

MONTANA ADVISORY COMMITTEE
U.S. COMMISSION ON CIVIL RIGHTS

03 JAN 1978

CONSULTATION ON CORRECTIONS

December 13 and 14, 1977

VOLUME I

TRANSCRIPT OF PROCEEDINGS

BOULEY, SCHLESINGER, PROFITT and DICURTI
Official Court Reporters
187 North Church Avenue
Tucson, Arizona

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VOLUME I
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1 MONTANA ADVISORY COMMITTEE
2 U.S. COMMISSION ON CIVIL RIGHTS

3
4 CONSULTATION ON CORRECTIONS

5
6 December 13 and 14, 1977

7
8 THOSE PRESENT:

9 MR. ERNEST C. BIGHORN, Chairperson

10 COMMITTEE MEMBERS:

11	Rev. Jacob Beck	Ms. Joan Kennerly
12	Mr. John C. Board	Mr. Joseph McDonald
13	Ms. Dorothy Bradley	Ms. Helen Peterson
14	Ms. Maria Federico	Ms. Angela Russell
15	Mr. James Gonzales	Ms. Marie Sanchez
16	Mr. Russel Conklin	Ms. Geraldine Travis

17 STAFF:

18 Dr. Shirley Hill Witt, Director

19 Mr. William F. Muldrow, Deputy Director

20	Mr. William Levis	Ms. Norma Jones
21	Mr. Cal E. Rollins	Ms. Thelma J. Stiffarm
22	Ms. Esther L. Johnson	Ms. Cathie M. Davis

23
24 THE ABOVE ENTITLED hearing was held at the Holiday
25 Inn West, I-90 West Exit and Mallowney, Billings, Montana,

1 on the 13th and 14th days of December, 1977, commencing at
2 the hour of 9:00 a.m., and the following proceedings were
3 had, to wit:

4
5
6
7 PROCEEDINGS

8
9 THE CHAIR: I'd like to have the people come in and
10 sit down, please.

11 Could we have the rest of the panel people up here,
12 please?

13 Good morning, I'd like to welcome you to our
14 corrections '77, it is a meeting for all Montanans to
15 consider the corrections, the institutes and so forth, and
16 to discuss, perhaps, some concerns of our corrections,
17 both in the prisons and in the communities.

18 My name is Ernest Bighorn, I'm the Chairperson of
19 the Montana Advisory Committee to the office of the
20 Commission on Civil Rights.

21 For the next two days our advisory committee is
22 sponsoring this consultation on corrections, our committee
23 has spent several years in trying to put this consultation
24 together. And I personally would like to thank a lot
25 of the people, the staff in Denver, for putting a lot of

1 work into this, to this meeting.

2 I think a special welcome should be to those people
3 who are going to and have been willing to participate in
4 this meeting.

5 I'd like to also invite our, or like to introduce
6 the advisory members. Angie Russell, is Angie here? Angie
7 Russell from Lodgegrass.

8 Mr. Gonzales, from Billings, and let's see, who else
9 is here from -- Mr. Conklin, from Great Falls, and see who
10 else is here?

11 Geraldine Travis is outside helping with the regis-
12 tration. Mr. Joe McDonald, who is from Ronan, I don't
13 believe is here at this time, and let's see, who else
14 have I left out here?

15 Joan Kennerly from Browning, I don't think Joan's
16 here, and Maria Sanchez, who is the -- from Lame Deer,
17 and our vice chairman of the commission is Maria Federico.

18 Also I think the staff members from Denver should
19 be introduced, Dr. Hill Witt, from Denver, and Norma Jones,
20 and our very competent lawyer, to my right here, Mr. Bill
21 Levis, and I think, where is the secretary? Is she out-
22 side? That would be Esther Johnson.

23 Our latest member to the staff in Denver is
24 Thelma Stiffarm, is Thelma here? There she is, right.

25 Now, if I'm a little shakey this morning I have had

1 a cold for several days and I've been trying to shake it
2 and last night we were supposed to have a meeting last
3 night and I wasn't able to attend it so if I'm a little
4 bit shakey, you'll have to excuse me.

5 The meeting that's going to take place for the next
6 two days is, of course, is regulated by rules and regula-
7 tions as established by the Office of Civil Rights.
8 Therefore we have to follow certain rules and regulations
9 before we can proceed in terms of the investigation and
10 etcetera, and I'm not quite sure of all the legalities,
11 therefore we rely on the Denver people but I must add
12 that we do, must follow rules and regulations.

13 The commission is a bipartisan, independent, fact-
14 finding agency of the federal government and was established
15 in 1957. The commission is authorized to do basically
16 five different things: Number one, they are authorized to
17 investigate complaints alleging that citizens are being
18 deprived of their right to vote by reason of their race,
19 color, sex, religion or national origin.

20 They're also authorized to collect and study in-
21 formation concerning legal developments which constitute
22 a denial of equal protection of the laws under the
23 Constitution.

24 They also are authorized to appraise federal
25 laws and policies with respect to denial of equal protection

1 of the laws and to serve as a national clearing house
2 for civil rights information and to investigate allegations
3 of voter fraud in federal elections.

4 If you'd like to have more information, there's
5 plenty of information back there for you to take.

6 The U.S. Commission on Civil Rights has constituted
7 advisory committees such as in Montana, at the present
8 time there are approximately 50 or so commissions in each
9 state.

10 And the advisory committee members are appointed
11 primarily out of Washington, and the committee members
12 work in cooperation with the regional offices of which
13 there are eight, I believe, through the -- nine? There
14 are nine throughout the nation, and basically again, the
15 role of the advisory committee members is primarily
16 to serve the people in those particular states and
17 ~~Montana our concerns have been in terms of employment.~~
18 ~~I might just add that, you know, I've been on~~
19 this commission for about eight, nine years or so, and I
20 recall that one example would be Mountain Bell, when I
21 first was on the commission there were very few Indians
22 working in other areas, but if you look today you can see
23 them working for Mountain Bell and you can see somebody
24 that's an Indian on TV and so forth.

25 So, I believe there has been some impact with our

1 efforts.

2 We also, the committee as a committee; we have the
3 responsibility to collect information from individuals, from
4 private individuals and from private groups and organiza-
5 tions that might give us information that might look into
6 and investigate discrimination.

7 The conference today and tomorrow will feature
8 panel discussions of correction issues. The panels will
9 begin at 9:30 after a welcome from Judy Carlson of the
10 governor's office and Mr. James Gonzales from the Billings
11 City Council.

12 The first panel will discuss the rights of inmates.
13 At 11:00 o'clock, legislative alternatives will be
14 addressed. At 12:15, lunch will be served in the Gallatin
15 Room.

16 Where is the Gallatin Room, does anyone know
17 where the Gallantine Room's at?

18 Right next door here. If you wish to purchase
19 tickets I believe you can purchase them in the back there
20 at the registration table.

21 After lunch we will reconvene at 1:30 with a panel
22 on women in corrections, and at 3:00 o'clock, for a dis-
23 cussion on juveniles and corrections.

24 The last panel today will discuss community
25 corrections.

1 At 7:00 o'clock this evening we will host an after
2 dinner coffee in the Stillwater Room, and discuss legis-
3 lative recommendations.

4 At 8:15 Beyond Bricks and Mortar will be shown in
5 the Stillwater Room.

6 The consultation will begin at 9:00 o'clock tomorrow
7 morning with a panel on the care and treatment of juveniles.
8 Following will be two panels, one of which will provide
9 a look at some other correctional systems, the second
10 panel will discuss Montana's correctional system.

11 At 2:00 o'clock we will conclude with a general
12 session, during which time anyone that may wish to make a
13 short presentation may do so.

14 Those of you who plan on making short presentations
15 at the general session should be in contact with some
16 commission members and primarily with the staff from
17 Denver.

18 It is anticipated that the consultation will end
19 about 2:30, at 3:00 o'clock everyone is invited to attend
20 a free movie, Mad Dog Blues? Mad Dog Blues. George
21 Kennedy, world premier, and this is at Cine III, the
22 movie is also free.

23 Every effort has been made by the commission to
24 invite the most qualified and exciting panel participants
25 who are knowledgeable about topics that will be discussed

1 in the next two days.

2 After individual presentations are made, the panel
3 moderator will invite questions from the audience and
4 other participants.

5 Now, I would assume that once there's -- there's a
6 panel then they would be able to respond, is that
7 correct, Norma? And if you decide to make a response or
8 to make a comment, it is proper that you would give your
9 name and your address and your occupation.

10 We do have a Court Reporter here this morning, as
11 you can see and it's important that we get the correct
12 information.

13 We do not like to have information that is not
14 correct. ~~Therefore,~~ it's important to give your name and
15 your address and your occupation.

16 Also, if you, after the meeting has ended, if you
17 so desire to give us written documentation or to give us
18 some written comments, you have approximately, or you have
19 30 days to hand those in.

20 Now, those must be written to or sent to the Denver
21 Regional Office and I believe that -- I don't know where,
22 where can they get that address? You can get it in the
23 back of the room there.

24 So if you have some comments that you'd like to make
25 in writing, you may do so but you must do so within 30 days.

1 So, on behalf of the advisory committee, again I'd
2 like to welcome all of you here and at this time introduce
3 Ms. Judith Carlson from the governor's office, who will
4 officially open our meeting.
5

6
7 MS. JUDITH CARLSON
8

9 A. (By Ms.. Carlson) Good morning. It's indeed a
10 pleasure to welcome you and for me to participate in this
11 civil rights commission consultation on corrections.
12

13 The Judge administration is devoted a great deal of
14 attention and energy to the problems of our institutions,
15 to community programs treating the mentally ill and the
16 developmentally disabled, and has made demonstrable
17 advances in the areas of corrections.

18 Few would contest that the struggle against crime
19 and the effects of crime is of primary importance to the
20 people of Montana.

21 The recent Montana futures survey indicated that
22 citizens are willing to pay for taxes for highways, and
23 for law enforcement. Corrections is probably the least
24 understood aspect of the total criminal justice system,
25 and addresses itself to the traditional goal of protecting
the public by working for the prevention of crime and

1 delinquency through effective correctional programs.

2 According to a national strategy to reduce crime
3 prepared by the National Advisory Commission on Criminal
4 Justice Standards and Goals, I quote, the American correc-
5 tional system today appears to offer minimum protection
6 for the public and maximum harm to the offender. This
7 approach is clearly in diametric opposition to the goals
8 which should be before us of maximum protection for the
9 public at a cost of minimum harm to the offender.

10 And please note that I'm stressing minimum harm
11 to the offender, not minimum sentencing or any other form
12 of meaningless tokenism.

13 State government plays the major role with the
14 public offender and the effect of their socially deviant
15 behavior both adult and juvenile.

16 The department of institutions has the responsi-
17 bility of managing our correctional services in Montana.
18 Within its administrative responsibility, this department
19 operates the state's only adult correctional institution,
20 the two juvenile correctional institutions, and a work
21 camp for young adults and juveniles. It operates a post-
22 institutional placement and counseling program for juvenile
23 offenders and the adult parole and probation field
24 services.

25 The department's recent efforts in adult corrections

1 include community based program for female offenders,
2 and transitional community care for probationary and
3 paroled inmates from Montana State Prison.

4 In spite of this effort, criminal statistics pre-
5 pared by the board of crime control show that although
6 Montana's crime rate ranks 36th amongst the list of
7 states, it is the seventh highest in the country in the
8 rate of crime increase.

9 Over the last five years Montana's crime rate has
10 been increasing at an average of 8.1% per year. And some
11 of this increase is due to recidivism crime. We experienced
12 a dramatic increase in our prison population in the past
13 two years.

14 The department of institutions will spend approxi-
15 mately 13 million in its correctional institutions and
16 programs during one fiscal year, this year. Clearly
17 the problems of crime and its effects are costly. Figures
18 on recivism nationally indicate strongly that society
19 today is not effectively protected simply by incarcerating
20 offenders.

21 For many offenders return to crime shortly after
22 release from prison.

23 There is in plain fact considerable evidence that
24 the longer a prisoner is incarcerated the greater are the
25 chances that he will return to crime upon his release.

1 There is also evidence that many prisoners do not
2 need to be incarcerated in order to protect society.
3 For example, when the Supreme Court's Gideon decision
4 overturned the convictions of persons in the Florida
5 prison system who had been convicted without representation
6 by an attorney, more than 1,000 inmates were freed,
7 although such a large and sudden release might have been
8 expected to result in an increase in crime, followup
9 studies showed that the Gideon group had a recivism
10 rate of about half that of a similar group of prisoners
11 released at the expiration of their sentence.

12 At the time of the Gideon release study, Louis
13 Wainwright, Director of Florida's correctional system,
14 commented that the study may prove that many more people
15 can be safely released on parole without fear that they
16 will commit new crimes.

17 Montana's correctional problems are not unique.
18 In the governor's welcoming address to the delegates of the
19 Montana Conference on Corrections convened in May of 1973,
20 he stated that regardless of our present efforts we can
21 still do a better job. And that statement is still true
22 today.

23 He emphasized the need for a comprehensive state
24 corrections philosophy. And to translate that philosophy
25 into systems and people and programs that will get the

1 results expected of them.

2 That particular conference called for a centralized
3 correctional administration as a foundation for future
4 correctional planning and administration. Subsequently,
5 the governor established the Montana Council on Criminal
6 Justice Standards and Goals, to aggressively identify
7 and address the needs of Montana's whole criminal justice
8 system of which corrections is a vital part.

9 The efforts put forth by that commission have now
10 been published. And the suggested strategy and standards
11 appear to be both sound and refreshing in that they con-
12 tain hope for the future.

13 Under the Judge administration the department of
14 institutions created a corrections division as a centralized
15 administrative agency within the department of institutions
16 which, for the first time, established an integrated unit
17 for its total correctional responsibility.

18 This achievement realized the goal of those pioneer
19 efforts of the '70's.

20 An important dimension in developing and managing
21 a human services organization such as the division of
22 corrections is its management capability, leadership and
23 operational philosophy.

24 Probably no organization ever operates consistently
25 on a particular management or treatment philosophy.

1 The department of institutions in Montana's
2 correctional programs have had an inadequate conceptual
3 framework for management planning and leadership. A
4 correctional policy is a definitive statement explaining
5 the goals of the correctional system to the public and to
6 professionals in the system. Montana has had no correc-
7 tional philosophy per se.

8 Montanans have no clear idea of the overall objec-
9 tives of the state correctional system. And this lack
10 of communication has led at time to misunderstanding
11 and public bewilderment.

12 Some activities are controlled consistently by
13 constitution or legislative mandate, some activities are
14 managed and controlled by consistent opinion, some by
15 information systems, some are professionally managed,
16 others are managed by the dictation of tradition.

17 One year ago this month, the governor brought back
18 to the state, Lawrence Zanto to be the new director of
19 the department of institutions. Mr. Zanto has had an
20 excellent record and reputation in Montana as a fair,
21 able and competent administrator. He has recently hired
22 B.J. Rhay, to be administrator of the division of
23 corrections.

24 Mr. Rhay has had years of experience in corrections,
25 has provided leadership in national correctional

1 organizations, and is eminently prepared to provide the
2 kind of leadership our corrections program deserves and
3 needs. Thus we have hope for the future in designing an
4 effective system and in managing it purposefully.

5 The remaining deficiencies in the system reflect
6 the fact that we have operated with an integrated
7 correctional administrative entity for only two years. It
8 is extremely important to lay a solid base for future
9 development.

10 The department has been awarded discretionary monies
11 from the Law Enforcement Assistance Administration to analyze
12 our present system and to develop a master plan for
13 corrections.

14 This effort will take 12 to 18 months. The master
15 plan should provide for an integrated conceptual base on
16 which correctional policy and programs can be founded.

17 Historically, Montana's system of laws included
18 sentencing which, although on the books permitted greatly
19 varying local -- wait a minute.

20 I didn't say that right. Anyway, our laws have
21 permitted local application that was varied across the
22 state.

23 This discretionary framework was open to abuse and
24 resulted in widely varying sentences for similar crimes.

25 The last legislative session, action resulted in

1 mandatory sentences for a large majority of crimes that went
2 into effect July 1st. While mandatory sentencing was
3 expected to result in a uniform application of laws, it
4 remains to be seen, if more rigidity in sentencing will
5 permit the achievement of the overall goal of providing
6 maximum protection to the public at minimum harm to the
7 offender.

8 There is considerable evidence that probation,
9 fines, public service requirements and restitution, are
10 less costly than incarceration and produce lower recidivism
11 rates.

12 There is also in this country a growing concern
13 for the widespread abuses in the correctional systems. In
14 recent years courts have intervened in prison management,
15 in some cases courts in other states have declared
16 some state prison systems in violation of the Eighth
17 Amendment's prohibition against cruel and unusual punishment.

18 Some of those prison units have even been declared
19 unfit for human habitation under any modern concept of
20 decency.

21 The pressures for change in the American correc-
22 tional system today are intense. And Montana is not
23 immune from this pressure. No discussion of corrections
24 would be complete without taking note of the victims who
25 have been left behind. The Montana Legislature, at its

1 last session, enacted the Crime Victims Compensation Act
2 to provide some relief to the victims financially, and to
3 recognize the fact that victims of crime are worthy of
4 public attention.

5 The workers compensation division, department of
6 labor and industry, was designated as the administering
7 agency for this program which becomes effective January
8 1st.

9 Cheryl Bryant of Billings has been hired to
10 supervise the program and administer its \$390,000.00
11 biannual budget. This fund should be increased by federal
12 funds if and when federal legislation, which is now
13 pending, is passed.

14 Rules for procedure are to be submitted this week
15 and a brochure outlining the purposes and procedures
16 should be distributed within the very near future.

17 This is a very worthy program and fills a long
18 standing gap in our system.

19 The U.S. Commission on Civil Rights-sponsored con-
20 sultation on corrections is an excellent opportunity for
21 interaction between correctional professionals, legis-
22 lators and concerned citizens, on current and important
23 correctional trends. The philosophy of normalization,
24 deinstitutionalization, right to treatment, civil and
25 constitutional rights of the incarcerated, various models

1 of treatment, alternatives to incarceration, all need
2 to be discussed frankly, openly and honestly. We will
3 be able to utilize this interchange to our advantage
4 in our current master plan undertaking.

5 We in the executive branch of government look
6 forward to this exchange and welcome your ideas and
7 recommendations.

8 Thank you, Mr. Chairman.

9
10
11 MR. JAMES GONZALES

12
13 A (By Mr. Gonzales) Welcome to Billings, a city of
14 brotherhood, a community of arts and culture, the star
15 of big sky country.

16 People in Billings can feel its culture and you can
17 observe it in our museums and art centers such as our
18 Yellowstone Art -- County Art Center, the Western Heritage
19 Center, our airport museum and others.

20 Some of my predecessors in city government have
21 described Billings as a city which offers climate
22 instead of weather, and I think we can prove it out there
23 this morning, as opposed to last week.

24 Pride in the appearance of Billings has grown along
25 with its population growth. And Billings continues to be

1 progressive as was recently exhibited in the passage of
2 a city charter form of government, whose benefits are
3 enormous.

4 We are approaching prominence as a multistate con-
5 vention center and we pride ourselves in having the best
6 medical center between the Twin Cities and Seattle, and we
7 invite you to enjoy and judge for yourselves the many shops
8 throughout the city.

9 Billings is blessed with diverse payroll and multi-
10 state distribution and at this moment we're thankful
11 for you being here.

12 Now, in closing, let me leave you with this thought.
13 As we say in Spanish, mi casa es su casa, which means my
14 house is yours, so have fun in Billings.

15 THE CHAIR: I would like to make maybe a couple
16 corrections here, I did not mention that the time of
17 the movie which is at Cine III would be at 3:00 o'clock
18 and our last speaker was Mr. James Gonzales.

19 I make those so it will be in the record.

20 Mr. Bill Levis.

21
22
23 MR. WILLIAM LEVIS

24
25 A (By Mr. Levis) Thank you, Ernie, I'm Bill Levis,

1 the Regional Attorney for the Commission on Civil Rights
2 in Denver.

3 When the United States Supreme Court ruled in 1954
4 that separate but equal was inherently unequal in school
5 desegregation case of Brown versus Board of Education, it
6 not only heralded the beginning of an era of equal
7 rights for minorities in this country but also for women,
8 the aged, the disabled and also prison inmates.

9 With the passage of the Civil Rights Bill of 1957,
10 our commission was founded. We began collecting information
11 in the late '50's and early '60' about the treatment of
12 Blacks in the south. As the civil rights movement
13 quickened with the passage of the 1964 Civil Rights Act,
14 and also the 1965 voting rights legislation, our studies
15 moved northward.

16 The successes and failures of civil rights
17 activists on Blacks awakened the concern of other
18 minorities and women.

19 Hispanics became more vocal relating to problems
20 affecting them in the southwest and the west. Native
21 Americans lobbied both for and against the 1968 Indian
22 Civil Rights Act, which is now being tested in the U.S.
23 Supreme Court.

24 For the last six years, we have seen the proposed
25 equal rights amendment being ratified by 35 of the 38 states

1 needed for its passage.

2 At the same time that minorities and women have
3 begun to demonstrate and litigate for their rights, another
4 interest group has emerged, this group in many ways is
5 the true silent majority, or that is silent minority.

6 Until recently, it has not even been clear that
7 this minority had any rights, I speak, of course, of
8 prison inmates.

9 Let me give you some statistics about the Montana
10 State Prison system that may startle you. According to
11 the 1970 census for the State of Montana, 694,409 persons
12 reside in the state. Of those, 95.7% are White, 0.3%
13 are Black, 1.1% are Hispanic and between 2.9 and 3.7%
14 are Native Americans.

15 And if you use the latter figure you will notice
16 that that adds up to more than 100%. This higher figure
17 for the Indian population is the result of a 1974
18 profile of the Montana Native Americans done for the state
19 by Urban Management Consultants of San Francisco. The
20 consultants also found for the state that as of March,
21 1974, 36% of the inmates of the Montana State Prison
22 were Native Americans.

23 Information supplied by the state department of
24 corrections and the state department of institutions,
25 breaks down the percentage and number of new inmates at the

1 prison for fiscal years 1974 through '76. The percentage
2 of women inmates has varied from 4.3% in '74, to 2.4%
3 last year, while female inmates make up an extremely
4 small percentage of the inmate population the same is not
5 true of the minorities in the state.

6 Although they make up no more than 3.7% of the
7 state population, two-thirds of them live on reservations,
8 American Indians make up 23% of the new inmates admitted
9 to the state prison in 1974, 14.6% in '75, and 13.9%
10 last year.

11 Blacks were 1.6% of the new prison inmates in '74,
12 1.8% in '75 and 0.5% in '76. Hispanics were 3.2% in
13 both '74 and '75, and were 2.6% in '76. It's evident
14 from these figures that the percentage of White inmates
15 who have been admitted to the state prison has
16 increased from 72% in 1974 to 82% in '76.

17 What is most alarming about these statistics, however,
18 is the average age of the inmates. In fiscal '74, 56%
19 of the new inmates were between 18 and 25 years old. Last
20 year this had jumped to 62.5%. Much change has occurred
21 in the Montana State Prison system since the original
22 prison was built in Deer Lodge in 1870.

23 A new correctional facility has been constructed,
24 inmates have had many of their civil rights defined, and
25 as a recently as the last legislative session, the rights

1 of juvenile offenders were updated.

2 House Bill 728, which took effect in May of this
3 year, revises the Youth Court Act and defines the detention
4 of persons under the age of 18. Specifically this act
5 limits the incarceration of youths before trial and
6 clearly defines the facilities in which they can be housed
7 after conviction.

8 Both the juvenile institutions and the state prison
9 are under the control of the department of institutions.
10 According to Montana statute, the primary function of the
11 state prison is to provide facilities for the custody,
12 treatment, training and rehabilitation of adult correctional
13 offenders. When a person is convicted of a crime, that
14 offender loses only those constitutional and civil rights
15 specifically enumerated by the sentencing judge necessary
16 for the rehabilitation and protection of society.

17 Once the sentence has expired, or the offender has
18 been pardoned, all civil rights and full citizenship
19 are restored to the inmate. Specifically, then, what
20 rights do remain when an inmate is sentenced to the state
21 prison?

22 The conditions and practices in a prison must not
23 subject the inmate to cruel and unusual punishment in
24 violation of both the Sixth and 14th Amendments.

25 In Montana, the law makes it clear that a prison

1 official mistreats an inmate by assaulting or injuring
2 the prisoner, by intimidating, threatening, endangering
3 withholding reasonable necessities from the inmate, or
4 by violating any other civil rights.

5 Other rights retained by the prisoner include the
6 freedom from discriminatory punishment inflicted merely
7 because of beliefs whether they're religious or not.

8 Prescreening and approval of legal documents by
9 prison officials has been held by the courts to impair
10 'an inmate's right to petition the courts. Montana pro-
11 hibits persons from communicating with inmates without
12 the permission of the warden. It is questionable whether
13 such a general law is constitutional in light of court
14 rulings that such restrictions must specifically be
15 found to be in the interests of security, order and reha-
16 bilitation.

17 Reasonable opportunities must be provided all
18 inmates who wish to exercise the religious freedom guaran-
19 teed by the First and 14th Amendments.

20 In addition, inmates must be informed of all conduct
21 that constitutes a breach of discipline and the penalties
22 and sanctions that may be imposed for such conduct
23 as well as the procedures under which disciplinary action
24 will be taken.

25 Montana is a party to the Western Interstate

1 Correction Compact, which allows it to contract with other
2 states in the west for incarceration of inmates. State
3 Attorney General Mike Greeley, has ruled that the compact
4 also allows Montana to contract with the Cheyenne and
5 River Sioux Tribe in South Dakota for the rehabilitation
6 of the state's Indian inmates.

7 He has said that such a program will allow Native
8 American felons to participate in rehabilitation programs
9 according to traditional Indian values.

10 Montana law also allows the department of institu-
11 tions to contract with Indian reservations within the
12 state for residential and educational inmate services. All
13 inmates who are incarcerated in another state subject to
14 the Western Interstate Compact are at all times subject
15 to the jurisdiction of the state from which they were
16 sentenced.

17 The state which receives the inmates must provide
18 regular reports to the sending state of the prisoners'
19 conduct, and in addition, the receiving state may not
20 deprive any inmate of any legal right that the prisoner
21 would have had in the sentencing state.

22 Within the department of institutions there are two
23 boards which resolve inmate complaints and consider parole
24 and executive clemency requests. The board of institutions
25 is composed of five members who review grievances of inmates

1 institution residents and their recommendations to the
2 institution's director are strictly advisory. On the
3 other hand, the board of pardons has the power to release
4 inmates on parole and to report on executive clemency to
5 the governor.

6 The board is composed of three members, one of whom
7 must have particular knowledge of the culture and problems
8 of Native Americans. Progress is being made in Montana
9 corrections. Yet improvements are needed.

10 Recognition of these needs has been shown in
11 part by the introduction of several bills during the 1977
12 state legislative session. Although most of these pro-
13 posals did not pass, these proposals do articulate some of
14 the concerns that have brought us together today.

15 Today and tomorrow we will discuss in detail the
16 laws and philosophy behind what has been outlined so
17 far this morning. But primarily we want to hear your
18 thoughts and your suggestions.

19 Together we may be able to give useful advice
20 and support to the Montana prison system in order to
21 secure for Montanans a system of which they can continue
22 to be proud.

23 Thank you.

24 THE CHAIR: Our next panel will be the rights of
25 inmates, the moderator, Angela Russell, would they please

1 come up?

2 Angela, John Dicke, Merle Lucas, Melvin Axilbund.

3
4 (The following was moderated by Ms. Angela Russell)

5
6 THE MODERATOR: Welcome to the first panel, entitled
7 rights of inmates.

8 I'm Anglea Russell, I'm with the Montana Advisory
9 Committee to the U.S. Commission on Civil Rights. I'm
10 from Lodgegrass and a social worker by background.

11 I'd like to introduce our panel members, first of
12 all on my left, John Dicke, who is regional counsel to the
13 American Civil Liberties Union and is from Denver.

14 The second person is Merle Lucas, who is a coordinator
15 of Indian affairs from the state office in Helena, and
16 we also have, to my right, Melvin T. Axilbund, staff
17 director for the American Bar Association's Commission on
18 Correctional Facilities from Washington, D.C.

19 Considering that we are running a little bit late,
20 I would like to ask each of our panelists to give a presen-
21 tation of maybe not exceeding 15 minutes, and then we'll
22 open it up to some questions from the audience.

23 Mr. Dicke, would you like to start?

24 MR. DICKE: Sure.

25 THE MODERATOR: What I would like to have you address

1 is what are we talking about when we're talking about
2 rights of inmates, do we have some minimum base standards
3 that we're talking about? What are they?

4
5
6 MR. JOHN DICKE

7
8 A. (By Mr. Dicke) Okay. I think perhaps Mr. Axilbund
9 is the most qualified to talk about that, although the ACLU
10 is significantly involved in what we believe to be minimum
11 base standards.

12 I work for the National Prison Project of the
13 American Civil Liberties Union, which is located primarily
14 in Washington, D.C., and it's run by a gentleman by the
15 name of Al Brownstein, who is a well known prison litigator
16 and adviser in the United States.

17 We have in our project, about five or six lawyers
18 and a significant number of staff people who work in liti-
19 gation, lobbying, legislative matters, etcetera.

20 The general policy and the feeling of the people in
21 our project and others throughout the country, is that
22 incarceration is, in a closed institution, is excessively
23 used and that the manner in which incarceration is many
24 times administered with the poor food, significant over-
25 crowding, the filth, the vermin, cockroaches, the lack of

1 classification procedures, the lack of medical and
2 psychiatric care, the lack of proper procedures in
3 disciplinary hearings, constitutes cruel and unusual
4 punishment and is in fact debilitating to the person so
5 incarcerated.

6 And we also believe that inmates have a right not
7 to be debilitated, a constitutional right.

8 Now, these thoughts and feelings have been seconded
9 by at least three courts in the United States, in Alabama,
10 New Hampshire and in a recent decision, in Rhode Island,
11 which is probably the most dramatic decision saying that
12 people have a right not to be incarcerated and holding
13 a prison to be a place where the prisoners were subjected
14 to cruel and inhuman -- cruel and unusual treatment.

15 The thrust of our project is essentially two-fold,
16 the first of which is that no new prisons, county jails
17 or any kind of incarceration facilities should be con-
18 structed in the United States without the agency, which is
19 constructing them, or which is responsible for their con-
20 struction, exploring every possible alternative to such
21 incarceration.

22 We believe that the most appropriate way, if possible,
23 to deal with offenders is through fines, through systems of
24 restitution, through community based probation, community
25 based halfway house systems, and I think that our feelings

1 are documented or at least the correctness of them has
2 been documented by a correctional economics center of the
3 American Bar Association study, released in October of
4 1975, which indicates that community based treatment
5 facilities are in fact less expensive than incarceration,
6 in fact, studies have shown that incarceration is in fact
7 the most expensive way to deal with offenders.

8 2 The second prong or thrust of our philosophy is that
9 there should be the discontinuance of indeterminate sentencing
10 in favor of fixed maximum terms and this, these terms
11 should be imposed by the court after the person has been
12 convicted.

13 Our philosophy is that in most circumstances, the
14 determinate sentence should not be in excess of two years.
15 Now, this would do away with arbitrary, discriminatory,
16 excessive and what amounts to debilitating sentencing
17 when a person is -- spends a long period of time under
18 conditions which are usually pretty gross.

19 And we urge the following sentencing principles:
20 One, that the legislatures define types of crimes where
21 sentencing can occur. The criteria for imposing sentence
22 and grounds on which a court can exercise discretion in
23 sentencing.

24 The ground should be clearly defined for allowing
25 the court discretion in determinate sentencing.

1 Two, the incarceration should be restricted to those
2 persons whose record indicates that society can't be pro-
3 tected except by their incarceration. Situations in which
4 a felon has a long record, habitual offender-type, psycho-
5 pathic personality, a person who has indicated that he can
6 not function in a community based treatment setting, he
7 can not function in society.

8 It's our feeling that there are a significant number
9 of these people but the percentage of them with respect to
10 the greater population of offenders is rather small.

11 As I said earlier, with respect to sentencing, we
12 believe in fines, restitution systems and community based
13 treatment would be the preferred method over sentencing to
14 an institution.

15 Furthermore, at the time of sentencing we believe
16 that courts should be required to state in the record
17 specific reasons for imposing sentence and there should
18 also be, after the sentencing, a system of rapid appellate
19 review, a system which unfortunately in too many states
20 at the present time, does not exist where a person appeals
21 his conviction and a year and a half, two, three years
22 later he gets his conviction overturned after he's already
23 served two or three years in the joint.

24 We believe that the obligation to prove the
25 necessity of sentencing, that burden is totally on the

1 shoulders of the prosecution in the state.

2 Now, concomittant with our feeling that there
3 should not be indeterminate sentencing but determinate
4 sentencing, is our feeling that the parole system should ★
5 be entirely eliminated. The parole system is premised or
6 based on the premise that institutions provide rehabilitation.
7 It's our feeling that generally they don't.

8 The parole system is one which allows the inmate
9 to gain, as he's usually gained, while he has existed in
10 the society, it's a system which fosters the feeling among
11 inmates that they have to get in many programs in the
12 institution, so-called rehabilitative programs, if they
13 exist, in order to impress the board. They don't really
14 get into these things necessarily for their own rehabili-
15 tation but merely to impress the board.

16 Frequently, also, parole boards look only at your
17 disciplinary record while you've been in the prison, and
18 I think it's well known that the guards and prison officials
19 give you good reports if you're a good person, if you're
20 a nice, quiet person, if you're not doing anything productive,
21 if you're not filing any petitions for writs of habeus
22 corpus, if you're not filing any conditions lawsuits,
23 if you're generally not making any waves and being a good
24 nigger.

25 These are the theories on which the whole parole

1 system is based, and it's -- it comes out to be a system
2 which is unproductive, discriminatory, arbitrary and just
3 really not good.

4 We believe that the systems -- well, prison systems
5 should have more work release-type programs, programs in
6 which people can be released from prison during the day to
7 go out and pursue meaningful jobs in the community
8 instead of sitting around the prison with idle time getting
9 in fights and doing absolutely nothing.

10 We also believe that people who do not qualify for
11 work release programs because of some peculiarity in their
12 record of whatever the reason should be able to at least
13 have the opportunity to pursue meaningful and useful jobs
14 within the prison setting.

15 Jobs which can be useful if they are also obtained
16 on the outside after incarceration, jobs which can be useful
17 to them on the outside, training which can be useful to
18 them on the outside after they have in fact been released.

19 We also believe in more educational release programs
20 within the prison, programs which will allow prisoners to
21 get out to school, to high school situations, to college
22 situations during the daytime and they can come back at
23 night to continue their sentence.

24 One of our biggest concerns is the disciplinary
25 hearings. There's an unfortunate decision which has come

1 down, Wolf V McDonald, which the supreme court rendered,
2 which sets the constitutional standard for disciplinary
3 hearings within the prisons. It's our feeling and I know
4 it's a feeling shared by the ABA, that the procedures,
5 the guidelines that have been set by the supreme court
6 are inadequate. And the result is that the hearings in
7 prison are many times, as my client prisoners tell me,
8 a kangaroo court, they're really a trevesty.

9 They're conducted in many instances by judges who are
10 not neutral and detached but merely work for the institution
11 and find, as a matter of course, everybody guilty.

12 The procedures set down by the supreme court at the
13 present time don't require or don't mandate that one
14 be able to cross examine witnesses against him and don't,
15 in all cases, allow people to call witnesses in their own
16 behalf, but only in circumstances where security allows
17 calling witnesses in your own behalf.

18 It's our feeling that not only do you have to have
19 notice of the hearing, but you should be able to present,
20 in all cases, witnesses in your own behalf and you should
21 be able to cross examine witnesses.

22 Of course, the hearing has to be before a neutral
23 and detached judge, we also believe that there should be
24 the right to counsel at that hearing, that that right does not
25 at all adhere at this point.

1 And we also believe that there should be a written
2 record of the hearing, at this point there's no written
3 record of hearings and in many states, this gives the
4 institution carte blanche to do virtually anything it
5 wants at the hearing because after all, if there's no
6 record of it, who's going to be able to question it.

7 It becomes the word of the prisoner against the
8 word of the prison authorities.

9 Finally we believe that prisoners should retain all
10 constitutional rights which aren't absolutely -- which
11 shouldn't be proscribed by the absolute demands of prison
12 security and rehabilitation.

13 We believe that prisoners should be able to read
14 anything they want, they should be able to practice any
15 religion they want, they should be able to correspond with
16 their attorneys and their people on the outside by mail,
17 that's totally uncensored.

18 We believe they should have, and the courts believe
19 this too, at least in theory, to have, they should have un-
20 limited and frequent access to the courts, this isn't
21 happening all the time in many institutions which I've
22 become familiar with, access to the courts, although it
23 exists on paper, is discouraged, people who get into the
24 habit or the -- which I consider to be a good and productive
25 habit of filing petitions for writs of habeus corpus or

1 challenge other things in prison conditions, are frequently
2 locked up, they're put into segregation, on trumped up
3 charges or on minor things which really don't merit
4 segregation.

5 They're pummeled and discriminated against in such
6 a way that they, the intent is to make them more timid
7 and not to make any waves in the prison.

8 You know, we believe those things have to stop.
9 After all if this is a rehabilitative process, people
10 should be encouraged to go to the law library in the
11 prison, to be aggressive, to write things, to file things,
12 because after all, this is what, this is what the greater
13 society, the free world demands of people, to be aggressive.

14 But in a prison setting, usually you only get by if
15 you're unaggressive, you don't make any waves and you're
16 just plain quiet.

17 Okay. Which is totally inimical to the concept
18 of rehabilitation, in our opinion. There should be better
19 law libraries in prisons, the New Mexico State Law --
20 New Mexico State Prison Law Library has advance sheets,
21 and, let's see, federal advance sheets and ALR and for
22 those of you who are -- who are lawyers, you know, I'd
23 like to know how many of you have used ALR, not ALR second,
24 third or federal, the ALR and they have some New Mexico
25 statutes and that's it.

1 I mean when there's no adequate law library.
2 facilities a person certainly does not have access to the
3 court, all the lawyers here know how difficult it is to do
4 legal research anyway, even after you've been trained for
5 a significant number of years, put yourself in the position
6 of an inmate who's had no training, perhaps didn't get
7 through the eighth grade, and tell him to go into the law
8 library and attack the books, many books without indexes,
9 etcetera, I mean it's really ridiculous when you think
10 about it.

11 We also believe that, and theoretically the Consti-
12 tution mandates that you're supposed to have adequate
13 medical care, and we believe that there should be more
14 psychiatric care, there's virtually no psychiatric care in
15 many facilities and I get letters all the time from people
16 writing me telling me they think they're going crazy,
17 and they want brain scans and all this stuff and I think
18 they're under tremendous anxiety, they don't realize what
19 emotional difficulties are, etcetera.

20 And there's nobody to get them in touch with their
21 feelings.

22 Obviously we believe there should be a freedom from
23 cruel and unusual punishment, no corporal punishment,
24 at least wholesome food, a roof over their head that
25 doesn't leak, windows that aren't broken, heat, situations

1 in which they're not locked up in segregation for long
2 periods of time, which exists now.

3 The whole host of things which go along with cruel
4 and unusual punishment. And also we believe that the
5 basic family structure should be preserved as much as
6 possible by allowing conjugal visits and visitation on a
7 more regular basis with the family.

8 Finally, and I think this was brought up by people
9 who spoke before me, we believe that people who are exoffenders
10 have done their time, should be able to return to society
11 without a whole host of disabilities facing them, such as
12 lack of their right to vote, lack of their right to have
13 a driver's license, etcetera.

14 I just want to say briefly that we've been, in
15 applying these theories, we've been involved in some
16 significant litigation and I think probably most of the
17 people here have heard about our case or cases in Alabama,
18 that was the first big one in which Judge Frank Johnson
19 determined the entire Alabama prison system to constitute
20 cruel and unusual punishment and he ruled that prisoners
21 do not have a right to be debilitated.

22 Since then, the Fifth Circuit has cut back that
23 holding somewhat, they affirmed the decision and the
24 implementation of the decision to a large extent, but then
25 went, there was a lot of wording in the decision which

1 indicates that people do not have a right not to be
2 debilitated because after all, everybody in this society
3 is debilitating whether or not they are locked up.

4 You and I on the outside every day lose a few
5 hundred thousand or a million brain cells or something
6 and we're all going down hill so there's -- so you have a
7 right not to be debilitated.

8 You don't have a right not to be debilitated, that's
9 what I meant to say.

10 Okay, we also had a big decision in Rhode Island
11 which was significant and went further than the Alabama
12 decision, and that ordered the maximum security prison
13 system in Rhode Island to be shut down within a year and
14 it had the whole structure in that prison there redone,
15 it was reclassification, and many people were taken out of
16 the maximum security and either released or put in minimum
17 security.

18 And I think that's probably been our most graphic
19 victory to date.

20 With respect to how our program can be utilized in
21 the State of Montana, I'm the regional counsel on the prison
22 project for ten mountain states, one of which is Montana,
23 and I know in the past we looked at the system here before
24 the new prison was built in Deer Lodge, and I know that
25 we have a significant file on the State of Montana and we

1 were almost at the state of filing a large class action
2 challenging the facility in Deer Lodge that was before
3 they built the new one, and I know that at that time,
4 back in '75 or '76, there were very few things that were
5 right with the institution and there were so many things
6 that were attackable under the Constitution.

7 I don't know exactly what the situation is there
8 now, I haven't -- I've gotten very little mail from
9 prisoners there, and I would hope that things are much
10 better.

11 THE MODERATOR: Thank you, Mr. Dicke.

12 We're just going to move along here. I noticed,
13 Merle Lucas, that you're going to be addressing primarily
14 how the corrections system affects Native Americans in
15 the state.

16 So, since you're going to be getting into a specific
17 area, I think ~~maybe we'll jump across here and --~~

18 MR. CRIST: I think I've got to ask to speak, I'm
19 Warden Crist, Montana State Prison.

20 As long ago as a year and a half, National Prisoners
21 Project did review our entire institution, you had your
22 staff attorney out, I met with Alvin Brownstein, the kinds
23 of things that we talked about were inadequacies in the
24 old physical plant which we all recognize.

25 Alvin Brownstein, your boss, indicated that the

1 directions that we were going and the things that we
2 were doing, you know, met the vast majority of the things
3 that the prisoners project was interested in.

4 Another comment I would have is with regard to
5 kangaroo courts, I hope you weren't talking about Montana
6 because the last time we checked our figures on that,
7 35% of those who pled not guilty at a disciplinary
8 committee hearing, were found to be not guilty and that
9 hardly is representative of a kangaroo court.

10 I don't really believe that Al Brownstein's position
11 is that there are many and grave things wrong with the
12 Montana State Prison, at least he has not conveyed that to
13 me in face to face meetings.

14 A (By Mr. Dicke) I will respond to that by saying.
15 that you're probably -- you're probably correct in every-
16 thing you've said, that I read a file, cold file that was
17 prepared a couple years ago before I came here, and there
18 was a letter in it to you written by my boss, pointing
19 out about 20 things that he felt were wrong with the old
20 institution.

21 MR. CRIST: Your boss? Which --

22 A Al Brownstein.

23 MR. CRIST: Al Brownstein, right. And we responded
24 in detail to that and apparently your organization was
25 satisfied because we haven't heard from them in a year and

1 a half.

2 A Well, you know, I don't know, like I say, I don't
3 know what's going on there now and I have got hardly
4 any letters from prisoners there, so I would assume that
5 things, you know, are really vastly improved, and I'm
6 tremendously impressed by the number of, shall we say
7 acquittals at your disciplinary hearing, not that there
8 should be acquittals unless the prisoner deserves it,
9 but I'm not talking at all about the disciplinary proceeding
10 at the Montana Prison, I know absolutely nothing about it.

11 I know, though, that in other states in which I'm
12 involved, perhaps New Mexico, that the situation is just
13 the opposite of what you're talking about.

14 MR. CRIST: Right, Mr. Dicke, I understand that
15 your comments were in general, I wanted the people in the
16 audience not to take your general comments and relate them
17 to the Montana State Prison as such.

18 A I want to make that, I want to make it clear that
19 I, as I said in the last sentence of my presentation, that
20 I don't know what's going on in Montana now, since the new
21 prison and since the policies of Warden Crist have been
22 implemented.

23 VOICE: I'd like to ask Warden Crist why we're
24 still --

25 A I think we have other people --

1 THE MODERATOR: Excuse me just a minute, you know,
2 if anybody is going to speak from the audience I'd like
3 you to wait until we're through having all of our panelists
4 present their information.

5 I know that all of us get very anxious and we want
6 to get our questions answered immediately, but that was
7 Warden Crist from the Montana State Prison who just spoke.

8 I would like to go on with this panel and I have
9 two other panelists who need to speak and then, after that,
10 we can open it up for questions.

11 As I said before, Merle Lucas will be addressing
12 primarily the corrections system and how it affects Native
13 Americans within the state, so that's a more specific area,
14 so as a result, I'd like to jump over and have, and hear at
15 this point from Melvin T. Axilbund.

16 Mr. Axilbund?

17
18
19 MR. MELVIN AXILBUND

20
21 A. (By Mr. Axilbund) You're certainly not the first
22 and undoubtedly won't be the last to mispronounce it.

23 I'm going to require your assistance because I'm
24 one of those persons increasingly a vanished breed in this
25 day of electronics who don't come equipped with a watch,

1 and when I'm approaching the end of my allotted time, if
2 you'd make a signal or something we can keep things
3 moving along.

4 I do come to you from Washington today via Los
5 Angeles where I was meeting with a group of my bosses to
6 review material which is highly pertinent to the subject
7 of this consultation.

8 We in Washington, as it is often said, have a
9 penchant for taking parts of the alphabet and assembling them
10 to form names of agencies and whatnot, it's true as well of
11 professional associations. And let me begin by responding
12 in a very general and quick way to the question of do
13 we have base standards? ABB

14 The answer is yes, the answer is indeed we may have
15 too many. Here's where the alphabet soup comes in.

16 There's an organization called the National Sheriffs
17 Association, affectionately known to me as NSA, which has
18 had some things to say about jails in this country.

19 The AMA, or the American Medical Association has had
20 some things to say about jail health care. The APHA or
21 American Public Health Association, has standards concerning
22 all types of correctional facilities.

23 The National Environmental Health Association, a
24 professional group of sanitary engineers has things to say
25 about the care -- the cleanliness of all parts of correctional

1 facilities. The Commission on Accreditation for
2 Corrections of the American Credential Association has
3 published already six sets of standards for parts of the
4 correctional system and later this month it is hoped
5 their standards for local accreditation of local
6 detention facilities will be released.

7 About half of the states have individual state jail
8 standards and enacted pursuant to legislation.

9 Virtually every state will have fire standards
10 which are arguably applicable to all types of correctional
11 facilities, as well as standards governing the preparation
12 of food in any place where more than X meals per day is
13 served and virtually every correctional facility with
14 which I'm aware would meet that minimum specification of
15 number of meals served per day.

16 Standards are also ~~inferable~~ from the plethoras --
17 not plethora, my God -- the enormous volume of court
18 cases which have been decided in recent years, certainly
19 not a plethora.

20 And the American Bar Association has weighed in with
21 some standards which I will describe for you briefly in a
22 moment.

23 In part responding to this large number of standards,
24 most of which are in agreement with one another on large
25 principles and diverge on implementing details, the

1 department of justice has an effort underway to promulgate
2 standards which would be enforced by the attorney general.

3 How? Good question. If this meeting were this
4 time next week I'd have an opportunity, perhaps, to inform
5 you more because there will be a meeting later in the week
6 in the office of the deputy attorney general with repre-
7 sentatives of the various alphabet soup groups that I've
8 referred to, to see exactly where our similarities and
9 differences lie and the extent to which we could agree
10 on a set of standards that the department could promulgate.

11 Suffice to say that the attorney general, in the
12 context of testimony on pending legislation that would
13 authorize him to sue state officials, when in his judgment
14 conditions in state institutions fall below constitutional
15 minima, has said that he would not exercise that authority
16 without conveying in advance the guidelines or standards
17 to which he will look in reaching his essential first
18 judgment.

19 Therefore, a task force has been working for some
20 months in the office of the deputy to come up with a
21 specific language whether they will be characterized as
22 national standards, whether they will somehow be enforced
23 through the mechanism of the Law Enforcement Assistance
24 Administration, as newly applicable conditions on its
25 grants or by some other means, I can not say.

1 But if you watch the papers carefully, you may see
2 much more of developments, the last staff person with whom
3 I spoke on this issue, told me that the attorney general
4 was going from a state of irritation to exasperation that
5 standards he expected to see for his review at the end
6 of the summer have not yet arrived.

7 And she said she hoped our meeting Friday could be
8 most productive because she did not look forward with
9 glee to the prospect of spending New Year's Eve in the
10 office trying to fashion standards.

11 To further provide a little background to the ABA
12 standards that I'll discuss briefly, I want to note that in
13 the nine years from 1968 till the end of 1976, the
14 population in federal and state correctional institutions
15 climbed what I would say is a large 45% to a total of
16 283,000 persons.

17 We have not had a recent census of the population
18 in jails, but reliable data on specific institutions
19 indicates that the population is well up there as well.

20 This development has exacerated -- exacerbated and
21 brought into sharp focus, problems of long standing in the
22 correctional sector of the criminal justice system.

23 Contemporary doctrine reflected in some of the
24 standards that I have referred to holds that a correctional
25 facility ought not to be constructed for more than 400

1 persons. The estimated per bed cost of traditional
2 corrections construction is about \$34,000.00 a bed. I've
3 done the math for you and that means that 13.7 million
4 dollars would be required to deliver on stream the average
5 facility for 400 individuals.

6 Just in 1976 alone to accomodate the 29,000 new
7 persons housed in correctional facilities, would have
8 required 73 new facilities or six a month.

9 We did not get that volume of construction, although
10 we did get a substantial amount of it.

11 The capital outlay for 1976 facilities had all 73
12 been built, would have exceeded one billion dollars. There
13 is every reason to settle on \$10,000.00 as a nice national
14 average cost of keeping a person in a facility for a
15 year, including the capital expense depreciation, and that
16 means that the imputed maintenance cost of keeping these
17 additional 29,000 persons alone for the last year was over
18 293 million dollars.

19 These are big numbers and they only serve to
20 exemplify the size of the problem that we're met here to
21 discuss in particular terms as applied to Montana.

22 The Correctional Facilities Commission of the
23 American Bar Association, for which I work, has not had,
24 as a major focus, a direct effort to change prison conditions.
25 Rather we've tried to limit them through pretrial diversion

1 and improved probation services, to speed a person's
2 passage through an institution, and facilitate their return
3 to the community upon release.

4 The association's direct work related to improving
5 penal conditions has principally been the responsibility
6 of the joint committee on the Legal Status of Prisoners
7 which published the standards I'll discuss earlier this
8 year.

9 I've brought, here's my huckster's pitch, I brought
10 a number of copies of this wonderful document, it's
11 at the back of the room for you ladies and gentlemen, this
12 is only an excerpted, we've taken out the commentary
13 to facilitate speedy reading and to hold down our reproduc-
14 tion cost, but the full document is available to you.

15 There's ordering instructions on the back, it's
16 only \$5.00. Write the ABA circulation department and
17 get out full thinking in detail in every case.

18 I got that out of my system.

19 No, I encourage, I only brought about 25, those
20 who can't get it today, the staff of the civil rights
21 commission in Denver would make up a list we'd be happy
22 to distribute additional copies of the Black Letter excerpted
23 for your reflective reading in the future.

24 Corrections has emerged as a significant legal field,
25 only in recent times. I do some part time teaching and

1 I can tell you, based on my experience in that regard,
2 that a decade ago, there were no law school courses on
3 prisoners' rights.

4 Neither were there any case books and stuff on which
5 law school courses seem to run, there were very few law
6 journal articles discussing aspects of corrections.

7 In large measure, each of these factors which I
8 consider to be indicia of legal significance was negative
9 because courts at all levels simply did not deal with
10 what went on inside jails and prisons.

11 It's been popularly referred to as the hands off
12 doctrine.

13 Only four minutes remaining, five.

14 And resulted in an absence of legal development.

15 Even if confinement did not in every jurisdiction
16 render a prisoner a nonperson, it did mean that he retained
17 few rights or protectable interests.

18 The association, in undertaking three years ago
19 to develop standards, sought to close a gap in its spectrum
20 of standards relating to criminal justice and address an
21 increasingly significant problem.

22 The standards are not a mere recitation of the
23 latest supreme court case, nor an expulcation which we
24 hope is literate of the best correctional practice which
25 can be found in some jurisdiction. Rather they're a product

1 of a testing of asserted values and what we have in the
2 Black Letter standards are those that the committee feels
3 ought to be recognized as aspirations for correctional
4 practices.

5 Before it could examine each of the particular
6 aspects of institutionalization to which it directed its
7 attention, the joint committee had to adopt a general
8 principle which would provide a test for each of its
9 particular standards.

10 I'll quote that for you, it's very brief. In our
11 judgment, prisoners retain all the rights of a free
12 citizen except those on which restriction is essential
13 to assure their continued confinement or to provide
14 reasonable protection for the rights and physical safety
15 of all members of the prison community.

16 In essence, this means that after examining all
17 of the asserted rationale for restricting individual
18 rights during confinement, there were only two which the
19 joint committee felt stood up, about the second of these,
20 the safety concern, I don't think there is any debate...

21 Regardless of the factual context, my rights stop
22 where yours begin.

23 In our prisons we have persons who have been unable
24 to recognize this limitation on individuality, and it is
25 in our judgment therefore, appropriate, that those measures

1 be taken which will enhance the safety of the entire
2 prison community.

3 Additionally, of course, it is necessary for correc-
4 tional authorities to take the necessary action to insure
5 that the judicially imposed limitation on liberty of those
6 who have been sentenced is carried out and not defeated
7 through escape..

8 The supreme court has recognized, as has already
9 been mentioned this morning, that there is a third
10 rationale, which in its judgment, is an adequate basis
11 for other correctional actions, and that is that some
12 actions can be justified because they tend to produce
13 rehabilitation of inmates.

14 The joint committee, as you will see in inspecting
15 standards, has rejected that rationale. The joint committee
16 agrees that many prisoners could and would justify --
17 benefit from habilitative services. You'll find our
18 language on that in standard 5.7.

19 But we do not believe that those services can be
20 effectively rendered when they are backed up by compulsion,
21 the compulsion of parole systems as Mr. Dicke alluded to,
22 or the compulsion of the disciplinary process.

23 As a result, the tentative draft provides partici-
24 pation in a program or activity which is not essential
25 to the maintenance of the program -- of the institution,

1 rather, may not be compelled.

2 An implication of this standard is that an inducement
3 other than the disciplinary sanction or the parole
4 sanction will be necessary if prisoners are to be lured
5 from their too frequent idleness.

6 The joint committee conceives that the most
7 effective inducement is money, stuff on which most of our
8 economy and society runs. We, therefore, have standards
9 suggesting the payment of a free world equivalent wages
10 for work which is of economic benefit to the institution.

11 My plan to tell you exactly why we thought that
12 was a good idea and to demonstrate that this wasn't just
13 a handout by illustrating the takebacks that we would
14 authorize for the system, but time doesn't permit that
15 now, I'd be happy to go into it.

16 There are also, of course, the bar association
17 couldn't fail to address itself to the question of legal
18 assistance for prisoners and legal materials, we've
19 covered that. We've covered just about everything, maybe if
20 I have time I can tell you more about it.

21 I think I should close by noting that correctional
22 administrators have responded already to our entry into
23 this field in several ways, there are those who question
24 the propriety of our having anything to say at all and
25 there are those who have taken a different view. They have

1 said, well, it's good to have another ally. And they have
2 begun to put state and local bar associations to the
3 test of assisting them in their efforts to examine
4 institutional procedures, to revise them, to accord with
5 the latest legal dictates, and very significantly, to get
6 the necessary implementing resources from state legis-
7 latures.

8 The description which Mr. Levis provided this
9 morning of recent Montana legislation, indicates that you
10 have come a long way to addressing some of the concerns
11 which we have talked about in the legal standards.

12 I can't say from his presentation whether we would
13 agree that you've gone far enough in every regard. No
14 doubt you feel that there is more to be done or else there
15 would not be the kind of attendance that there is here this
16 morning.

17 I would encourage you to beat on the doors of the
18 state bar association and local bar associations and make
19 your desire for their participation and assistance known.
20 I can't promise that it will be forthcoming, but it's
21 certainly my hope that it would be.

22 Thank you very much.

23 THE MODERATOR: Thank you.

24 And now Merle Lucas?
25

MR. MERLE LUCAS

1
2
3 A. (By Mr. Lucas) Thank you, Angie.

4 Everyone hear me?

5 I guess I'm here to speak about a private interest
6 group in Montana, or the minority of Montana and that is
7 the American Indian.

8 There's an awful lot of definitions of who an
9 American Indian is, but the definition that I always refer
10 to is when Columbus first came to America, he thought he
11 was looking for India so he called us all Indians.

12 The question I always have is, you know, what
13 would be -- what would be called if he had to be looking
14 for Turkey?

15 The Montana tribes -- I would be called a coordinator
16 of Turkey affairs.

17 Montana tribes for some time have been, or have
18 for some time been concerned about the problems Indian
19 people have in the judicial system in the State of Montana.
20 And we were asked by Montana tribes to investigate some
21 of the problem areas and perhaps maybe come up with some
22 suggestions on how some of these problems can be resolved.

23 And as a result of that, our office had taken a look
24 at the Montana justice project, the correctional report
25 and this is in the goals and standards and what I'd like

1 to do is just read, I picked at random some of the goals
2 and standards in the corrections report and what I'd like
3 to do is follow up with that and identify some specific
4 problem areas.

5 Access to courts is one where offenders under
6 correction control should have access to courts. They
7 should be able to challenge the legality of the conviction
8 or confinement, seek another remedy for unlawful treatment
9 or violation of rights while incarcerated under correc-
10 tional control, seek relief from civil legal problems.

11 An incarcerated offender should have a right to
12 counsel to seek post conviction relief or have charged
13 with a crime other than for which sentence was passed,
14 offenders should be treated fairly and without discrimi-
15 nation in correctional facilities, since the reform of
16 the offender is a goal of corrections, then it is important
17 not to discriminate against an offender because of his
18 race, religion, nationality, sex, politics in a correction
19 setting.

20 All offenders should have access to rehabilitation
21 programs designed to help them lead a law abiding life
22 when released from incarceration.

23 More important, Article 2, Section 28 of the
24 Montana 1972 Constitution, states that laws for the
25 punishment of crimes shall be founded on the principles of

1 prevention and reformation.

2 In the area of conduct, offenders should be told
3 what is expected of them so they may follow the rules
4 for acceptable behavior while incarcerated. Free
5 expression, offenders should be able and given the oppor-
6 tunity in preserving their individuality through dis-
7 tinguishing clothing, hair styles, and other characteristics
8 related to physical appearance.

9 In so far as possible within the requirements of
10 security.

11 Exercise religions, beliefs and practices. With
12 these are some of the areas that we were able to identify
13 that Montana tribes have been concerned with.

14 In an effort to assist the state in implementing
15 some of these recommendations, our office developed a program
16 that we called Native Court Worker and Counseling Program
17 to provide assistance to Native Americans in overcoming
18 some of these problem areas.

19 Give you a little background on it, we've had a
20 number of meetings with tribal leaders, with the law
21 enforcement officials from British Columbia, law enforcement
22 officials from city, county and state, the Montana Supreme
23 Court, and as a result of these meetings, you know, it was
24 determined that the intricate and sophisticated structure
25 of the law and the judicial system are culturally and

1 linguistically foreign to most Indian people.

2 Indian people who appear before the courts are
3 uninformed and often the technology in a courtroom is
4 beyond their comprehension due to language barriers
5 and the lack of education.

6 Consequently, many Indians do not understand the
7 seriousness of their illegal action. And we based some of
8 these facts on, it is awfully difficult for Indian people
9 to obtain legal counsel mainly because Indian people have
10 such a low income level, then on the other hand, when an
11 Indian, a non-Indian public defender is appointed to
12 represent an Indian, then that creates a language-cultural
13 barrier between the public defender and his client.

14 Therefore, many Indian people plead guilty, you
15 know, to expedite the entire process. Even though they
16 may be innocent and not aware of the consequences.

17 So these were some of the things that we were able
18 to turn up in our investigation and earlier a gentleman
19 mentioned that the Montana or the profile of the Montana
20 Native American indicated that roughly 36% of the total
21 Indian, or the population of Montana State Prison, were
22 Native American.

23 Well, this was a study that we instituted back in
24 1974. It goes on further to talk about the, if you look at
25 the state Indian population, the Montana Native Americans

1 make up roughly around 6%.

2 If you look at two-thirds of whom live on reser-
3 vations, that leaves very, very few Indians who reside
4 off of reservation but yet we have such a high population
5 of Indian people in the Montana State Prison.

6 In an effort to help in this area, this program that
7 we have designed, first of all what we had to do was look
8 at the arrest record. So two years ago with the assistance
9 of a law intern from the University of Montana, we were
10 able to document the number of arrests that were made
11 on or adjacent to Indian reservations. By category.

12 This would be a felonies all the way down to
13 misdemeanors.

14 In addition to that, we tried to identify some
15 means of assisting Indian people in overcoming this con-
16 flict when an Indian person who leaves a reservation or
17 who commits a crime adjacent to a reservation, you know,
18 that's the same as if any one of you or myself was to go
19 to Canada and violate an ordinance in Canada, we would
20 be subject to a court -- a court of foreign jurisdiction,
21 so on that basis we tried to design a program on Indian
22 people who commit crimes off of Indian reservations.

23 The goals that we're looking at are to provide
24 assistance and counseling service to Indian people who are
25 in conflict with the law in the jurisdiction of the State

1 of Montana. What we're saying is that when an Indian
2 person commits a crime off of an Indian reservation, he
3 appears before a city court, a county court or in general
4 under the State of Montana.

5 In most cases the individual is not aware of what his
6 rights are. Of course there's this cultural barrier or
7 language barrier, cultural conflict, we're looking at the,
8 in some cases individual aren't even aware of how to con-
9 duct themselves within a city court, county or a state
10 court.

11 When an individual commits a crime on a reservation
12 he appears before their reservation law and order or their
13 courts. That individual is aware of what the consequences
14 are within their tribal law and order codes but when an
15 individual commits a crime off of an Indian reservation,
16 that individual is, in most cases, not aware of what the
17 consequences really are.

18 On the other hand, the individual does know -- does
19 not know what services and resources are available within
20 the communities off the reservations so in some cases they're
21 not even sure if legal services even exist within those
22 communities.

23 We're looking at providing Indian people in major
24 Montana cities with information, advice -- and advice
25 concerning their rights and responsibilities under the

1 Montana criminal justice system.

2 Again, this is, would be an educational process.
3 Where we would want to make Indian people who are in con-
4 flict with the law under the jurisdiction of the state,
5 aware of what their rights and responsibilities are before
6 the courts.

7 We want to -- we're looking at establishing
8 effective working relationships, you know, with the
9 department of institutions, with the department of
10 social rehabilitation service, with the employment
11 security, what we want to do is coordinate and direct
12 the various, their various resources to serve the needs
13 of Indian people who commit crimes off the reservations.

14 We're also proposing to provide cross cultural
15 awareness training to criminal justice personnel, agencies
16 and organizations who provide services to Indian people

17 Again this is an area of the criminal justice
18 system.

19 We want to assist courts or we're proposing to
20 assist courts in providing presentence and pretrial release
21 reports on Indian offenders to help judges make determina-
22 tions on sentencing and detention.

23 We're also proposing to establish a toll free line
24 that would be available to Indian people.

25 An Indian person is arrested he can identify a

1 resource within that community, in turn, get in touch with
2 a court worker and that court worker would make the
3 initial contact to determine the circumstances surrounding
4 his or her arrest.

5 The court worker would also identify the resources
6 within that community, put him in contact with those
7 individuals or agencies or organizations, and in turn
8 provide assistance, not only to the prosecuting attorney,
9 but to the defense attorney, to the judges in doing back-
10 ground investigations, in assisting in conducting pre-
11 release and of course predetention reports for the criminal
12 justice system:

13 I guess what I would like to talk to you about is,
14 or what I'm proposing here is that, you know, is a concept
15 that our office feels, and the Montana Indian Tribes
16 and the off-reservation Indian organizations, feel would
17 make a substantial improvement; you know, in this criminal
18 justice dilemma that involves Indian people who are accused
19 and arrested, incarcerated for a crime committed off of an
20 Indian reservation in Montana, and with that I will just,
21 I would like to close and try to answer any questions
22 you might have concerning this proposed project.

23 Thank you.

24 THE MODERATOR: Thank you, Merle.

25 Many of us have had some experience with corrections

1 systems, as a social work student I had some experience
2 working in a juvenile detention center, I also did some
3 group work in a prison, and many times we end up dis-
4 cussing, well, what are the rights of prisoners?

5 What can we, as individuals who are concerned about
6 prisoners' rights be upheld, what kinds of things can we
7 do?

8 I would like to ask just a brief question to any of
9 the panelists, what is the procedure that we would take,
10 as concerned individuals where we do see violations of
11 prisoners' rights on-going?

12 A (By Mr. Axilbund) Well, my own view is that there
13 will not be progress, in response to that situation, unless
14 first of all the authorities responsible for a particular
15 institution know what's troubling you or another member
16 of the public.

17 And if there was reliable information that something
18 was amiss, I wouldn't hesitate to call the warden, sheriff
19 or whomever it is, and tell him about your concern, ask
20 him about it.

21 It was indicated earlier that there is a grievance
22 commission set up with the department here, which would
23 have a formal role to play and that might be an alternative.

24 If the matter clearly seems to be a justiceable one
25 or violation of the state codes, the state attorney general

1 would have a role to play.

2 But I don't think that the person in the hot seat
3 is going to have a chance to improve the performance over-
4 time unless he knows what others are troubled by.

5 THE MODERATOR: I'd like to open it up to the
6 audience now, if you have questions, would you please rise,
7 identify yourselves and then ask your question?

8 Also let me make this quick announcement. We are
9 going to be going on with this discussion till 11:00, that
10 gives us like 12 minutes and I believe there is coffee
11 outside in the hallway or here to my left, so just help
12 yourselves to coffee during the question and answer period.

13 Q (By Ms. Holmes) I'm Polly Holmes of Billings,
14 Montana. And I'd like to ask you, in regard to checking
15 with the warden, when we have a word of some rights that
16 are being abridged, is it -- how can we be sure that
17 there will be no -- nothing that will happen to the person
18 who has made the complaint? This is the question that I
19 always have, I always hesitate to call the warden because
20 I don't want to jeopardize the safety of anybody who has
21 made a complaint.

22 MR. AXILBUND: Perhaps Warden Crist would like to
23 respond.

24 MR. CRIST: I'd be happy to respond to that.

25 A member of the audience today is Gary Quigg, who is

1 one of the inmates of the Montana State Prison, and Gary
2 has sued me deep, wide and repeatedly, as he can attest
3 to, and Gary is here today. That's hardly retaliation.

4 A. (By Mr. Axilbund) More generally, if I could
5 broaden that response, unless it's a very peculiar
6 situation, focused on a single individual, there isn't
7 any necessity on your part to identify every particular.

8 You can put your concern in specific terms and yet
9 general. You can stack that up against any exact facts
10 you may have and if there is a divergence, then there's
11 something to proceed, but a lot of things which might,
12 to an individual in an institution appear incorrect
13 and improper or whatever, are not.

14 Question, or there was a statement made earlier
15 today about the law of Montana with respect to corres-
16 pondence. Well, like it or not, they apparently have
17 the right to determine what letters can go back and forth.
18 So a person newly incarcerated in Montana might be
19 concerned about that. The warden will tell you what the
20 law is and whatever we did was in furtherance of that law.

21 Then your recourse, it would seem to me, is to
22 change the law. But, you know, if you just don't have to
23 say, you know, John Doe hit Richard Roe on the 13th of
24 August, what are you going to do about it?

25 Every situation is not of that nature. Matters which

1 are of more general concern may also be brought to the
2 attention of the Civil Rights Division of the United States
3 Department of Justice, which has an enforcement responsi-
4 bility under current federal statutes.

5 THE MODERATOR: Any other questions? Or would
6 any of the other panelists like to respond to that?

7 Q (By Mr. Frank Casciato) I'm Frank Casciato, I'm
8 an exinmate out at Deer Lodge.

9 I'd like to respond to Warden Crist on one matter.
10 He did in fact bring Gary Quigg here today but I'd like
11 to point out Gary Quigg is a very unique inmate, in fact
12 he has a good understanding of law and for Warden Crist to
13 hassle Gary Quigg would probably mean that there'd be
14 more lawsuits, more writs of habeus corpus, etcetera.

15 If you brought a Bill Sather (Phonetic) or a John
16 Mauno (Phonetic), or someone else to represent the popula-
17 tion down there, it would be more exact in being able to
18 bring out what goes on, Gary Quigg, in fact, does file
19 a lot of writs, he knows how to file them and the average
20 inmate in Deer Lodge does not.

21 Q (By Ms. Smith) I'm Judy Smith from Missoula,
22 Montana. I think another mode of bringing some pressures
23 is the one that the Montana Indian Tribes has already pre-
24 sented to us which is a group that realizes it has certain
25 things that need to happen and bands together to get those

1 to happen.

2 Going through the system is a nice alternative
3 in that you should try it, but I think relying on the
4 system to basically correct itself, is somewhat naive in
5 that if there are people who feel they have needs that
6 aren't being met, they need to band together and I'm glad
7 to see that Montana Indian Tribes has done that and I
8 hope the women in the state are going to do the same for
9 women offenders so I would say as long as you're talking
10 about a system that has its own interests at heart, you're
11 going to have some trouble changing those basic interests.

12 THE MODERATOR: Thank you for your comments.

13 We understand some of the people in the back can't
14 hear, so if you do have questions or comments, would you
15 please use the microphones?

16 Yes?

17 MR. BIGHORN: Ernie Bighorn, I'd like to ask
18 Merle Lucas a question if I might.

19 Q (By Mr. Bighorn) You indicated that you're
20 coming up with or proposing a -- some kind of a system
21 to help Indians off the Indian reservations, is that
22 correct?

23 A (By Mr. Lucas) That's correct.

24 Q You also indicated that you did have, or you've
25 conducted some type of a survey?

1 A. Yes, we did.

2 Q. That was conducted off or on or near Indian
3 reservations.

4 A. We were able to document the number of arrests
5 that have been made on Indian people on or adjacent to
6 Indian reservations in the state in all of the major
7 categories.

8 Q. Would that document be available for the commission's
9 report?

10 A. I would have a copy in my office, yes.

11 MR. BIGHORN: Thank you.

12 Q. (By the Moderator) I'm curious, Merle, just from
13 the study that you've been involved in, where does the
14 problem seem to be, is it in the actual apprehension, is
15 this where you pick up or where, maybe rights are violated
16 or is it actually once they get into prison?

17 Are there any particular trends you can share with
18 us?

19 A. I would think that the reason why the majority or
20 the majority of the Indian people who are arrested or
21 incarcerated are probably alcohol related.

22 Secondly, I think it's once the individual is incar-
23 cerated the individual lacks an understanding of the
24 Montana judicial system, and I think, you know, if he lacks
25 that system, well, he certainly doesn't know how to go

1 about, you know, getting adequate assistance in taking
2 a case to court.

3 And of course I think the other major problem
4 that is attributable to the whole situation is the fact
5 that most Indian people who commit crimes off of Indian
6 reservations can not financially afford legal counsel.

7 And one of the other things that I've neglected
8 to mention was that the Indian population in the state
9 prison, I would think that one of the reasons why it's
10 so difficult for that individual to be paroled, is because
11 the inmate can only be paroled to major Montana cities
12 or those communities that would be willing to accept and
13 provide supervision over that inmate.

14 Indian people, I believe, under existing state
15 status, can not be released or paroled to their individual
16 reservations.

17 Now that, there may be a change in that but in
18 1974 the department of institutions would not allow an
19 individual to be rehabilitated on his respective reservation
20 because of the extradition process and the -- openly there
21 was some problem area there.

22 ~~Maybe Warden Crist could --~~

23 THE MODERATOR: Warden Crist, you may want to bring
24 that up to date.

25 MR. CRIST: To clarify one point, the Native American

1 population at the prison right now, as of two months ago,
2 was 13.4, which is the lowest it's been in years. I would
3 really like to take credit for that but there's no way
4 that I can very frankly.

5 We don't control who comes to the prison, the
6 courts determine that. We don't control who leaves the
7 prison, the parole board determines that.

8 I think that there was a recognized problem with
9 the Native American offender in his release back to the
10 freed community. The parole board sees a man two months
11 before he's eligible to actually leave the institution.
12 He's seen two months early to provide the time for planning
13 for the individual, where is he going to live and where is
14 he going to work.

15 Now, this problem of getting a plan where he's
16 going to live, where he's going to work, where he's going
17 to go to school, with the Native American was recognized
18 in the institution. Our Indian selfhelp group, the
19 North American Indian League, stepped forward and they
20 have obtained an LEAA grant, and this is in conjunction with
21 the Flathead Indian Reservation, the prison, the board of
22 pardons, and a few other agencies, but it's actually
23 administered by the Indian group itself, and they, in turn,
24 have hired two individuals who are both Indian and both
25 exoffenders to specifically zero in on getting the Indian

1 offender placed back in the community, either in the
2 general community or the reservation, either one.

3 In addition to that, the state has come forward
4 with funding for two job finders whose specific job is to
5 get inmates out of the institution, once they've received
6 parole, so we currently have four people working on that
7 right now, at the prison.

8 A. I'm familiar with the Indian offender project out of
9 Flathead. Isn't there still a problem of jurisdictional
10 release in an individual to a reservation? For extra-
11 dition purposes?

12 MR. CRIST: I think everybody in the room is aware
13 there are jurisdictional problems in the State of Montana
14 but I can not really say that they have affected the
15 institution or parole.

16 We've been able to work out on a grass roots level
17 with the reservations accomodations.

18 Another example of that is somebody mentioned the
19 swift bird project where we're going to actually be able
20 to send the inmates out of the state to an Indian facility
21 in another state that's not part of that government type
22 of thing, so basically, we've been able to work out
23 cooperative agreements between the reservations and
24 ourselves.

25 THE MODERATOR: Yes? I think we have time for one more.

1 MR. PLOUFFEL: I'm Dennis Plouffél, I'm an inmate,
2 Montana State Prison, and an Indian. I'm also director
3 of North American Indian League and I'd like to respond
4 to a couple points brought up there.

5 One was whether an Indian knew his legal rights
6 and whatnot when he's picked up. Approximately 50% of
7 the Indians that come in there, about 30 days after they're
8 there, they realize, why am I here? They don't even know.
9 That's, we've got to work on that..

10 We've got to provide legal advice to them before
11 they come to prison.

12 I'm also director of the IOD project, which is the
13 Indian Offender Diversionary, and the Indian reservations
14 and the local sheriffs state to the parole board they
15 don't want the Indian back on the reservations.

16 So they've come to us and we have to provide them
17 with a parole plan to one of the cities which they're not
18 familiar with, they have no family, no relatives, they've
19 going to a place that's like a foreign country to them; born
20 and raised on the reservation, as a result, they end up
21 back in prison within a month, two months, three months.

22 And I've got all the same facts and figures that
23 Warden Crist has, as far as recidivism. The percentage of
24 inmates in the prison now have dropped but he said he
25 couldn't take credit for this drop but I think North American

1 Indian League can, and we're going to get working on it.

2 Thank you.

3 THE MODERATOR: I'd like to thank our panelists,
4 John Dicke from ACLU, Merle Lucas from the Indian affairs
5 office in Helena and Melvin T. Axilbund from the American
6 Bar Association's Commission on Correction Facilities in
7 Washington.

8 Thank you.

9
10 (Applause)

11
12 (Short recess)

13
14 (The following was moderated by Mr. Paul Spengler)

15
16 THE MODERATOR: Would everyone please be seated
17 so we can get underway?

18 I'd like to, in the panel discussion, we're going
19 to end the panel discussion we're going to have at 12:15,
20 so we can all go to lunch and to do that we're going to
21 have to begin immediately.

22 The title for this panel discussion is legislative
23 alternatives, all of us are not going to talk about
24 legislative alternatives, some of us are going to follow
25 up some of the things that were discussed earlier in the

1 rights of offenders panel.

2 I am Paul Spengler, the moderator for this panel.
3 I am the former coordinator of the corrections task force
4 for the Montana Justice Project, which is an abbreviated
5 term for the Montana Council on Criminal Justice, Standards
6 and Goals. We thought the justice project would be a lot
7 easier to say that.

8 And I'm also a criminal justice lecturer at Hero
9 College in Helena, Montana.

10 To my left we have Polly Holmes, state legislator
11 from Billings, she's going to discuss rights of offenders
12 and to my right we have the Senator, Tom Towe, from Billings,
13 and he is going to discuss the legislative process and some
14 legislative alternatives, and then to my far left we have
15 Professor Vandiver, who is a sociology professor at the
16 University of Montana in Missoula.

17 I would ask those of you who have questions of the
18 people on the panel to please hold them for the discussion
19 period which will follow after everyone has made their
20 short presentation.

21 As the panel moderator I'm going to use my preroga-
22 tive and kick off my presentation first and I assure you it
23 is going to be short.

24 We would like to finish at 12:15 so we can go to
25 lunch next door.

MR. PAUL SPENGLER

1
2
3 A. (By Mr. Spengler) The rights of offenders can be
4 a subject of heated debate in corrections. Much of the
5 public believes that criminals shouldn't have rights, and
6 demand more punishment. Others call for more rights than
7 present correctional practices may give the offender.

8 Caught in between these opposing views are Montana
9 correctional administrators who must protect the constitu-
10 tional and statutory rights of offenders while maintaining
11 order and discipline.

12 Offenders' rights are constantly being interpreted
13 by the courts both state and federal and reams of material
14 have been written on this often-volatile subject.

15 Mr. Axilbund, who was on the committee earlier, re-
16 minded us that just about every committee who has or is
17 studying corrections has its special set of standards on the
18 rights of offenders plus other areas in corrections.

19 The proliferation of case law illustrates the need
20 for Montana's correctional administrators to respond to the
21 law in order to prevent judicial intervention.

22 Administrative convenience must not justify non-
23 compliance with an offender's rights. Difficult as it
24 may be, every effort should be made to insure that offenders
25 are granted their rights under the law. If we protect the

1 rights of the minorities and powerless, we, in turn,
2 strengthen our own.

3 Rights must be constantly secured in a free society.
4 Permitting the erosion of rights, even amongst criminal
5 deviants, may hasten the day when all of our rights are
6 correspondingly diminished. But even the most conscientious
7 corrections person may be confused as to what rights
8 an offender has and how they should be implemented.

9 This is where the corrections task force report of
10 the Montana Justice Project is useful. And I have this
11 little document before me, it's not a little document, and
12 I don't have a bunch in the back, if anyone is interested
13 in the corrections report, I understand there are extra
14 copies at the board of crime control, unfortunately in
15 Helena, you could write there and possibly secure a copy
16 for yourself. I don't have any extras with me today.

17 The committee studied corrections in Montana for
18 two years and published its report last year.

19 A major chapter in the report is the rights of
20 offenders, which consists of 19 standards a lot, and I'd
21 like to define what we consider the standard to be.

22 Standards serve as specific levels of performance
23 with which to compare present practice when dealing with
24 offenders and their rights under the Constitution and state
25 and federal law. Some standards may be useful

1 or are merely implemented, others may serve as a reminder
2 of what should be done in the near future, all standards
3 were written to be used and not ignored.

4 The rights chapter is too lengthy to discuss here
5 but I will talk about four standards to kick off our panel
6 discussion.

7 And these standards have to do with access to the
8 courts, legal services, legal materials, and lastly on
9 searches. ① Access to the courts gives offenders the right
10 to challenge the legality of their conviction or confinement,
11 seek a remedy for unlawful treatment or violation of
12 rights while under correctional law, correctional control,
13 I'm sorry, and to seek relief from civil legal problems
14 and oftentimes prisoners do have civil legal problems and
15 we don't sometimes consider those when we're talking
16 about litigation in the courts.

17 The standard calls for transporting offenders to
18 the courts if the need arises, consistent with the reason-
19 able requirements of correctional security.

20 And the courts may order the transportation.
21 ② Offenders should have access to legal help from
22 attorneys and counsel substitutes who are law students,
23 correctional staff, inmate paraprofessionals and other trained
24 paralegal persons.

25 These legal services may be used in numerous

1 circumstances such as disciplinary proceedings in the
2 correctional facility, that impose major penalties and
3 deprivation, probation revocation and parole grant and parole
4 revocation hearings.

5 Anda challenge to the conditions of treatment or
6 confinement. Help from other inmates should be prohibited
7 only if legal counsel is reasonably available in an
8 institution. Correctional staff should assist inmates in
9 making confidential contact with attorneys and lay counsel.

10 This includes visits during non-normal institutional
11 hours, uncensored mail and phone calls. ³ Inmates should have
12 access to law materials to help themselves with their
13 legal problems.

14 The prison is, increasing its law library but
15 this standard could present problems in county jails.

16 The task force decided that local law enforcement
17 agencies should make arrangements for inmates of jails
18 to have reasonable access to legal materials. But if this
19 does not mean that a sheriff must stock a law library
20 as the warden does.

21 ④ The last standard I'll mention here has to do with
22 searches, a vital tool of correctional control. The
23 American Civil Liberties Union has stated that, and I
24 quote, substantial limitations on one's privacy can be
25 expected in prison. But this is not inconsistent with

1 reasonable rules and procedures made known in advance
2 to the inmates, unquote.

3 The standard calls for offenders in the community
4 to be subject to the same search and seizure rules
5 that apply to the general public. All state correctional
6 facilities should make a plan for regular searches of the
7 facilities and persons, and unnecessary force should be
8 avoided as well as embarrassment or indignity to the inmate.

9 Technological devices should be used whenever
10 possible instead of strip searches and lastly, the search
11 plan should be published and all searches should be ordered
12 only by top management officials.

13 Later I will ask some questions of the panel if
14 there aren't any from the floor, to kick off the discussion.

15 Now I would like to introduce to my left, Polly
16 Holmes.

17
18
19 MS. POLLY HOLMES
20

21 A (By Ms. Holmes) Most of our corrections systems
22 in America, I believe, are themselves fostering crime.
23 We are methodically cultivating an ideal soil which --
24 in which future crime will flourish and grow.

25 The corrections system, the traditional corrections

1 system, is built on the principle that an offender can
2 best be handled by confining him to a building full of
3 disturbed, hostile, resentful, lawbreakers, isolated
4 from normal society, normal family and sex life and from
5 all responsibility, and that after years of this he should
6 be expected to step back into the normal community and
7 behave like an angel.

8 We are dreamers.

9 William Leek, Director of the South Carolina Depart-
10 ment of Corrections, says... ...there is massive evidence
11 that general imprisonment as it has been applied in this
12 country, is a major contributor to crime, not a deterrent.

13 Now, if it disturbs you that I should include Montana
14 in this kind of a castigation, then I'm illustrating, with
15 you, exactly what I want to talk about in regard to the
16 clients of the system.

17 If I should batter away at the system for which
18 several of you work, implying that your lives may be
19 invested in the wrong goals or in an almost impossible
20 assignment, you could become so defensive and resentful
21 that the attitude you'd come out with would be more negative
22 than if I hadn't said anything at all.

23 And this is exactly the way negative feelings
24 work in the clients of our system. Those of us who complain
25 about the system are like the little girl who got dressed

1 up in an angel costume on Halloween night and knocked
2 on a neighbor's door and he came, a nice neighbor came to
3 the door with a big red, shiny apple and dropped it in
4 her paper sack. And out from -- behind this angelic
5 little mask came a not so angelic little voice, saying Mithter,
6 you just busted every damn cookie in my bag.

7 We tell our corrections people what we expect
8 them, we, the public, expect them to do and then, when they
9 do it we complain that they've busted the cookies.

10 Well, what about it? Is it possible, within our
11 system, to correct criminals? Can we get the apple into the
12 sack without busting the cookies?

13 I think there are some more realistic ways to go
14 about it, and we need to find what those ways are. The
15 best way to start is by appreciating the fact that most
16 of the employees of the system are knocking themselves
17 out, often against impossible odds, to do the job that
18 the public has given them to do, through the legislature.

19 What is needed is for the public to give them a new
20 job analysis. We're simply going to have to find a more
21 realistic way to treat lawbreakers.

22 Here in Billings, Reverend Ken Mitchell, among
23 others, has found a more effective way. Ken Mitchell
24 costs the state absolutely nothing, and yet he does more
25 in six weeks in our county jail, and I think our county

1 attorney and the judges would agree with this, than 20
2 years of what we call correctional programs do.

3 What he does is to meet the client where he or she
4 is, with a stomach full of very negative feelings, fear,
5 guilt, anger, hopelessness, feelings that are always
6 present in any, anyone who has been arrested.

7 Ken accepts those feelings and expects them and
8 encourages the people to express them. But he lets the
9 person be who he is, and encourages him to -- to appreciate
10 himself and the other people in the group, and helps him
11 to get out of his system the rage that is clogging his
12 thinking, and as a result, the client gets to the point
13 where he can figure out for himself what he needs to do
14 to change his behavior and become a more cooperative
15 citizen.

16 This method works much better than either sheer
17 punishment alone or telling the person how inappropriate
18 his behavior is. [Punishment has two purposes, it can
19 provide shock value and it makes everybody feel that the score
20 is even. X

21 It makes us, the public, feel better because the
22 dirty rat got what he deserved. But it does not make bad
23 people good. X

24 Last month our county attorney, Harold Hanser,
25 reported that 85% of our thefts in Yellowstone County are

1 committed by juveniles.

2 Now, set next to this the fact that his office
3 deals with five to seven cases of severe child abuse every
4 week, and only about 15% of child abuse cases are ever
5 reported. Now, at what point, at what age do we stop
6 feeling sorry for the abused child and start blaming him
7 or her for responding to that abuse?

8 You have nothing but sympathy for him when he's seven
9 and scared and silent and too small to defend himself,
10 but how do you feel about him when he's 12 and he's beginning
11 to strike back, when he or she begins to do what anybody
12 would do under the circumstances, then suddenly we change
13 our entire attitude toward him.

14 Now we say, good enough for him, he should know
15 better, he brought it on himself. We forget that he's
16 been repeatedly hurt until he's socially sick, and he's
17 going to continue to be sick until somebody comes along
18 who cares, who has the time to listen to him, and who knows
19 how to help him.

20 But he's not likely to get that in our system. Once
21 he's in jail or reformatory or prison, there is no safe
22 way to express his feelings of frustration and despair
23 and resentment and everything else. He can't cry or he'd
24 be ridiculed by his fellow inmates. He can't yell or hit
25 or run because he gets sent to the hole, and that's not

1 only miserable, it's -- it's -- takes away his good time
2 and it, sometimes, in this state, lasts a long time, in
3 the invisible bowels of our system.

4 We force him to put the lid on his feelings, and
5 this is the worst possible way to treat human feelings if
6 you ever expect to change them from negative to positive.
7 The feelings of fear, anger, helplessness, are an ever-
8 present reality, not only to the client but to all the
9 officers who work with him and if we don't learn how to
10 handle feelings constructively, we're simply storing time
11 bombs.

12 The second change that needs to be made is that we
13 must deal with individuals rather than categories. At best
14 we've defined offenders by their crimes. At worst, we've
15 defined all offenders by the worst of their crimes.

16 Judges have made the decision as to whether an
17 18-year old boy should be sent to Deer Lodge on the basis
18 of how much the old car was worth that his buddy stole in
19 his presence, which made him an accomplice.

20 Much more attention was given to whether the car
21 was worth \$50.00 or \$150.00, which would make it a felony
22 and make him defined for the next X number of years, as a
23 felon, than was given to whether the boy was worth anything
24 or not.

25 Each individual is a separate, unique entity, and if

1 that unique human entity has not been recognized and
2 cherished and encouraged to express itself, a natural
3 result of this deprivation is crime, we should be expecting
4 it.

5 And to punish the person by giving him the same
6 dehumanizing treatment that he's had all his life is not
7 going to cure him. It's going to make him worse.

8 The only way to turn a bad actor around after his
9 initial short shock treatment in jail, is to tailor
10 his treatment to his or her particular needs. We should con-
11 centrate not on what he deserves, but what he needs in
12 order to go straight.

13 Sixty to 70% of the people in our prison are
14 there because of alcohol or drug related crimes. Many
15 of these people need programs like the lighthouse program
16 at Galen (P) and it would do a lot more for them than
17 sitting in prison for an extra five years. 83.4% of the
18 people who were paroled from our prison in 1976 were
19 first time felony offenders.

20 What the average offender needs is first, swift,
21 sure, certain, short punishment. At the first sign of
22 criminal behavior, even if he's only ten years old,
23 I'd rather see a ten-year old spend a night in solitary
24 confinement and then have some help than wait until he's
25 18 and put him in jail for a year. It doesn't take long in

1 solitary confinement to make a person wake up to the
2 realities of life and recognize that he needs some help,
3 and then follow that with personal, individual, caring
4 attention, tough love, if you will, in the community by someone
5 who's not a member of the person's family and who is not
6 there, who is not paid to judge or grade the individual
7 but who's just there because he knows how to and wants to
8 help.

9 The third change that needs to be made is that we
10 must quit training people to be wards of the state and
11 start training them for responsibility. If, instead of
12 taking care of the offender for long periods of time by
13 feeding, clothing and making his decisions for him, in an
14 unnatural, undemanding, meaningless society, we trained
15 him in responsibility under close supervision, of course,
16 in the community, where he would have to learn to
17 support himself, his family, make restitution for his
18 crime, we would be reducing crime instead of preparing
19 the person to rely on it.

20 And in the long run, it would cost less.

21 In the area of changing people's behavior, there
22 are no experts. Any of us, all we can do is testify to
23 the things, the experiences that have worked and those that
24 have not worked in our little corner of the system. And
25 there are many programs that have worked remarkably well.

1 At the Colorado State Reformatory, the goal of
2 punishment has been replaced. They've developed an Rec
3 incentive program that primarily rewards good behavior
4 instead of punishing bad behavior. They've eliminated all
5 guardian forms, they've developed a variety of treatment
6 and training alternatives and they're using a security
7 system that's based on internal awareness rather than
8 external watching.

9 And after five years of this program, the results
10 are amazing. And Roger tells me that the program in
11 Montana State Prison is moving in this direction and I'm
12 delighted to hear it.

13 At San Francisco County Parole Outreach Office,
14 four of the five case workers are themselves exoffenders
15 who understand the clients and speak their language.

16 Theirs is called the most realistic crime preven- Re
17 tion program in the city. Their director says on the basis
18 of his ten years work in the system and I quote, 70%
19 of all jail inmates, if given adequate supervision, would
20 not need to be incarcerated. And he suggests that we use
21 more exoffenders to work with prisoners.

22 It would help in Montana if the legislature would
23 do some innovative planning, but don't count on it.
24 Politicians make political hay out of being tough on crime,
25 it's the best way to get reelected. They love to argue that

1 there's no point in spending more money on rehabilitation
2 because nothing works. They love to misquote that. That
3 simply isn't true.

4 What has been done in coercive situations, in
5 cohesive systems, hasn't worked, rehabilitation, while a
6 person is in prison, doesn't work very well. But lots
7 of things work where there is, A, flexibility, and B,
8 creative people who care.

9 You know, there's a sure test for insanity. You
10 take a patient into a room where the water is overflowing
11 onto the floor, from a faucet, and if he turns off the
12 water and starts to mop, then he's all right. But if he
13 starts mopping and never turns off the water, you figure
14 maybe there's something wrong with him.

15 Well, I've heard dozens of impassioned speeches
16 in the legislature crying mop up crime, build bigger
17 prisons, give longer prison terms, eliminate parole
18 and furlough possibilities, let's get these criminals off
19 the streets.

20 But when somebody brings a bill in that would
21 start turning off the faucet, we don't have enough extra
22 money for that kind of thing, just send them to Deer
23 Lodge, what else is that fine new prison for?

24 We finally have one single halfway house starting in
25 Missoula, we're about to have one good female facility in

1 Billings, we're beginning to develop deferred prosecution
2 programs in several communities in Montana.

3 Ken Mitchell here in Billings is working out a
4 program with our courts to sentence people from our jail
5 directly to a reevaluation counseling group. We did
6 get a prerelease work study treatment furlough bill through
7 in '75, it allows for individual contracts with daily
8 sponsors, and there are some recipients of that bill here
9 today, we got the bill through in '75 but the legislature
10 didn't provide one penny for the social services that are
11 necessary to make it work.

12 So, there have been only, I think 15 people since
13 '75 who have gone out on this program, and not one single
14 one of them has violated, there's not been one failure
15 in that group.

16 And yet we've only had 15.

17 Nationwide, work release programs have been over
18 80% successful, according to Ronald Goldfarb's national
19 study, maximum benefit was achieved by those falling into
20 the poorer-risk categories, they succeeded at much
21 higher than the expected rates.

22 Now, nobody thinks that all the people in our
23 prisons should be turned out into community programs.
24 Psychologists seem to agree that 10 to 20% of the people
25 in our prisons are for all practical purposes unrehabilitable.

1 This is the group for whom prisons are needed for long
2 periods and probably always will be, but George Bito
3 (Phonetic), past president of the American Correctional
4 Association, says, if we're honest with ourselves, we'll
5 admit that our massive prison buildings and time-honored
6 security measures are actually designed for a small per-
7 centage of our prisoners, 25% at the most.

8 The best interests of the majority of our inmates,
9 as well as those of society, would be better served in
10 intelligently designed community programs. Only one in
11 418 criminals actually goes to jail for his crime. All
12 the rest get away with their crimes. And of course, if
13 they didn't our jails and prisons would be ridiculously
14 overcrowded.

15 And we'd have to enlarge them.

16 But it's the young, the poor, the non-White, the
17 no so smart, who get behind the bars and these are not
18 always the people who need to be there.

19 They are the ones who need the most help and in the
20 most cases they're not getting it. And so we go on mopping.

21 We go on pouring millions into prison buildings
22 and almost nothing into mobilizing the free resources that
23 are available in our communities. And the resources are
24 there, volunteers are ready, many have already been trained,
25 people in dozens of communities in Montana want to be furlough

1 sponsors but they don't know how to go about it.

2 There are several statewide civic groups that have
3 studied corrections recently and could be mobilized. The
4 Montana Association of Churches has formed a prison relations
5 task force, whose primary goal is to provide a welcome
6 family -- a welcoming family in every local church for
7 prisoners to come home to.

8 ~~Montana~~ is in a unique position to lead the way. If
9 we took advantage of ~~the~~ resources in our local
10 communities, and trained and organized volunteers that are
11 available, we could go along with human nature instead of
12 ~~bucking~~ it as we do now. We'd be involving the community
13 instead of placating it by removing its problems from its
14 ~~sight and~~ we'd be turning off the faucet instead of spending
15 more and more on mops.

16
17 (Applause)

18
19 THE MODERATOR: Thank you, Representative Holmes.

20 I will ask you to hold your questions until the con-
21 clusion of the presentations.

22 Now we have Senator Tom Towe.
23
24
25

MR. TOM TOWE

A. (By Mr. Towe) Thank you, Paul.

I almost would just as soon turn over the rest of my time to Polly, I think she has far more wisdom than I in these matters. She has certainly done more study of these things and has an awful lot to contribute and I certainly hope we can listen a little bit to what she has to say.

Let me make a few remarks today about the history of Montana's prison and its -- and the legislature and the legislative response to corrections in Montana as it relates to, primarily, to the prison.

I became interested and involved as early as 1962 when the prison bond issue came up for approval by the voters, and by the way, it was rejected at that time.

I supported it at that time. But let me go back a little bit further.

To really understand what's happened in Montana, I think it's important to go back to the history of corrections in Montana, at least to the -- prior to the mid '50's. At that time, as one eminent person in the state, now a district court judge, referred to and used the term, we used to have a bunch of sheep herders who were prison wardens. In my opinion they clearly were not capable,

1 were not trained, did not understand penology, and simply
2 sat there and made things, try and make things go as
3 smoothly as possible without any waves being created.

4 Well, it didn't work because in 1956, as you may
5 recall, we had a prison riot. That awakened the people
6 of the State of Montana and they were very concerned that
7 something be done about this situation. And as a result
8 of that, a lot of public opinion developed, and committees
9 were formed and I'm not sure of the background, but at
10 any rate, a bill was introduced and passed in the
11 Montana Legislature, and I think that the date was 1957,
12 and that bill provided that the prison warden must be
13 someone who is trained and experienced, not just trained
14 or not just experienced, but both, and that was really
15 the beginning of the modern era of penology in Montana, I
16 think.

17 As a result of that, a wide search was made for a
18 prison warden. The National Prison Association was asked
19 for assistance and helped in that regard, I think over
20 100 applicants were taken and Warden Powell was chosen, some-
21 one who clearly was trained and experienced in the field
22 of penology.

23 Warden Powell came into the Montana prison, took one
24 look at it and found out that the con bosses were running
25 the prison. That the prison officials and guards had no

1 control of what was going on, who was assigned to what
2 work detail, no -- there wasn't even, at that time, any
3 educational program in the Montana State Prison, at all.
4 And there wasn't -- it was just about that time that the
5 first chaplain started coming into the prison.

6 That's how far behind we were.

7 Well, Warden Powell immediately terminated the
8 con boss system and there resulted the prison riots of
9 1958, because they didn't stand for it. Those were finally
10 put down and the administrative staff then did control
11 the prison and has ever since.

12 But unfortunately, at least in my opinion, at --
13 a few years later and the date escapes me, the exact
14 date escapes me now, I think it was 1962, Warden Powell
15 was fired, and Warden Estelle was then made prison warden.

16 Warden Estelle was a former deputy sheriff, he did
17 not have the training or experience that was required under
18 the statute, and therefore he was made acting warden.

19 However, after a few years he was named full warden
20 on the theory that he, by that time, had obtained the
21 experience.

22 Well, at least that's the way I understand that
23 matter to have come about, we did have some, I think
24 unfortunate situations that developed during the Estelle
25 period, we had the problem of Dan Cheetle (Phonetic) and I

1 had been contacted on a number of occasions on that, we
2 had the march from Rothy (Phonetic) Hall one night when
3 Deputy Warden Dwight, I think it was, in charge of an
4 escape attempt at Rothy Hall where the people were marched
5 into town without any clothes, and those are the types of
6 things that I just don't think should happen in a modern
7 penal system.

8 The next big thing that happened was Warden Estelle
9 came to Montana and Warden Estelle, in my opinion, was a
10 very good warden. I think he is one of the -- without
11 any doubt the best warden that we've ever had in the
12 State of Montana in our prison.

13 And he -- and no offense to Roger Crist, who I think
14 has taken a lot of the lead that Warden Estelle started and
15 I think he's followed up on that very well.

16 That has made a tremendous difference, I think, in
17 the attitude.

18 I was there in 1962, I went through the prison on
19 a number of occasions at that time, and I've been there
20 recently, and the difference is striking. It's over-
21 whelming. The emphasis on security is no longer there,
22 and that is significant, I think.

23 The emphasis is in a different direction. But the
24 point is, where are we going and what is happening?

25 In 1962 I supported the effort, the bonding effort

1 to pass a bond issue to construct a new prison and I
2 thought it made sense at that time.

3 But at the present time, and when the matter came up
4 again in 1973, I changed my mind. And I believe there's
5 some very good reasons for that change. By 1973, the prison
6 population had dropped, it was less than 300, I think it
7 got down as low as at one point 256 or 257 people in the
8 prison. That was significant. The earthquake, as you
9 may recall, eliminated one of our cell blocks because it
10 crumbled, and we had to double up as -- it was at that
11 point, as I recall, the new dining room was built
12 and they put bunk beds in the old dining room and
13 there was a really crowded situation at one time.

14 But by 1973, that crowded situation didn't exist
15 because the population had come down quite substantially.
16 And I was convinced at that time that the emphasis should
17 not be on bricks and mortar. And it seems all too often
18 that state legislators and others get wrapped up on this
19 idea of building a monumental building and thinking that
20 that solves all the problems, and in my opinion that does
21 not.

22 And I was afraid that if we built a new prison and
23 the request was for 3.8 million dollars, much of which was
24 to come from federal revenue sharing, that we would all
25 of a sudden say, aha, we got our problem in penology and

1 corrections in this state all taken care of, we don't
2 have to worry about anything anymore, and all of the
3 emphasis ~~towards~~ really improving corrections in Montana,
4 prison reform and all the other matters would be forgotten.

5 And that's why I was concerned and at that point,
6 then, did oppose the construction of the new prison.

7 I was not successful, the new prison was authorized
8 in 1973, they came in for another request for a supplemental
9 in 1974, that was authorized, and another one in '75, and
10 I think we're up, by 1975, to approximately five million
11 dollars for the prison.

12 In 1974, however, I said okay, if we're going to have
13 \$500,000.00 more money for this new prison, then I want
14 an equal amount for community corrections. So we don't
15 forget that other aspect of penology in the State of
16 Montana.

17 And I was unsuccessful, but I did apparently
18 receive quite a bit of support, and I was very pleased that
19 the administration, the department of institutions, with
20 the support of the governor's office, came into the next
21 session of the legislature with a request for an appropria-
22 tion for enough money for three community correction
23 facilities.

24 And I thought that was a step in the right direction.

25 But we were able to salvage, I think, only one out of

1 that -- out of that appropriations session, but in the
2 1975 session we did in fact obtain for the first time an
3 appropriation for a community corrections facility. That,
4 I think, was a step in the right direction.

5 It's taken a long time to get that underway, but
6 we finally now have such a facility in Fort Missoula and I'm
7 very pleased that that program is -- seems to be working
8 and underway.

9 But let us not forget that we still have that
10 obligation to look beyond the bricks and mortar, and I
11 was very disappointed that in the 1975 session, I mean '77
12 session, we came back into the legislature and learned of a
13 request for another 308 million dollars. Interesting, the
14 exact same amount as the original prison appropriation,
15 for a new building at the prison for maximum security or
16 for stronger security.

17 And what was that all about? Well, apparently,
18 and I'm not sure whether this can be traced back to a
19 particular meeting in Helena, but I do think that meeting
20 was significant, apparently when the prison appropriation
21 was passed in 1973 and the architects were first hired,
22 there was a real serious concern on the part of the
23 committee that was in charge of approving the construction
24 at the prison that we might lose the appropriation if that
25 money didn't -- if the building didn't get underway by the

1 1974 session.

2 And I recall I was at that meeting and apparently
3 there were a lot of people who were very concerned that I
4 might try and introduce a bill to take away the whole
5 prison appropriation in 1974 session.

6 That attitude, I think, was conveyed to the archi-
7 tects, very well, and I believe the architects came up
8 with a plan which was an excellent one, and I believe
9 that -- I think they've done a really good job, the job that
10 they did in designing a prison, I think makes sense.

11 It allows for individual treatment of the prisoners,
12 it allows for a little bit of privacy, and it allows for
13 the flexibility that's needed with the segregation that's
14 needed, I think, in a modern prison institution.

15 But apparently there weren't enough bars on the
16 windows, and there weren't enough cell blocks, and things
17 of that nature, and consequently, the legislature was
18 asked to appropriate another 3.8 million dollars for that
19 kind of a structure. Which the legislature did in the
20 1977 session.

21 So I'm still worried that the legislature is not
22 going in the right direction, I'm worried that we're not
23 putting the emphasis on programs, that we should, the
24 types of things that Polly was talking about, I think,
25 make sense, I think we've got to recognize perhaps there

1 are some people who we're going to have to hold incarcerated,
2 perhaps for the rest of their lives, because they're too
3 dangerous to society. And if we recognize that there
4 are a very few such persons, let's face that fact and
5 recognize it and deal with it.

6 But then we've got to also recognize that the
7 vast majority of the people who are sent to prison will
8 someday go back out on the streets, and the question is,
9 how much better prepared to contribute to our society as
10 all the rest of our citizens will they be after spending that
11 time in prison?

12 And I suggest to you that at the present time probably
13 not very well. Most of the people have not obtained any
14 training or knowledge to cope with the serious problems
15 in society that has caused them the difficulty in the
16 first place while they're in prison.

17 And to put them back out on the streets with a
18 whole raft of new problems, such things as whether or not
19 they should really tell their fellow employee that they've
20 been convicted of a felony or not, is a real serious
21 thing for someone to cope with.

22 They need help coping with those problems. They
23 need such things as halfway houses, they need counseling,
24 psychiatric counseling, they need economic counseling,
25 they need alcohol and drug counseling, and they need

1 vocational counseling.

2 Most of the people have trouble keeping a job and
3 they need help in this area. And I don't think that we're
4 providing them with the help that they really need, and
5 I hope that the legislature will try and work in that
6 direction.

7 I think that the idea that Polly made, mentioned
8 earlier, makes a lot of sense, that we should make more
9 use of our excons, the people who have been through the
10 system, they know the in's and out's, they know where
11 people are likely to fall off and they know where they need
12 a little more help and a little bit of push and they know
13 where to be firm and where not to be firm, and I think that
14 that can be utilized very successfully as it has, for
15 instance, in the Fort Des Moines program in Iowa.

16 We are very impressed with the program in another
17 part of town that's going on right now, the corrections
18 institute and some of their suggestions and speakers'
19 suggestions. So I think that there are some things that
20 the legislature can do, and I hope that the legislature
21 will do. But at the same time, I would hasten to add that
22 I think, with people like Roger Crist and others who have
23 worked very hard in the corrections system, we've come
24 a long way from 1962 and from 1955 before we had really
25 capable people handling our corrections in the State of

1 Montana.

2 THE MODERATOR: Thank you, Senator Towe.

3 Now we'll hear from Professor Vandiver.

4
5
6 PROF. RICHARD VANDIVER

7
8 A (By Prof. Vandiver) We came here today to talk
9 about rights of offenders, rights of people, and I wish I
10 had a lot of good, pat, easy answers for you.

11 If you'll allow me to give you a reminder of your
12 basic course in civics, we've got a government that's based
13 on three different units that are theoretically supposed
14 to work as checks on each other. The executive, the
15 judicial and the legislative.

16 Ideally new programs, new ideas for handling
17 social problems should come out of them, but they should
18 act in various ways to check each other to make sure that
19 the basic rights of individuals do not get infringed upon
20 in the generation of those programs and in the carrying
21 them out.

22 But we're faced, it seems to me, with a situation
23 in which we've got a governmental structure that is not
24 working as a system of checks and balances on each other,
25 they're all sort of, acting like they want to ignore the

1 problem.

2 One of the basic problems we have in trying to
3 assure rights of people is the problem of accountability.
4 And our government has grown so big and so bureaucratized
5 that many of the people involved in it, in all levels,
6 are not accountable for their action.

7 It's not enough for the executive branch to be held
8 accountable simply by an election every four years of the top
9 administrator. It's not enough that the legislature is
10 held accountable only through elections every two or four
11 years or that the judiciary is held accountable every six
12 years with an election.

13 Somehow the whole system has got to be made more
14 accountable.

15 All of the various branches, I think, like to take
16 credit for some successes, but they don't want to be held
17 accountable for dragging their feet in various areas,
18 and I'll talk a little bit about some of that as we go
19 along.

20 More specifically, I raise the question of whether
21 we can count on legislative alternatives for providing
22 basic guarantees of rights of offenders or anyone else.
23 There are some problems here, I have some suggestions to make
24 this morning, but this is not a panacea, there have got
25 to be other checks and other balances that are brought into

1 effect.

2 It seems to me that one of the basic problems when
3 we're dealing with correctional agencies is partly their
4 nature. Correctional agencies are, by nature, a coercive
5 part of the criminal justice system. The whole criminal
6 justice system in so far as it deals with human beings
7 eventually makes a decision that somebody has offended and
8 therefore needs to be coerced by the state.

9 Now, one of the best legislative alternatives, in
10 my opinion, that could be brought about, is a provision of
11 general alternatives for people in the community so that
12 they would not have to nearly so frequently come into
13 contact with the criminal justice system.

14 One of the ways of dealing with this is to get rid
15 of some of our old moralistic laws that deal, in essence,
16 with the private behavior of people, allowing people to be-
17 have as they want to as long as they don't hurt other folks,
18 and we see, in recent years, more and more people being
19 coerced by our correctional systems and our criminal justice
20 system in general, who have not really been serious
21 threats to the rights of others in the society.

22 The legislature, it seems to me, needs to take a
23 positive approach in getting rid of some of these laws
24 which put more and more people under the coercive umbrella
25 of the criminal justice system.

1 Another thing is to provide more alternatives for
2 disadvantaged people, if our legislatures would pay more
3 attention to providing jobs and less with building
4 buildings, for prisons and so forth, we'd all be better off,
5 I think, and we'd have much less need for those correc-
6 tional facilities.

7 But more concretely, let's look at some of the
8 problems. I think Roger Crist pointed out this morning
9 one of the basic problems with correctional agencies. That
10 is the problem that they're basically bureaucratic agencies
11 without control over their intake.

12 If we begin to look for legislative alternatives
13 for providing rights for offenders, and look solely at
14 correctional agencies, we're looking in the wrong place.

15 For one thing, we have to deal with the people who
16 place those individuals in --underneath the control of
17 the correctional agencies. That means that we've got to
18 begin to expect the legislature to provide a check on the
19 judiciary. And I don't mean in the sense of more mandatory
20 sentences, I mean in providing alternatives and to
21 limit the options of judges for sentencing more and
22 more people to correctional facilities.

23 One alternative would be to provide sentencing
24 councils which can operate on the basis of professional
25 judgment rather than under political pressure. Most judges'

1 decisions are simply political decisions made in the
2 interest of trying to placate the community, and in many
3 ways, that's based on a lot of emotional feeling at the
4 time.

5 A correctional council or sentencing councils
6 could provide more professional judgments about what would
7 be in the best interest of the individual.

8 Another option would be to sentence all offenders
9 to the correctional authority which would establish the
10 type of treatment and/or incarceration for the individual.

11 That is, allowing that correctional authority to
12 make the judgments about what kinds of sentences should
13 be carried out for the individuals.

14 Basically, the State of Montana has what I regard
15 as to be adequate laws guaranteeing civil rights of
16 offenders, and in the constitution. As was already
17 pointed out, an offender in Montana under the new criminal
18 sentencing procedure, retains all of their civil rights
19 except those taken away by the judge at the time of
20 sentencing, and justified by the judge as necessary for
21 protection of the community.

22 But how do you get people to uphold laws? Basically
23 we have to do that through providing some sort of policing
24 procedure.

25 One of the things we need in Montana, in my opinion,

1 is a policing authority of some sort that will police
2 correctional agencies.

3 What I'm talking about is not a group of uniformed
4 policemen but a role of a person such as a corrections
5 advocate, which was advocated or discussed by the Montana
6 Justice Project, corrections task force.

7 This would provide for a procedure for anyone in the
8 system, and I'm referring not only to inmates, but also
9 to correctional officers, who have complaints, who have
10 grievances of various kinds about violations of rights
11 and so forth. This procedure would set up an independent
12 group under -- not under the control of the department of
13 institutions or the executive branch but someone who would
14 look at and possibly the correctional agencies so that
15 individuals' rights can be guaranteed to them and correc-
16 tional programs can be held accountable for their violations
17 of people's rights.

18 Another option, legislative option which I think
19 needs to be developed in this state, is one that has
20 concerned me for some time, and that has to do with the
21 tremendous violations of rights of juveniles. I believe
22 legislation should be enacted to control the informal
23 intimidation of juveniles by juvenile probation officers.

24 Most of the violation of the rights of juveniles
25 does not take place in court or in institutions, it takes

1 place in the inner sanctum offices of juvenile pro-
2 bation officers.

3 Legislation should be enacted to make certain that
4 juvenile probation officers be held accountable for their
5 decisions, their statements, the processing of juveniles.

6 I would argue that juvenile probation officers or
7 that juvenile probation should be placed under the state
8 executive, that is the division of corrections, and that
9 every juvenile brought by the police to the probation
10 officer be given complete and total statement of the
11 available alternatives.

12 Accountability for the rendering of services or
13 restriction of the life situation of the juvenile should
14 be imposed on the juvenile probation officers. Juvenile
15 probation officers have to be responsible, it seems to me,
16 to more than simply judges.

17 Another option that I would suggest is that we
18 make use of the recommendation of the Montana Justice
19 Project corrections task force principle that minimum use
20 be made of institutionalization.

21 There are some good steps, I think, in the right
22 direction being taken in Montana right now. The community
23 correctional facilities that are being developed are good,
24 they're not a panacea, we've got to make certain that in --
25 individuals' rights are not violated in community correctional

1 facilities, because they can be just as easily violated there
2 as in prisons.

3 But I think that we have to keep in mind the fact
4 that the more we allow individuals to maintain their lives
5 in the community, and not behind closed walls, behind
6 closed doors in various kinds of agency programs, the
7 more they're going to have their rights that are guaranteed
8 to them by the state and the state law and the constitution.

9 I think we have to keep in mind that while the
10 Judge administration right now wants to take credit for
11 the development of community corrections programs, it's
12 been the Judge administration that's dragged its feet
13 for a period of years in keeping us oriented toward the
14 use of massive institutions for both adults and juveniles,
15 and now that there has been some agreement to allow some
16 of this community correctional kinds of programs to develop.

17 It's interesting that the Judge administration
18 wants to take credit for it. But for many years they
19 have dragged their feet in all kinds of ways, the legis-
20 lature likewise has dragged its feet, taking almost
21 total, well, guidance for its actions from the executive,
22 not acting as the check that it should have.

23 I think we have got to continue along this line but
24 do it in a much bigger and much broader kind of sense.

25 Ultimately, I really believe the more we develop

1 in the way of legislative alternatives to keep people out
2 from under the control of the criminal justice system, the
3 more we're going to guarantee those people their rights.

4 THE MODERATOR: Thank you, Dick.

5 Are there any questions or comments from the floor?

6 There was a gentleman in the back? Sir, would you
7 please come to the microphone, state your name and where
8 you're from?

9 Q (By Fr. Gregori) I'm Fr. Gregori of the College of
10 Great Falls.

11 When Senator Towe was giving his presentation,
12 he mentioned, I believe, ~~that Estelle~~ was named acting
13 warden ~~after the present?~~

14 A (By Mr. Towe) Ellsworth.

15 Q Ellsworth was the man.

16 A Oh, it's Ellsworth, I'm sorry. I missed that.

17 Q That's quite a situation.

18 A Quite a difference.

19 THE MODERATOR: Any other questions? Comments?

20 Well, I think it's time --

21 MR. CRIST: Hold on, Paul.

22 THE MODERATOR: Okay, Roger, go right ahead.

23 Q (By Mr. Crist) So many things were said of interest.
24 I'd just like to comment on a few.

25 Dick talked about, you know, some outside agency with

1 regard to civil rights.

2 There is such an organization now, Dick, the
3 prison has just signed a \$30,000.00 contract with the law
4 school to provide legal services on civil rights matters
5 as well as ~~postconviction remedy matters.~~

6 Another point I'd like to make is that Montana
7 incarcerates fewer people per 100,000 population than all
8 but four other states in the nation. Our rate of incar-
9 ceration per 100,000 is extremely small. What has been
10 lacking and I think it's been recognized and I think it's
11 been recognized by the legislature and the governor's
12 office, is the fact that we don't have enough services for
13 those people in the community.

14 In round figures, there's approximately 2,000
15 felony offenders in the community, there are 550 inmates
16 in the state prison. But we don't have our situation geared
17 up in terms of community corrections, we're moving in that
18 direction, we don't have enough probation and parole
19 agents, again we're moving in that direction.

20 With regard to the size of the prison, and again
21 as I've indicated before, we don't determine numbers that
22 come, we don't determine the numbers that go. It takes
23 you four years from the time you say you're going to build
24 a prison until the time you occupy that institution.

25 When the commitments were made to the size of the

1 institution, that was back in September of 1972. At that
2 time we had 249 inmates and we had a steady five-year down-
3 ward trend in terms of prison population.

4 Once we were -- had committed ourselves to size
5 which was 334 because nobody wanted to build it larger
6 than what was necessary, nobody wanted to see more inmates
7 there than was absolutely necessary, the trend not only
8 in Montana but nationwide reversed itself, in this country
9 today we have 280,000 inmates incarcerated, which is
10 the most we've ever had in the history of the nation.

11 So it wasn't just a Montana problem, it was a
12 national problem, the trend reversed itself and very
13 strongly.

14 In the last two years in Montana we had a 40% increase,
15 and it was necessary to go back to the legislature and
16 say, hey, the ballgame has changed, society, the judges,
17 whatever, are sending more people to us and we do need
18 more space.

19 I would certainly agree with some of the comments that
20 were made to the effect that, you know, the prison is not
21 the end all, I cringed a couple times, I don't think it
22 was speakers up here I think it was a previous panel,
23 when they referred to the prison system in Montana.

24 Let's stop talking about a prison system, that goes
25 back to the days when we didn't have probation, we didn't

1 have parole, we didn't have community corrections, we're
2 going in a different direction.

3 The prison is only one small element of that
4 correctional system and should not, by any stretch of the
5 imagination, be looked at as the end all.

6 Those are just a few comments I had, I could talk
7 longer than the panel members if I had to.

8 THE MODERATOR: Dick, do you have any response?

9 Thank you, Roger.

10 Dick, any response?

11 Mel?

12 Q (By Mr. Melvin Mohler) My name is Melvin Mohler,
13 Dick, I almost hesitate to ask this question, but I'm
14 interested in your response.

15 What would happen if we were to merge all our systems
16 into, quote, the justice system and place it under the
17 judicial branch instead of the executive branch?

18 A (By Mr. Vandiver) God only knows. I guess my
19 reaction to that is that if you look at the judicial
20 branch, it seems to me that it's probably the one branch
21 of government that's least educated, trained and organized
22 to handle corrections, to handle, in many ways, criminal
23 justice.

24 As you may imagine, I have a fairly deep distrust
25 of lawyers, and I think that what we need are more checks on

1 the system and I think more alternatives developed by people
2 in various communities, rather than more dependence on
3 heavier and heavier bureaucratic kinds of organization.

4 Now, to some extent bureaucracy is good in that it
5 can provide you with fairness, objective kinds of decisions.
6 In so far as the bureaucracy is responsive to the kinds of
7 demands and expectations of people in the community
8 and the people affected. The theory of our governmental
9 system, I think, is a good one, if it would operate, but
10 it does not operate effectively to provide checks on the - -
11 each other and to allow people from the communities that
12 are governed to get input into it in what's going on.

13 A. (By Ms. Holmes) I'd like to raise a question, maybe
14 within my own mind out loud, about whether it's true that
15 the prison has no control over who leaves it?

16 I can see that it doesn't have much control over who
17 comes in but I think they do have control over who leaves.
18 Because a great deal of subtle control is -- permits a
19 person to have a good enough looking record so that he can
20 be accepted by the parole board, whereas a person who
21 perhaps doesn't fit the good boy image of the prison adminis-
22 tration or some guard, Roger can't possibly know what all
23 is taking place between single guards and single individuals
24 to make their records good or bad.

25 And I think the prison does have quite a bit of

1 control over who leaves.

2 Q (By Mr. George Cuff) I'd like to respond to that
3 question.

4 My name is George Cuff. I'm now chief of probation
5 and parole in the State of Montana. I was, for five
6 years, assistant director of the Board of Pardons of the
7 State of Montana. And I can assure you that the board of
8 pardons have the key to who leaves the prison. The board
9 of pardons has, on many occasions, released people from
10 Montana State Prison while they were incarcerated in maximum
11 custody, maximum security cells. They were placed there
12 for disciplinary reasons, by the staff at the prison, but
13 the board of pardons in its wisdom determined that they
14 should be released.

15 And I don't think that Warden Crist could have
16 stopped that release. That board of pardons made that
17 decision and they were released.

18 A (By Mr. Towe) I'd like to ~~comment further~~ on this
19 point, and this is one thing I wanted to emphasize and
20 perhaps didn't sufficiently earlier.

21 I really think that we've got to make a distinction
22 between punishment and rehabilitation. And it may be
23 true that we need both, and I accept that premises, but
24 I think it's untrue that we can realistically expect to
25 administer both at the same time. And I think that we need

1 to take a look at the rehabilitation programs.

2 Frankly, and I don't think this is any fault of
3 any of the wardens at the state prison, including Roger
4 Crist, but I don't think that our rehabilitation programs
5 have been very successful there.

6 Frankly, because someone doesn't accept rehabilitation
7 at the same time they're accepting punishment. And for
8 that reason, I think it's extremely important that we,
9 once we make this distinction, that then we can deal with
10 it accordingly.

11 All right, if someone's going to be punished, let
12 him be punished, maybe punishment is better in the county
13 jail than in prison. But whether it's prison or jail, fine,
14 let's recognize that and then at the time the punishment
15 is over, at that point let's start on rehabilitation and
16 let's make sure that it works well, and that's why I have
17 some real serious questions about the indeterminate sentencing,
18 I have questions about the function of the parole board
19 itself.

20 I know that that's generally a reward system that's
21 supposed to work in order to get people to behave better
22 while they're in prison, but I think it might be more
23 successful in society if we said okay, this person is
24 going to be punished, he's going to be sent to jail or to
25 prison for X number of months or years, and at that time

1 his term will be over, he won't get out before then, but
2 at that time his term will be over and then he will be
3 under our supervision for another period of years or
4 months, and under -- during that time we can really
5 emphasize rehabilitation.

6 And we can't get very good rehabilitation, frankly,
7 when we've got people like Gene Corbett here, with what,
8 over a 100 case load? It doesn't work.

9 And we can't, that's just unrealistic. How many
10 times a month can you see one of your probationers?
11 Once? If you're lucky.

12 We've got to have supervision that is everyday until
13 they get started and then later gradually we can remove that.
14 And we can't do it with that kind of attention to the
15 probation officers. We've got to improve that area. And
16 I certainly hope that we can.

17 We've got to start, I think, also, with the improving
18 and upgrading the probation staff. I was astounded to
19 learn, I think it was two or three years ago, that of,
20 at that time our 26 probationers, there were eight or
21 nine that had a college education. Incredible. They
22 should have master's degrees or maybe even doctor's
23 degrees at least or training equivalent to that to be
24 dealing with some of the very serious problems that prisoners
25 have when they get out of prison, we're just not touching

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1 that ~~field at all~~, I don't think.

2 THE MODERATOR: I'll entertain one more comment and
3 then we're going to have to go to lunch.

4 Sir, would you state your --

5 Q (By Mr. Frank Casciato and I'm a senior at the
6 University of Montana.

7 I'm also an exinmate, excon, if you will. I would
8 like to speak to Polly Holmes, Tom Towe, Warden Crist at
9 the same time.

10 I understand that we appropriated 3.8 million to
11 build a maximum security ward, am I correct in that
12 thinking?

13 MR. CRIST: No.

14 Q We didn't appropriate it --

15 THE MODERATOR: It's a close security --

16 MR. TOWE: Close security, ~~1,200-man unit~~ which
17 we have already built a 300-man unit.

18 Q (By Mr. Casciato) Which supposedly supposed to
19 lessen security and increase the rehabilitative purpose, and
20 we turn right around and appropriate money to build a tight
21 security, I have some real problems with that, when at
22 the same time Tom Towe just says we should have closer
23 supervision on parole.

24 When, in fact, Polly Holmes says that we should
25 utilize our furlough programs, which in fact does give

1 you close supervision, it isn't a contractual agreement
2 that's good, it's a fact of someone out there in the
3 community cares about you, they'll go out on a limb to
4 say you're good and you can make it, that's why there's
5 15 people that's out and 15 successes.

6 If you want to utilize closer, I mean close super-
7 vision, then utilize the community in which we live in,
8 we don't need more money, use the people that are willing.

9 Thank you.

10 THE MODERATOR: I'd like to thank the members of the
11 panel and you in the audience for your questions and
12 comments.

13 Lunch is being served next-door in the Gallatin Room,
14 we urge you to attend if you have any more questions of the
15 panel, this is a good time to ask them.

16 Thank you.

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19 (Luncheon recess)
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