

Approved

Date

2/16/88

MINUTES OF THE SENATE COMMITTEE ON FEDERAL AND STATE AFFAIRS

The meeting was called to order by Edward F. Reilly, Jr. at  
Chairperson

11:00 a.m. ~~xxx~~ on February 2, 1988 in room 254-E of the Capitol.

All members were present except:

Senator Vidricksen was excused.

Committee staff present:

Emalene Correll, Legislative Research  
June Windscheffel

Conferees appearing before the committee:

Mr. Roger Endell, Secretary of Corrections

Senator Hoferer requested a bill be introduced by the Committee concerning commercial breeders of dogs and cats. The motion to introduce such a bill was made by Senator Bond. The motion was seconded by Senator Martin. The motion carried.

The Chairman announced that this Committee will meet in Joint Session with the House Committee on Federal and State Affairs on the whole issue of puppy mills and related matters, next week, on February 9-10, 1988, Room 331-S, at 1:30 p.m.

Fiscal notes were before the Committee for SB456, SB457, SB478 and SB480.

The Chairman announced he had met with Senator Salisbury and staff concerning SB471 and SB478. He announced that he is going to appoint a Subcommittee to work with Senator Salisbury and staff, to work out a compromise. The members will be: Senator Bond, Chairman; and Senator Vidricksen and Senator Martin.

Also before the Committee was a copy of a Memorandum from Bill Rich to David Monical, concerning the Washburn Law Clinic Representation of Inmates at Kansas State Penitentiary. (Attachment #1) It deals in terms of the consent decree that was issued in 1980 by Judge Richard Rogers on the issue of conditions within certain correctional institutions. It is an excellent briefing on what has transpired historically, going back to 1978, when Judge Rogers appointed the Washburn Law Clinic. ~~Do deals~~

Also, the Chairman shared with the Committee an editorial from the Topeka Capital-Journal, entitled "Some simple corrections." (Attachment #2)

The Chairman stated that today's meeting is to hear from Secretary Roger Endell, of the Department of Corrections. Secretary Endell has quite a background in Corrections and a lot of credentials. The Chairman welcomed the Secretary.

Secretary Endell expressed thanks for the opportunity to speak before the Committee. He has been analyzing and sharing with the Legislature his impressions of the system in Kansas and what he hopes to recommend as solutions.

The most important problem is overcrowding of prisons. These issues have a way of becoming terribly complex. He is trying to reduce some of the complexity and get to the basic issues. Bed space needs and budgetary needs were two of the first things looked at. All that pointed the need to look at how the system is being managed. There is room for change in those directions.

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The Secretary said there are many advantages by regionalizing. He has asked two of the deputy secretaries to be responsible for two areas of the state. They will be responsible for everything in those regions. There is a deputy secretary focusing on the entire system.

He pointed out that a main problem is the lack of consistency. The average tenure of correctional heads in the average 50-state system is 2-2½ years. Figures on the tenure of Kansas Secretaries of Corrections indicate the longest was a 5-year period. Most have served 2-2½ years. Consistency and stability are management problems every place in the nation. The rest of it has to do with leadership: determining the goals and a mission to work for.

Professionalism within the internal ranks is important. We need to recruit, train and promote the best people. Professionalism within the ranks is a major theme.

Another important aspect is putting the offender population to work. They can work Monday through Friday. The goal is to show them work skills and how to get up, go to work, and keep a job. The work ethic is what the Department of Corrections is trying to get across to them, along with the alcohol and substance abuse programs.

Overcrowding is another major issue. It can be resolved. It will take commitment and agreement between both branches of our Legislature. Kansas has been first in the nation from 1983-1987 in growth rate population in the institutions. It has increased 65%. Four hundred inmates per year. Kansas can get out of a court suit if it addresses the overcrowding situation. There are basically two solutions. Remove 1500 prisoners from the penitentiary at Lansing. 500 must come out of the reformatory at Hutchinson. If that many people are removed the state will be out of the threat of a lawsuit, because the institutions will have enough personnel. If you take those numbers and add the 400 that are coming in this year that is 2400 people we need to house or get out of the system. We must divert them from the system or build beds to hold them. The 2400 is what the state must focus on. About 500 beds are already being designed in various phases of remodeling. These are minor modifications at a variety of sites. Secretary Endell talked about the importance of building sufficient beds, because if a large number were put out on the streets he estimated that 95% of them would be people with whom the citizens would have a difficult time

He used the analogy that a correctional system is like a bathtub. An inflow with an outflow. Unless you divert people at the front end of the system or the back door there is no other option but to build a larger prison. Later this month the Secretary will present to the Governor and the Legislature a draft plan outlining the alternatives to improve our situation.

Another important area is the development of programs. In some situations we have excellent programs. In some they have little to offer. We need consistency and stability in those programs. No one should leave our system who cannot read or who does not have a highschool diploma or GED, with some exceptions. Support that with mental health, medical and so on. All should go into a re-entry program before they are released.

Furlough probation, parole and community corrections are all tied together. Community corrections, in his example, means any correctional program that does not have a fence around it. He said it is clear to him that Kansas does have a serious problem.

Mr. Endell said he is not opposed to community corrections. He thinks it ought to be enhanced, improved, and expanded. He said the community corrections act was based on good intentions to divert offenders from the front, but the system is small, inflexible, and it mandates county participation. It really amounts to a contract between the Legislature and a few counties that want to participate. Out of 105 counties there are only ten community corrections.

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There is clearly a need to have more resources there, but there is a limited number participating. The types of programs are primarily intensive supervision. That is probation. If the direction of the program is intended to be for probation, Secretary Endell said he would recommend it be given to the court system where probation officers are based.

He would like to recommend that the Legislature appropriate the same amount of money to the DOC, but give it the latitude to spend that money in the way they determine best for the state. They would issue contracts to the lowest bidders. They can get more action for their money. He said there are about 2100 people in those programs. If they cannot have more control within the DOC then they should give it to someone to monitor.

Secretary Endell answered questions from the Committee. There were questions concerning prison population, alcohol and drug abuse counseling, meaningful employment for persons being released from the system. Secretary Endell said in Kansas the major release mechanism is the parole mechanism, about 95% of the people are released through parole, and other options need to be explored.

Secretary Endell talked about the work performance possibility. Farming is one. He said there are some joint venture programs going. Things are being done with inmate labor. He specifically mentioned the Winfield, Eureka, and Toronto area. Lansing is doing some things. Parks and rest stops can be maintained. He said he does not want to put the private sector out of work.

The Chairman commented that the Secretary's philosophy is not out of tune with what a lot of the legislators feel about longevity and consistency.

He was asked more questions from the Committee. He was asked about a timetable. Secretary Endell said he will have this all spelled out at the end of the month. He hopes that they can come to some agreement, formal or informal, with the Legislature. They do want to convince the court that they have commitments, and the most important is from the Legislature, because it is the only entity that can appropriate funds. He said the more funds put into community corrections the more inmates you will see diverted and pre-released.

A member asked if there is going to be an administrator of community corrections. The Secretary said on that act they can work together. He would recommend more flexibility be given to the program. He said he needs to get something specific before the Committee so it can evaluate it. He said they have some ideas that can improve the performance.

A member asked Mr. Endell if he has an opinion on the unanimous vote of the parole board concerning felons. The Secretary said he is not sure the unanimous vote is the issue. The issue is the flow in and out of the system. The member stated that it is an issue before this Legislature. The Secretary said he did not know what the history of the problem is in Kansas. He understands there is a court ruling saying there should be a majority ruling. He does not know whether that has to do with parole decisions or not.

A member asked as part of this plan is there a part that will deal with total reclassification of prisoners, and if there were a category for those in the classifications to deal with the physically handicapped. He said the physically handicapped should not be included. They will be introducing something called "community custody." It will designate those offenders who, in the opinion of the DOC, can be released in a partial manner.

The Chairman said the Secretary had stated that he had authority to put people out on extended furloughs together with people out of the prisons.

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Secretary Endell said he thinks they need to have broad powers, and as an alternative to release mechanisms. It gives them the ability to show that that person has earned that privilege. It is important they get as much latitude as possible. Rules have been enacted that make it impossible.

The Chairman said the parole policy is a result of the fact in Kansas that people expected the Legislature to get tougher because the majority of the people who end up in Lansing are not first-time offenders. Based on the crisis of overcrowding the Secretary says we are going to have to look at other systems in order to meet the mandate in order to find a place unless the statutes are changed. The Chairman said that is hard to do, because a lot of that would be perceived as being easy on the criminal. He commented that the national crime rate is down 4%, yet Kansas continues to have this surge of people coming into its system.

Mr. Endell said the same pattern extends in most states. The system keeps expanding. So adjustments must be made. He said it has to be paid for or policy and procedure must be changed.

The Chairman thanked him for his appearance. He said the Committee will look forward to receiving the report when it is ready and will work closely with the Department.

The Minutes of the meeting of January 20, 1988, were before the Committee. Senator Morris moved they be approved. The motion was seconded by Senator Hoferer. The motion carried.

The meeting was adjourned at noon.



2/2/88

# WASHBURN UNIVERSITY OF TOPEKA

School of Law  
Topeka, Kansas 66621  
Phone 913-295-6660

January 25, 1988

To: David Monical

From: Bill Rich <sup>B.R.</sup>

Re: Washburn Law Clinic Representation of Inmates at Kansas State Penitentiary

In 1978 Federal District Court Judge Richard Rogers appointed the Washburn Law Clinic to represent a group of inmates who had filed complaints challenging conditions at the Kansas State Penitentiary. Because this case involved substantial education value for our students, we were, of course, honored to receive Judge Roger's appointment.

At the time of our original appointment, Rebert F. Bennett was the Governor of Kansas and the named defendant in the case. A year later, Governor John Carlin was substituted for Governor Bennett as a defendant. During the first two years of litigation law students undertook fact investigations, took depositions, argued motions before the federal court, and participated in negotiations with representatives of the state. Those efforts led to a consent decree in 1980 which we have monitored since that date.

The 1980 Consent Decree incorporated renovation plans that had been adopted by the Kansas State Legislature. It also identified agreed upon standards and objectives regarding future conditions. Those objectives included compliance with the minimum accreditation requirements of the American Correctional Association. Because of the dramatic growth of the Kansas inmate population, those objectives have not been met.

The United States Department of Justice, with whom we have had regular contact for almost two years, concluded an investigation several months ago that found extensive constitutional violations. A report based upon their follow-up investigation should be completed in the immediate future. In keeping with the evidence of ongoing constitutional violations, we are now at the point of seeking modification and enforcement of that consent decree. Motions for both preliminary and permanent relief will be filed as soon as possible to address what is considered to be

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Attachment #1

an emergency situation.

The Law Clinic has applied to the Edna McConnell Clark Foundation for additional resources. That grant application will not affect the motions that are being filed or the immediate requests for injunctive relief. It will provide financial support for expert assessments of conditions at KSP.

This case was accepted as a part of the operation of the Washburn Law Clinic which has provided clinical legal education as an elective course since 1970. Clinical education is the study of law through faculty supervised actual client representation, combined with seminars and lecture classes. The Washburn Law Clinic, which operates as a model law office, is staffed by four full-time members of the law faculty. Practice of law by students is permitted by Kansas Supreme Court Rule 708, which allows senior students, under lawyer supervision, to represent persons who cannot afford legal counsel.

Because we accepted Judge Roger's appointment in 1978, the Law Clinic continues to be responsible for advocating the interests of these clients. The American Bar Association has addressed the obligation we have in maintaining a law school clinic in a state-supported university. Our obligations include representation of indigents in controversial cases, with an understanding that such work is consistent with the highest standards of the legal profession.

**Editorials***In God We Trust**Some simple corrections*

When Michael Barbara speaks about prison overcrowding, Kansas legislators ought to listen. The Washburn University law professor knows the issue from two perspectives, having served as both a district judge and secretary of corrections.

Last week, Barbara offered some alternatives to a massive building plan proposed by Corrections Secretary Roger Endell. Besides being expensive, building new prisons also can be ineffective in solving problems.

"No state, with the problems facing Kansas, has been successful in resolving overcrowded prisons simply by building alone," Barbara said.

One of Barbara's suggestions is raising the threshold for felony theft from \$150 to \$1,000. That simple adjustment wouldn't cost the state anything to implement and it could save bundles.

For one thing, felonies require prison terms. Raising the threshold for felony crimes, therefore, would mean fewer cases would result in costly imprisonment. It also would more accurately reflect the seriousness of the crime. While

\$150 may have been a considerable amount when the law was written, inflation has reduced it to little more than a petty theft.

The change also would save on defense costs since many of those charged with these crimes also depend on public defenders or court-appointed representation, which means paid by the taxpayers. A recent Supreme Court ruling raised the fees for that work to \$60 an hour.

Among his other suggestions: a mandatory regional community-based program for those convicted of misdemeanors and expansion of the Kansas Reception and Diagnostic Center in Topeka and the Larned State Hospital. Both would allow for treatment of those with drug or alcohol addictions, mental health illness or medical problems. And many inmates fall in those categories.

Barbara's proposals won't satisfy those with a "lock 'em up and throw away the key" philosophy of corrections. But they do offer a realistic, workable — and affordable — approach to getting Kansas through this overcrowding crisis. They deserve serious consideration.

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Attachment #2