

MINUTES OF MEETING - COMMITTEE ON JUDICIARY, 54th Session, February 15, 1967

Meeting was called to order at 2:00 P.M.

Present: Wooster, White, Swackhamer, Schouweiler, Torvinen, Dungan, Hilbrecht, Lowman, Kean

Absent: None

Mr. Carl Hocker, warden of the Nevada State Prison, was present by invitation to give his viewpoint on AB 71.

SENATOR MONROE: The question before these two committees right now is whether to have determinate or indeterminate sentences. Under a determinate sentence, the judge would have much more to say.

Under another school of thinking, which may be more in line with modern penology, is the indeterminate sentence. With this system, your prison must be equipped to handle prisoners under the indeterminate sentence. We would like to hear Mr. Hocker's views on how our prison is equipped and staffed.

CARL HOCKER: There are two requirements that must be met in a prison before it is prepared to handle prisoners on the indeterminate sentence. One is to get control of the institution. The other is to have some professional staff to prepare cumulative summaries, which are comprehensive histories of each man. It is also the function of this professional staff to prepare pre-board reports.

In the past, the Parole Board has considered cases based on information that could be seen on a 3 x 5 file card. It was not a very accurate way to go about this. It is my opinion that by use of the resources contained in the cumulative summary and pre-board information we can make a reasonable decision as to what to do about each prisoner, whether to fix a period of parole or to deny the man. The indeterminate sentence is the thing. It gives the institution and parole authority a tremendous tool to use. In brief, this is my thinking.

Not only that, but I think it gives you another tool in controlling your population, keeping them in line, so to speak. Once a determinate sentence is fixed, the man knows there is no one that can do anything about it.

WOOSTER: You have served in California under the Adult Authority, haven't you? Can you tell us briefly something about the system? How is the indeterminate sentence handled?

HOCKER: There is a classic minimum and maximum sentence. There are no good time credits for many years. The period in which the man appears is determined by the minimum sentence. Some sentences are put at zero. However, they do not make an appearance before a year. A life sentence serves seven years before appearing before the parole authority. First degree robbery is given five years to life. He makes his first appearance in 22-23 months, but it does not follow that he is eligible for an immediate release on parole. There is a great deal of incentive for the prisoners in that they get into a meaningful program, have to conduct themselves properly and so forth, in order to merit a possible favorable consideration.

WOOSTER: What are they doing in California that we are not doing here, from your end? What facilities would you need to equip the prison to deal with indeterminate sentences?

HOCKER: Will rely on the professional staff to prepare pre-board reports. For these they will glean information from every place possible. They will talk to everyone who has any contact with him. They will explore his outside resources, family, friends, possible employment, etc. All these are put together into a package.

For sex offenders and people with records of excessive violence, a special report is required from a psychiatrist. This gets into an area most important to the parole board in making a decision about the man. We need to know what the prospects are for a repeat if the man is released.

WOOSTER: How are you staffed here? Do you have psychiatrists?

HOCKER: We would have the services of a consultant from the State Hospital to find if the individual is a further menace to society. We have good vocational training and the academic is fine, also. At Stewart everything is being built very modern. The old building, of course, is like back in the Dark Ages where people were simply serving time.

DUNGAN: Do you have proposals to make to this legislature about this?

HOCKER: No, I don't. This is my 16th day on the job and I am still trying to find my way about. I intend to make proposals later which will result in constructive activities.

WOOSTER: I take it that, assuming the legislature should establish indeterminate sentences, you feel you are not set up to handle this?

HOCKER: We could handle it in an adequate enough fashion but not as I would like to. The counselors and professional staff will prepare the reports to be used for guidance of parole board.

WOOSTER: What does your professional staff consist of at present?

HOCKER: We have a counselor at the medium-minimum institution and two at the maximum section. Also, we have a director of classification. I am confident that we can do the job, but of course we could do it better with additional staff. There is another counselor listed in next years budget.

WOOSTER: What is the classic formula? The ratio of counselors to inmates?

HOCKER: There is division of opinion on this. The counselors would like to have small case loads. I am going to say 200 to 1. The prison population is now 603.

LOWMAN: Do you think you have the people now to do this? Suppose we put in indeterminate sentencing, are you in a position now to tell us how many people you are going to ask for next session?

PAGE 79 MISSING 3/26/87 (R)

APPARENTLY THE PAGE WAS MISSING AS EARLY AS 3/18/87  
SINCE IT WAS COPIED FOR PAGE UNDERWOOD AT THAT TIME  
AND SHE FOUND IT MISSING.

times. He had about as much expression as this table. Cold as ice. I could see and sense emotions seething within him.

SENATOR HUG: I don't know if indeterminate sentences would mean longer sentences or shorter. How is the prison? Is it full? Will you have to let prisoners out to make room for more? Is the prison adequate?

HOCKER: There is under construction at the present time another building for minimum-maximum space. There is also another one in the planning stage. Yes, we do have adequate housing. I am dead opposed to released people for the simple purpose of providing space. This is dead wrong.

About the indeterminate sentence thing: All people are different. Two people might be convicted of the same crime. There will come a time when one can safely be released, but it might be equally obvious that the other one should not be released. If decisions can be made in the proper manner, we can let one go and keep the other one.

TORVINEN: Getting back to California: After one year the prisoner comes up before the Parole Board. Do they, at that time, set the maximum sentence?

HOCKER: A man is automatically doing the maximum until his sentence is fixed. The common practice is to do these things simultaneously--fix his sentence term, grant a parole date sometime in the future. For example, first degree robbery: When they fix his term and grant his parole, it would be common to set it at ten-split, which means five years in jail and five years on probation. They might deny fixing his sentence and have him continue for another period of time.

TORVINEN: Is this set when the five years are up? When do they ordinarily do it in California?

HOCKER: They ordinarily do it when he is to be released.

MONROE: When does he first learn how long he is to serve? When do they bring him in and discuss this with him?

HOCKER: He doesn't know how long he is going to serve until they take action. This could be the first year, the 5th year, or whatever.

WOOSTER: Who determines this? Is it set by statute?

HOCKER: In some instances he is not eligible for parole for "x" number of years. This depends on the maximum.

LOWMAN: Is he reviewed annually?

HOCKER: Except for statutory life sentences, then not for 7 calendar years. They might wait for ten years.

SENATOR YOUNG: Are the prisoners ever represented by counsel when they appear before the board?

HOCKER: No.

YOUNG: Can the prisoners initiate this action themselves? Somebody might get lost

in the shuffle.

HOCKER: No, they cannot initiate this action. They will not get lost in the paper mill.

YOUNG: The indeterminate sentence is regarded as fairly progressive. If our institution were moved to California, how much more staff would we need to apply the indeterminate sentence to 650 to 700 inmates that you will probably need during the coming year?

HOCKER: I can't answer that right off.

DUNGAN: We do have indeterminate sentencing now.

DUNGAN: What experience have you had in the penal field?

HOCKER: I have been working in prisons in the capacity of a uniformed officer for 28 years. I was supervisor of the parole office for one year. With the exception of less than five years, when I was in the Vocational Institution, all my experience was at San Quentin.

MONROE: Were you aware that they had eliminated some of the positions in the coming budget, such as a psychiatrist?

HOCKER: Yes.

MONROE: Do you feel that they should be restored?

HOCKER: No, not at this time. The immediate thing is to establish full and adequate control of the prison and then enlarge the institution. I am thinking in terms of the available funds. The first thing I want is adequate uniformed officers. I am willing to forego some of the other until this is achieved. After that, I would be urging more strongly that more positions be established.

TORVINEN: AB 71 allows the judge to establish sentences. After serving one-fourth of his maximum term he is eligible for parole and would come up for review. This is the scheme of things as presented to us for our consideration. What, if any, defects do you see, based on your general knowledge in the penal area?

HOCKER: I could sum this up pretty basically by saying I feel you would be wrong. The indeterminate sentence is the modern concept. It embodies the basic parole function. Determinate sentences were tried and found wanting years ago. I am not implying any criticism of any judge. The indeterminate sentence is the way to keep all factors level.

(At this point the Senate Judiciary Committee left, also the prison warden)

AB 91: Limits permissible covenants not to compete.

Mr. Sloan, an attorney from Reno, was here at Len Harris' request to speak on this bill. He explained that the reason was it doesn't seem to be fair that because a man has troubles with his partner and has to sell his stock that he should be restrained for five years from earning a living for his family, unless he moves to another state. He said the restrictive covenants in Nevada are very broad.

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Mr. Kean asked if this sale to which Mr. Sloan referred had a contract not to compete as part of the conditions of the sale.

Mr. Sloan said yes it did. They had a stock purchase agreement with a restrictive covenant. The time limit was five years, which is reasonable under general authority.

Mr. Hilbrecht said that in many small businesses there is good and sufficient reason for a covenant of restraint of trade. Good will doesn't bear any relationship to whether a restrictive covenant should be entered into. Common law says that it must be reasonable in scope. What you are saying is that unless you mention the word "good will" this would not be a good covenant. Are you going to devalue these small businesses?

Mr. Sloan said that state courts try to avoid passing on a Federal question but some authorities feel that sometime in the future many of these contracts on restraint of trade could come under the Sherman Act on restraint of trade. He suggested that California law be copied. It has been tested there.

Mr. Torvinen asked how this case happened to arise. Mr. Sloan said that Mr. Coburn was forced to sell and sold out for book value or less, then went to work for Dohrman Supply. As a result Sierra Restaurant came in with suit for injunctive relief. Mr. Coburn then was not able to earn a livelihood in Reno, lost his home and had to move to California.

AB 131: Provides penalties for wrongful diversion of construction funds.

Mr. Wooster said the discussion on this would be held next Tuesday, Feb. 21.

AB129: Car storage bill.

Mr. Wooster said the subcommittee, consisting of himself and Mr. Kean, had come up with extensive amendments which they will talk about when the bill is printed.

AB 148: Requires Public Service Commission to issue cease and desist order when a public utility violates or allows violation of wiretapping laws.

Mr. Hilbrecht asked that this be continued also. He said he had heard no objections but wanted to talk to the utility a little more about it.

AB 91: Limits permissible covenants not to compete.

Mr. Hilbrecht moved to postpone indefinitely

Mr. Kean seconded

Motion passed unanimously

SB 12: Authorizes State Fire Marshal to set standards for fire prevention and fighting equipment, license certain businesses, and establish library.

Miss Dungan said Mr. Torvinen was going to write some amendments but they were not ready yet. Mr. Wooster asked what they were amending and Miss Dungan said the licensing part.

Mr. Wooster asked that it definitely be ready for Tuesday, Feb. 21.

SB 33: Permits Supreme Court to employ bailiff.

Mr. Wooster explained that the court felt they could use one of the law clerks and this would make another man available for the sheriff's office.

Mr. Lowman moved Do Pass  
Mr. Torvinen seconded  
Motion passed unanimoally

AB 92: Provides penalty for making of anonymous obscene or threatening telephone calls.

Mr. Wooster said the Senate had amended line 11.

Mr. Torvinen moved the committee concur in the amendment  
Mr. Hilbrecht seconded  
Motion passed unanimously

SB 48: Frank Daykin was called in on this bill, which has to do with exemption from taxation of federally owned real property.

He explained that there was no need for an amendment to make the effective date earlier than July 1. He said the bill will only affect assessment of property for the coming year, therefore July 1 was all right. He said they hoped the preamble to the bill would strengthen the position of Nye County authorities. It is a resolution of what this legislature construes the intent of the 53rd session to be when enacting the original section which we are here to amend.

Mr. Lowman asked if there is any reason why all the agencies cannot be stricken, leaving only the provisions of the Taylor Grazing Act.

Mr. Daykin said that some of these lands are not leased under the Federal Grazing Act. That is the reason for the three-headed enumeration. He said the committee might add three words, "for grazing purposes".

Mr. Wooster asked wasn't it important this bill be passed intact and then to get amendments later? It was decided to hold the bill over until Tuesday.

Mr. Wooster said he may call the Monday Judiciary meeting for 1:00 o'clock if there are some bills that can be handled quickly because there is a hearing at 2:00 o'clock which some of the members would like to attend.

Meeting was adjourned at 3:45 P.M.