

Approved: 3/13/95
Date

MINUTES OF THE HOUSE COMMITTEE ON APPROPRIATIONS.

The meeting was called to order by Chairperson Robin Jennison at 1:30 p. m. on March 7, 1995 in Room 514-S of the Capitol.

All members were present except:
Representative Edlund, excused Representative Gross, excused

Committee staff present: Alan Conroy, Legislative Research Department
Dr. Bill Wolf, Legislative Research Department
Julian Efirm, Legislative Research Department
Kathy Porter, Legislative Research Department
Laura Howard, Legislative Research Department
Leah Robinson, Legislative Research Department
Jim Wilson, Revisor of Statutes
Mike Corrigan, Revisor of Statutes
Lenore Olson, Committee Secretary
Tara Eubanks, Administrative Assistant

Conferees appearing before the committee:
Bob Wunsch - University of Kansas Medical Center
Dr. Ernest Crow -retired faculty member- University of Kansas Medical Center,
Wichita
Jessie Branson, former Representative
Representative Greg Packer
Rev. Robert Keller
Bill Lucero - Murder Victims Families for Reconciliation
Elizabeth Herbert, attorney for the Keller family
Ron Hein for Orrin J. Fowles

Others attending: See attached list

The Chair opened the hearing on **SB 169**.

SB 169 - Medical student scholarships and loans, satisfaction of service obligation.

Robert Wunsch, representing the University of Kansas Medical Center, testified in support of **SB 169**. Mr. Wunsch said the Medical Center sought this legislation to clarify legislative purpose, specifically, the provision to enable a physician to satisfy their service obligation by providing 100 hours of service in a clinic operated by a local health department or non-profit organization (Attachment 1).

Dr. Ernest Crow, retired member of the faculty of the University of Kansas Medical Center, Wichita, testified in support of **SB 169**. Dr. Crow said he believes that a legislative act giving loan forgiveness to internal medicine and other primary care residents who accept full-time faculty appointments will substantially assist in recruiting junior faculty (Attachment 2).

Jessie Branson, former Representative, testified in support of **SB 169**. She reviewed amendments to statutes made during the 1990 Legislative Session that would allow graduates of the KU School of Medicine to repay their state loans presented her definitions of the 1990 Legislative intent as shown on (Attachment 3).

Written testimony was distributed from the Department of Health and Environment requesting a technical amendment on page 5, line 41 of the **SB 169** (Attachment 4).

Chairperson Jennison closed the hearing on **SB 169**

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON APPROPRIATIONS, Room 514-S Statehouse, at 1:30 p.m. on March 7, 1995.

The Chair opened the hearing on SB 95.

SB 95 - Special claims against the state.

Dr. Bill Wolf, Legislative Research Department, presented a detailed review of SB 95 and the Committee discussed several sections of the bill with Dr. Wolf.

Representative Greg Packer requested SB 95 be amended to include \$100,000 for the Robert Keller family, who contend their daughter, Brenda, was murdered because Jon Mareska was "wrongfully and negligently" released (Attachment 5).

Rev. Robert Keller appeared before the Committee on SB 95. Rev. Keller said a positive response from the Committee to his claim would send a message to all officials who are responsible for the care and keeping of dangerous criminals, that the citizens of Kansas do not take lightly the careless release of dangerous prisoners onto the streets before they have served their time. (Attachment 6). Rev. Keller distributed copies of a transcript of proceedings to consider modifying Jon Mareska's sentence (Attachment 7) and a picture taken of his daughter, Brenda (Attachment 8).

Bill Lucero, Murder Victims Families for Reconciliation, testified he believes the State of Kansas owes personal liability to the Keller family and that the State has erred badly with the costly result of a human life.

Elizabeth Herbert, attorney for the Keller family, urged the Committee to get the full documentation that was filed with the Committee on Special Claims to support the claim made by Rev. Keller.

Ron Hein requested SB 95 be amended on behalf of Orrin J. Fowles, who contends his winning lottery ticket was lost by the authorized lottery retailer in 1988. Mr. Hein said this claim was the first and only time during the time period of 1988-90 that the Lottery did not pay a lost or mutilated ticket, and the Lottery continues to approve all similar and identical claims through the spring of 1990. According to Mr. Hein, if Fowles were to be awarded statutory interest on the \$117,037 ticket, as of March 1, 1995, the total amount including interest would be approximately \$220,000 (Attachment 9).

Chairperson Jennison closed the hearing on SB 95.

The Chair requested the Committee turn to HB 2236.

HB 2236 - Appropriations for FY 96, state board of regents and higher education institutions.

A motion was made by Representative Helgerson, seconded by Representative Kline, to amend HB 2236 by removing the language which was added by the Committee of the Whole which restricted or prohibited abortions done at the University of Kansas Medical Center. The motion carried with a count of 8 aye and 7 nay votes. Representatives Carmody, Cornfield, Farmer, Kejr, Mollenkamp, Neufeld and Wilk requested they be recorded as voting nay.

Representative Farmer distributed information on governance and oversight of Washburn University of Topeka (Attachment 10) and on state aid to Washburn University (Attachment 11).

A motion was made by Representative Farmer, seconded by Representative Cornfield, to amend HB 2236 to remove one-fourth of the 1995 state operating grant (about \$1.7 million) from Washburn University every year for four years until the operating grant is no longer there. The motion failed with a count of 5 aye and 11 nay votes.

A motion was made by Representative Bradley, seconded by Representative Neufeld, to amend HB 2236 by adding the language back into the bill regarding restricting or prohibiting abortions done at the University of Kansas Medical Center. The motion failed with a count of 8 aye and 11 nay votes. Representative Bradley requested to be recorded as voting aye.

A motion was made by Representative Farmer, seconded by Representative Neufeld, to amend HB 2236 to remove the 2.6 percent increase for Washburn University. The motion failed with a count of 6 aye and 11 nay votes.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON APPROPRIATIONS, Room 514-S Statehouse, at 1:30 p.m. on March 7, 1995.

A motion was made by Representative Neufeld, seconded by Representative Minor, to amend HB 2236 on page 7, lines 22 through 25 by removing the language regarding payment of \$33,000 per county plus \$.28 per capita on an annualized basis to support county extension agents. The motion carried.

A motion was made by Representative Carmody, seconded by Representative Helgerson, to amend HB 2236 regarding the Regents systemwide budget reduction, to approve the Committee recommendation for a reduction of \$5,759,874 from the State General Fund. The motion carried with a count of 14 ayes and 3 nays. Representative Hochhauser requested to be recorded as voting nay.

A motion was made by Representative Haulmark, seconded by Representative Neufeld, to amend HB 2236 by lowering the grant to Washburn University to 2.6 percent. The motion failed.

A motion was made by Representative Reinhardt, seconded by Representative Minor, to amend HB 2236 to show no reduction in funding for Kansas State University - Extension. The motion failed.

A motion was made by Representative Allen, seconded by Representative Wilk, to make a technical amendment to SB 2236 on page 8, line 26 by removing the reference to (f) and inserting (c). The motion carried.

A motion was made by Representative Carmody, seconded by Representative Haulmark, to pass as amended HB 2236. The motion carried. Representative Hochhauser requested to be recorded as voting nay.

The meeting adjourned at 4:15 p.m.

The next meeting is scheduled for March 8, 1995.

APPROPRIATIONS COMMITTEE GUEST LIST

DATE: 3/7/95

NAME	REPRESENTING
Bob Wunsch	KUMC
Emi Sexton	Wsu
Bill Hollowbeck	PSU
Tim Scanlan, MD	SSMC
Chip Wheeler	KS Medical Society
James Crawford	Intern
Nathalie Scharf	KHA
Marvin Burris	Regents
Marty Kennedy	DOB
Edward Rome	LWU KS
Dan Hermes	DIVISION OF THE Budget
Mary Ellen Conlee	St Francis Reg. Med. Center
Edna Brown	UKSM - WICHITA
Zachary Starbird	
Geoff Schneider	KDHR
D.B. Dallas	DOB
Amy Howell	Intern
PHILIP HURLEY	PATRICK J. HURLEY & CO.
David & Monical	Washburn Univ

APPROPRIATIONS COMMITTEE GUEST LIST

DATE: 3/7/95

NAME	REPRESENTING
Roger Trumble	FTE
Peggy Jarman	PCAL
Jon Josseland	KY

TESTIMONY BEFORE THE HOUSE APPROPRIATIONS COMMITTEE
SENATE BILL 169
ROBERT S. WUNSCH
MARCH 7, 1995

Thank you, Mr. Chairman. My name is Robert Wunsch and I am here today on behalf of the University of Kansas Medical Center to testify in support of Senate Bill 169.

When the Medical Scholarship Program was initially enacted by the 1978 Legislature, it was totally a legislative initiative. The legislative objective was clearly to encourage medical students to ultimately seek a practice location in an underserved area in Kansas upon completion of their medical training. To provide an incentive, financial aid is provided during the student's undergraduate medical years, with a waiver of the repayment obligation upon the provision of satisfactory service in a locale within the state that was in compliance with the statute.

Throughout the history of the program, it has been amended on numerous occasions. The numerous changes, whether they related to financial incentives, specialty preference, or service obligations were changes initiated by the Legislature. Perhaps the most significant change occurred in the 1992 session of the Legislature when the program was retitled as a Medical Loan Program and the financial incentives for students were significantly enhanced. The University of Kansas Medical Center's role was, and continues to be, to advise the Legislature on the impact the program is having and to alert legislators to problems that we might be encountering in administering the bill. The administration of the act in accordance with legislative intent has always been the principal concern of the Medical Center.

In the current Kansas Medical Scholarship law, there is a provision for a student awarded a scholarship prior to January 1, 1986, that allows for the satisfaction of the student's service obligation by engaging in the full-time practice of medicine and surgery in any service commitment area by devoting at least 100 hours per month to a local health department or non-profit organization serving medically indigent persons. This provision was amended into the statute by former Representative Jessie Branson in the 1990 session. When the Kansas Medical Loan Law was enacted in 1992, the same provision was made for such alternate service opportunity.

While we believe that the intent of the Legislature in providing for this alternative service opportunity was quite clear, it is apparent that others could perhaps, prefer to construe the statute more broadly. We have sought this legislation to clarify this provision in keeping with what we believed was legislative intent. Specifically, we believe the legislative purpose was to enable a physician to satisfy their service obligation by providing 100 hours of service in a clinic operated by a local health department or non-profit organization. We do not believe that "devoting" of 100 hours could be construed to be anything other than providing direct service in such a clinic and that the medical service could be anything other than in primary care. Unfortunately, others interpret the language more broadly and thus, the need for clarification.

The language we have proposed would specifically require that a physician provide 100 hours of primary care service in a clinic operated by a local health department or non-profit organization serving medically indigent persons. We believe this was the original legislative intent and we would ask for the passage of Senate Bill 169 in order to allow us to administer these two laws in a manner which we feel is consistent with the legislative purpose.

3/7/95
Appropriations Committee
Attachment 1

The Senate Committee amended the bill to provide that serving as General Internal Medicine and General Pediatrics faculty at the Medical Center would satisfy one's service commitment as it currently does for Family Medicine or Family Practice faculty. Although the programs were not specifically established to provide faculty, the addition of these other primary care practices will help in recruiting and maintaining these needed additional primary care faculty.

SUBJECT: DIFFICULTY RECRUITING JUNIOR FULL-TIME INTERNAL MEDICINE FACULTY
FROM: Ernest W. Crow, M.D.
Clinical Professor of Medicine

In the report which I prepared for Dr. Meek as I retired as Acting Chairman of the Department of Internal Medicine at the University of Kansas School of Medicine-Wichita, I expressed my concern about a problem confronting the Department of Internal Medicine. This same problem was noted by the Departmental Review Committee which has been reviewing departmental activity during the past few months and they also recommend the solution defined below.

This problem relates to the difficulty and almost impossible task of recruiting junior faculty into the Department of Internal Medicine. The problem has become critical in the past year because two of our most revered older faculty members in Wichita have reached an age where they must be replaced. Both are over 70, one over 75 years of age, and the two of them are among our finest role models as primary care generalists. The teaching load in Wichita and Kansas City is especially heavy for our general internal medicine faculty since they do a major portion of the teaching in the junior and senior clinical rotations. We believe that the development of strong role models in the primary care fields is essential in expanding the number of students who select those fields for residency. In addition as we expand into the rural areas, the use of such models as those currently in Beloit (Dr. Concannon) and Chanute (Dr. Maben) are essential.

Some probable explanations for the problem are as follows:

1. The Wichita Campus is not yet well known nationally so it becomes extremely hard to attract young faculty from elsewhere to this campus. As evidence of this, advertisements placed in national magazines during the past year have resulted in only two resumes, both with unsatisfactory credentials. Dr. Greenberger on the Kansas campus reports that a similar situation exists in Kansas City even though they are better known nationally. On the good side in Wichita however is that our program matched 100% of positions on the last residency match and most of those will be going into general internal medicine. This indicates the respect this department receives from our students, since most of our residents come from our own student body.
2. The starting salaries for instructors or assistant professors in internal medicine is often lower than the competition outside the university offers and some groups now are offering to pay off the student loans in order to recruit into the groups. The department of internal medicine cares for a majority of no pay and medicaid patients, so patient care income to support internal medicine faculty is quite limited. A young, vigorous general internal medicine faculty is essential to developing a primary care base from which students can learn. That base must include our rural rotations. Unfortunately two of our fine young volunteer faculty have been recruited out of state, one to Nebraska and one to Missouri by hospitals and/or clinics offering to pay off their student loans.
3. We are unable to provide loan forgiveness for full-time faculty, a perk which was provided for family medicine by the legislature in previous years.

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Attachment 2

Recently the American Board of Internal Medicine and the American Board of Family Practice issued a joint statement urging program directors to "foster collaboration in the training and education of generalist physicians."¹ A committee from internal medicine and family medicine began working on that subject last year in Wichita. By increasing the opportunities in various primary care fields, it is my belief that the number of students going into one of the three primary fields; (general internal medicine, general family medicine, and general pediatrics) will increase.

By doing this one is able to avoid duplication of faculty, take advantage of the strengths of both internal medicine and family practice programs to the benefit of residents. We already are able to offer a combined internal medicine pediatrics program.

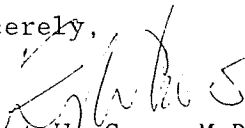
I believe that a legislative act giving loan forgiveness to internal medicine and other primary care residents who accept full-time faculty appointments will substantially assist in recruiting junior faculty. I feel confident that we will be able to recruit from our own residency programs in Wichita and Kansas City. We have a full quota of quality residents in our program, most I believe will continue in general internal medicine. There are many excellent opportunities in the state of Kansas for young general internal medicine physicians. In our class of residents who complete residency in June 1995, three are already committed to general internal medicine practice in the state of Kansas. Among the 1994 graduates, four are already in general internal medicine.

In the current recommended amendment we have specifically utilized the term general family practice and family medicine, general internal medicine, general pediatrics as a restrictive term rather than as the term might imply an expansive one. By utilizing the term general we then eliminate any of those who might choose a subspecialty area of practice. In addition the three year limited eliminates subspecialists from the program. Family medicine, internal medicine and pediatrics all require three years in general training before subspecialization can occur.

The Chairman of the Department of Family and Community Medicine at the University of Kansas School of Medicine-Wichita, Dr. Andrew Barclay, is in support of this suggestion. Dr. Norton Greenberger, Chairman and Peter T. Bohn, Professor of Medicine are also in full support of this plan.

I am quite willing to answer questions regarding the need for loan forgiveness for primary care physicians.

Sincerely,



Ernest W. Crow, M.D.

EWC:nec/crow.leg

1) Kimball, Harry R, Young Paul R., JAMA, January 25, 1995, pg 320-322

JESSIE M. BRANSON
800 Broadview Drive
Lawrence, Kansas 66044

February 14, 1995

To: Honorable Robin Jennison, Chairman
and Members
House Committee on Appropriations
State Capitol
Topeka, Kansas 66612

From: Jessie Branson

Re: Senate Bill 169

Thank you for the opportunity to speak with you this afternoon. I appear as a proponent of SB 169 and as a former member of the Kansas House of Representatives, serving from 1981 - 1991. I was a member of the Public Health and Welfare Committee throughout my tenure, eight years as Ranking Minority, and I served as Vice Chair of both the Commission on Access to Care for the Medically Indigent and the Joint Committee on Health Care Decisions for the 1990's.

During the 1980's several Interim Committees on Public Health and Welfare, the commission on Access to Care for the Medically Indigent, and the Joint Committee on Health Care Decisions for the 1990's spent considerable time hearing testimony from and touring various facilities throughout the state that were besieged with increasing numbers of people seeking health care due to their lack of access to care elsewhere.

Facilities that we toured and/or heard testimony from included several local health departments (Wichita/Sedgwick County; Kansas City/Wyandotte county: Finney, Saline, Leavenworth, Johnson, Greenwood-Butler, and Douglas Counties).

We also made on-site visits to several clinics which had been initiated to serve "medically indigent". These included the Hunter Clinic and others in Wichita, the Marion Clinic in Topeka, and Sisters of Charity in Kansas City, all operated by nonprofit organizations.

We found that, among other problems, these agencies were sorely in need of physicians. Accordingly, the Joint Committee on Health Care Decisions proposed an amendment to the statutes during the 1990 Session that would allow graduates of the KU School of Medicine to repay their state loans by providing medical care in local health departments or in clinics operated by nonprofit organizations. The amendment passed and is found in K.S.A. 76-375, Subsection (e), (2).

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Attachment 3

The Legislative intent of the 1990 amendment was as follows:

- a) The service would be provided by those graduates who were qualified to practice primary care, i.e., general pediatrics, general internal medicine, or family practice.
- b) Allowing medical school graduates, specifically those trained in primary care, to repay their loans by serving in health departments and nonprofit clinics would encourage students early on to pursue careers in primary care. (Medical indigence in our state was due, in part, to the fact that there were too many specialists and not enough primary care physicians).
- c) Preventive care, as well as general sickness care, could best be provided by primary care physicians. (Increased preventive care was one of the Committee's chief objectives).
- d) The requirement of at least 100 hours per month service, in order to satisfy the loan agreement, would be provided on-site. It was never the Committee's intent that the time requirement be satisfied by any off-site service such as by telephone consultation.

Mr. Chairman and Members, as sponsor of the 1990 Amendment, I believe that the proposed new language in SB 169 would clarify and strengthen the original legislative intent. I urge that you recommend SB 169 favorable for passage.

Thank you for your help in this matter.

State of Kansas

Bill Graves



Governor

Department of Health and Environment

James J. O'Connell, Secretary

Written Testimony presented to
House Committee on Appropriations

by

The Kansas Department of Health and Environment

Senate Bill 169

Senate Bill 169 provides clarification of a provision in the Kansas Medical Loan Repayment Program allowing physicians to earn loan forgiveness by providing care in sites serving the medically indigent. The Kansas Medical Loan Repayment Program, formerly the Kansas Medical Scholarship program, was conceived as a way to get primary care physicians to medically underserved areas by offering them a full scholarship in exchange for service in shortage areas. Originally those sites were defined as counties with high patient to physician ratios and they tended to be rural areas. But, in 1990, sites serving the medically indigent were added as a location for discharge of this service obligation.

We agree with the Kansas Medical Scholarship Advisory Committee's conclusion that the intent of the original legislation was to get direct primary care to the medically indigent and that current statutory wording leaves too much room for rival interpretations. Consequently, we support the clarification provided in Senate Bill 169.

Since passage of this bill by the Senate, we have become aware of a technical problem with the wording of the bill. On page 5, line 41, the reference to K.S.A. 76-374 should be stricken. K.S.A. 76-374 does not define "primary care," but places geographic limits on where such care can be provided. We do not believe that was the intent of the sponsors of this bill. We have prepared a balloon showing the amendment we are recommending. Once this change is made, this bill accomplishes its goal of making it clear that a person may satisfy his or

Attachment 4

her service commitment by providing on-site primary care to health departments or the medically indigent. The Department recommends that the Committee report Senate Bill 169 with our suggested amendment favorably for passage.

Written testimony presented by: Richard J. Morrissey
Director
Bureau of Local and Rural Health Systems
Kansas Department of Health and Environment

Date: March 7, 1995

1 chancellor's designee, or (2) at a state medical care facility or institution,
 2 shall be on the basis of at least the equivalent of ½ time in order to satisfy
 3 the obligation to engage in the practice of medicine and surgery under
 4 an agreement entered into pursuant to K.S.A. 76-374 and amendments
 5 thereto.

6 (k) As used in this section, "state medical care facility or institution"
 7 includes, but is not limited to, the Kansas state school for the visually
 8 handicapped, the Kansas state school for the deaf, any institution under
 9 the secretary of social and rehabilitation services, as defined by subsection
 10 (b) of K.S.A. 76-12a01 and amendments thereto or by subsection (b) of
 11 K.S.A. 76-12a18 and amendments thereto, the Kansas soldiers' home and
 12 any correctional institution under the secretary of corrections, as defined
 13 by subsection (d) of K.S.A. 75-5202 and amendments thereto, but shall
 14 not include any state educational institution under the state board of
 15 regents, as defined by subsection (a) of K.S.A. 76-711 and amendments
 16 thereto, except as specifically provided by statute.

17 Sec. 2. K.S.A. 1994 Supp. 76-384 is hereby amended to read as fol-
 18 lows: 76-384. (a) Upon the selection of a service commitment area for
 19 the purposes of satisfying a service obligation under a medical student
 20 loan agreement entered into under this act, the person so selecting shall
 21 inform the university of Kansas school of medicine of the service com-
 22 mitment area selected.

23 (b) A person serving in a service commitment area pursuant to any
 24 agreement under this act may serve all or part of any commitment in the
 25 service commitment area initially selected by such person. If such person
 26 moves from one service commitment area to another service commitment
 27 area, such person shall notify the university of Kansas school of medicine
 28 of such person's change of service commitment area. Service in any such
 29 service commitment area shall be deemed to be continuous for the pur-
 30 pose of satisfying any agreement entered into under this act.

31 (c) A person receiving a medical student loan under this act, may
 32 satisfy the obligation to engage in the full-time practice of medicine and
 33 surgery in a service commitment area if the person serves as a full-time
 34 faculty member of the university of Kansas school of medicine in family
 35 medicine or family practice **or general internal medicine or general**
 36 **pediatrics** and serves two years for each one year of such obligation, or
 37 the equivalent thereof on a two-for-one basis.

38 (d) A person may satisfy the obligation to engage in the full-time
 39 practice of medicine and surgery in a service commitment area by de-
 40 ~~voting performing~~ at least 100 hours per month ~~to of on-site primary care~~
 41 ~~as defined in K.S.A. 75-374 76-374~~ and amendments thereto at a medical
 42 facility operated by a local health department or nonprofit organization
 43 in this state serving medically indigent persons. As used in this subsection,

Delete

48

GREG A. PACKER

REPRESENTATIVE, FIFTY-FIRST DISTRICT
7200 WATTLING CT.
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TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
VICE CHAIR: BUSINESS, COMMERCE, AND LABOR
ECONOMIC DEVELOPMENT
FEDERAL AND STATE AFFAIRS
JOINT COMMITTEE ON ARTS AND CULTURAL
RESOURCES

Testimony on SB 95

Thank you Mr. Chairman and members of the committee.

I am Representative Greg Packer. In my Legislative District there are eight small communities . Some are so small they do not even have a store or gas station. These people in small towns are the backbone of America. They are the people who have the values that promote goodness and kindness. These small towns have a sense of unity and community. Most of the people in these communities commute 30 to 40 miles to work in the bigger cities that surround them. One of the reasons the people decide to live in these communities is the crime rates are low, and the unity of neighbors is high. Their children walk the community without fear or concern . This was the way Dover, Kansas was until October 18, 1991, when Brenda Keller was violently slain. Brenda Keller was a happy child who loved life and loved her family. Her father was a local minister at the local church who brought up his family to trust society and the laws it passes. Brenda was only 12 years old and maybe trusted people too much. As she rode her bicycle that fall day she was violently murdered by a man who should have never been released from custody at all. The District Attorney of Osage County, acting in the name of The State of Kansas, freed a violent man, contrary to the instructions of the

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Attachment 5

presiding judge. If the Judges orders had been carried out, we would still be able to talk to Brenda today. A quote from Attorney General Bob Stephan in his testimony spells this error out. Jon Mareska is free because Ms. Cheryl Stewart "wrongfully and negligently" ordered his release. As a District Attorney. Ms. Stewart's job is a difficult one. She has immunity from prosecution and rightfully so, no one would take this job if they could be sued over every little thing. As a District Attorney though Ms. Stewart does have some obligation to uphold the law and follow the judges directives in sentencing and releasing prisoners. I have read the judges directive. it is vague and could be interpreted in many ways. I talked to two other District Attorneys in Kansas these past few days and showed them the court transcripts and told them a little about Mareska being involved in crimes against persons and aggravated robbery. Both DA's said they would have never let him out of custody. One said the court directive is vague, but I would have called the Judge to ask if he had given a lot of thought to letting him out. But I would never have the inclination to let him out as a violent offender. I am not here to judge the DA of this county, I am not here to judge Mareska, I am here to try to get \$100,000.00. Retribution that was once paid, then voted against in another hearing. I am here to ask the State to stand up and be responsible for the actions of the DA that practices under their authority. I grew up in a small town, I was taught that no matter how hard it was you say you are sorry when you are wrong, and if your wrongful act causes damage, you pay for that damage. I hope that this committee will think with that mindset and vote to add \$100,000.00 to this bill for Bob Keller's family. who has suffered the most traumatic thing any family can ever suffer, the loss of a child.

Thanks again for allowing me to appear.

A handwritten signature in cursive script, appearing to read "Greg".

Greg Packer

State Representative..

Bob Keller
13442 SW 57th Street
Topeka, Kansas 66610

Tuesday, March 7, 1995

Tomorrow, March 8th, has special significance for our family. On March 8th, sixteen years ago tomorrow, our daughter, Brenda was born. What should be a day of celebration, has become a day of special pain. Because on a Saturday afternoon, in October of 1991, Brenda, went on a bike ride and she never came home. Less than a mile from her home, in broad daylight, Brenda was grabbed from behind, pulled off the road, forced to go to a secluded area, where she was sexually abused and savagely beaten. Then, after her attacker was through he strangled her, and tossed her body into a shed.

Her killer, Jon Mareska, confessed to the crime the very next day. He is now serving two life sentences and two 10-to-life sentences at Eldorado State Penitentiary for the following four crimes: 1st degree murder, Aggravated Kidnapping, Rape and Sodomy. He will not be eligible for parole until the year 2031. Forty years. If the death penalty had been Kansas law that day, he would very possibly be on death row at this very moment.

I agree with Representative Adkins of Leawood, when he was quoted after our last hearing saying, "The murderer in this case was not the state of Kansas, but a very disturbed man." The man who brutally raped and strangled our daughter is doing his time. The reason we are here today, is because he wasn't doing his time when he should have been. We believe, and will document, that the county attorney of Osage County, acting in the name of the State of Kansas, freed that very disturbed man contrary to the instructions of the presiding judge. And if this representative of the State had followed proper procedure, this disturbed man would not have been able to kill anyone.

I don't want to bore you with a lot of dates, and details. But some are necessary to establish our claim. After a long history of crime, which included everything from theft, burglary, to extreme violence toward females, Jon Mareska, Brenda's rapist and murderer, found himself before Judge James Smith in the District Court of Osage County on July 31, of 1991. A presentence evaluation had been completed in which it was stated: "It would not be this writer's opinion, Jon would not make a suitable candidate for probation at this time. This writer would recommend the Court would consider a sentence to jail for a period of time prior to any release on supervised probation." (Presentence evaluation, *State vs. Mareska*, Osage County Case No. 91-CR-90). Jon Mareska was sentenced to 1 year in jail.

I have two more items I would like you to look at right now. The first, is a transcript of proceedings to consider modifying Mareska's sentence. This hearing took place on September 24, 1991. That's about the same time this picture was taken of Brenda. One of the last pictures we have of her. But on this day, September 24, 1991, Judge Smith heard a motion for sentence modification. Mareska's attorney had already written a letter asking that Mareska be placed in a 90 day pre-revocation program at the Osawatimie Correction Facility for the final 90 days of his local sentence. Mareska's attorney stated that "the defendant could be supervised through the Osawatimie facility which is designed to give the defendant the structure he needs. Further, Defendant would be facing state prison time should he fail to complete this

Appropriations Note Attachment 6
3/7/95

program." *Nowhere in the motion is it requested that Mareska be released into the public prior to the successful completion of the program.*

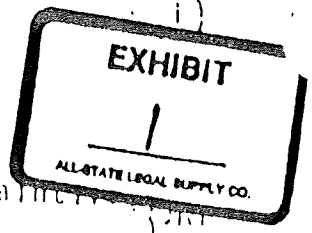
At the hearing, Judge Smith asked for the State's position relative to such motion. The State, represented by Ms. Cheryl Stewart said, "Your Honor, may it please the Court, the State's position is that if this defendant can be released into a drug and alcohol treatment program, we would have no objection." Judge Smith asked, "Is that what the 90 day pre-revocation at Osawatomie is...?" The State's attorney, Cheryl Stewart answered, "Yes, Your Honor, we would concur with that."

Nevertheless, on October 18th, less than one month later, Jon Mareska was free. Free to attack my daughter. The then, Attorney General of the State of Kansas, General Bob Stephan, stated that Jon Mareska was free because Ms. Cheryl Stewart "wrongfully and negligently" ordered his release.

Now, Brenda is dead. And once somebody is dead, there is no getting up again. You can't give her back to us. As Brenda's dad I know that all too well. My arms ache to hold her. There were times especially at first, when I would think, "Maybe this is a bad dream, and in the morning I'll wake up and she will be alive." But it's not a dream. You cannot replace Brenda, your money cannot bring her back. But you can send a message. Our desire is that Ms. Stewart be held accountable for her negligence. Unfortunately, the State of Kansas has granted Ms. Stewart immunity from prosecution. In principle, I can appreciate the need for this immunity, but it leaves us with no place to go except to you and your colleagues. I wish could take this matter to court. But we can't. You are our place of last resort. I believe a positive response from you, to our claim would send a message to all officials in Ms. Stewart's position, officials who are responsible for the care and keeping of dangerous criminals, that the citizens of Kansas do not take lightly the careless release dangerous prisoners onto the streets before they have served their time.

Thank you,

Bob & Tracy Keller



STATE OF KANSAS,

vs.

JOHN H. MARESKA, JR.,

Plaintiff
OSAGE COUNTY, KANSAS NO. 91-CR-90
Defendant.)

TRANSCRIPT OF PROCEEDINGS

NOTICE had before the Honorable James J. Smith,
one of said Judges sitting in for the Osage County District
Court, on the 24th day of September, 1991.

APPEARANCES:

The State of Kansas appeared by and through its
counsel, Ms. Cheryl Stewart, Osage County Courthouse,
Lyndon, Kansas 66451.

The defendant appeared in person and by and through
his court-appointed counsel, Ms. Kathleen Heff,
DEVOE & HEFF, P.O. Box 56, Carbondale, Kansas 66414.

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3/7/95
Appropriations Ante
Attachment 7.

1 THE COURT: We're taking up 91-CR-90. The
2 State of Kansas appears by the county attorney. The
3 defendant appears in person and by his attorney,
4 Kathleen Neff. This matter comes on on a Motion for
5 Sentence Modification filed by the defendant. What's
6 the State's position relative to such motion?

7 MS. STEWART: Your Honor, May it please the
8 Court, the State's position is that if this defendant
9 can be released into a drug and alcohol treatment
10 program, we would have no objection.

11 THE COURT: Is that what the 90 day pre-
12 revocation at Osawatomic is or at least--

13 MS. NEFF: If I may be permitted to answer,
14 Your Honor? Yes, it is. I have spoken--

15 THE COURT: I want to know if the State
16 concurs with that?

17 MS. STEWART: Yes, Your Honor, we would
18 concur with that.

19 THE COURT: Generally, I have no objection
20 to allowing him to enter such program under the terms
21 contained in the letter from Mr. Knoll. And we will
22 grant probation from the remainder of that sentence
23 giving him credit for the time he does serve in such
24 institutional diversionary program.

25 If in fact he violates that institutional

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diversionary program, it will be a violation of probation
here granted; and subsequent to the parole revocation,
he'll be subject to reentry into the jail to serve the
remainder of the sentence imposed hereunder. Other than
that, I do not believe any other terms or conditions of
probation are necessary.

MS. NEFF: Okay.

THE COURT: Very good. Do you agree with
that, Ms. Stewart.

MS. STEWART: Yes, I do, Judge.

THE COURT: Okay. Very good.

MS. STEWART: Thank you.

END OF PROCEEDINGS



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Appropriations Note
Attachment 8

Brenda Keller, Age 12
September, 1991

HEIN, EBERT AND WEIR, CHTD.

ATTORNEYS AT LAW

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Telephone: (913) 273-1441

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*Ronald R. Hein
William F. Ebert
Stephen P. Weir
Stacey R. Empson*

HOUSE APPROPRIATIONS COMMITTEE

TESTIMONY RE: SB 95

Presented by Ronald R. Hein

on behalf of

Orrin J. Fowles

March 7, 1995

Mr. Chairman, Members of the Committee:

My name is Ron Hein, and I am legislative counsel for Orrin J. Fowles. Orrin Fowles, as many of you will remember, is the gentleman who had his winning lottery ticket lost by the authorized lottery retailer back in 1988.

Orrin Fowles bought a Lottery ticket in July 17, 1988. Since he was leaving town, he handed the ticket to the clerk (also his daughter) at the convenience store where he purchased the ticket, who placed the signed ticket under the counter to send to the Lottery if he won.

The ticket got lost. Fowles filed a claim with the Joint Committee on Special Claims, and his claim was approved by the committee, and ultimately passed by the Legislature (twice)(three times by the Senate) overwhelmingly, but was vetoed (twice) by Governor Finney.

The Director of Security of the Lottery in 1988 says there is no question that Mr. Fowles bought the ticket. (See attachment.)

Between May, 1988, and March, 1990, the Lottery had a policy that it would pay claims even though tickets were lost. The written but informal Lottery policy allowed payment of lost or mutilated tickets if the Lottery "could determine the status of the ticket (a winner or not) and if no other claim was made on the same ticket, and if no other information concerning the ticket was brought to the attention of the Lottery...[and after] expiration of the game."

The Lottery paid 205 separate ticket claims on lost or mutilated tickets for over \$15,337.00 in winnings during that time. The lawyer for the Lottery, Carl Anderson, and Mr. Jim Huff, the former Director of Security of the Lottery, confirmed the policy.

This policy was in effect when Orrin Fowles purchased a Kansas Cash Lotto ticket with the winning combination numbers for a jackpot prize of \$117,037. The retailer he purchased it from, the Short Stop convenience store in Clay Center, Kansas, was an authorized Lottery retailer.

The back of Kansas Cash Lotto tickets state "To claim the prize: Present winning ticket to any Kansas on-line retailer for processing." Once the retailer had the ticket in their possession they were processing it on behalf of the state lottery. Fowles did everything that he was supposed to do. The ticket was lost by the store, not by Mr. Fowles.

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*Appropriations Cmte
Attachment 9*

Mr. Fowles also waited the allotted amount of time provided for by the informal policy of the Department, one year after the drawing date. The money that Mr. Fowles won and to which he is entitled was never paid out by the Lottery. So far as can be ascertained, the Lottery has never paid out to anyone the \$117,037 that was "won" that night.

To the best of anyone's knowledge, Mr. Fowles claim was the first and only time during that time period (1988-90), that the Lottery did not pay a lost or mutilated ticket, and the Lottery continued to approve all similar and identical claims through the Spring of 1990. The only distinction on the Orrin J. Fowles claim was the amount of money he won.

The Lottery paid a lost ticket claim by a woman who purchased a ticket worth \$250 at the same Short Stop convenience store from which Mr. Fowles purchased his ticket, a year after Mr. Fowles purchase. In their letter to the woman, which included the check for payment of the claim, the Lottery stated "We were unable to pay your claim until after the expiration of the "Holiday Cash" game which occurred on June 11, 1990, since we never received the original ticket and claim form at the Lottery. This delay was required because anyone presenting the winning ticket, which they had signed with an accompanying claim form would have been entitled to payment. No such claim was made, and in accordance with office policy in effect at that time, we are honoring your claim..."

In 1991, Mr. Fowles sued the Lottery, and the Lottery sued the retailer, which filed a third party petition against the sales clerk. The District Court ruled that the Lottery could not be liable at all, and Mr. Fowles' sole claim was against the retailer. The Court, in its opinion, made no mention of the fact that the Lottery had a policy of paying such claims, and simply cited the rules and regulations. The District Court opinion was appealed by Mr. Fowles, but the decision was upheld on appeal.

Mr. George Leiszler, the owner of Leiszler Oil Company which ran the store where Mr. Fowles purchased his ticket, has been supportive of Mr. Fowles' efforts. He is the past president of the Kansas Oil Marketers Association and Convenience Store Association of Kansas, and he has indicated in the newspaper article attached that the 5 cents profit that a retailer makes on a dollar ticket sold does not warrant the potential liability for paying off claims worth thousands or millions of dollars, and that such liability could "make some stores think twice" [about continuing as lottery retailers].

Orrin Fowles has no claim as a matter of law, but he certainly has a claim a matter of equity, since every other lost or mutilated ticket during this period was paid by the Lottery.

The Legislature has twice passed this legislation, and the Governor has indicated he will sign the legislation if approved by the Legislature. The claim can be paid directly out of the Lottery's budget. There can be no other claims such as this, because the lottery changed their policy in 1990.

If Fowles were to be awarded statutory interest on the \$117,037 ticket, as of March 1, 1995, the total amount including interest would be approximately \$220,000.00.

Thank you very much for permitting me to testify, and I will be happy to yield to questions.

GOVERNANCE & OVERSIGHT
OF
WASHBURN UNIVERSITY OF TOPEKA

Washburn University of Topeka is a municipal university. The Kansas Constitution specifically recites that a municipal university shall be "...operated, supervised and controlled as provided by law."¹

Washburn University of Topeka is governed by a nine member Board of Regents. Four of the members are appointed by the Mayor of the city of Topeka, three are appointed by the Governor, one is a member of the Kansas Board of Regents and one is the Mayor or his/her designee.² The specific operating statutes pertaining to the governance of the University are found in two Chapters of the Kansas Statutes Annotated.

K.S.A. 13-13a03 *et seq* detail the authority and responsibility of the University's Board of Regents. In these statutes the University's Board of Regents is vested with management of the University³, the authority to determine all questions pertaining to degrees to be conferred and courses to be offered,⁴ to set tuition,⁵ to levy, within the city of Topeka up to 7 mills for general operating expenses⁶ and up to 3 mills for debt retirement and construction expenses,⁷ to issue bonds for acquisition of realty and the constructing and equipping buildings,⁸ to collect out-district tuition for persons outside of the University's taxing district,⁹ and to exercise all powers necessary for the operation of the University which do not conflict with other legislation.¹⁰ There are strict limitations placed on the mill levy authority for debt retirement and construction and for general operating expenses. And, while the University may charge rent for the use of its facilities, the rental income must be deposited in the general fund¹¹ as must all tuition and fee income¹².

K.S.A. 72-6502 *et seq* are the statutes governing the payment of the state operating grant to the University. Washburn University is entitled to receive an annual operating grant from the state's general fund as appropriated by the Kansas Legislature. The University is required to submit its request for the operating grant to the Kansas Board of Regents, which is to review the request and forward it and its recommendations to the State Budget Director.¹³ There are limitations placed on the University. First, the University must be accredited by the North Central Association of colleges and Universities.¹⁴ Second, funds distributed to the University may only be used to pay current operating expenses and not for any capital improvements.¹⁵ Third, the funds received may not be used for expanding graduate programs or for off-campus programs without the approval of the Kansas Board of Regents¹⁶. Additionally, the law provides that the University shall be limited to conferring associates, bachelors, masters and juris doctor degrees and is prohibited from creating any specialized school without the express approval of the Kansas Legislature by enactment of a law.¹⁷

Washburn University of Topeka is a quasi-municipal corporation, subject to the statutes applicable to cities and other governmental subdivisions of the state of Kansas, including the Kansas Cash-Basis Law,¹⁸ the uniform payment of claims laws for municipalities,¹⁹ the state's bond law,²⁰ the laws pertaining to the budgets of taxing subdivisions of the state,²¹ the Kansas Tort Claims Act²², and the municipal accounting laws.²³

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Appropriations Committee
Attachment 10

Under the Kansas Cash-Basis Law, Washburn University is prohibited from contracting for indebtedness beyond the amount of funds actually on hand in its accounts.²⁴ Unlike the school districts and community colleges, it may not issue cancelable purchase order for school supplies and equipment for the ensuing fiscal year.²⁵ It may enter, however, into certain type of leases provided certain statutory requirements are met.²⁶

The uniform claims provisions for municipalities requires that, subject to certain exceptions, that the governing board approve each expenditure of the University. The procedure requires that each claim be certified that it is correct, due and unpaid prior to payment and includes an audit procedure for all claims.²⁷

As indicated in the preceding section, Washburn University does have the authority to issue bonds, provided, the bonded indebtedness of the University does not exceed two percent (2%) of the assessed valuation of the taxing district.²⁸ The required procedure for issuing such bonded indebtedness is found in the state's general bond law which includes limitations as to the number of years of maturity, the method of conducting the public sale, the registration procedure and the fee to be paid the state treasurer's office.

As a taxing subdivision of the state of Kansas, Washburn University is required to follow a specific procedure for the adoption of its annual budget. The budget law mandates that the budget: be submitted on forms prepared by the states' Director of Accounts and Reports;²⁹ show in parallel columns the current and ensuing budget years appropriations, expenses and revenues; be subject to a public hearing for the purpose of allowing taxpayers to object to the budget and for amendments to it;³⁰ be filed with the county clerk;³¹ and, shall constitute an appropriation for each fund shown in the budget.³² The budget law prohibits the payment of any payment of indebtedness in excess of the total amount of the adopted budget for the fund and that the amount of indebtedness incurred for the purchase of goods and services be an encumbrance on the fund as it is incurred.³³

The University, like all of the other governmental subdivisions of the state of Kansas, is subject to the Kansas Tort Claims Act and will be liable for damages arising out of or resulting from the acts or omissions of its employees acting within the scope of their employment.³⁴ The University is required to provide for the defense of any of its employees³⁵ and to pay judgments against the University under the act.³⁶ The University is authorized to levy, and does, a tax for the payment of judgments and insurance.³⁷

Washburn University is subject to the municipal accounting laws for the state of Kansas. These laws require that: the University's accounting procedures and reports shall conform with certain prescribed standards,³⁸ the books and accounts of the University be audited annually,³⁹ and, the statutorily required audit be filed with the state Director of Accounts and Reports. There is a standard audit program prescribed by municipal accounting board. The annual audit is conducted immediately upon the close of the fiscal year.

In addition to the above statutes, Washburn University is subject to the Kansas Open Records Act,⁴⁰ requiring the University to permit the inspection and copying of any of its public records unless specifically exempted by law.⁴¹ The University's Board of Regents, like the Kansas Board of Regents, and all of its committees, etc., are required to conduct meetings in open public session unless one of six specifically enumerated exceptions applies and may only take action in open session.⁴²

Rep. Farmer

STATE AID TO WASHBURN UNIVERSITY			
	State Aid	Increase from Prior Year	% Increase
FY 1987	4,366,419	--	--
FY 1988	4,453,000	86,581	2.0%
FY 1989	4,706,308	253,308	5.7%
FY 1990	5,948,748	1,242,440	26.4%
FY 1991	5,992,202	43,454	0.7%
FY 1992	5,932,280	(59,922)	-1.0%
FY 1993	6,107,875	175,595	3.0%
FY 1994	6,349,568	241,693	4.0%
FY 1995	6,806,633	457,065	7.2%
FY 1996 (Gov. Rec.)	7,044,865	238,232	3.5%
FY 1996 (Comm. Rec.)	6,982,564	175,931	2.6%

NOTES:

- For years prior to FY 1992, the amount is the total state aid to Washburn including the operating grant, credit hour aid, and out-district state aid. Actual operating grant amounts in the totals above are: FY 1988 - \$200,000; FY 1989 -- \$400,000; FY 1990 -- \$1,442,440; FY 1991 -- \$1,662,670
- Beginning in FY 1992, funding for Washburn was transferred to the State Board of Regents from the State Board of Education and an operating grant replaced other budgeted state aid categories.

3/17/95
Appropriations Cmte
Attachment 11