

**MINUTES OF THE
ADVISORY COMMISSION ON THE
ADMINISTRATION OF JUSTICE**

February 11, 2008

The Advisory Commission on the Administration of Justice (NRS 176.0123) was called to order by Justice James W. Hardesty, Chair, at 9:04 a.m. on Monday, February 11, 2008, in Room 4100 of the Legislative Building, 401 South Carson Street, Carson City, Nevada, and via simultaneous videoconference at the Grant Sawyer State Office Building, Room 4401, 555 East Washington Avenue, Las Vegas, Nevada. **Exhibit A** is the Agenda. **Exhibit B** is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMISSION MEMBERS PRESENT (CARSON CITY):

Justice James W. Hardesty, Nevada Supreme Court, Chair
Larry Digesti, Representative, State Bar of Nevada
Gayle W. Farley, Victims Rights Advocate
Douglas Herndon, Judge, Eighth Judicial District Court
Arthur Mallory, Churchill County District Attorney
Richard Siegel, President, American Civil Liberties Union of Nevada, Inmate Advocate

COMMISSION MEMBERS PRESENT (LAS VEGAS):

Raymond Flynn, Assistant Sheriff, Las Vegas Metropolitan Police Sheriff
John Allan Gonska, Chief, Division of Parole and Probation
Philip Kohn, Clark County Public Defender
Catherine Cortez Masto, Attorney General
Assemblyman David Parks, Clark District 41
Howard Skolnik, Director, Department of Corrections

COMMISSION MEMBERS ABSENT:

Senator Mark Amodei, Capital Senatorial District
Assemblyman John Carpenter, Assembly District 33
Senator Steven A. Horsford, Clark District 4
James Miller, Sheriff, Storey County
Dorla M. Salling, Chairwoman, State Board of Parole Commissioners

OTHER LEGISLATORS PRESENT

Assemblyman Bernie Anderson, Washoe District 31

STAFF PRESENT:

Janet Traut, Senior Deputy Attorney General
Angela Clark, Secretary

OTHERS PRESENT:

Dr. James Austin, Council of State Governments and President, JFA Institute

LaToya McBean, M.A., Council of State Governments

Captain Mark E. Woods, Division of Parole and Probation, Department of Public Safety

Joshua J. Hicks, General Council, Office of the Governor

Elaine Voigt, Executive Director, My Journey Home, Inc.

Nelton Voigt, My Journey Home, Inc.

Rick Bro, Transition Coordinator, My Journey Home, Inc.

Justice Michael A. Cherry, Supreme Court and Chair of the Indigent Defense
Commission

Michelle Ravell, Citizen Advocate

Juli T. Star-Alexander, Founder and Board Member, Redress, Inc.

Donald Hinton, Spartacus Project, Las Vegas

Tonja Brown, Advocate for the Innocent and Inmates on Appeals

Kathy Testa Smith, Victim

Teresa Werner, Citizen

Nancy Gentis, Families of Murder Victims

Kristen L. Erickson, Nevada District Attorneys' Association/Carson City, and Washoe
County District Attorney's Office

Teri Boyce

CHAIR HARDESTY:

We have a quorum. Please mark those who arrive late as present when they arrive. Dorla Salling is very ill. Senator Steven Horsford and Sheriff James Miller have commitments that conflict with today's meeting. District Attorney Arthur Mallory has provided the Commission with a copy of "Selected Nevada Revised Statutes Relating to Felonies." ([Exhibit C](#))

The January 3, 2008, minutes are being formulated and will be circulated at the March meeting of the Commission. Since January 3, we have had a number of phone calls and discussions with Ms. LaToya McBean and Dr. James Austin of the Council of State Governments. To accommodate Dr. Austin's and Ms. McBean's travel schedules, the meeting will start with the second item on the agenda, which is a presentation regarding the probation tracking.

DR. JAMES AUSTIN (Council of State Governments and President, JFA Institute):

I will cover four areas: (1) an update on criminal justice trends; (2) a presentation given for the 2007 Legislature; (3) the Arizona crime fighting strategy which emphasizes reforms to reduce crime; and (4) the Missouri Sentencing Commission reforms which have had positive results due to sentencing changes. (The power point presentation, Justice Reinvestment Project: February Update, is [Exhibit D](#).)

In 2007, Assembly Bill (AB) 510 was designed to move people to the Parole Board faster, get them off parole and probation faster, and start awarding credits to prisoners who are completing certain programs. We have parole risk-based guidelines in place that

should increase the grant rates for low-risk prisoners and people completing risk reduction programs. The parole and probation revocation matrix is designed to restrict the number of people coming into prison for probation and parole technical violations. This chart tracks everything simultaneously. There is not much change, which is good news. The trends are nearly the same as they were previously. Reported crime is stable. Arrests and bookings are either declining or stable, dispositions are stable and jail populations are stable. The front end of the system appears stable. Prison population continues to decline as we thought it would. In a positive way, on the probation and parole side, the revocation rates are declining. The parole revocation rates, which have always been relatively low, continue to be low. The chart you are looking at now is updated through the end of January (**Exhibit D**). There is further departure between projected population without the reforms and what is actually occurring which means some of the reforms are taking hold and are having an impact. Over the next two or three months, we have a rather large number of hearings. The Parole Board is now in the midst of processing those hearings. The results should show, in my opinion, further impact on the prison population because these are people coming to the Board faster than they would normally. A good number of those people are low risk; we expect those low-risk people to get out of prison faster than they would have under the old policies and the old laws.

CHAIR HARDESTY:

Does this slide indicate the difference between the inmate population at the end of January and what was projected?

DR. AUSTIN:

The difference is about 600 inmates.

CHAIR HARDESTY:

I've had conflicting information on this point. Did the Legislature use the projected population to develop the Department of Corrections' (DOC) budget?

DR. AUSTIN:

No. In the spring we said unless the Legislature does certain things, such as AB 510, this is the track you are on. The budget assumed the reforms would have impact and would greatly reduce the rate of growth. We could add a budget line for the next presentation to show those constraints.

CHAIR HARDESTY:

Yes, please do that.

DR. AUSTIN:

We will add the budget line.

Commissioner Howard Skolnik's staff has been helpful in providing information enabling us to see what is happening at the front end. These are the admissions and

releases. During the last couple of months, the releases outpace the admissions. With this type of trend, the population starts moving south.

CHAIR HARDESTY:

Do the releases relate to the increase in parole grants, the expiration of sentences or both?

DR. AUSTIN:

We do not know. The detailed data files from the DOC were received on Friday and will allow us to render some kind of tracking. The next question is what types of admissions and releases are dropping or increasing. My expectation is we are going to see more parole releases and fewer revocations coming in for probation and parole admissions.

CHAIR HARDESTY:

Could you add that to your presentation in March?

DR. AUSTIN:

Yes, I will.

The daily parole population dipped in June and is now starting to come up; probably an indication of more people getting out on parole. The admissions to parole track the daily population. The releases dropped but are now starting to increase as people get near the end of their parole release date. The probation population represents a big decrease occurring in July and August as the law took effect and a lot of people were released on probation supervision. That population is stabilizing at the 13,400 to 13,600 level. The releases off probation go up in October, November and December while admissions seem to be trending down. An admission to probation now requires a court decision. We are starting to get the court data to see what they are doing; for instance, if they sending fewer people to probation. The big picture here is the probation population went down and is about a thousand below what it was when we started the reforms in June.

CHAIR HARDESTY:

Was the budget for the Division of Parole and Probation (P&P) built on projected numbers?

DR. AUSTIN:

I believe it was.

CHAIR HARDESTY:

Could you look into that and, if so, include a line on your chart for that point.

DR. AUSTIN:

The probation revocation rate was in the neighborhood of 43-50 percent during the first five to six months. The rate went down to 32 percent when many people were dropped from supervision; went back up briefly and is now down to about 38 percent. Forty percent is below the historical level. This is a good sign. The parole revocation rate,

which has always been lower than probation, jumped up for some reason in August and October and has now come back down to where it was, about 13 percent. We are more successful with probation. More people are completing probation. The parole population jumped, but now it has come down to where it was. Hopefully, that trend continues. The recycle rates are important because these are the people that come off the system, fail, come back into the prison system and occupy a prison bed. We want to make sure these rates do not worsen and the probation rate stays below 40 percent, which will have a large long-term impact on prison population estimates.

In regards to reported crime from January 2006 through October 2007, we are receiving crime data from Las Vegas and Washoe Counties. The numbers reflect the major categories being reported to the police: robbery, assault, burglary, larceny, auto theft, murder and rape. The numbers bounce around, but we are not seeing any increase or decrease in the serious crimes reported to police in those counties. There is some month-to-month variation, but the overall trend is fairly flat. It is probably fair to say that the rate of criminal activity is declining because we have more people moving into Las Vegas and Washoe Counties. The felony charges bounce around. Gross misdemeanor charges indicate little variation. We are watching trends to identify changes which would not be good for the prison or probation system. They seem to be relatively stable in Las Vegas and Washoe County. We did have drops most recently in September 2007 in felony charges. There is not much movement in gross misdemeanors.

Jail booking data has been received. The number of people booked in the City of Las Vegas and the county jails from January 2007 through December 2007 declined over the last five months. I am not sure why. Jail populations still exceed or are close to capacity. The Las Vegas Metropolitan Police Department (METRO), with a design capacity of 3,200 inmates, is holding 3,600 inmates. North Las Vegas is holding 874 inmates and has a 902 capacity. Washoe County is a couple of hundred over its capacity. The major jails in this state are full.

CHAIR HARDESTY:

Do the jail capacity numbers reflect alternative supervision by the sheriffs in Las Vegas and Washoe Counties?

DR. AUSTIN:

These are people who are physically incarcerated; they are in the jail.

CHAIR HARDESTY:

An important part of the jail story is the number of defendants who are under some alternative form of supervision. When I was Chief Judge in Washoe County, the number was probably 600 defendants. The resource requirements that exist for the Sheriff's Department are a concern. We need this information to compare the fiscal impacts on available resources and determine if there is a lack of available resources to supervise the total population of people under the supervision of the jails and the DOC. Would you

request the Las Vegas and Washoe County jails provide the Commission with the additional information?

DR. AUSTIN:

Yes, I will.

CHAIR HARDESTY:

Would you separate the information on charts for the Commission to monitor? Sheriff Flynn, do you know approximately how many Clark County defendants are supervised in an alternative way?

COMMISSIONER FLYNN:

We have 200 to 250 on house arrest. There are about another 50 on the weekend arrest program.

DR. AUSTIN:

Sheriff Flynn, are there a number of people under pretrial supervision who were booked into the jail, released and are now being supervised by a pretrial agency of some kind?

COMMISSIONER FLYNN:

I can check into that.

COMMISSIONER SIEGEL:

There is a substantial disparity between the sentenced and presentenced in Washoe County and Las Vegas.

DR. AUSTIN:

I do not know why that disparity exists. Only 253 are presentence in Washoe County, which is a small percentage. In Las Vegas, the majority are going to be presentence which is what you typically see in a jail. This information came from Sheriff Flynn or through his sources. We can look into the disparity. It could be a very aggressive pretrial release program operating in Washoe County.

COMMISSIONER SIEGEL:

Washoe County is possibly reacting to the fact that three-quarters of their capacity are sentenced people and they have no choice but to presentence to move them somewhere else.

CHAIR HARDESTY:

Agenda item six concerns the need for a study to evaluate the effectiveness of the 1995 truth in sentencing (TIS) legislation, Senate Bill (SB) 416. I would like the Commission members input on what subjects should be considered for study or evaluation related to this measure. When the law was passed, the Legislature requested the then Advisory Commission on Sentencing to provide input on the effect of the legislation. That study

was not provided to the Legislature. It is one of the charges of this Commission. I have asked the Council of State Governments to address the possibility of studying this topic and give us a cost estimate for the study. The Council has some information about sharing costs and grants to help fund the evaluation.

DR. AUSTIN:

Senate Bill 416 is now having an impact on the current prison and parole and probation populations. It is not clear what the precise effects have been. Four major changes or developments have occurred as a result of SB 416.

Prior to the implementation of SB 416, sentenced inmates received a maximum sentence and could be eligible for parole after serving one-third of the maximum sentence. Inmates were then eligible for parole consideration. If a parole was not granted either at the initial hearing or subsequent hearings, the inmate would be released on mandatory parole three months prior to the expiration of the maximum sentence. During the mid 1990's, the Federal Government began issuing large grants to states for adopting TIS. Crime categories were divided into categories A through E based on the severity of the offense. Minimum and maximum sentences were imposed. The criminal would be required to serve a minimum of no less than 40 percent of the maximum penalty allowed. The Legislature increased sentence lengths for certain crimes and reduced others. Under SB 416, an inmate is not eligible for discretionary release until the entire minimum sentence, less jail credits, is served. Good time credits are not applied to the minimum sentence. The mandatory parole release remained unchanged under the new statute. First time Class E felony offenders were diverted from prison. The law did result in a reduction of about 500 admissions per year into the prison system, but several hundred are being admitted for probation violations. If a Class E offender sentenced to probation violates that probation, the judge will vacate the probation and send the felon to prison.

Class B is the largest category during 2006 with 55-56 percent of all males. The Commission may want to revisit the categories and move some of the offenses to a more appropriate designation. The other columns provide information regarding time served: average good time days per month; jail time served; the average sentence; and the average minimum sentence. There is a large range between the maximum and minimum sentences. The Class B average maximum is seven years; the average minimum is two years. The minimum and maximum drives the length of stay. Female sentences are lower and fewer are in Class B.

We will be updating the information regarding the length of stay by class for 2003 through 2006. The average length of stay for Class B felons in 2006, before parole, is 30.4 months and discharge is 26.3 months. The average length of stay, across the board, is two years for prisoners being sentenced by the courts. If you move people to different categories, the length of stay in the sentencing patterns will be affected. Female length of stay is shorter.

For the March meeting, we should have current data on the parole grant rates and detailed data on parole and probation revocations by type of violations. We should start seeing the effects of the new parole guidelines and accelerated hearings. We will also have a detailed analysis of current prison admissions and release trends.

To summarize, the population continues to go down in the way we thought it would and should continue for the next two to three months due to the hearings. Crime rate is not going up. The violations look good. Probation violations continue to be down, and parole violations went down recently.

A summary of what was presented to the 2007 Legislature is the State's population had increased by 56 percent. The prison population was projected to grow 61 percent over ten years to 22,000 inmates. There was a high failure rate of people on probation supervision which has an impact on prison admissions. Forty-six percent of probationers were sent to prison for technical violations or for committing new crimes. People on probation had few incentives to comply with the conditions of their supervision. Probation officers did not have access to the latest training on effective probation intervention. These were the major findings in terms of where the system was headed. We provided several options for the State to consider.

One option was to increase the percentage of people in prison who successfully complete vocational, educational and substance abuse treatment programs prior to release. A small percentage of the prisons were completing these types of programs prior to release. Incentives to reduce the minimum and maximum sentence served needed to be created by giving standardized credits for successful completion of programs. In 1995, legislation prohibited people from having credits applied and their minimum eligibility date could not change. We discussed the need to expand the number of programs that would be available in the prison system.

Another option was to reserve prison space for serious and violent offenders by placing low level offenders, with Class E sentences, on probation. We recommended that the Class E's never go to prison. We thought that could be done successfully if we had more community-based programs, in particular substance abuse, and a sanctions program that would keep them on probation. We recommended increased funding for P&P for more probation officers to supervise category E offenders

The final option recommended was to reduce by 30 percent the number of people on probation who fail to meet their conditions of supervision and return to prison. The key policy elements were:

1. Establish the goal of probation as a reduction of offender's risk to public safety rather than just enforcement of the conditions of supervision.
2. More emphasis by P&P on risk rather than just enforcement of the conditions of supervision. Probation officers needed training on evidence-based principals on how to intervene with people who are moderate risk and do cross training with community-based behavioral health care providers.

3. Create incentives for people on probation by giving a ten-day reduction in probation terms for every 30 days served without a violation of the conditions of supervision.
4. Establish an intensive technical violation unit at P&P for at-risk people on probation instead of sending them to jail or prison.
5. Provide additional funding to pay for substance abuse assessments and treatment.

All these recommendations could result in a 400-bed savings in the next fiscal year. Fiscal year 2017 savings were estimated at 1,300 beds or \$155,000,000.

A good number of those reforms were implemented. The major item not approved is the treatment package for probationers and parolees.

(The Arizona crime fighting strategy is included in [Exhibit D](#)) When the Council of State Governments goes into a state, it looks not only at the prison population but also what area is affecting crime rates. Certain communities and/or portions of communities have very high crime rates. The Council starts by identifying these populations. We then start talking about a state/county partnership; about money saved by reducing the prison population; and about the savings being invested in targeted communities. We recommend an oversight group responsible for monitoring and adjusting the strategies in real time, which means they are meeting constantly to see where the hot spots are, what successes they are having and moving funds around to where it has the greatest impact. This is what is happening in Arizona, particularly in Phoenix, which is very similar to Las Vegas or Reno.

The Council developed the mapping and a state and county partnership has been formed. The county's already provided some money to help implement the strategy. The oversight group, which has local, county and state representation on it, meets on a monthly basis to review their plan, adjust it and make changes. In Phoenix, the Council started looking at where the prisoners were coming from. One zip code in Phoenix, 85441, had a large number of people coming into the prison system. There were other counties that also had this characteristic but the strategy was to pick one county to see if we could be successful. There are certain zip codes in Las Vegas or Reno, in any metropolitan area, where you have this major concentration of either prisoners, probationers or parolees.

COMMISSIONER. MALLORY:

Is the zip code for the residence or the occurrence of the crime?

DR. AUSTIN:

It is the zip code of the residence. There is not necessarily a connection between the residence and where the crimes are being committed. We can map both if METRO can provide the address of the reported crime. We can map the crime location and see the relationship to the residency of the offender. In some types of crimes, there is a

relationship; in others there is none. The residency map of probationers, who were admitted into the Maricopa County jail system in Phoenix in that same zip code, can be drilled down. Each red dot on the map is a probationer. Certain blocks have 16 to 26 adult probationers. When you map the jail, probation, parole, prisoner and juvenile corrections data, you will see entire families under the care and supervision of the state or the county for criminal justice or other kinds of services such as welfare. The amount of money involved is significant. Arizona is trying to synchronize probation and parole risk and needs assessments. Arizona has developed a good risk assessment and service needs for the probation and parolee population and can identify who is high, moderate or low risk and what is needed. Arizona is investing the prison savings on prevention programs for youth and families. Arizona has linked with a university which has a strong criminal justice program and crime analysis center which will be charged with monitoring this situation over the next few years. The Council's role is to set up a program, then turn it over to the university. The process should be institutionalized so you can map current information. New York City uses the same procedure.

Basically, we are trying to find out where the action is and act on that information aggressively to reduce crime. We need to use all the tools we can: the presence of the police on the street; probation and parole working with the police; and supervision of the high risk people. A long-term investment is required in the children and families which will have a long term-impact on the number of offenders in a neighborhood.

In Nevada, 78 percent of all the people in prison and 81 percent of all people on probation or parole come from Las Vegas and Reno. This is not to say there are not needs in other counties and cities in Nevada. The big numbers are coming from these two metropolitan cities. The prison admissions that are coming in from Clark County have been mapped. We can provide this information for any location in the State of Nevada. North Las Vegas and Sunrise Manor have very high rates of people coming into the prison system. We have also mapped the amount of money the State is spending by zip code. We can probably find blocks in Las Vegas where the State is spending over a million dollars a year in criminal justice costs.

CHAIR HARDESTY:

What are the components of those costs?

DR. AUSTIN:

These numbers represent only correctional costs. We look at the annual prison costs for the people from that block. That amount becomes the basis for the investment the State is making in punishing and incarcerating this person annually. This map gives you a good sense of how you are spending money and where and on what types of people. The next map shows prison admissions and substance abuse, prevention and treatment agencies (SAPTA) certified programs. There are many people in the public housing projects who are coming into prison or are going into substance abuse training.

Arizona looked at all this data and selected a neighborhood. Nevada has several neighborhoods from which to choose. If you want to get aggressive, the best strategy is to pick two or three neighborhoods. The main thing is to get something going so you see if it really reduces the crime rate, the number of people going into the prison system, the numbers on probation and the numbers going to the jails. The Commission may want to visit Arizona or we may want to have people from Maricopa and the State of Arizona come here and do a presentation for you. Arizona now has state, local and city money invested in a particular neighborhood. The process starts with folks saying ok, let's do this, let's pick a location, let's go to it and let's start analyzing it. The Commission may want participation from a university with criminal justice expertise and which may be tracking some of this information. That university could be your brain power in the future. We can bring in people from other parts of the country, not only Arizona but other cities, to hear what they have done so you can build upon the research done elsewhere.

COMMISSIONER MALLORY:

Briefly, what programs have you found to be highly successful in these areas?

DR. AUSTIN:

There are some programs having an abrupt drop in violent crime. The Boston experiment, in particular, was very successful; they virtually eliminated gang violence over a one-to-two year period. Chicago's prevention efforts have been successful in moving into targeted areas on the south and west sides. Chicago has spent more time trying to change such things as the nature of housing, access to education and job development. Private investors, for example, have developed a major store which can produce employment opportunities for people. There are not a lot of success stories. Maricopa does not have a success story right now. Nevada would be developing new efforts to try do this on a long term basis. There are many stories about short-term effects. Holding and maintaining that foothold you establish is a real challenge.

The Missouri sentencing reforms are significant because they effectively stopped prison population growth. In 2005, Missouri established a commission which reviewed state procedures, legislation was passed and the results started to take hold immediately. Missouri was growing fairly rapidly though its growth has now flattened. There has been a slight decline in the prison population.

Missouri has an indeterminate sentencing structure, which means after sentencing, you are eligible for parole after serving a portion of that sentence; a parole board governs the release. Significantly, the parole board in Missouri controls not only the board but it controls probation and parole services. The Board hires and fires parole and probation agents. The Missouri Department of Corrections is the super agency with the parole board, probation, and parole institution one entity. It is a super agency making it easier to do things; they do not have to negotiate with another agency. They just do it. In 2006, Missouri was ranked number eight for incarceration rates. Nevada was number twelve. Nevada's incarceration rate in 2006 was 503 per 100,000 in population; Missouri was 514. Missouri's population in 1997 was 22,669; it peaked at 30,219 in 2005. The

population dropped a little bit and is expected to continue to drop. In the parole hearing situation, all the sentences, up to sentence number seven, are seen by the parole board pretty quickly. For instance, with a two-year sentence you are eligible to see the board after serving two months. The A and B category sentences are more severe, although their parole eligibility dates are relatively low. With an eight-year sentence for nonviolent drugs or driving while intoxicated (DWI), a prisoner sees the board in ten months. Missouri has a low minimum before seeing the parole board.

The Missouri commission members include a representative from the Supreme Court, the Department of Corrections, two private citizens, the Senate President Pro Tempore, the Speaker of the House, the Board of Probation and Parole, the Public Defender, the Bar, a Prosecutor, and a Judge. Since November 2005, the recommended sentences were incorporated into the presentence reports probation officers make to the courts. The presentence report became a major tool used by Missouri. Every felon has a detailed presentence report completed by a probation officer. The statewide system of recommended sentences is based on actual sentencing practices of trial judges. The system encourages courts to refer more offenders to 120 days in prison shock and treatment programs and to reduce prison sentencing for nonviolent offenders with little prior criminal history. The reforms require probation officers give courts and attorneys an analysis of the offender's risk factors, strategies for supervising and managing the offenders through community based sanctions or prison-based programs, and, where prison is recommended, the parole board's guidelines and practices for paroling offenders in that category. Prior to sentencing, the presentence report contains a detailed assessment of the offender. According to the study, low-risk people who go to prison have a higher recidivism rate than if they were put on probation. When the actual sentence is probation but the recommended sentence is prison, which occurs in 31 percent of the sentence recommendations, the recidivism rates are also higher. Missouri is trying to get judges, courts and prosecutors to pay more attention to risk. In actual sentences, by offense group and prior criminal histories, level one is the least severe criminal history; level five the most extensive criminal history. Prison disposition is lowest, 31 percent, for level one; rises in level two to 46 percent and level three is 71 percent. This information indicates the judges and courts are following the guidelines. The parole board has risk-based guidelines much like Nevada's, which guides them in their decision-making process. Ninety-five percent of nonviolent level one offenders will not go to prison. About half of those who have three or more prison commitments or have five or more prior felonies are going to prison. In Nevada, P&P uses a matrix, but it is not separated into these offense groups. It is based on the sentence imposed. Nevada's statutes cite the minimum and maximum sentence which can be imposed. P&P uses it to make a recommendation to the court based on an internal scoring process. Nevada has not revisited the process to see if it is making sense. We do know from past research the court is not agreeing with 25-30 percent of the recommendations by P&P. The cause of disagreement needs to be reviewed. In Missouri, the parole board guidelines are used to determine a risk level score. The scores drive the time served before release. The parole board sees offenders shortly after coming into the prison system. The inmate is informed of the score and the time to be served if certain behavior is accomplished. Missouri has an extensive report

put out by their sentencing commission. In conclusion, Missouri was concerned about prison population growth. It looks like it has successfully turned the table. Missouri made changes by sentencing reform at the front end. They are trying to restrict the number of people coming to prison. Not much has changed once a person is in prison.

Nevada is getting its inmates to the Parole Board faster. It is probably a good opportunity for Nevada to look at sentence reform. The number one category for Nevada is going to be class E which is driving the prison system more than any other class. Nevada should question why 500 class Es are still coming into the prison system.

COMMISSIONER MALLORY:

Is it correct to say the closer the Missouri sentencing body adhered to the recommendations based on the matrix, the more likely they were to prevent recidivism?

DR. AUSTIN:

That is correct.

COMMISSIONER MALLORY:

The matrix itself seems to be a predictor of recidivism.

DR. AUSTIN:

That is correct. Part of the presentence report, which goes to the court, is a risk assessment and is incorporated in a recommendation to the court for either probation or prison. If the court follows the matrix, there is lower recidivism. If the court goes against it, higher recidivism results.

COMMISSIONER MALLORY:

Your report indicates Missouri leveled off and started reducing the prison population. Has there been a similar reduction in the crime rate in Missouri? Is there a correlation or should there be a correlation?

DR. AUSTIN:

They probably have had a drop in crime rate just like every other state in the country. This legislation passed in 2005. Crime data for 2006 and 2007 is not available. We will look at it. Missouri's recidivism rate for the people coming out of prison has been lowered. Only a few states have been able to lower their recidivism rates.

CHAIR HARDESTY:

I have had a number of discussions with Dr. Austin about other states and other state reports. Connecticut is currently undertaking some legislation. Could we get a sense of that report and an overview of it in March or April.

DR. AUSTIN:

Yes. Ms. McBean and I have been in constant contact with Connecticut. Nothing has come forth formally, but we should have something formal for you at the next meeting.

CHAIR HARDESTY:

There are three points I want to carry into the next discussion. First, some developments are occurring in presentence investigation reports and the guidelines used for probation recommendations. Second, we are going to have a general discussion about the sentencing matrixes in Nevada and reconciling those matrixes and proportionalities of sentences to the extent that seems appropriate and recommend to the Legislature some modifications in those areas. That discussion is an outgrowth of Dr. Austin's presentation. Third, is to begin to address this issue of public safety and expanding how the Commission can recommend expanding partnerships between the county and State; to put us on the offensive fighting crime and attacking some of these public safety issues in the areas that have been identified in the geographical and zip code mapping done in Nevada. We would like to address these in our studies. With respect to the TIS, I have had conversations with the Council of State Governments, Commissioner Siegel and representatives of the criminal justice community at the University of Nevada Reno and the University of Nevada Las Vegas. The professors in those institutions are very interested in supporting this Commission in its work and its study of these areas.

I would like to open the discussion now under agenda item number six to a study of the evaluation of the TIS statutes. What types of information do we want to look at and what types of issues should the State be addressing as part of an overall study so that we can make recommendations to the Legislature about the effectiveness of the legislation and any modifications, if appropriate. We want to include the fiscal impact the legislation has created and will continue to create.

Dr. Austin might mention what the Council of State Governments has looked at, what types of subjects they think should be part of a study and then Ms. McBean may have some information about general costs. After your discussion, I would like to get feedback from the Commissioners about this information.

DR. AUSTIN:

Are you requesting information on the impact of the 1995 law?

CHAIR HARDESTY:

Yes, I am.

DR. AUSTIN:

The major objective is to look at how the law impacts the number and type of people coming into the prison, probation and parole systems and any changes in length of stay. We can see if sentencing disparity has improved or hurt the range of sentences received. We are limited in what information we can look at about people sentenced prior to 1995. We have some information; we would have to see what information Commissioner Skolnik's staff has stored regarding the flow of people into the prison system. We can look at sentence ranges by offense group to see if they've changed. We can look at the composition of the prison system. Is it getting any different in terms of demographics? Is

it a more difficult population to deal with? We have a pretty good sense of what was happening, but we could quantify it for you.

COMMISSIONER SKOLNIK:

The Association of State Correctional Administrators did a down and dirty evaluation of the TIS law in January. Responses were received from about 21 states; seven states had no legislation; one showed a decrease in population as a result of legislation, however, there were changes in the maximums and the minimums and good time served was lost. Most of the TIS impacted good time. Eight states showed an increase in population and costs; three showed no change. I think the most significant information available probably will come from Wisconsin which actually did a longitudinal study in June 30, 2001 for the period beginning January 1, 2000. A follow-up was done in 2004 and another in 2007. Wisconsin has shown an impact on length of time served as a result of their statutes. It cost the state a substantial amount of money. I believe I sent you copies of some of the information.

CHAIR HARDESTY:

Yes, I have read all the study information. The Wisconsin model provides a good overview of the subjects we would want included in our study and would provide valuable information to our Legislature about the effects of sentencing.

COMMISSIONER SKOLNIK:

One of the things we also ought to look at is the impact in the institution regarding disciplinary issues. Do they increase when we have less control over people's behavior when they get out?

CHAIR HARDESTY:

I suppose that is also an indicator of recidivism.

COMMISSIONER SKOLNIK:

That may or may not be. I think it would be worth looking at.

COMMISSIONER SIEGEL:

My understanding of the presentation about the 1995 law was it did extend sentences in terms of eligibility for parole. I want to know the impact on recidivism. Does keeping people in prison an additional year increase or decrease recidivism?

DR. AUSTIN:

To address Commissioner Siegel's concerns we would have to review the recidivism rate of people sentenced prior to 1995 that have been released. I think such a study was done. Maybe confirm with Commissioner Skolnik and also the National Council on Crime and Delinquency, which is doing a study now for P&P and get a copy of the study. We have a recent recidivism study we can use to say what has happened since 1995. Commissioner Skolnik's point is well taken. The intention of many states adopting TIS was to extend the period of incarceration for people defined as violent offenders or serious offenders.

We can do a pretty good job of showing what Nevada did. My immediate recollection was that Nevada was relatively smart in how it approached this. Parole eligibility was extended for everyone. At the same time, Nevada started moving sentences around and tried to divert class Es out of the system. Nevada's length of stay right now is about two years, which is not a high length of stay compared to other states. It looks as though TIS did a number of things in both directions. Nevada's growth was triggered by increases in people being admitted to the prison system due to demographic growth. We can sort these things out and start pointing out how Nevada stacks up with other states on the same topic.

LATOYA MCBEAN, M.A. (Council of State Governments):

The two studies, the 1995 TIS law and the study on the proportionality of the state sentencing structure, are doable. The Council of State Governments will be happy to assist the Commission with this particular project. We estimate the total cost of the two studies will be \$100,000. If the Commission will provide us with a letter detailing the scope of work as well the timeline for completing the studies, I would be able to provide a formal cost estimate. In terms of the Council of State Governments partially funding this project, I need to speak with some of our funders to determine the possibility of matching the amount the Commission plans to contribute. I cannot guarantee what our funders' response will be, but I do know they will ask us if these studies will affect policy development for the 2009 Session. We also would be willing to partner with local universities. Once I receive the Commission's proposal, I will try to get a response by the end of this month.

CHAIR HARDESTY:

Thank you Ms. McBean. Commissioner Siegel, as a member of the Steering Committee, has asked to help organize some discussion with representatives of our universities and their participation in some of this work. I would like him to provide that portion of his report to the Commission members now.

COMMISSIONER SIEGEL:

As a member of the Steering Committee, I was directed to organize a working group from the two university campuses. We located two centers. The University of Nevada Las Vegas (UNLV) is headed by Dr. Timothy Hart and has focused on criminal justice data collection and analysis. He is working with Dr. Deborah Shaffer, Dr. Terance Miethe, Dr. Randall Shelden and Jim Palombo. The Center for Justice Studies at the University of Nevada Reno (UNR) is directed by Dr. James T. Richardson. The coordinator for criminal justice is Matthew C. Leone. At least three members of the Criminal Justice Department at UNR would be involved. Last Thursday we had a 75 minute telephone call which did indicate considerable interest. They are looking forward to a funding opportunity as well as important contributions to our Commission. We will have a follow-up meeting dependent upon what is said here. On February 20 we are going to provide UNR and UNLV with a record of the Commission meetings. We indicated to them we would like suggestions and proposals from them for the kind of

work they would do. It is a matter of interfacing the work discussed today with what they could do. I think there is a lot of flexibility.

CHAIR HARDESTY:

Subject to any additional discussion here, I would like to request the Commission vote on whether to obtain a study of the TIS 1995 statutes. I would like the Commission's authorization to appoint a subcommittee whose responsibility would be to set the scope of the study and work with the Council of State Governments, the universities, the criminal justice departments, the public defenders and prosecutors in our State and others to formulate this study as a collaborative effort in support of the Commission. Part of the scope would be to secure the funding, whether it is through funds authorized to the Commission, matching funds from the Council of State Governments or other sources.

Is it feasible to try to incorporate the results of this study in our report to the Legislature by September or at least with a follow up report thereafter?

DR. AUSTIN:

Are you talking about looking at recommended changes to your penal code?

CHAIR HARDESTY:

That is part of it. The State did some smart things in 1995. There are probably things within the 1995 legislation not requiring change. Are there some components of the law which would make us smarter in dealing with crime and punishment, not only in terms of how we handle those who commit crimes and how we deal with public safety, but also how we utilize, in an intelligent way, our fiscal resources?

DR. AUSTIN:

I think it is doable because you have an existing body to start proposing changes. The data systems are pretty good. There is another entity you should consider as a partner. Mark Woods will talk about the study being done by the National Council on Crime and Delinquency which is looking at the risk and needs and would be a big driver in the PSI report.

CHAIR HARDESTY:

The Commission will get to that later in the agenda.

COMMISSIONER MALLORY:

Are you discussing a motion to request a study on the pre- and post-effects of the legislation of 1995?

CHAIR HARDESTY:

Yes.

COMMISSIONER MALLORY MOVED TO REQUEST A STUDY OF THE
PRE- AND POST-EFFECTS OF THE TRUTH IN SENTENCING

LEGISLATION OF 1995 (SB 416) WITH THE OBJECTIVE OF UTILIZING THE STUDY TO FINE TUNE THE 1995 LEGISLATION OR THE PENAL SYSTEM IN GENERAL.

COMMISSIONER DIGESTI SECONDED THE MOTION.

THE MOTION CARRIED. (COMMISSIONERS MILLER, SALLING, AMODEI, CARPENTER AND HORSFORD WERE ABSENT FOR THE VOTE.)

CHAIR HARDESTY:

I would also like to request authorization from the Commission for the Chair to appoint a subcommittee to define the scope and arrange for financing of the study.

COMMISSIONER PARKS MOVED TO APPOINT A SUBCOMMITTEE TO DEFINE THE SCOPE AND ARRANGE FINANCING OF THE STUDY.

COMMISSIONER CORTEZ MASTO SECONDED THE MOTION.

THE MOTION CARRIED. (COMMISSIONERS MILLER, SALLING, AMODEI, CARPENTER AND HORSFORD WERE ABSENT FOR THE VOTE.)

CHAIR HARDESTY:

Are there any members of the Commission who would like to serve on the subcommittee? I would expect to reach out beyond the Commission for most of the subcommittee members. I want to draw in a wide number of people in our State to serve on this study committee and assist in its scope.

The following have volunteered to be on this subcommittee: Commissioners Skolnik, Parks, and Siegel.

COMMISSIONER MALLORY:

I will be glad to serve, if needed. There might be other prosecutors from larger jurisdictions who could serve. I would certainly yield to them if that situation arose.

CHAIR HARDESTY:

If you do not mind, Commissioner Mallory, I have other plans for your services. I wanted to reach out to you and your association to appoint some representatives from the prosecutors. Commissioner Kohn will be a little busy with some other tasks here in a moment. I would like the Public Defender Offices in Clark and Washoe Counties and the Office of the State Public Defender to appoint a representative to this subcommittee.

COMMISSIONER KOHN:

I will see that is done.

CHAIR HARDESTY:

The Commission will now hear a presentation by the Division of Parole and Probation (Agenda Item III).

COMMISSIONER GONSKA:

The pretrial report is under a cover which says “notice do not share this report with anyone.” Underneath that is a sample pretrial services report. This report is prepared whenever a federal offender is arrested by a federal agent. An initial appearance is scheduled, and the pretrial services officer has a couple of hours to compile this report. For example, someone may be arrested at 9:00 a.m. and have a 2:00 p.m. appearance before the magistrate or judge. The report contains whatever social, family, employment and criminal history is available within a short period of time. An assessment is made as to whether or not the individual is a danger to himself or others, if there is a flight risk, if the person can be placed on bail and under what minimal conditions can the person be released. A lot of the information is not verified. If the arrestee has family members or an employer, they are contacted.

The Commission has received copies of two federal reports. One is a 27-page report containing information you would not see in guideline calculations. This sample report is a John Doe; the offense is bank robbery. There is a multiple-count adjustment which I will not go into. There are several guideline calculations. The commonality with this federal report and the state report is the personal and social information, the criminal history and the instant offense. Nevada provides about 90 days to complete the guideline report. In some districts there is no sentencing schedule until the probation office notifies the sentencing judge the report is complete. The officer has about 55 days to complete the report. We have about 40 days if the defendant is out of custody and about 25 days if the defendant is in custody. The information in the federal report is the same except the guideline calculations. Collecting the criminal history, getting the record and the certified judgment is time consuming. At one time, many of the U.S. Probation Offices had units with people dedicated to tracking criminal histories for other districts. Unfortunately, now because of budget issues, they are not seen very often. The pretrial report has a lot of information in it which is not given to the U.S. Probation Office until there is actually a change in plea or a conviction. Once a defendant pleads guilty in federal court or is found guilty, a wealth of information is available. Nevada does not have that luxury.

The closest thing Nevada has to a presentence report is a nonguideline report. These reports are for anything other than a felony or a Class A misdemeanor. There are no guideline calculations. The report has an instant offense description, a personal, social, medical, and criminal history and sentencing justification. All the factors are evaluated and a recommendation is made to the judge.

The federal guideline report is a little more complicated. They use variance sentencing which means if you depart from what is described in the guidelines, you can depart on the factors authorized by the Sentencing Commission. A good argument can be made for a

variance sentence upwards or downwards by using sentencing factors found in US Code Title 18 Part II Chapter 227 Subchapter A Section 3553 A. One thing that is vulnerable with the federal presentence report, in terms of objections, is the criminal history. It is probably the easiest thing an attorney can attack because sometimes it is very difficult to get all the information. In a lot of these presentence reports, the criminal history is protracted. The same is true in our State reports. The most difficult part of doing the State presentence report is gathering criminal history. If we get to the position where we are challenged on a criminal history, it is going to be interesting because you need a lot of time to secure the information. It is difficult to obtain criminal history out of state for a myriad of reasons. I do not have samples from other states, but the difference is in the formatting and appearance; the information is the same across the country: social, family, medical, description of the instant offense and criminal history.

CAPTAIN MARK E. WOODS (Division of Parole and Probation, Department of Public Safety):

As of February 1, 2008, P&P's official website contains forms, a Probation Success Probability, a Sentence Recommendation Selection Scale and a blank questionnaire, which Dr. Austin referred to earlier. The judiciary, public defenders, district attorneys (DA) and private counsel have received copies. A few comments have been received. During the past session, the Legislature granted P&P, through the Department of Administration, monies to do a study for our risk and needs tool. That tool is utilized by the supervising officer within the first 30 days of supervision to determine the risk an offender poses and also the requirements for successful completion of probation.

P&P has met with the National Council on Crime and Delinquency (NCCD) and has been granted the study. The NCCD will be looking at not only our risk and needs tool, our reassessment tool, but also the Probation Success Probability, which is used at the presentence part of the offender's supervision. Our hope is the NCCD will recommend a tool to be utilized at presentence, during the supervision phase and it will be a validated tool. The NCCD has just been given access to our system. The contract is due to be completed by December 2008. We will probably get some feedback early fall of 2008. The tools being discussed by this Advisory Commission are being looked at by the NCCD.

CHAIR HARDESTY:

This is huge in developing an improved tool. We have had a number of discussions about the presentence report. As the study is developing, we need to bring together a number of the players in the criminal justice system to participate in a revision to the overall presentence investigation tool, the set of guidelines, updated guidelines and risk assessment factors. I have been discussing with Mr. Woods the possibility of appointing a subcommittee in the early fall to provide further assistance to the Commission with a recommendation to the Legislature for statutory revisions to the presentence report. Is this an area the Commission would have an interest?

COMMISSIONER GONSKA:

Regardless of what this Commission does, P&P plans to review our assessment tools and, when appropriate, make changes.

CHAIR HARDESTY:

I would like the Commission to make recommendations on any statutory changes necessary.

COMMISSIONER GONSKA:

I have no problem with that.

MR. WOODS:

Regarding the status of the release of inmates who have been granted parole, we are closely following these numbers. As of February 6, 2008, there were 256 inmates in custody who were past their eligibility date. Of the 256, 81 had not submitted a plan or had refused parole. Some are late because by the time they went through the system, their date had already passed. The Advisory Commission is aware of the issues of getting inmates to the Parole Board. Thirty-five of the inmates were pending acceptance from another state. Thirty did not have money to get into a halfway house or, the majority, were sex offenders who did not have a halfway house willing to accept them. The remaining had various unique reasons for being late, anything from errors in the plan, credits being applied incorrectly and a few were the controlling sentence. The overall number is consistent. We anticipate the numbers will remain consistent until we actually get rid of the bubble the Parole Board is dealing with right now.

CHAIR HARDESTY:

Commissioner Salling is very ill but did provide me with an update. The State Board of Parole Commissioners (SBPC) is in the process of hiring the personnel authorized by the Interim Finance Committee to reduce the bubble and increase the number of SBPC hearings. She hopes to have the first set of analysts hired within the next 30-45 days. She estimates that the bubble is somewhere between 1,000 and 1,200 people. Apparently SBPC needs additional information from the DOC to determine the exact number. The SBPC is making progress but does not see any way of getting through the bubble until at least the summer of 2008 and probably into the fall. The SBPC is in the process of installing video equipment to accommodate remote hearings.

COMMISSIONER SKOLNIK:

The DOC does not have direct control over the installation. The University system is providing the expertise and equipment. Most of the sites have been brought online; one or two have not.

CHAIR HARDESTY:

Is it correct to say the SBPC cannot deal with the bubble until the video equipment is available?

COMMISSIONER SKOLNIK:

The DOC transports inmates to one of the other institutions for their hearings which is costly and slows down the process.

COMMISSIONER SIEGEL:

Mr. Woods, did you say there are 30 inmates incarcerated due to the lack of a facility or halfway house?

MR. WOODS:

Yes, the number was 30. Most of the houses require a deposit. These people either did not have money or were sex offenders and no halfway house would take them.

COMMISSIONER SIEGEL:

Is it the responsibility of the prisoner or his family to pay a deposit? Is there no other provision for payment?

MR. WOODS:

Most of the houses we work with have a floating scale, but the bed space is limited. Most houses ask for some type of deposit, like the first month.

COMMISSIONER SIEGEL:

Is it possible we are doing something irrational? The State is not coming up with money to get these people out of prison and spending a lot more money keeping them in the prison.

MR. WOODS:

We do have people who would be able to come out of the system if they had some money.

CHAIR HARDESTY:

Could you please describe for the Commission the resources that are allocated in the budget to P&P for housing and how you use them?

MR. WOODS:

Several sessions ago, the Legislature funded a one-time \$10,000.00 Parolee Loan Fund. Loans could be a maximum of \$300.00. Many people coming out of prison had learned a trade and could, by joining the Union, become a carpenter, for example. Initially, people were given loans to use for tools or union dues, with the idea the loan would be quickly repaid. Over the years, we started using the money for rent. The fund was replenished when parolees paid off their loan. Currently, there is a zero balance in the fund. The fund was intended to get parolees started in a job, not necessarily for rent.

COMMISSIONER FARLEY:

Parolees are being released because they have served the minimum, had good time credits or they have served all their time. Why are they being released if nobody wants them?

MR. WOODS:

Dorla Salling is the expert in this area. We are discussing a group of people who have met their eligibility date, which in most cases is the minimum sentence, have gone in front of the Parole Board and have been granted parole. In order for them to be released on parole, they have to have a plan.

COMMISSIONER FARLEY:

They cannot get out because they do not have a plan.

MR. WOODS:

Correct.

COMMISSIONER FARLEY:

If they cannot figure out what they are going to do when they get out, why are we letting them out?

MR. WOODS:

We are talking about inmates who have refused to provide a plan so they are still in prison. They do not come out.

COMMISSIONER FARLEY:

Are they refusing to give a plan because they want to serve the maximum rather than be on parole and watched?

MR. WOODS:

I do not want to say what a parolee or an inmate is thinking.

COMMISSIONER GONSKA:

On Friday there was a meeting at High Desert between P&P, the DOC and the Urban League. The Urban League received a grant for reentry. This is an effort to work with inmates to transition them into the community. We are arranging space at High Desert for the Urban League to work with the offenders. We are getting shoddy prerelease plans from inmates. I would ask the Urban League to work with the inmates to provide better prerelease plans. Many inmates are being held because they give us bogus release plans. Transitional housing in the community is a shrinking market. Months from now there will be few transitional living facilities to which we can refer offenders.

CHAIR HARDESTY:

Commissioner Parks, has the Parolee Loan Fund come up in front of your committees? It seems like a rather low amount with a rather severe restriction on its use. Do you think the Legislature would consider expanding that?

COMMISSIONER PARKS:

I am on the Assembly Ways and Means Committee and served as the Co-Chair of the Public Safety Subcommittee during the last session. Unfortunately, when we do review budgets, we are somewhat removed from the finer details. Had I known about this budget last year I would have made an effort to see that we added supplemental funding.

Last week I appeared in front of the Clark County Commission regarding three applications for transitional housing. The use permit for two of those facilities was denied. They had also been denied at the Planning Commission level as well as the Town Advisory Board. It was an uphill battle to keep these two facilities in place even though they had been in place for eight years. During the last year they had to file additional documentation and applications with the County.

CHAIR HARDESTY:

We need to inventory the amount of available transitional housing and report the shortage to the Legislature.

I would like to move to reports from the subcommittees. Commissioner Horsford indicated to me he expects his subcommittee will be meeting between now and March 17 and will have a report for us at the March 17, 2008, meeting. Does the Attorney General have anything to add or report concerning victims' rights, statutory funding and the like?

COMMISSIONER CORTEZ MASTO:

Commissioner Farley and I have been meeting and putting together potential members for the subcommittee. Last week we sent a letter to individuals throughout the state who we think would be helpful in putting together a presentation for this Commission. The letter suggests meeting either February 26 or February 27, 2008. We will let you know if we will have a presentation for the March or April Commission meeting. If there is anyone in the audience interested in participating on the subcommittee, contact my office and we will make sure that they get on the list.

CHAIR HARDESTY:

Will the subcommittee try to identify the source of funding for victims of crime and how we go about improving the program?

COMMISSIONER CORTEZ MASTO:

Yes. We have a draft agenda. The focus is the status and availability of services and compensation programs for victims of crimes, sources of funding and other provider issues, including domestic violence issues for those areas. I will send you a copy of the agenda.

CHAIR HARDESTY:

I would like to report on the meeting of the Steering Committee and then get feedback from the Commission with respect to the approach the Steering Committee has taken

concerning how we are gearing up for our report and prioritizing the topics on which we believe the Commission should be focused.

The first Steering Committee item, which we discussed earlier today, is to conduct a study of the effects of the 1995 TIS statutes. The Commission has already acted on this particular item.

The Steering Committee's next item is a study to examine the sentencing matrix. As a subpart, within the sentencing matrix study, I have included recommendations made in November by the public defenders for specific modifications to certain criminal statutes. That study is in part going to be undertaken by the group we mentioned. I would also like to work with a subcommittee on which Commissioner Mallory and Commissioner Kohn will serve, and others I will appoint, to examine the proportionality of the sentencing matrixes. As you heard from the presentation of Dr. Austin, an important component of Nevada's current TIS structure is an examination of the proportionality of its statutory structures and criminal code. This group would be principally charged with looking at those areas with the assistance of some of the university folks and the professional study committee we are working with and then report to the Commission.

The Steering Committee agreed our report should include an examination of drug sentencing statutes and the prescribed mandatory sentencing, including statutes dealing with the giving or not giving of special assistance to qualify for probation. Those areas are handled in many different ways by different prosecutors, defenders and judges. I want to include that topic with the items Commissioner Mallory and Commissioner Kohn will review.

The next area the Steering Committee addressed was the PSI report. The report is in progress. It has been discussed by Commissioner Gonska and Mr. Woods. P&P is already on the move. It is a question of what recommendations, if any, the Commission needs to make in the fall as a result of the NCCD report and any collaboration by other members of the criminal justice committee, or community, in that PSI effort. As you noted from the previous discussions from Dr. Austin, the Missouri Commission found the correlation between the PSI recommendations and the judges following those sentencing recommendations, or guidelines, to be an important piece of this overall puzzle.

The Steering Committee feels we need to address the issue of probation with respect to the level and nature of supervision, the operation of the department and assessment tools. With respect to the assessment tools, we need to address the number of tools available to P&P, the nature of specialty courts, monitoring and housing, quantifying needs versus the available resources and trying to provide to the Legislature a picture of any differences that may exist. On that point, all of the specialty court judges are going to make a presentation to the Commission on March 17, 2008, regarding the operation of the specialty courts in the State, both drug court and mental health court. They will have a rather detailed presentation to make regarding how they operate, what needs are present, how it could be expanded, its effectiveness improved and issues involving prison reentry.

The Steering Committee felt that we need an analysis in the juvenile area, which is Senator Horsford's subcommittee. Included are issues about adult certification, about which we have already heard some testimony.

The Steering Committee wants a report on victims. The Attorney General's subcommittee will provide that report.

There are many issues surrounding the Parole Board, both statutory and budgetary issues, the Steering Committee felt should be addressed.

The Steering Committee recommended we include within our report a fiscal analysis. We are looking at proposing to the Legislature a transition of incarceration dollars against treatment, crime fighting or crime prevention dollars. An important segment of the report of the Commission will be how we make that transition, where it comes from and how can we better and more effectively use our dollars to reduce the incarceration component.

Last, the Steering Committee recommends a report on the effects of Assembly Bill 510 of the 74th Session which made various changes pertaining to offenders.

Those are the items identified by the Steering Committee we would develop and work on over the course of the next six months. The items would become the components of our report. There are a couple of additional areas. Commissioner Siegel wants the report to include a discussion regarding the resources, or lack of resources, for the DOC in a variety of areas. We also want to address the issue of geographical resources. I think this is a long term issue. Dr. Austin's report indicated the identification of geographical areas where there is criminal activity and a high level of inmate addresses. I do not think the Commission can achieve a recommendation by September or August. I would like to study this issue to see if we can do a follow-up report for the Legislature in January. I would like to assemble a group of Commissioners to go with me to Arizona and meet with judges and some others in Maricopa County to look at what they are doing and report to the Commission and determine whether this is something we should pursue and recommend to the Legislature.

Once we have completed our report, we will address some of the other pending issues we have been discussing. There is one other component I want to mention. It has to do with this partnership between the state, the county and community government resources to address some of these issues. I have scheduled, through the fine work of Mr. Larry D. Struve, Religious Alliance in Nevada, a meeting with the faith-based community for April 16 and 18, 2008, in Las Vegas. Representatives of all of the various faith leaderships will be present. The meeting will be conducted in the Regional Justice Center on the 17th floor. The objective is to begin the process of developing support from the various faith-based organizations in this effort and provide a series of ideas about how that can be accomplished. I will provide additional details as they become available. I would like Commissioner Skolnik at that meeting.

COMMISSIONER SIEGEL:

If this Commission is going to have an impact on the Governor's budget, at what point do we need to communicate recommendations to the Governor's office and the Budget Division?

JOSHUA J. HICKS (General Council, Office of the Governor):

The short answer is the sooner the better. We are starting to put the budget together right now. The budget will be finalized the end of the year.

COMMISSIONER SIEGEL:

When does the Governor's Office get the recommended budgets?

MR. HICKS:

The budget is received in September or October.

CHAIR HARDESTY:

If the Commission's report, which should be provided September 1, 2008, has detailed transitional recommendations, would that be adequate?

MR. HICKS:

Yes. We will be at these meetings. We will have a good idea of where you are coming from and will work with the agencies. The affected departments will be thinking about the Commission recommendations as they put budgets together.

CHAIRMAN HARDESTY:

Commissioner Kohn and Commissioner Mallory, do you accept being hauled into this process?

COMMISSIONER KOHN:

It is an honor, Justice.

COMMISSIONER MALLORY:

I did not think we had a choice.

CHAIR HARDESTY:

You always have a choice.

COMMISSIONER HERNDON:

I just want to go back and ask Commissioner Skolnik about something Mr. Austin brought up earlier with reference to some of our past statutory provisions for things regarding the DOC. Why was the 120 day evaluation and shock and treatment program eliminated?

COMMISSIONER SKOLNIK:

I know, anecdotally, it was not particularly successful. I do not have any idea why they actually did away with the program. I think AB 510 has a section authorizing judges to send individuals to specific facilities, which is problematic for us. Because of enemy situations and other issues, if you direct an inmate to a specific institution, we have no alternative but to put him in that institution, we conceivably can put the inmate in a life threatening situation.

CHAIR HARDESTY:

It is the perception of at least one judge that the shock and treatment program is worthwhile. Do you have a different view?

COMMISSIONER SKOLNIK:

I think the boot camp alternative is a better alternative than sticking someone into a major institution and exposing them, perhaps, to behavior they would not otherwise be exposed to, and do not need to be exposed to.

COMMISSIONER HERNDON:

We cannot send certain inmates to the boot camp program, depending on the nature of the offense or even the nature of the conviction. The 120 day evaluation, from my perspective back when I was in the DA's office, was helpful not just in terms of prison versus probation but also length of incarceration. Many times people come up for sentencing who are out of custody and have spent maybe two or three days in custody. From the perspective of the judge, you are curious as to a number of things. That is where I thought there was some value to the 120 day evaluation program.

COMMISSIONER KOHN:

I attended one of the meetings when the Legislature did away with the 120 day evaluation program four legislatures ago. I thought the reason was financial. I do not have any anecdotal stories. I think many judges would be more comfortable with the 90 day diagnostic California used. I think we need to make two changes. The idea that anyone who has any kind of violence cannot go to boot camp is disqualifying exactly the people who should be at boot camp. I am not saying we should send murderers to boot camp, but the fact that someone has some violence should not be disqualifying. We need to look at both reinstituting the program the judge is talking about and I think we should consider altering who should go to boot camp and experiment for two years and see how we do.

COMMISSIONER SKOLNIK:

One of the issues is the fact that we are already placing a tremendous amount of strain on our existing intake. We do not have a separate intake facility in the State of Nevada. We intake inmates in the south through the High Desert State Prison and in the north at the Northern Nevada Correctional Center. Physically, there is limited space; we have never been staffed appropriately for an intake facility. We use case workers who are charged with more than handling intake. It is hard on our medical staff who are also maintaining the required medical care for the entire facility while they are doing intake at those

particular institutions. Intake costs approximately \$8,000.00 per inmate for a 21 day process. If we are going to talk about expanding that process for an evaluative period for more offenders, the State actually needs to look at how to do it and not just stick it into an existing institution without any planning or forethought.

CHAIR HARDESTY:

Assuming the facility and staffing issues could be resolved, do you think it is something that should be part of the Commission's recommendation? You have reservations about exposing some people to prison life, on the other hand, it seems some inmates or defendants I sentence respond to the exposure and the recidivism rate lowers.

COMMISSIONER SKOLNIK:

I am not opposed to an evaluation being part of the recommendations although if it comes out of the Commission there needs to be a period of significant evaluation as to its impact. We went through an era of scared straight in this country. The data has all shown it was probably not worth any of the investment. In fact, scared straight did not have a positive impact on anybody. If we are going to look at some kind of an evaluative process there needs to be somebody from the outside to review the process and determine, after a period of time, if it makes sense.

CHAIR HARDESTY:

Are the Commissioners interested in learning more about the Maricopa County experience? There is a real advantage to looking into this. It allows us to identify the problem areas and take the offensive through housing, education and other resources which could be plugged into the communities to fight back against public safety and crime threats.

COMMISSIONER SIEGEL:

I supported this at the Legislature when Dr. Austin initially proposed it and was unhappy we were not able to identify any funds to get started. It would be good to do some continued planning of a program as a first stage. Dr. Austin mentioned there are only one or two examples of successful work in this area; one being Phoenix. I think we might be more successful next session in having the Legislature do some planning and refinement and have something meaningful for the 2011 session.

CHAIR HARDESTY:

Are you suggesting identifying two or three zip codes to run a pilot program?

COMMISSIONER SIEGEL:

I am talking about the planning. The Legislature needs to be persuaded there are benefits to investment in particular areas, such as jobs and housing. I would be open to both a pilot study and further study. I do not anticipate the Legislature will make a large scale investment in this kind of redirection right away.

COMMISSIONER KOHN:

We can easily identify the two zip codes in Clark County. It is a matter of having the will to provide resources and make sure that the social conditions in those zip codes change. I support going to Maricopa.

COMMISSIONER FARLEY:

I agree we should go to Maricopa County.

COMMISSIONER PARKS:

I would support taking a look at Maricopa County model and would be eager to participate.

CHAIR HARDESTY:

I will arrange a site visit and invite those who would like to go. We will take a quick look at it and develop an exchange of ideas and information. Any member of the Commission can go. Is it a violation of the open meeting law if we all go to Maricopa County?

JANET TRAUT (Senior Deputy Attorney General):

The Commission may need to provide time for public comment. I will look at the open meeting ramifications. There should not be a problem in inviting people. The open meeting law is to provide access, not necessarily the means to participate.

CHAIR HARDESTY:

It is a site visit. We are not going to have a meeting or have any discussion. If we must provide public comment, we will. This meeting will recess for one hour and reconvene at 1:00 p.m.

The meeting will reconvene; we have a quorum.

Mr. Woods has informed me the amount of the Parolee Loan Fund was not \$10,000.00, it was \$4,500 and was established in NRS 213.145.

COMMISSIONER PARKS:

I received an e-mail from Rick Combs, Fiscal Division, Legislative Counsel Bureau. He provided some background information on the Parolee Loan Fund and said the balance forward from fiscal year (FY) 2007 to FY 2008 was \$1,745. No loans have been issued this fiscal year. During FY 2007, six loans at \$300 each were issued. Is \$300 an adequate amount for a parolee in such a situation?

CHAIR HARDESTY:

It seems to be not only an underfunded program but also underutilized. The Commission will now hear public comment until 1:30 p.m. Please keep your comments limited. I did request a presentation by My Journey Home, Inc., representatives who have prepared a power point presentation ([Exhibit E](#)).

ELAINE VOIGT (Executive Director, My Journey Home, Inc):

The Commission has received a copy of "My Journey Home Inc. A Non-Profit Organization," (**Exhibit E**). An assessment of tools needed versus tools available has been formulated by My Journey Home (MJH). We have been volunteering for the last seven years. On February 1, 2008, I spoke with Chief Gonska who referred my questions to Sergeant David Helgerman who is part of the prerelease program. Sergeant Helgerman's only suggestion was the use of the Parolee Loan Fund. MJH met with prerelease about a month ago to let them know what programs we have available. The tools needed include an identification card; social security card; driver's license; job; housing, both transitional and recovery; employment training; mental health evaluation; general educational development (GED) and/or high school diploma; support group services; job preparation; general assistance; welfare; and bus passes. Not many people coming out of prison can afford the down payment of \$450.00 for transitional housing. MJH has been successful through intervention so some people do not pay the deposit. MJH provides housing referrals, work force development, job placement, mental health evaluations, bus passes, and support services.

We now have a computer lab with eight units used for job searches. We have a volunteer in the computer lab to help with resume writing as well as online job searches. Many temporary agencies are asking for online applications. Our clients become nervous sitting in a place like JobConnect or JOIN where there are a lot of other people because they do not have computer skills. They can sit in our lab and work at their own pace. In the last two weeks since we opened the lab, 26 people have used our computer lab. Of those 26 people, 20 have been employed. A volunteer who has been teaching at the Western Nevada Community College is going to start GED classes for us within the next month or so.

Justice Hardesty asked how the State could provide support for organizations such as MJH and RAIN. MJH has experienced a flood of parolees and all indicators say it is going to get worse. The grant I received from the DOC asked me to see 60 people over the next 18 months. I have seen 82 people in the last six weeks. Many are paroled to Washoe County from Clark County where their crimes were committed. These people are unfamiliar with the area. We are giving them maps of the Reno-Sparks area. For the 82 clients I have seen, MJH has provided one-on-one assessments, assistance with job searches, resume writing, referral for mental health assessments, housing and general case management. The volunteers and I provide services in the north. I worked 228 hours during the month of January. I am dealing with a population unfamiliar with the changes which have taken place in the last two or three years - not just computers but educational changes. Some of these people have literacy problems; some cannot read even though they have a high school education. We are lucky to have a volunteer, a licensed clinical social worker, to provide mental health assessments. She has just been hired by the Ridge House. MJH refers all mental health assessments to her. She has been bombarded over the last month. She is getting calls from Melissa Harris with the mental health facilities wanting to know why we are referring so many people to the mental health hospital. JobConnect does not know how to deal with released inmates. They refer them to us.

JOIN is referring them to us. Luckily, the Second District Court referred somebody to our office for community service. I had that person in the computer lab for a whole week which really helped.

It would be great if the State could provide some support.

Friends and Family of Prison Inmates (FAFPI) is a support group for the friends and family of an inmate. It helps in the relocation process when a prisoner is released. The Transitional Reintegration Program (TRIP) is for men and women. We get together first as an entire group, 72 people met last week, then separate into two groups: one for men and one for women. MJH has trained facilitators for the TRIP groups and the Children of Prison Inmates (COPI) program. Forum is a detention prevention program for juveniles. The Carson City Juvenile Detention Center just made us part of their curriculum. We have been effective in using ex-felons and families, with friends and family in prison, who tell the kids how prison has affected their lives. I always do testimony on having a son in prison; other parents have done the same. We have a huge effect on kids. The ex-felons do not glorify the old days of criminal behavior; they do a reality check – now at 40 years old, I am seeing the light of day and I have to start my life all over again; I have Hepatitis C, multiple sclerosis and look at my teeth. The ex-felons show the juveniles the ramifications of drug use. They have a big impact on the kids. The Forum has been very successful.

We are starting to realize our dream of the one stop shop. We are near the Ridge House, which provides drug and alcohol counseling and transitional housing. We are providing wrap around services for the Ridge House. They were gracious enough to award us two offices as of January 3.

I get many requests to help with parole planning. I am doing home prepared classes, the healthy rapid recovery program and send out examples through the mail. I would like to either hold a class or actually go into the prison for parole planning.

I have a list of halfway houses for northern and southern Nevada, including how many beds they have for male and female, and the price. MJH collaborates with every one of the houses.

I have 72 people in the TRIP; 31 are paroled; 10 of them have expired, the others are in the program voluntarily. Some of the members were released from other states.

My figures, from the last meetings, indicate \$25,000 is spent each year to house a Nevada inmate. My calculations indicate if the 72 MJH people do not go back to prison, the State will have saved \$1.8 million. That says a lot for outside the prison transitional programs. The transitional process needs to start in the inside and have it overlap to the outside. Many of these people coming out of prison have been kicked to the curb by their families. They have no one outside the prison. They have no one to come up with that \$450. They do not have support in making changes. They have no one to pat them on the

back and say job well done. MJH supports and guides them in everything they do. MJH has had TRIP for the past four years. Dr. Austin mentioned in his study there was a decrease in some of the people going back into prison. That reduction has something to do with the support system we provide for the people in northern Nevada. UNR looked at my files and said we are offering exactly what everybody is looking for. We are offering the support system and jobs. The client is coming to us because they want to make a change and that is why our recidivism rates are so impressive.

NELTON VOIGT (My Journey Home, Inc.):

The guys inside have heard from some of their friends who have left the prison, gotten into our program, are succeeding in jobs and advancing in their positions. Several people have made it to manager positions. An inmate sees they can actually start to have a life on the outside and have a position in the community. The service work we do with the Forum appeals to the juveniles. Some of the released inmates want to make amends to their victims. That opportunity may not be available so they do service work in the community to make amends on a different level. Paying back the community represents a lifestyle change. I invite any one of you, or a representative from this Commission, to come to our meetings at 510 E. Greenbrae in Sparks; at 7 p.m. on Tuesday and in Carson City on Thursday at 7 p.m. at the Methodist Church on Musser Street. We do not give incentives. We tell them you either want to make it out here or not. If you do not know how to do it, we have the tools for you. If you do not know how to talk to people, we will teach you communication techniques. If you do not know how to write a resume, we have resume writing tools. The federal work force development program helps quite a bit. These guys come in with a hang dog face, cannot get a job, they are an ex-felon and have parolee written on their forehead. I tell them it is a state of mind we really need to work on. When we get them jobs there is a transformation in that person and his attitude about life.

RICK BRO (Transition Coordinator, My Journey Home, Inc.):

Getting these guys a job is crucial. I come from a pastoral background. You must give an individual faith and a family. MJH provides both. I teach them how to interview. MJH needs grants. Ms. Voigt has not been paid for the 45 days she has been in her position. We are with the Urban League in southern Nevada, but no moneys have come forth to pay her. She quit a state job to work for MJH. We need to ensure that any grants received will pay her. One of my main concerns for some of our people coming out of prison is the economy. Typically, on a Tuesday night I will interview five to six people to see what we can do to find a job. We must clean them up; teach some job skills and teach interview skills. It may not be the job they want to start with, but this is a stepping stone. After we communicate, nine out of ten are willing to try. I spend at least one day each week driving people to interviews and making sure they go to their jobs. I want to make sure they are showing up. I will take two or three at a time. We must have employment for these guys. We have the resources. We canvass daily going through newspapers and online. I was in Las Vegas a week ago last Saturday with a faith-based group doing the same thing MJH does for reentry. There were over a hundred attendees.

MS. VOIGT:

We do have volunteers ready to go down south. I did not wait for someone to give me an office; I got one. I did not wait for someone to teach me what to do; I learned what to do. I work in the trenches everyday and that is why I have the experience I have. I do what I am doing because I have a passion for it. We finally have a website. This Wednesday our t-shirts, canvass bags and prison blues go on sale. Microsoft has offered to come in and update our computer lab. Wal-Mart and Target are banging on my door wanting to know when we will have grant applications. Jen Jackson from Channel 2 has followed one of our parolees during the last six or seven months. Once a week they interview her and follow her progress, everything she is doing. The documentary will air on Channel 2 in May and shows the difficulties of reentry. CBS is looking at it because they feel it is a worthwhile project. I am trying to get the word out and would be more than happy to provide all the information we have.

CHAIR HARDESTY:

Would you please provide the list of halfway houses, including their rates? Thank you for your input. We will have further questions and explore the State support of your activities. The demand on your organization is rather worrisome. It underscores the lack of transition support services for those coming out of prison. We run a high risk of having people recidivate.

Justice Michael A. Cherry of the Supreme Court will provide an overview of the Supreme Court's recent order regarding representation of indigent defendants. As many of you know, Justice Cherry practiced law for a considerable part of his career in the public defender's office, special public defender's office and as a general criminal defense lawyer. He was a district court judge and is now my colleague on the Supreme Court. He was appointed by Justice Maupin to chair the Indigent Defense Commission.

JUSTICE MICHAEL A. CHERRY (Supreme Court and Chair of the Indigent Defense Commission):

After this Commission was created in April, 2007, then Chief Justice Maupin felt that we needed to take a real careful look at indigent defense in Nevada. I served with Bill Maupin as a public defender in the early 70's so both of us had a background in indigent defense. I have been a student of the criminal justice system in Nevada for the 38 years I have been here, including: seven years with the Clark County Public Defender's Office; 20 years in private practice doing a lot of criminal law; serving on the federal panel as a court appointed attorney in the federal court and, before taking the bench in 1999, I served as the first special public defender in Clark County handling nothing but homicide cases. I was lucky in chairing the Indigent Defense Commission (IDC) because I was put in touch with a man named David Carroll; not the David Carroll who was my law clerk, but the David Carroll who is a member of the staff of the National Legal Aid and Defender Association and was a great consultant to the Commission. He gave us fantastic information and is still doing so.

The IDC began with a survey statewide of indigent defense services which took place during June and July of 2007. We had numerous meetings of the Commission and subcommittee May 2007 through October 2007. The IDC voted and was unanimous on certain things. The IDC voted to promote the independence of the court appointed public defense system and to establish performance standards for those who represent indigents in Nevada. We voted to have case load standards; this was not a unanimous decision of the IDC; there were some minority reports talking strictly about the financial ramifications and suggested that there be case-weighted studies before we institute case load standards. We wanted the independence. We did not want the judiciary participating in what the experts were appointed to do or get into how much an attorney charges, but rather the public defense system should have independence from the judges who were involved in the appointment process.

The IDC established performance standards, favored by the majority, which were attached to the order along with a minority view on case load standards. Phil Kohn, Clark County Public Defender and a member of this committee, could tell you his attorneys are overwhelmed by the number of cases. What they have to do and have to perform is unconscionable. I give the young men and women in his office a lot of credit. The IDC involved the Special Public Defender's Office in Clark County, the Alternate Public Defender in Washoe and the Public Defender in Washoe. The IDC had some great people, including federal folks and lay people. The IDC wanted to ensure consistency of indigent defense in rural counties, which is my biggest heartache because this is like two different planets. We can get a handle on indigent defense in the metropolitan areas, Washoe and Clark Counties. The rural areas lack attorneys and sometimes do not have experts. It is difficult to develop a system applicable to Washoe, Clark and the rural areas.

After public hearing, in January 2008, the Supreme Court passed Administrative Docket (ADKT) Number 411 ([Exhibit F](#)). We agreed to adopt a federal standard for determining indigency. It is a standard the appointing authorities can use to determine if a person should receive free counsel. We ruled there should be court appointed defense systems independent of the judiciary and each judicial district and the municipal courts, which represent misdemeanants in Nevada, should develop a plan to have this independence by May 1, 2008. I asked Ms. Franny A. Forsman, the Federal Public Defender, and her assistant, Mr. John C. Lambrose, and summarized my request in a letter, to create a committee to study and make a suggestion as to some statewide plans we can use. There will be no judicial involvement. People in the trenches with indigent defense will try to develop a plan applicable to the Supreme Court order.

The IDC is tasked to create a model plan containing alternatives and options for use by individual districts and courts in devising their plans. The IDC intends to complete its work and a draft of the model plan by March 15, 2008. We met recently and have two more meetings scheduled: February 20 and March 13. The IDC consists of judges from a variety of courts, both urban and rural, lawyers and other stake holders. In their initial meeting, they reviewed the American Bar Association standards created by the National Legal Aid and Defenders Association and completed a preliminary review of plans for

provision of appointed counsel in some jurisdictions. Input from the judiciary throughout the State has been requested. The Legislative Branch is saying there will be a financial problem. Clark County has appointed Drew Christiansen, a former public defender, to be the coordinator of court appointed counsel, both the attorneys who contract with a jurisdiction or will be appointed by an authority to represent an indigent defense. The appointment does not affect the public defenders offices.

The performance standards were a unanimous choice of all the IDC members. I have asked Chris Booze, from the State Bar of Nevada, and John Lambrose to come up with some continuing legal education. I know Commissioner Kohn's office is already planning some continuing legal education so both lawyers and judges can understand the performance standards. The standards are for appointed counsel when they represent indigent defendants. We want to make sure that everyone understands them.

I was disappointed with the court's case load standards decision. In Justice Maupin's dissent, we felt case weighted studies will waste money. A case weighted study for Clark County will cost \$200,000. It will simply prove that in most areas the court appointed attorneys are overwhelmed with cases and we need some assistance. People say this is not a good constituency to represent. People charged with crimes are protected by the Sixth Amendment of the United States Constitution and the Nevada Constitution. There is constitutional basis for what we are trying to accomplish. Weighted case studies will be done in Clark County, Washoe County and by the Nevada State Public Defender. We want this information by July 15, 2008. We have determined that anyone appointed to indigent defense, and gets to the point they are unavailable to accept further appointment based on either ethical standards or these performance standards, should not be forced to take additional cases. The court has unanimously agreed to this position. We have created a subcommittee to the IDC to study these plans.

I have received a number of e-mails from various judges and administrators saying there are some problems because the judges want to be involved in appointments. There is no standard saying the judiciary should be involved in appointment. We want the best qualified attorneys. We are asking the Nevada Legislature to take a look at reinstating the State Public Defender because we need to bolster that budget so they can be more involved. With more involvement there would be some real pros traveling the circuits to make sure that the indigent defense meets the constitutional standard.

As a district judge I was limited to 15 sentencings and five probation revocations each day. I do not think we will be able to do that anymore. The lawyers will have to spend some time with P&P which will cost more money. It is very important, in complying with these performance standards, to keep sentencing in line with the charges so litigation can be brought forward. It is fair and still appreciates victim witness participation in the sentencing process. We will have to slow down a little bit, especially in Clark. I moved to Clark County 38 years ago. There were six district court judges and a couple of justices of the peace. Everything was done in Las Vegas Township. In 2009, we will have 43 district court judges. The population increased at least from 270,000 in 1970 to about

2,000,000 in 2008. The 40,000,000 guests we have do cause some problems with the criminal justice system, either as victims or as defendants. We are the fastest growing state; I have seen Las Vegas change from a sleepy little town to this major metropolis. We must come forward, open our eyes and unfortunately open the pocket books to make sure indigent defense lives up to the Sixth Amendment of the United States Constitution.

COMMISSIONER CORTEZ MASTO:

Let me commend you and the IDC. This is an incredible job you have undertaken and serves the indigent community well. Are the standards of performance for the defense team?

JUSTICE CHERRY:

Yes.

COMMISSIONER CORTEZ MASTO:

How does this affect a defendant who may have an ineffective assistance of counsel claim? Does this somehow add to the burden for defending? My office defends many of those claims.

JUSTICE CHERRY:

I am sure there will be some claims the defense attorney did not live up to the performance standards. We still are guided by *Strickland vs. Washington* which says not only does a person who represents an indigent have to be ineffective, but there also has to be prejudice. Due to the second prong, and believe me I have seen loads of these cases, both as a lawyer and a judge, this is not an easy burden on a defendant who tries to set aside any type of conviction in the post-conviction realm. I do not think this is going to be a problem for your office or for the DA's offices. I think it will be the same as usual. It just gives performance standards to which the attorneys representing indigents should try to comply.

CHAIR HARDESTY:

During the course of the Supreme Court hearings, that question was posed. The Federal Public Defender's Office provided a brief sighting a number of cases in which case performance standards in other jurisdictions had not been used as a basis for determining satisfaction with the first prong of *Strickland*. That is a matter of public record. You may want a copy.

COMMISSIONER CORTEZ MASTO:

As we move forward and my office handles more of these claims, and should this standard of performance have an impact, is your committee open to hearing from my office?

JUSTICE CHERRY:

Always.

I have been asked to continue with the IDC. There is no way we can do what we need to do during Justice Maupin's term. I am sure when Justice Hardesty becomes Chief in 2009 we will continue with the IDC.

COMMISSIONER DIGESTI:

Will these performance standards be expanded to include retained counsel?

JUSTICE CHERRY:

Not really. The retained counsel will probably get a copy of the standards. Hopefully, the entire criminal bar will adopt these performance standards. I would like to see the Nevada Attorneys for Criminal Justice take a look at these performance standards and at least go on record with continuing legal education and adopting these performance standards as an association. The standards are for appointed counsel, including the public defenders offices.

COMMISSIONER DIGESTI:

Will there be a Supreme Court rule or some type of additional standard that would bind and hold appointed counsel to the same standard of performance as counsel for indigent defendants.

JUSTICE CHERRY:

I will bring it to the attention of the Supreme Court on an administrative docket.

COMMISSIONER GONSKA:

One of the components here is to have the attorneys be more active during the PSI stages, specifically to make challenges to material facts and the presentence report, which could lead to lengthy sentencing for the defendants. Have you had a reaction from the district court judges about this?

JUSTICE CHERRY:

Not really. They realize they have enormous calendars and their goal is to try to move these as fast as possible. All we are doing is going back to the old way we used to do things, where there was some communication between defense attorneys and the P&P. We had a great relationship. As a federal probation officer, you know, a member of the federal panel would spend a lot of time with you. Many times we would be there when the client was interviewed. I think resolutions were better then; dispositions in cases were better and people understood why a person would get probation or not get probation.

COMMISSIONER KOHN:

Last week the Standing Committee on Legal Aid and Indigent Defense of the American Bar Association met in Los Angeles. Darren Richards, the Assistant Public Defender of Clark County, attended on my behalf. A whole section of a notebook they handed out was devoted to ADKT 411. A lot of the discussion was about the first order of the court in ADKT 411, which is to order the public defenders of Clark County and Washoe County to advise the County Commissioners when they are unavailable. I think a large

part of the discussion was beating me up as to why I have not done that. This is something which is not going to go away. I have talked to law professors and public defenders throughout the country and suspect this discussion is just beginning. I have a copy of the letter to the court by the Federal Defenders Office dated December 19th and I will give General Masto a copy.

CHAIR HARDESTY:

Is it the letter discussing the performance standards in relationship to *Strickland*?

COMMISSIONER KOHN:

Yes, it is.

COMMISSIONER SIEGEL:

The Commission needs to know the larger implications of what has been done. Does this mean that prosecutors have to be more selective in terms of filing charges against indigents? Does this mean the system will slow down to any significant degree? Are there larger systemic implications?

JUSTICE CHERRY:

The largest implication is financial. It will cost a little more. There will need to be more public defenders in Clark and Washoe Counties. We cannot have attorneys representing 400 people when every standard is about 150. Our people have even agreed to go up to 200 cases, which is magnanimous on their part. The major ramification is financial. Assemblyman Parks will see requests for increasing the budget of the State Public Defender to provide representation in the rural areas. I am not sure if that is going to be the final outcome of how we handle the rural areas indigent defense. We are not going to tell prosecutors how to handle the prosecution. They are elected officials who have their own obligations, duties and ethics. We are trying to ensure the performance standards, case load standards and the Sixth Amendment is valued when a person is charged with a crime in Nevada. This is a Constitutional issue. The ACLU is looking over our shoulders saying if you do not do something, we are going to file suit. I would like to prevent any type of litigation. I have been involved in litigation my whole career and this is something that we do not need to litigate. We need good minds to come together to develop solutions that are beneficial to this State. This is a wonderful, wonderful place to live. We just want to make it a better place. A criminal justice system must be one that is fair to all sides.

MICHELLE RAVELL:

I applaud the Commission for taking on the gargantuan task of making changes impacting the future of the criminal justice system. In an effort to identify and correct cases where a conviction has been obtained erroneously or the charges were inflated, I wonder if it would be prudent for this Commission to appoint someone to review past cases which may not have been adequately represented. This could possibly be another avenue to explore in the ongoing effort to find fiscally sound solutions to the growing prison population. With the rise in the prison population over the past 10 years and the

corresponding crisis in the public defenders system, there could be a significant correlation between these two events. There may be cases where the defendant was not adequately represented by a public defender system which, for many years has had case loads two and three times the national average, as was noted by the National Legal Aid & Defender Association (NLADA) in their 2003 report. The report indicates the crisis did not begin in 2003 and has been ongoing for some time. Although there have been many improvements in the public defender system, the same problems still exist today due to many factors including the More Cops Initiative as indicated by the 2000 Supreme Court, or maybe it was the 2007 Supreme Court report from Justice Cherry. The success of this Commission will ensure future cases moving through the judicial system have a better chance for the legal representation required by the Constitution. We should not lose sight of the fact that many people currently housed in our correctional facilities, who were defended by our public defenders offices, either should not be there at all or are serving more time than the crime they committed calls for. If these past inequities are not addressed, we will be denying those inmates the same rights as future litigants, which amount to unequal justice under the law. This Commission has a multitude of tasks vital for the future welfare of our State. Many of these tasks will take large amounts of time and resources, but I feel strongly we must not neglect the opportunity to correct prior issues created by the circumstances that led us here today.

JULI T. STAR-ALEXANDER (Founder and Board Member, Redress, Inc.)

Redress, Inc. (RI) advocates for victims of legal abuse. RI understands, in legal reform and advocacy work, the need for healing crime victims. The things I want to bring to the attention of this Commission are: the issue of restorative justice and *Goldsworthy vs Hannifin* with respect to whether or not the information released regarding the Parole Board is accurate.

RI submitted written information on the topic of restorative justice which we think will address a great area in this State. We tend to be a little bit black and white here: there are victims and there are perpetrators and never the twain shall meet. We will be submitting a book to Judge Hardesty for his review. I have two extra copies. I gave one copy to Assemblyman Parks today. Restorative justice is a program which creates opportunities for victims, offenders and community members to discuss crimes and the aftermath of crimes. It allows the offenders to repair the harm that they have caused. It seeks to restore victims and offenders to whole, contributing members of society. It provides opportunities for parties with a stake in a specific crime to participate in its resolution. We cannot have the extreme black and white of victims and victimizers in the state and expect people to heal. Victims need to be able to heal; they need to be able to move on with their lives. We see a lot of victims who attend Parole Board Hearings that obviously have had no ability to emotionally heal. We think that the convicted parties need to see the results of their behaviors in order to increase their social understanding, to heal and to avoid recidivism. We would like the Commission to consider putting this topic on the agenda for a future meeting.

RI has both attorneys and legal researchers in our network. I am not a lawyer. RI would like to know if this Committee would take a look at *Goldsworthy vs Hannifin*. This case says if a Parole Board misses a legally required hearing for an individual it can lose jurisdiction over that individual. This has massive application in the State of Nevada. Because I am a reverend, one of my contacts at Southern Desert Correctional System is inmate pastor Reverend Kenny Bridgewater. Reverend Bridgewater has been behind bars for about 22 years; five parties were convicted of the same crime; a number of them have been released. He had a Parole Board meeting RI attended last year. He was given the six month dump. He was supposed to have a scheduled Parole Board hearing in February. There is no Parole Board hearing scheduled at this time. Reverend Kenny Bridgewater, having gotten a six month dump, may become a part of *Goldsworthy vs Hannifin*.

In an article from one of the two papers up north, Geoff Dornan stated there are 1,600 inmates eligible for parole as a result of SB 510. That is, people who are in the C, D and E felony categories and have a one to five year sentence. This means we have a large number of people ready to go home when in fact the number is extremely low. There are a lot of people eligible for freedom and yet we have no Parole Board hearings scheduled. A note from one of our activists in the Las Vegas area says no names will come up for eligibility until April. RI would like somebody to check into this situation

With regard to the work that Ms. Voigt is doing, RI has a group in Las Vegas, Friends and Families of Incarcerated Persons, which meets the first and third Fridays at Christ Episcopal Church. They maintain resource lists, including halfway houses. They do some pretty good work with former inmates and families.

I think this Commission is the best thing that we have going in the State. I am amazed at the number and breadth of participants. I am grateful for the work that you are doing.

DONALD HINTON (Spartacus Project, Las Vegas):

I listened to some of the comments made today on prisons and one that struck me was what happens on intake when an inmate comes into a prison system. Why would those men be continually locked up awaiting some sort of investigation? Based upon comments I have heard and the mail I get from prisoners, there is a good deal of our money being spent on locking inmates away from one another which results in showers every third day, no yard time, no recreational time and no fraternizing. Strictly lock up. If you do not like that kind of treatment, it is debilitating if you do not have a television.

Unit three at High Desert State Prison has not had heat for a long time, yet the community area, where there is nobody, is heated. Seems like a waste of money while the guys in cells are freezing. Maybe Commissioner Skolnik could do something about that.

During the January 3, 2008, meeting, Judge Hardesty mentioned an ombudsman program. An ombudsman program is needed. There is no cushion between the prison and families or even the attorneys. Without someone in the middle, everything is one sided. You write a letter, it is ignored. You write to ask about medical treatment being given and

never get an answer. I have a lot of letters from inmates complaining about the lack of medical treatment. We have all heard this before. The medical treatment in the prisons is disgusting. There are one or two other items I am not going to bring up because I would rather submit them in writing and become part of the record.

COMMISSIONER FARLEY:

I understand your concerns about the prisoners. What about the people who are not here because the prisoners put them somewhere, like in the ground? I know people who get less medical treatment than prisoners. I know people who work two jobs and cannot afford medical insurance. As far as an ombudsman being between the inmates and the, lets call them the gate keepers, there is quite a bit of cushion. Think of the victims when you start talking about all of the things that the prisoners are not getting.

MR. HINTON:

After the inmates are accepted into our program, they become our responsibility. There has been a lot of press on Guantanamo Bay and Russia, but we are not addressing problems with the people who are currently our responsibility. I take seriously the fact there are people in the ground because of some of the inmates. I hope you would not classify everyone in the prison system as a murderer. If a man in prison has an ear infection or a heart problem, he cannot step outside to see his own physician. A festering infection or a tooth problem is debilitating and humiliating and should not go unchecked. The living are getting out and becoming your gardener, your pool man, maybe your bartender. You are going to be living beside them one day; do not get them to start coming up with al-Qaida ideas. The prison system in Nevada can do that.

TONJA BROWN (advocate for the innocent and inmates on appeal):

At the last meeting of the Steering Committee, there was a discussion on inconsistencies in sentencing. I was asked to present some names which I have provided you ([Exhibit G](#)). I have added Rocky Boyce. Some Native Americans were involved in the beating death of an Hispanic individual. Terry Boyce mother of Rocky Boyce, was vocal in the community with regard to the injustice being done. A Grand Jury (GJ) was impaneled. The GJ harshly criticized the public officials, who did not like what the GJ had to say, so the record was sealed. Later, it would be known there was possibly some information in the GJ report which could have been favorable to Mr. Boyce's defense. There might have been an inconsistency in the sentencing. If you take a look at all ten of the individuals, nine of them either received nothing, probation or up to five years; Mr. Boyce received 20-50 years. He was involved, but if I recall it was not his blow that actually killed the victim, it was one of the nine.

The cases dealing with embezzling several hundred thousand dollars received probation, yet the sheriff's blog indicates somebody committing a burglary goes to prison. Darren Sweetland's family has been in the community for a number of years and he received a sentence of 8-16 years for raping a little girl. Jason Excell received approximately 18 years for child pornography. A woman received a life prison sentence because she bounced checks in the Las Vegas casinos because she had to feed her family.

I would like to discuss the indigent defense standards six and seven. Nowhere in here is there a mention of an attorney who admits to being ineffective. For example, I've been talking about my innocent brother, what none of you know is on June 20, 1993, I sat across from Nolan Klein's former public defender, Shelly O'Neill, at the Public Service Commission. She was closer to me than the end of this table. I knew she had committed perjury; I filed a police report. She lied at Mr. Klein's evidentiary hearing/post conviction hearing. It sat at the DA's office until the statute of limitations ran out. During that time I got an affidavit from her investigator who said he recalled the case. The Reno Police Department believes she committed perjury. They said it was the DA's office. Bernice Martin Mathews commended me for bringing it up. These people believe Shelly O'Neill committed perjury.

CHAIR HARDESTY:

Ms. Brown, we do not want to revisit the details.

MS. BROWN:

When a public defender admits they are ineffective and there is no justice, this was 15 years ago, and there is no mention of what can be done. We wait for the court system, but if the court system does not know that she has admitted lying and the decision is based on her lies, what do we do? Do we keep an innocent person in prison? Do we try to correct the problem? How many others are there who are afraid to be found ineffective and will keep this lie alive? If a public defender admits they screwed up and it would have made a difference I would like that circumstance addressed in the order. When she realized she was looking at the wrong photo lineup, you should have seen her expression. She ended the conversation with: well, well, if I had 20/20 hindsight maybe things would have been different. I in turn turned this over to the DA's office and it sat there until the statute of limitations ran out. They cannot do anything unless she is charged. The DA would not do it because they were friends. The new DA said we would like to charge her, but the statute of limitations had run out.

COMMISSIONER DIGESTI:

I am familiar with the Rocky Boyce case. I was one of the court-appointed counsel to represent one of the nine young men involved in that case. The disparity in sentencing throughout the State is an issue which is going to be looked at. In light of Ms. Brown's comments I feel compelled to respond. I was involved in the homicide case from the inception. I do not recall any GJ proceedings in the case. The matter went to preliminary hearing not to the GJ. If there is a GJ transcript available I am not sure what it might be. With respect to the sentences that were handed out by the court, it is important to understand that this case originally was severed into three different groups by the district court judge. I was counsel for a defendant in group one which included Mr. Boyce. On the eve of trial, for reasons which I will not go into here, I made a motion to sever my client from the trial of Mr. Boyce. That motion was granted. Mr. Boyce was the only defendant in this case who actually went to trial and was subsequently convicted of second degree murder, if I recall correctly. He received the sentence as Ms. Brown

outlined. The other defendants did not proceed to trial. After Mr. Boyce was convicted there were discussions and negotiations between respected defense counsel and the DA which resulted in other defendants pleading guilty to something less than second degree murder. Accordingly, each defendant was sentenced by the judge to the offense to which he was plead and convicted. I do not necessarily see this as a great disparity in sentencing with respect to these nine or ten young men. I have other thoughts about the case and will keep them to myself, but I think, for the record, what needs to be made clear and understood is the courts did nothing to cause any disparity in the sentencing. The young men were sentenced for what they were convicted.

MS. BROWN:

The GJ did not have anything to do with the Native Americans. The GJ had to do with an investigation into our public officials. The information which could have been favorable to the defense was in Sheriff Bannister's testimony. Sheriff Bannister testified the Native Americans would come to the sheriff's office trying to file complaints. He would send them away. He said something to the effect he was hoping that the Native Americans and the Hispanic gang members would just go and kill each other. The GJ looked at some of those Native American complaints. Someone leaked a copy of the GJ report to the Nevada Appeal. It was sealed by Judge Gibbons, Las Vegas, because he said it harshly criticized public officials. Judge Gibbons came back up here and unsealed the record.

KATHY TESTA SMITH (Victim):

I have provided the Commission with a copy of my statement ([Exhibit H](#)). On July 3, 1999, my 20 year old daughter, Jennette Wren Testa, never came home from work. She worked the night shift at Kinko's on California Street, downtown Reno, a temporary job since five days earlier she had signed a six year enlistment in the Navy. I contacted the Washoe County Sheriff's Office the night of the third when I had not heard anything from her and she was due back at work. She would never not call me and not show up for work because Jenny was the most dependable, responsible person anybody could ever know. I spent the entire night and the next day, calling every hospital room and every friend and praying and wondering and somehow deep inside knowing something was drastically wrong. The night of the fourth I stood outside on my deck, which overlooked all of Reno, and recalled hearing and seeing fire trucks responding to a smoky fire in the South Meadows area of the business park. The Sheriff's Deputy, I will never forget his name or what he looks like, Officer Dougherty, called me about midnight and asked me if there was any reason Jenny would have been in the South Meadows area of town and I said no, I couldn't think of any reason. The next morning, I hadn't slept all night, I picked up the newspaper and there was a small add-on piece which said a body burning next to a dumpster in the South Meadows business area had been found. I began calling, first the fire department, then the newspaper. Everyone was closed because this was the Monday after the fourth which had been on Sunday and all I wanted to know was if this was a small body of a female? Jenny was 5'4", 109 pounds. I knew something in my soul, somewhere in my soul that this was Jenny, where else would she be. Then I called the Reno Police Department and I explained that I had a missing persons report filed on my daughter and asked if it was the body of a small female. They told me to call the Washoe

County Sheriff's Office because that was where the missing persons report was filed. I called the Washoe County Detective's missing persons number that Officer Dougherty had left with me and all I got was an answering machine. Just as I hung up from leaving that message, Detective Jim Duncan of the Reno Police Department called me and asked if I was the person who had called about my daughter. I said yes and asked if the body they found was a small female. He said he could never tell a mother that a body could be that of her daughter unless there was absolute proof. I again asked him, I pressed, was this, just tell me, was this the body of a small female? I could feel right through the phone the true pain he felt having to tell me I was right. This was the body of a small female. He then asked where my husband was and I told him that he was driving to the County Sheriff's Office and he asked could I call him, did I have a way to call him and I said yes, he has a cell phone. He said could you ask him to come home and they were going to start an autopsy and he would call and let me know for sure if it was Jenny. I think I knew, emotionally I knew, there was no question and I think he knew it too. Jenny had been raped and strangled to death with a rope Saturday, July 3; her body was taken to a storage unit and left there over night. Her murderer returned July 4 and took it to an area close to town, placed it in a sleeping bag next to a construction dumpster, poured two cans of lighter fluid and three cans of kerosene over it and set it on fire. I was never able to see Jenny again. I could never touch her hand, touch her cheek, kiss her, nothing. I cannot tell you how haunting and painful this is. I cannot begin to tell you how much I love my daughter. She was my best friend and to tell you I miss her is beyond an understatement. I still recall the week before she died. She worked at Kinko's and at Franktown Corners Car Wash and then she would get home around noon and sleep. Sometimes in the afternoon I would sneak into her room and sit on the edge of the bed and just look at her and give her a kiss or brush her long, beautiful, wavy hair away from her face. She had a fuzzy little bear and she would snuggle with it and I would always make sure it was tucked in with her. So what about Jenny's killer? And what's his story? How does justice play a role in our lives and in Jenny's short life. Four months prior to Jenny's murder, Jonathon Lloyd was arrested for manufacturing methamphetamine together with his brother who had three outstanding arrest warrants in California. The charge for the brothers was plea bargained down to possession and they were given diversion programs. Jonathon and his brother did not spend time in jail. It is my understanding the first time he even saw a probation officer was the week he murdered my Jenny. I do not understand why he was not given jail time. When I asked the DA handling the murder case he dropped his head and said very hesitantly well, he got a really sweet deal. That sweet deal cost my daughter her life. I realize plea bargains are a part of the justice system and I am opposed to them in many instances. There are certain crimes, when a plea bargain changes the nature and category of the crime, I believe it is wrong. As the offender moves along in the system and eventually returns to society should he or she commit another crime, there is no true record of their offenses. No one has a clear picture of the potential for destruction. I have no confidence as a victim that any sentence cannot be changed or overturned. I am told there are TIS laws. There seems to be the most absurd reasons for the Supreme Court reversals and changes in State laws to adjust the way sentences are carried out. Why would I think that Jonathon Lloyd would spend the rest of his life in prison? I do know my daughter's sentence is forever. Our

family's sentence is forever. The absence of my daughter is felt every moment of my life. The crime has changed the circle of Jenny's friends' and families' lives forever. There is a piece of my heart that is gone forever. Part of my life is gone forever. Jenny's sister lives in constant fear and terror. Our sentence will never receive good time credits. We live in a prison that was created by someone else's cruelty and greed. I often wonder how a jurist feels - who sits on a trial for weeks on end deliberating over the guilt or innocence of a murderer, who has suffered through the heartache of the death of an innocent being and the anguish of a family who has lost a loved one - when the whole thing is thrown out - the long hours, the extreme burden of their decision, just tossed away. I really do not believe that is what our forefathers believed in when they created our laws. I honestly believe they wanted justice for the innocent not manipulation for the guilty and certainly not with the least cost for the State. This is a horrific tragedy, with broken lives, destroyed lives and the destruction continues. Jenny's sister has had tremendous problems and while I do not have her permission to share this I am going to for the sake of this hearing. She is a heroin addict. She is in a recovery program. I am involved in Al-Anon and have learned much that has helped me in many ways. One way I would have least expected is dealing with the anger over Jenny's death. In Al-Anon, it is important to do service. As a part of this service I have been going to Bristlecone Center in Reno once a month. Bristlecone is a rehab center housing a number of alcoholics and drug addicts who have been court ordered to attend this center. We hold a quasi-meeting where we share our story, how we came to attend Al-Anon and how drugs or alcohol have affected our lives. I talk about both my daughters. I share how Jenny's life was taken and how methamphetamine has destroyed both our family and Jonathon Lloyd's life and family. I then share about Katie and her struggles and how much the twelve step program has been able to bring healing to me and how thankful I am to be able to share my family's story. I also thank them for being there regardless of how they came to be there. I cannot begin to tell you the positive impact because of the ability to take my story to these broken people. The reason I share this part of my life is to ask that you consider more funding for the enlargement of the rehab programs. I have so often thought, what if Jonathon Lloyd had been court ordered to attend that program. Would Jenny be alive today? Drugs and alcohol are a growing menace plaguing our society and Nevada, by nature of the 24 hour a day lifestyle, perpetuates a culture where drugs and alcohol flourish. To prepare for today I looked at some statistics on a website called Disaster Center which had rankings by state from 2005. Nevada was ranked as the 36th largest state and yet crime statistics place us in an alarming category. Nevada is ranked 9th for violent crimes; 5th for murder and non-negligent manslaughter; 11th for forcible rape; 3rd for Robbery; for aggravated assault we are 14th; property crime we are 9th; burglary we are 7th; larceny and theft we are 30th; and for motor vehicle theft we are 2nd. It is apparent we cannot just lock everyone up. We need to provide services to aid in recovery. If they continue to break the law, so be it, they should be locked up since they clearly cannot follow the rules of an established society. If a sentence is given, the sentence should be carried out. What is the sense of laws that require certain punishments for criminal actions setting certain expectations for certain behaviors and then not following through on the set punishment as prescribed by law. You basically are saying to a criminal, you have broken a law and the criminal system says your punishment for

breaking the law is to serve so much time; however, the prison system cannot afford to keep you for that time so to save money for the state you can be released. What does that say to the criminal? Your crime really was not as bad as it was made out to be? What about the victim? What does that say to the victim? The naïve belief I walked into court with was the justice system protects the innocent. Now my greatest fear is the day Jonathon Lloyd will not have to serve his given sentence. Who will be the next victim of a senseless crime committed by someone who should have been in prison? I would just like to take a moment to leave you with the words of my daughter. I found this one page document buried in Jenny's notebook. It leaves no question about Jenny's belief regarding the philosophy of Mosaic Law: an eye for an eye. I ask you to consider who you release and ensure it is individuals who have truly paid the price for their crimes and understand the expectations society require. I have read a lot about Maricopa and Arizona. I would love for you to take a look.

TERESA WERNER (Citizen):

I also hate plea bargains. I think they work in negative ways, both ways. My brother always plea bargains his thing; he is always arrested for a violent offense; he always plea bargains to a non-violent offense even though he is violent. My husband is classified as a violent murderer, yet he was just present when one occurred. He was pressured into taking a deal because the overworked public defender's office could not represent him.

I am here today to talk about an idea from my husband about education outreach ([Exhibit I](#)). We all know scared straight did not work and the Drug Abuse Resistance Education (DARE) program has been challenged. My husband works hard to keep up on technology to find new ways to reach out and educate people. He does it through me and through his art. I try to educate kids about watching who their friends are because you never know how your friends can get you in trouble. His idea is to allow inmates to write supervised web blogs. The benefit would be to explain to youth the impact of crime on victims, family and society. Schools, college educators, parents and law enforcement could access this information anytime. I discussed this idea with some college interns who work for me and was surprised to find they use inmate letters, in some cases, as part of literature classes. Web blogs are great because they can be accessed, anytime, anywhere. They could be used in juvenile cases. It is a safe learning environment for both sides. My husband's proposal helps the general public become more aware and it closes that bridge. There needs to be a better bridge in many cases for healing as well as education. There are some inmates with a lot to offer and could help the public be more aware of how not to become the victim of a crime, to be aware and notice if something is wrong. No one knows criminal behavior like criminals. Who better to identify at risk behavior. This would allow the inmates to give something back to society, a productive way to rehabilitate and repay for the crimes. This can be done at minimal cost with potential maximum effect. This is world wide stuff, not zip code stuff. I was pleased that Dr. Austin talked about prevention and putting your money in better investments. I think this could be part of the DOC website or even the Public Safety website. If it is part of the DOC website, anybody supervised to leave a blog could have a link to their actual crime

list. I have seen some of the rap sheets; they are pretty long. Kids relate to web blogs. Blogging could be taught in classes. Randy Sheldon works a lot with UNLV stuff.

There is an Alternatives to Violence Program (AVP) taught in the Nevada State Prison. It is a powerful program. My husband says it is the best program he has seen in his almost 14 years of prison. I am working with the organizers of AVP to try to get it in more prisons. I am going to the Susanville prison for three days to attend the AVP class. I would like to see the AVP class in the prevention arena for juveniles.

My Journey Home did not talk about art shows and funding. The Nevada State Prison used to have art shows available to the public and they did charities before Mr. William Donat was the warden. The art shows donated money to local schools. It would be a great idea to have art shows and donate money equally to both victims and for rehabilitation. Some of the money from the art shows could go to MJH to help people getting out of prison. Mr. Donat has no problem with charity fund raisers as long as they benefit the prison and not outside help. This would benefit the prison if people can get out faster and get into MJH faster.

NANCY GENTIS (Families of Murder Victims):

I want to speak today about the criminal justice system and the effects on victims. There has been a lot of improvements regarding victims and how they are treated. My brother Steve was killed in 1997. Tony Trabert was convicted of his murder one and a half years later. In 2003, the case was thrown out of court and a retrial was set for 2007. I registered with the Parole Board. My information was at victims assistance. I was never notified the case was thrown out. I got the information from Blackstone. It makes you feel victimized again when you are not notified. Everyone I have talked with, the DA's office, victims assistance, the Parole Board, all were professional, efficient, compassionate and empathetic. I know there are several other people whose family members were killed and the cases were thrown out of court. I am not complaining about those or saying they were wrong. I do not know the specifics. One person was in court with somebody else helping a friend and talking to a reporter. They said her son's murderers, there were four of them, were being retried. She did not know. When I complain about something, I like to find a solution, but do not know the system. If a case is thrown out of the Supreme Court, could P&P and the Parole Board be made aware? They could look to see who is listed for the parole hearings and notify them? It would then be the individual family's responsibility to keep up with Blackstone to determine the retrial schedule. What if the DA called victims assistance and let them know? Then the system is already set up; they do the investigation to see whose information is listed and send a letter about what is happening. Then it is the individual's responsibility to keep up on the case. I found out April 2007 the trial was scheduled in May. It is hard at the last minute. The person in the system was fine, but I felt let down. Why can't victims have some kind of notification. I do not know if it needs to be mandated through a law or legislative action; or, do we just need someone to say we are going to do this from now on. It does not affect everybody. It is affecting more and more people. Even though people have complained, no one is saying ok, next time we will tell you.

COMMISSIONER FARLEY:

I have several people with the same problem. There have been appeals and no one has been notified. Does the Parole Board or the DOC know when an appeal is being filed?

MR. WOODS:

The Parole Board does know when someone is coming up for parole and does advise victims or those people who wish to be notified. P&P does not have a role in that process and I do not believe DOC does either.

COMMISSIONER FARLEY:

Can we find out if there is any way to inform victims when an appeal is filed?

CHAIR HARDESTY:

The best way to approach this is to find out what the procedures are for the DAs. My understanding is the Victims Assistance Organization attached to the DA offices notifies victims when there's been a reversal. Is that right Kristen?

KRISTEN L. ERICKSON (Nevada District Attorneys' Association/Carson City, and Washoe County District Attorney's Office):

I am not aware of the procedure.

CHAIR HARDESTY:

You can check it out then?

COMMISSIONER FARLEY:

I have checked it out. They do not have a way of contacting anyone. I talked to Christine Conte of Dick Gimmick's office.

CHAIR HARDESTY:

We will determine the practice of the various DAs in terms of notifying victims of appeals or reversals and retrials.

MS. BROWN:

The amendment to AB 510 was mine. It was on appeals. The State Board of Parole Commissioners can no longer ask if an inmate is appealing his conviction. I do not think it should be coming from the State Board of Parole Commissioners.

CHAIR HARDESTY:

That is correct, but this is a different issue. This witness is concerned about whether there is a practice, procedure, regulation or statute which provides victim notification in the event of a retrial or reversal on appeal.

MS. BROWN:

I think it should come from the DA's office because they are the ones prosecuting. They should keep the victims abreast because they may be witnesses in the future.

CHAIR HARDESTY:

We will find out what the practice is. If you will monitor our proceedings, we will try to get an answer for you.

MS. GENTIS:

There is no notification system with the Supreme Court when they do the same thing.

CHAIR HARDESTY:

I think the notification would come from the victims assistance group attached to the DA's office. If that's not occurring, we will try to find out why or what their practice is. We will let you know.

TERRY BOYCE:

This Commission is looking at sentences imposed being proportional to the crime committed. I have provided the Commission with a copy of "Sentences Imposed in Criminal Statutes Are Proportional To The Crimes Committed" ([Exhibit J](#)). My son, Rocky Boyce, Jr., committed, at best, a battery. The other defendants committed the murder; they are out, but he is not. There is in proportion in his sentence.

CHAIR HARDESTY:

There being no further requests, the public comment section of this meeting is closed. I have asked Commissioner Skolnik to work with the Commission on scheduling our April meeting in the Southern Nevada Correctional Facility, or a similar facility, for the purposes of a walk through and to conduct the Commission meeting. There are many logistical issues involved in doing that, so we will work on those and give you a report in March. Public comments in March will be limited to two minutes. The reason is I expect the March agenda of the Commission to be lengthy, with a number of preprogrammed presentations. We will have a couple of hours from the specialty courts of Nevada and a presentation from the juvenile judges. There will also be a lengthy presentation from Dr. Austin on updated information and statistics. We will also be addressing the scope of the new study commission and further recommendations from the Steering Committee. Commissioner Farley has also scheduled a presentation from the victims group.

MR. HINTON:

Will the public attend the April meeting?

CHAIR HARDESTY:

The question will be the logistics for inviting members of the public to attend. I am going to discuss this with the Attorney General. For security reasons, most likely we will videoconference attendance by the public at the Grant Sawyer Building in Las Vegas and

in Carson City while the Commission members are physically at the High Desert Facility. We will work on the logistics and make an announcement in March.

I will be in touch with Commissioner Kohn and Commissioner Mallory with respect to the sentencing matrix issues and what I have in mind. Judge Herndon will serve on that subcommittee. We will be working on a number of other matters. I want to thank the Commissioners for their work. Steering Committee, we will be conducting another meeting the first week of March and I will be in touch with each of the Steering Committee members in the next couple of days for a date for that meeting.

There being no further business to come before the Commission, this meeting is adjourned at 3:05 p.m.

RESPECTFULLY SUBMITTED:

Sandra K. Small, Secretary

APPROVED BY:

Justice James W. Hardesty, Chair

DATE: _____

EXHIBITS

Advisory Commission on the Administration of Justice

Date: February 11, 2008

Time of Meeting: 9:04 a.m.

Exhibit	Witness / Agency	Description
A		Agenda
B		Attendance Roster
C	Arthur E. Mallory, Churchill County District Attorney	Selected Nevada Revised Statutes Relating to Felonies
D	Dr. James Austin, Council of State Governments and President, JFA Institute	Justice Reinvestment Project: February Update
E	Elaine Voigt, Executive Director, My Journey Home	My Journey Home Inc. A Non-Profit Organization
F	Justice Michael A. Cherry, Supreme Court and Chair, Indigent Defense Commission	Administrative Docket Number 411
G	Tonja Brown, Advocate for the innocent and inmates on appeals	Inconsistencies in Sentencing
H	Kathy Testa Smith, Victim	Written Statement
I	Teresa Werner, Citizen	Education Outreach
J	Teri Boyce	Sentences Imposed in Criminal Statutes are proportional to the crimes committed