensive experience with wood working equipment. She noted that it was unclear who removed the guard; however, if the cut was capable of being made with the guard, Mr. Fitzpatrick should have put the guard back on the saw.

She went on to say that his finger was x-rayed, cleaned, and stitched. In addition, he was given pain medication and appropriate follow-up care. In light of her investigation, she recommended that the claim be denied.

Following discussion, the Joint Committee recommended that Claim No. 5884 be carried over to the November meeting. (See section captioned "Committee Action and Recommendation".)

Gary R. Haberlein, Jr., LCF, discussed his Claim No. 5907 against LCF in the amount of $7.06 for the loss of his personal lock and a hair brush. At the outset, Mr. Haberlein called attention to a copy of three "Inmate Request to Staff Member" forms relating to his missing property and a copy of a segregation report which he mailed on August 31 to be attached to his claim. He went on to explain that he was transferred to segregation for protective custody in September 2006. When he received his property on December 14, he discovered that his lock, hair brush, boots, a pair of jeans, and a laundry bag were missing. He pointed out that the amount of his claim did not include the value of the state-issued items which were missing.

Shelly Starr, KDOC, commented that most of the property which Mr. Haberlein claimed was lost by facility staff was state-issued property. Furthermore, she noted that he provided no proof that he possessed the items when the property in his cell was packed out by officers. Having found no evidence to show that the facility was negligent in handling his property, she recommended that the claim be denied.

Following discussion, the Joint Committee recommended that Claim No. 5907 be denied. (See section captioned "Committee Action and Recommendation".)

Aaron R. Suits, LCF, explained his Claim No. 5915 against KDOC in he amount of $56.33 for the loss of personal property. Officers packed out the property in his cell after he was taken to segregation on November 30, 2006. The officer who brought him the property he could have in segregation told him that he must sign the property inventory sheet for those items, but he did not have the inventory sheets for the items placed in storage. When Mr. Suits received his stored property on January 11, 2007, he discovered that several items were missing and had not been not listed on the inventory sheets. In his opinion, the items were lost because the officers were negligent when they inventoried his property. He explained that he did not receive his sweat shorts even though he told the pack-out officers that they had been sent to the laundry. He noted that his name and inmate number were clearly printed on the shorts. The estimated value of the shorts was $18.00.

Shelly Starr, KDOC, recommended that the claim be denied. She commented that, unfortunately, if an inmate's property was not on the inventory sheet, there was no way to verify that the inmate had the alleged missing property at the time the property was packed out.

Following discussion, the Joint Committee recommended that Claim No. 5915 be allowed in the amount of $18.00. (See section captioned "Committee Action and Recommendation".)

Jason Dowell, LCF, discussed his Claim No. 5933 against LCF in the amount of $174.73 for

the loss of his headphones and television, which were confiscated on March 5, 2007, when his inmate level was reduced to Level 1 due to a disciplinary report. Mr. Dowell claimed that officers who confiscated his property did not give him a confiscation sheet or an inventory sheet. He asked his unit team to assist him in getting a copy of the property sheets, but the unit team was unable to determine which officers confiscated his property. On March 6, the property room sent him a disposition sheet notifying him that he must send out the television by March 13, but there was no mention of the headphones. On March 12, he gave his unit team the disposition sheet with a Form 9 attached requesting a property removal form and noting that his conviction on the disciplinary report was on appeal. The headphones were never located. On March 16, he received another disposition sheet regarding his television. He gave his unit team the disposition sheet with a property removal form attached requesting that the television be sent to his grandmother. He was later told that the television was donated because he did not respond to two disposition slips.

Shelly Starr, KDOC, reported that the officers interviewed in the facility investigation of the claim stated that they did not remember taking the headphones, only the television. She noted that, even if the headphones were confiscated, they would have been treated as though they were with the television, and Mr. Dowell would not be allowed to have them at inmate Level 1. Furthermore, she noted that, although he claimed that both disposition slips were returned, there was no evidence that they were received by the property room officer. Having found that the television was donated according to KDOC policy, Ms. Starr recommended that the claim be denied.

Following discussion, the Joint Committee recommended that Claim No. 5933 be denied. (See section captioned "Committee Action and Recommendation".)

Shaun Kendall, LCF, summarized his Claim No. 5916 against KDOC in the amount of $59.10 for the loss of his Nike tennis shoes. He discovered that the shoes were missing when he returned to his cell after being called out for a visit on January 20, 2007. He contended that the guard on duty erroneously opened his cell door while he was away, and another inmate came into his cell and took the shoes.

Shelly Starr, KDOC, commented that all cell doors are opened for mass movements such as meal times; therefore, Mr. Kendall's cell door may or may not have been opened while he was not present. She pointed out that he could have locked the shoes in his cabinet before leaving his cell. Noting that IMPP 12-120 states that inmates shall assume responsibility for the care and control of their personal property, she recommended that the claim be denied.

Following discussion, the Joint Committee recommended that Claim No. 5916 be denied. (See section captioned "Committee Action and Recommendation".)

James Watson, LCF, discussed his Claim No. 5935 against LCF in the amount of $500.00 for property loss. He explained that his property was confiscated after he received a disciplinary report. The disciplinary report was overturned after an appeal process was completed. However, the facility did not hold the property while the appeal was pending. Instead, facility staff donated his television, radio, typewriter, headphones, and assorted airbrush paints. He explained that, after

receiving the notice of hearing on Claim No. 5935, he mailed copies of receipts and his inmate bank account statements to the Committee showing that he purchased the missing items. Representative Huebert informed Mr. Watson that the documentation had not been received and suggested that the hearing on his claim be carried over to the next meeting.

The written response to the claim submitted by Shelly Starr, KDOC, recommended that Mr. Watson's claim be denied because he failed to prove ownership of the property or that the facility wrongfully disposed of the property.

Following discussion, the Joint Committee recommended that Claim No. 5935 be carried over to the November meeting. (See section captioned "Committee Action and Recommendation".)

Everett Cunningham, LCF, summarized his Claim No. 5902 against Norton Correctional Facility–East Unit (Stockton) in the amount of $1,000.00 for injury to his lower and middle back. As he was putting pans and dishes in the dishwasher in the facility kitchen, he slipped and fell when he stepped into water on the floor. He was taken to the hospital, and it was determined that he had no broken bones. However, his back continued to hurt when he walked or got out of bed. Mr. Cunningham contended that he would not have fallen if mats had been placed on the floor.

Shelly Starr, KDOC, confirmed that Mr. Cunningham slipped and fell while working in the facility kitchen. She commented that floors are often wet in the kitchen area, and she found nothing which would indicate that the facility was negligent in the situation described by Mr. Cunningham. She noted that he was not permanently injured and that he received appropriate medical care. For reasons cited, she recommended that the claim be denied.

Following discussion, the Joint Committee recommended that Claim No. 5902 be denied. (See section captioned "Committee Action and Recommendation".)

Joshua Bush, LCF, discussed his Claim No. 5921 against EDCF in the amount of $114.00 for property loss. He was taken to segregation, and the property in his cell was packed out by officers. When an officer asked him to sign a property inventory sheet in segregation, he refused to sign the sheet because his radio-cassette player and hot pot were not listed. The officer told him that he was not allowed to have the radio and hot pot in segregation, but they had been stored in the property room. Therefore, he signed the inventory sheet. He discovered that the radio, hot pot, and several other items were missing when he went to the property room to pick up his property after he was released from segregation.

Shelly Starr, KDOC, recommended that the claim be denied on the grounds that Mr. Bush did not note that some of his property was not listed when he signed the inventory sheet; therefore, there was no way to verify that he had the property in his possession at the time he was packed out. In response to Mr. Bush's statement that an officer told him that the radio and hot pot were in storage, she quoted the following portion of the response to his facility property loss claim prepared by CCII R. Hoover: "I do recall having a conversation with COII Jackson in reference to his hot pot, radio, and other non-allowable segregation property and that COII Jackson indicated that the radio

had metal antennae on it and would not be authorized. He also indicated that his hot pot was metal and it too was not authorized in segregation but that he did have the non-authorized property in storage." Ms. Starr noted that the response was not dated and that she had no evidence to verify whether or not the statement was true. She agreed to contact CCII Hoover and obtain further information regarding the radio-cassette player and hot pot. She noted that inmates are no longer allowed to have radio-cassette players; therefore, Mr. Bush could only be given monetary compensation.

Following discussion, the Joint Committee recommended that Claim No. 5921 be carried over to a future meeting. (See section captioned "Committee Action and Recommendation".)

Darryl Margrave, LCF, explained his Claim No. 5944 against LCF in the amount of $38.27 for property loss. He claimed that another inmate was able to steal several food and hygiene items from his cell because the officer on duty negligently opened his cell door after he left to get ice. He noted that the officer on duty, who was not the officer usually assigned to his floor, refused to acknowledge that the cell door was erroneously opened, and he also refused to give him permission to go to the captain's office to report the theft.

Shelly Starr, KDOC, pointed out that inmates own property at their own risk, and although reasonable precautions are followed, the Department is not an insurer of inmate property. Emphasizing that officers are employed to guard inmates, not their property, she recommended that the claim be denied.

Following discussion, the Joint Committee recommended that Claim No. 5944 be denied. (See section captioned "Committee Action and Recommendation".)

Damon Ricks, LCF, discussed his Claim No. 5943 against LCF in the amount of $28.75 for the loss of his tennis shoes. Officers packed out the property in his cell when he was transferred to the segregation unit on April 26, 2007. One of the officers denied Mr. Ricks' request to wear his tennis shoes because they were not allowable property in the segregation unit. As the officers were packing his shoes, another inmate told them that they were the wrong shoes; therefore, the officers left the shoes in his cell. When he was released from segregation on May 21, he discovered that his shoes had not been stored in the property room with his other property. Mr. Ricks informed the Committee that he ordered the shoes when he was incarcerated at Larned, and he was not required to mark the shoes with his name and inmate number at that facility. He stated that he preferred that the shoes be replaced rather than receiving monetary compensation.

Shelly Starr, KDOC, clarified that KDOC rules require that all inmates in all KDOC facilities mark their property with their name and number. Noting that there would have been no confusion as to the ownership of the shoes if Mr. Ricks had correctly marked them when he received them at Larned, she recommended that the claim be denied.

Following discussion, the Joint Committee recommended that Claim No. 5943 be denied. (See section captioned "Committee Action and Recommendation".)

Todd Deal, LCF, stated that he wished to withdraw his Claim No. 5931 against ECF in the amount of $20.45 for the loss of a book which was confiscated in a shakedown after he loaned it to another inmate. He explained that the book was returned to him at ECF, but he was unable to notify the Committee before the hearing. The written response to the claim submitted by Shelly Starr, KDOC, recommended that the claim be denied.

Following discussion, the Joint Committee recommended that Claim No. 5931 be denied. (See section captioned "Committee Action and Recommendation".)

Christopher Clark, LCF, discussed his Claim No. 5942 against LCF in the amount of $100.00 for the loss of personal property, legal documents, family photographs, and miscellaneous addresses. In January 2007, he was taken to crisis level segregation for a suicide watch. At that time, an officer placed his property in a trash bag and told him that the bag would be sent to A&D. When he was removed from suicide watch three days later, he was told by A&D staff that they had no record of his property. After filing several Form 9s regarding the loss of his property, his unit team instructed him to file a facility property loss claim. The claim was denied because it was not filed within 15 days after the discovery of the loss.

Senator Journey explained to Mr. Clark that many claimants provide copies of receipts for their missing property, and he suggested that Mr. Clark provide the Committee with documentation showing that he owned the property he claimed was lost by facility staff. Mr. Clark agreed to send a copy of his facility purchase records. Ms. Starr informed Mr. Clark that KDOC could not compensate him for the loss of legal documents, photographs, or addresses. Her written response recommended that the claim be denied.

Following discussion, the Joint Committee recommended that Claim No. 5942 be carried over to the November meeting. (See section captioned "Committee Action and Recommendation".)

The Committee's attention was turned to claims on the agenda under the heading, "Claims Carried Over," Claims Nos. 5881 and 5940.

Claim No. 5881 was filed by Othello Johnson, NCF, against KDOC in the amount of $314.12 for property loss. Ms. Deckard reminded the Committee that the claim was carried over at the July meeting after Shelly Starr, KDOC, stated that the Department would replace Mr. Johnson's missing boots which he purchased at another facility. Ms. Starr reported that she sent an e-mail to the warden in July asking that the boots be replaced; however, she had not yet determined whether or not Mr. Johnson received the boots.

Following discussion, the Joint Committee recommended that Claim No. 5881 be carried over to the November meeting. (See section captioned "Committee Action and Recommendation".)

Claim No. 5940 was filed by Eldon L. Ray against the State Board of Technical Professions in the amount of $8,422.00 for punitive damages and out-of-pocket damages relating to a complaint that the plans and specifications he provided when he volunteered to help build an addition to the

Mayetta Christian Church constituted the unlicensed practice of architecture. Representative Huebert recalled that the claim was carried over at the July meeting to allow time for Mr. Ray to provide an itemization of the actual expenses he incurred. He called attention to an itemization of expenses sent by Mr. Ray's advocate, David Martin Price, Office of the Independent Federal Fund Oversight Committee. Mr. Price included a copy of Mr. Ray's bill for attorney fees in the amount of $3,122.00. In addition, Mr. Price suggested that the engineer and the architect who volunteered to survey the church addition be paid $2,000.00 each for their time and inconvenience and that Mr. Ray be paid $1,300.00 for expenses he incurred for research and documentation.

Representative Huebert introduced Representative Ron Worley and explained that he had requested an opportunity to present his views on the claim. Representative Worley prefaced his comments on the claim by informing the Committee that he had 24 years experience as a building official in Kansas and that he had worked with many engineers, architects, and other professions regulated by the Board of Technical Professions. He noted that the Board members are respected members of their profession and are volunteers appointed by the Governor. He went on to express his concern that the Board would experience difficulty in enforcing regulations if the Committee approved Mr. Ray's claim. He pointed out that the Board's written response to the claim indicated that they clearly followed the law when making a decision concerning the complaint against Mr. Ray. He commented, "You do not volunteer to drive the church bus if you don't have a driver's license. That's what he did. He designed a building, the foundations. You need a license for that according to the Board of Technical Professions and according to the law. This is not his private garage or private deck on his private home. It is a public building. The regulations of the Board of Technical Professions are not about protection of an architect or engineer. They are about the protection of the public. If you read the letter from the engineer and the architect that the church hired that are in your packets, I found one thing to be interesting in that neither one of them put their professional license seal on the letters that they submitted. In fact, the engineer even asked for a letter of immunity. In short, the Board found Mr. Ray to be in violation of their regulations. Not knowing the law may be the cause, but not knowing the law is not a defense. Mr. Ray's case was taken to the Legislature, and he was granted what amounted to a pardon. I spoke against that, and the Chairman may recall that, and I also voted against it. It passed. Now, based on that, he is asking for repayment of his unpaid attorney's fees. I think that granting this money sets a bad precedent and will make it difficult for the Board to control others who claim to be volunteers. I respectfully request that you not grant his request for payment." Representative Worley then responded to comments and questions from the Committee.

Following discussion, the Joint Committee recommended that Claim No. 5940 be allowed in the amount of $3,122.00. (See section captioned "Committee Action and Recommendation".)

The meeting was adjourned at 4:25 p.m.

Representative Huebert called the meeting to order at 9:10 a.m. and opened the telephone hearing on a claim carried over in October 2006 to allow the claimant time to consult with an attorney, Claim No. 5755 by Catherine J. Rose, an inmate at Topeka Correctional Facility (TCF), against the Clay County District Court in the amount of $300,000.00 for an illegal sentence, violation of due process rights, and property loss. Trevin Wray, the Assistant Attorney General who investigated the claim and submitted a written recommendation, was at TCF with Ms. Rose.

Ms. Rose contended that she was incarcerated at TCF under an illegal sentence for manufacturing methamphetamine. She maintained that she should have been sentenced under the "McAdams clause" (*State v. McAdam*) but was not. In her opinion, she should have been sentenced to 36 months instead of 77 months. She claimed that, as a result of being illegally sentenced, she suffered mental anguish and also lost her home/rent, furniture, personal belongings, and collectible items.

Ms. Rose confirmed that she currently had an appeal pending before the Kansas Court of Appeals regarding her sentence and that the Appellate Defender's Office was representing her. A committee member asked what her criminal history score when she was sentenced, but she did not have that information with her. Mr. Wray informed the Committee that Ms. Rose' criminal history classification was G. He went on to summarize his written response to the claim. He explained that, on September 6, 2005, Ms. Rose was sentenced to 63 months incarceration upon a first offense of unlawful manufacturing of a controlled substance under K.S.A. 65-4159(a), a level one felony. The sentence was entered as a result of a plea agreement which reduced the mandatory sentence of a person with no criminal history by approximately 75 months. He noted that Ms. Rose did not supply a petition or order which would show that her sentence was declared illegal. Noting that Ms. Rose's sentence had been reduced by approximately half of what it could have been, Mr. Wray recommended that the claim be denied.

Following discussion, the Joint Committee recommended that Claim No. 5755 be denied. (See section captioned "Committee Action and Recommendation".)

The Committee's attention was turned to a claim on the agenda which had been carried over several times, Claim No. 5841 filed by Kim J. White against the Kansas Department of Social and Rehabilitation Services (SRS) in the amount of $51,000.00 for mental and emotional anguish he experienced after his two sons were placed in foster care. Ms. Deckard informed the Committee that Mr. White stated in a letter dated August 27, 2007, that he was still in the process of trying to regain custody of his son Nolan who was currently in the custody of the state. He requested that the hearing on the claim be carried over to the December meeting because he expected to be able to report more definite information on his progress in regaining custody by that time.

Following discussion, the Joint Committee recommended that Claim No. 5841 be carried over to the December meeting. (See section captioned "Committee Action and Recommendation".)

Representative Huebert announced that a request had been made to reconsider a claim which was denied on July 10, 2007, Claim No. 5908 filed by Frank A. Martin, Jr., against Pittsburg State

University in the amount of $3,004.33 for damage to his automobile.

Following discussion, the Joint Committee recommended that Claim No. 5908 be reconsidered. (See section captioned "Committee Action and Recommendation".)

Representative Huebert recalled that the pictures of Mr. Martin's automobile attached to the claim showed a very deep scratch on the door panel. Ms. Deckard reminded the Committee that Mr. Martin submitted only one repair estimate and that he stated in his claim that he did not choose to use his insurance because he did not feel that the repair was his responsibility.

Following discussion, the Joint Committee recommended that Claim No. 5908 be allowed in the amount of $1,000.00. (See section captioned "Committee Action and Recommendation".)

Representative Huebert opened the hearing on Claim No. 5946 by Mark A. Jordan and family against the Kansas Department of SRS in the amount of $28,000.00 for false and misleading information, the removal of his children from their home, and related expenses. Mr. Jordan was allowed to video tape the hearing as permitted by the Rules of the Committee under Rule 3(d).

Ms. Deckard called the Committee's attention to copies of a written response submitted on September 4, 2007, by Ron W. Paschal, Deputy District Attorney in the Office of the Sedgwick County District Attorney. Mr. Paschal addressed allegations Mr. Jordan made in an essay entitled, "A Family Scared by the SRS and the System," which was attached to the claim.

Mr. Jordan began the explanation of his claim by stating, "Our family was tortured by the system because of many attempts made by myself and my wife to get the system to do their job. That was the job that they were paid to do, to prevent our underage daughter from being raped and getting pregnant." In support of his claim, he called attention to a letter sent to him by SRS on July 20, 2006, which confirmed that the allegation on September 17, 2004, involving his family was categorized as a non-abuse/neglect concern. He noted that another letter from SRS dated August 27, 2006, indicated that the primary factor was his daughter's severe acting out and her parents' struggles with helping her bring her behavior under control. He explained that his daughter was seeing a 21 year-old man at the age of 13, and that, as a father, his job was to prevent her from seeing him. He noted that Don Jordan, Secretary, Kansas Department of SRS, invited him to come to Topeka to share his concerns about his family approximately three years after his children were first taken from their home. After the conversation, Secretary Jordan sent a him a letter on March 2, 2007, in which he stated, "You will be receiving a formal notice of action indicating that, at my direction, the substantiated finding of physical abuse has been changed to unsubstantiated. The reality is that today, based on the facts of your case, there would not be a substantiated finding. Today, agency policy clearly distinguishes between an isolated incident of inappropriate discipline and physical abuse. Your story demonstrates the correctness of this change. The fact that you never again used corporal punishment in the ongoing effort to protect your daughter from her own immaturity is a credit to you. Mr. Jordan, I applaud your courage in coming forward with your concerns." Mr. Jordan pointed out that the formal notice of findings sent to him on March 2, 2007, confirmed that the substantiated finding for physical abuse made on February 24, 2004, had been

changed to unsubstantiated. Noting that he recorded and transcribed his conversation with Secretary Jordan, he began reading a portion of the transcript wherein Secretary Jordan expressed his concern that the system's safeguards often do not work and that the safeguards did not protect Mr. Jordan's family.

At this point, a committee member requested that Mr. Jordan summarize the basis for his claim. Mr. Jordan explained that his 13 year-old daughter Brittany was picked up at school by a 21 year-old man (Justin Jones) and other older men to engage in sex, smoke marijuana, and drink alcohol. He notified authorities about the crimes against his daughter, but he was told nothing could be done because, when interviewed, Brittany stated that she did nothing against her will. He then located the men himself and advised them to stay away from his daughter, and all complied except Justin Jones. In February 2004, Brittany left home to be with Justin. When she returned, Mr. Jordan told her that he would spank her if she skipped school or left home again to be with Justin. The following week, she left home to be with Justin; therefore, he spanked her. The next day, both of his children were placed in protective custody due to the spanking. Mr. Jordan emphasized that, other than the spanking, there was no physical discipline or anything else to support SRS's decision to take his children from their home.

Mr. Jordan commented, "If I did not act and allowed my daughter to continue to see this guy, then the SRS would say I neglected this child. But as a father and any man in here that has kids, I did what I thought I was supposed to do. I continued to go to the Wichita Police Department and made many attempts to talk to EMCU about charges. In the midst of all this, the system was not doing anything to protect my daughter. I don't have a habit of spanking my kids. At that particular time, I had to do something because nobody else did anything. I spanked my daughter, not to abuse her, but only to change her attitude about what she was doing." He noted that, due to his daughter's risky behavior, SRS provided a safety plan when the case was closed in May 2004. According to the plan, if his daughter left without permission, she was to be placed in a locked facility for her own safety. In September 2004, she ran away. When she returned home three days later, she told her parents that, in order to be with Justin Jones, she stayed with one of his male friends. Mr. Jordan advised the police department and the district attorney's office of the situation; however, only his daughter was questioned.

Mr. Jordan noted that, from the time the family was originally placed with DCCCA for family preservation, Justin Jones continued to pursue his daughter. He commented, "My hands were tied. I couldn't spank my daughter. I couldn't go after this guy because I was told by Mr. Mitchell at EMCU that, if I attempted to make contact with this guy, if he made a phone call about me, then I would be the one that would get into trouble. So the only thing I could do as a father was to continue to say to whoever was involved, please do something to stop this guy from pursuing my daughter. In September, after a stint of my daughter continuing to act out and see this guy, this 21 year-old man, they decided to remove our kids. This was only after she had run away. And like Secretary Jordan said, at that time and with the paperwork that I had, the incident in September when they took our kids and threw them in the foster system was an unsubstantiated case. There was no allegation of abuse. But at that particular point, they took the incident that happened in February, and they compiled it with the incident in September and developed a case. If you look through the

history of this, it talks more about what happened in February than it did in September. So at that time, when they took our kids and put them in a foster system, that warranted an investigation. They did not do an investigation. According to their policy and procedures, if one kid is considered to be a child in need of care, the other kids are also considered to be children in need of care." Mr. Jordan then resumed reading from the transcript of his meeting with Secretary Jordan wherein the Secretary agreed that there should have been an investigation before the children were removed. In addition, the Secretary admitted that a number of things could have been handled much better, and he expected SRS to do a better job than was done in this case. Furthermore, the Secretary stated that the safeguards within the system that protect families when SRS does not do a good job also failed in this case. Secretary Jordan also stated, "In response to contracting chlamydia and getting pregnant, obviously, it was a terrible thing, and none of my employees did that. I believe what that person did was a felony, and he should be prosecuted for it." Mr. Jordan commented that he felt that Secretary Jordan should publically apologize to his family.

Mr. Jordan emphasized that he only asked the system to follow established policies. He then read the SRS policies relevant to his case. He pointed out that the investigation is the initial phase of the family-based assessment for reports relating to child abuse or neglect, and in the investigation, facts are to be obtained and evidence gathered before reaching a conclusion on the validity of the report and what actions, if any, are needed to protect the child. He complained that this policy was not followed before SRS placed his children in the foster family system in September 2004. He went on to point out that SRS policy also requires that interviews be conducted with all persons known or believed to possess relevant information in order to reach a case finding; however, SRS did not contact him, his wife, the school, or his neighbors before taking custody of his children. In addition, he noted that SRS policy requires that face-to-face contact must be made with the child in order to determine the child's safety, but SRS staff did not talk to Brittany in September. Instead, she was placed under the direction of Deputy District Attorney Ron Paschal in the Office of the Sedgwick County District Attorney. Mr. Jordan explained that he called Mr. Paschal the day that his daughter ran away in September and asked his assistance in placing her in a secured facility as outlined in the SRS safety plan. Regardless of the SRS safety plan, Mr. Paschal advised him that, in order to have Brittany placed in a secured facility, he and his wife must press charges against her because there was not a "no run" order in place under an existing case.

Mr. Jordan noted that the SRS policy regarding the safety and assessment of children is defined as "a structured method of evaluating potential danger to the child." He commented, "My daughter being raped while she was in the custody of SRS, that was important. Contracting chlamydia, not once but twice while she was in the custody of SRS, that was important. For these things to happen to my daughter with the system fully aware of the guy's name, and this guy's still walking the street; this is unbelievable. There is no way that I can say that the system has treated my family fairly." He went on to say that SRS policy states, "When the safety of the child cannot be reasonably assured, removal of the perpetrator from contact with the child should be considered before removing the child." He noted that, after his children were removed from school and placed in protective custody in September, he asked a SRS representative if he could remove himself from the home while the case was investigated. He was told that the children had been placed with foster families, and he did not have this option or any other option.

Mr. Jordan further noted that SRS policy requires that a case be reported to a law enforcement agency if the department determines no action is necessary to protect the child, but criminal prosecution should be considered. He commented, "They turned the whole focus on me and what happened in February. Because I consistently tried to get the system to do their job, to get this guy off the streets, and to protect my daughter like I was supposed to; they didn't give a hoot about what happened to my daughter while she was in the custody of the state. Why didn't the SRS even take the time to go and question this guy? Why didn't they go to the D.A.'s office? Why didn't the D.A.'s office take up on this? When she contracted that venereal disease, why didn't they even go to check this guy's medical record? It's been documented that she left with this guy."

Mr. Jordan emphasized that, when his daughter was taken into custody on September 16, 2004, her records did not show that she had a sexually transmitted disease (STD). However, her records reflect that, on October 18, 2004, her foster parents reported to SRS staff that Brittany attempted to sneak out of the foster home, and the emergency room had informed them that she was diagnosed with a STD. Mr. Jordan commented, "That's a critical incident that wasn't told to the judge." He went on to say that Brittany's records reflect that, on October 24, 2004, she showed signs of depression and appeared overly anxious, afraid, and angry, but there was no mention of possible abuse by her father. At that time, she begged to come home, but her request was denied. He posed the question, "After they had taken my kids in custody, how did they do any better than what I supposedly had done? When my daughter was in the care of my home, she didn't contract a STD. She didn't get pregnant."

Mr. Jordan went on to say that DCCCA records show, "Critical Incident, May 12, 2004. Brittany ran away from the home. Critical Incident No. 2, May 14, 2004. Brittany ran away from Wichita Children's Home." He commented, "If they were so concerned about my daughter at that time, then why did they close the DCCA family preservation case on May 19, 2004?" He further noted that, after his children were taken into protective custody, he and his wife were required to appear at a court hearing regarding the clinical assessment of the children. The court indicated that, based on the clinical assessment, he and his wife appeared to be good candidates for resuming residential custody of their daughters. He commented, "The state never admitted that. They had this information. We didn't get this information until several months after this whole case was closed. We asked for this information, but we were denied. The only option that was given to my family was that they be placed in foster care."

Mr. Jordan noted that, although he and his wife had no communication with DCCCA after the case was closed in May 2004, DCCCA made the following statement when his children were taken in custody in September 2004, : "DCCCA recommends the removal of Brittany from home due to her out-of-control behavior, physical abuse by her father, and Brittany's safety being at risk while she is on the run." He commented, "This recommendation was made by the same social worker who developed the safety plan for Brittany to be placed in a locked facility if she ran away again. Somehow, this thing got turned around to be against me with no facts to support it." He went on to quote the following notes from the Youthville child assessment records for Brittany in October 2004: "Foster mom notified staff that Brittany had given Justin her phone number, and he called. Foster mom informed him that he was not to call the home again." Mr. Jordan commented,

"This was proof that Brittany had an ongoing sexual relationship Justin. They knew this, and they admit it here." He pointed out that another record stated, "On February 7, 2005, case management notified Bob Johnson, Youth Shelter, that Brittany had an STD." He noted that this was the second time it was reported that Brittany had a STD.

In summary, Mr. Jordan said that, knowing that the system was doing nothing to protect him or his daughter, he did what he felt was necessary, not to abuse her but to change her actions. The state then intervened without proof of any allegation of abuse. The case was changed from an unsubstantiated case to a substantiated case, and his children were removed from his home without interviews, an investigation, or an assessment. He reiterated that SRS Secretary Don Jordan told him that he was disappointed with the way the case was handled. He noted that as late as early summer 2007, the state classified him as a threat to children based on an isolated incident which was a non-abuse, non-neglect case. He stated, "Somebody needs to pay for this. My family has paid enough. With all that said, to charge my family the amount of money that they did right before Christmas – there was no Christmas, no vacation. How was that in the best interest of our kids after they returned our kids home? One my kids being pregnant; they had an obligation and a duty to protect my child. The system failed me and failed my family."

Roberta Sue McKenna, SRS legal counsel, responded to the claim on behalf of SRS Secretary Dan Jordan. She explained that the child welfare system is very complicated and that the checks and balances built into the Kansas code for care of children are intended to protect children by providing safety, security, and well being for children in need of care due to abuse and neglect as well as for children in need of care due to non-abuse and non-neglect. She noted that, since 1992, SRS has advocated more limited state intervention when the issue is out-of-control behavior of teenagers in conflict with their parents, school, or community. However, the code continues to require that SRS collaborate with law enforcement and prosecutors under supervision of the court for all children who are or may be in need of care for any reason. Therefore, limited state intervention, which SRS believes might better serve families such as Mr. Jordan's family, is not in place. Within the system in place, any child who is in need of care for any reason comes under the jurisdiction of the court and has the right to an appointed attorney. The child's best interest is represented by a guardian ad litem. Prosecutors are responsible for determining whether to file a child in need of care petition, and the court determines whether or not to adjudicate a child in need of care. These decisions, like all provisions of the code, are implemented within the context of individual communities.

Ms. McKenna noted that the reason SRS is repeatedly asked to look at a redesign of the system is that SRS has a history which shows a lack of success in dealing with adolescents like Brittany who are out of control and in conflict with their family, communities, or schools. She explained that, under the current system, SRS collaborated with law enforcement and the prosecutor under the oversight of the court and prepared an affidavit as is the custom in Mr. Jordan's community (Wichita). In Wichita, the prosecutor's office requires that the affidavit prepared by SRS include a complete history of the family. Therefore, the incident in February was included in an affidavit submitted in September for a child who was no longer in danger of being abused or neglected by her family but who was continuing to act out in a way that jeopardized her safety. As

is also the custom in the Wichita community, the affidavit included information on other children in the family. The code for care of children states, in the definition of "child in need of care," that if one child is in need of care, the court may look at the other children in the family, and the prosecutor may include them in the petition. In Wichita, it is fairly common for the prosecutor to file a petition on all children when one child is identified to be at risk. Ms. McKenna noted that the nine page affidavit concerning Mr. Jordan's family compiled by the SRS social worker was accurate but included unverified statements by the girls. However, the 23 page petition filed by the District Attorney expanded the information prepared by SRS to include additional information from reports provided by law enforcement and the juvenile intake and assessment center. The prosecutor's perception of the situation was not identical to the response by the social worker. Ms. McKenna pointed out that Mr. Jordan was represented by a court appointed attorney, and he was given the opportunity to discredit the state's evidence and to present such evidence on his own. The children's interests were represented by a guardian ad litem, who was required by statute to conduct an independent investigation. After the hearing, the court adjudicated both girls to be in need of care and ordered continued out-of-home placement. Ms. McKenna explained that, once a child is placed in the custody of the SRS Secretary and placed in out-of-home care, the Secretary has a obligation to Kansas taxpayers to collect child support for the full cost of care. For the Jordans, the actual cost of care was over $25,000.00, but SRS considered $10,656.00 a fair amount based on the Jordans' income. Mr. Jordan settled the obligation with a one-time payment of $9,500.00.

In conclusion, Ms. McKenna stated, "The time line presented by Mr. Jordan is troubling in that an event that took place in February became the grounds for a petition that was filed in September and was a basis for the adjudication which took place the following February. But what's not troubling is that the prosecutor be provided that information by the executive branch agency or that the court be provided that information by the prosecutor. The reason the substantiated finding was changed is that, had that occurred at the time Mr. Jordan met with Secretary Jordan, the criteria that the agency uses to make that determination had changed, and an additional factor is now part of that conclusion so that, today, in addition to clear and convincing evidence that the child was abused and that an identified individual is responsible, staff is required to consider whether or not that individual should be allowed to work, reside, or volunteer in a child care facility. Mr. Jordan is not a danger to children in a child care facility. He was under a great deal of stress. He behaved in a way that he subsequently came to agree was inappropriate, and he never repeated that behavior. The Secretary is extremely sympathetic to that set of facts and to what happened to the Jordan family subsequent to our intervention and efforts to support him in controlling his daughter. We are also sympathetic to the fact that, like Mr. Jordan, we were not successful at controlling a teenager's behavior while in our co-care and that we did not improve on her decision making or her choices. I have no explanation for the prosecutor's decisions concerning the individuals who were involved with a very young girl who was making bad decisions and should have been protected from those decisions."

In response to a question from a committee member regarding the medical expenses related to Brittany's pregnancy, Mr. Jordan said that her first pregnancy at age 14 was terminated. He noted that, before Brittany became pregnant at age 14, he and his wife were told in a family consultation meeting that he was being a "brick wall" by not being flexible and not allowing his

daughter to act like a teenager, but he disagreed with that assessment because he knew what was about to happen. He contended that, due to the failure to correct the initial problem, Brittany was currently pregnant at age 16. He explained that the amount of his claim included his expenses for attorneys fees and compensation for the loss of his job as an environmental specialist for which he was paid $35.00 per hour. He explained that his job was secure up to the point when his children were taken from his home, but the company had to replace him because he took too much time off for scheduled visits with his children and to respond to the demands placed upon him by SRS and the court.

In response to committee discussion and questions concerning the responsibilities of SRS in the care of Mr. Jordan's children, Ms. McKenna commented, "I think there are always things we could have done differently, and learning from it is our obligation. We're not in a position to apologize for decisions we didn't make. In the relationship between the social workers and the prosecutors, social workers are at a disadvantage. It's been part of my job to suit them up so that they can operate in that arena as equals, as representatives of a co-equal branch of government. For a social worker to say to a prosecutor, you've exercised your prosecutorial discretion in error, risks a relationship that a social worker depends upon for the next case. That's an unreasonable expectation for our staff. SRS doesn't support removing children from the home based on the children's bad decisions. But that decision is not SRS'. SRS by itself can never remove children. The prosecutor makes the decision to file the petition, and the court makes the decision to adjudicate the child. Law enforcement or a court make the decision to remove the child from their home, not the Secretary. It's complicated, and that's part of people's problem. I represented SRS for 20 years. I understand this system. People who are in the emotional turmoil of having a child they're scared for receiving help that seems more hurtful than helpful have a great deal of difficulty understanding the system. What you've done is to say that they get an attorney. And Mr. Jordan had an attorney."

Representative Huebert expressed concern that the Committee did not have all the information needed to make a decision on the case. He suggested that perhaps Secretary Jordan should have appeared before the Committee to personally address questions relating to the claim and SRS procedures. Other committee members felt that additional information should be provided by a representative from the Sedgwick County District Attorney's Office. At this point, Ms. McKenna commented, "Perhaps it would help you to understand that, when the Secretary talked to me about coming here today, my charge was not to win. My charge was to present the information to the Committee, and should you decide to award the claim, that would not upset the Secretary."

Following discussion, the Joint Committee recommended that Claim No. 5946 be carried over to the November meeting. (See section captioned "Committee Action and Recommendation".)

Representative Huebert turned the Committee's attention to two claims on the agenda filed by Dianne Meyers, Claim No. 5879 against the Kansas Department of Corrections in the amount of $250,000.00 for the death of her daughter and negligence and Claim No. 5880 against the Kansas Department of SRS and the Kansas Judicial Branch for failure to protect her daughter and her two children. He noted that Ms. Meyers requested that the hearings be carried over; however, Tom Drees, Ellis County Attorney, was present and wished to respond to Claim No. 5880.

Mr. Drees informed the Committee that he was the prosecuting attorney who handled the case against Kurt Stecklein, who was convicted for the death of Ms. Meyers' daughter Lindsay. He commented, "This is a tragic situation in which a young lady, Lindsay Meyers, lost her life; however, the fault for that is the person who killed her, Kurt Stecklein. It's not the fault of the system. It's not the fault of anybody in the system. The system did everything it could to get involved with this family even when the victim did not want that assistance. Both Kurt Stecklein and Lindsay were of age and chose to live together." He went on to inform the Committee that Stecklein had 18 prior misdemeanor convictions and one felony conviction for drugs. He was charged in Rooks County in February 2004 and in Ellis County in April 2004 for possession of marijuana for personal use. Both charges were level 4 drug felonies, which do not require a prison sentence but mandatory probation. Because of his prior drug felony conviction, Mr. Drees requested that he be placed under the supervision of Community Corrections. While under supervision, law enforcement became aware of a domestic violence situation on September 21, 2004. The victim, Lindsay Meyers, claimed that Stecklein did not harm her in any way; however, a witness had seen him throw her down the stairs. Therefore, the county attorney's office chose to continue to pursue prosecution for domestic violence. Based on the allegation of misdemeanor domestic battery, Community Corrections agreed to upgrade Stecklein's supervision to electronic monitoring, and there was a No Contact Order put in place by the court system to keep them apart. Lindsay then moved out of Stecklein's residence to a separate apartment about five blocks away. Mr. Drees noted that it was later discovered that she rarely stayed at the apartment but had leased it to placate SRS and the court system which ordered that they have not contact. He explained that, after a day of celebrating a local Octoberfest in Hays on October 8, 2004, she went with Stecklein to the residence they shared. They began fighting, and their friends left. The following morning, Stecklein called law enforcement and said that Lindsay was not breathing. Police responded to the call and found that Lindsay was dead. Stecklein was then prosecuted and convicted of murder. He pled to second degree murder and is now serving a 14 year sentence.

As to Dianne Meyers' charge that the court should have done something to keep her daughter and Stecklein apart, Mr. Drees noted that the court had a No Contact Order in place. As to her claim that Community Corrections should have done more to keep them apart, Mr. Drees noted that Community Corrections was not obligated to supervise Stecklein but was supervising him as a courtesy to the court. Mr. Drees pointed out that Stecklein's prior criminal history was not very severe. He noted that Lindsay denied the first domestic violence report received on September 28, 2003, but she and Stecklein were forced to go through an informal diversion at the local community health center for counseling for domestic violence and anger management. Lindsay continued to deny reports of domestic violence that followed on November 8, 2003, and on September 21, 2004. Mr. Drees noted that, when he obtained medical records concerning Lindsey Meyers' emergency room visits during the discovery on the Stecklein homicide case, he felt that, although none of the five visits were reported to the law, the injuries she reported were suspicious due to the nature of the injuries, which included a black eye, pain and swelling in the cheekbone, back pain, and ear pain and decreased hearing. He further noted that, on October 5, Lindsay asked the court to lift the No Contact Order, but the judge kept the No Contact Order in place. On October 6, she came to Mr. Drees' office with her attorney to advise him that she would be testifying that Stecklein did not harm her and did not throw her down the steps. She also informed Mr. Drees that she would be

claiming responsibility for the marijuana found in Stecklein's residence in an effort to stop the felony prosecution. Noting that it was unfortunate that Lindsay Meyers continued to deny the physical abuse at the hands of Kurt Stecklein and that she failed to abide with what other people were attempting to do to intervene, Mr. Drees recommended that the claim be denied.

Following discussion, the Joint Committee recommended that Claim No. 5879 and Claim No. 5880 be carried over to the December meeting. (See section captioned "Committee Action and Recommendation".)

The meeting was adjourned at 12:10 p.m.

Prepared by Shirley Higgins
Edited by Amy Deckard and Cindy Lash

Approved by the Committee on:

November 14, 2007
(date)