

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
November 06, 2009

[CONFIRMATION]

The Committee on Judiciary met at 10:00 a.m. on Friday, November 6, 2009, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a confirmation hearing. Senators present: Brad Ashford, Chairperson; Steve Lathrop, Vice Chairperson; Colby Coash; Brenda Council; Scott Lautenbaugh; Amanda McGill; and Kent Rogert. Senators absent: Mark Christensen.

SENATOR ASHFORD: Well, let's get going. Welcome, everyone, and welcome, Mike, to the joviality of the Judiciary Committee on the gubernatorial appointment confirmations for the Crime Reparations Committee and the first victim...no, the first person to...we'd like to hear from is Mike McLarney. Mike, would you like to come up and give us just a brief...if you could, just a brief outline of your background and if we have any questions, we'll... [CONFIRMATION]

MIKE McLARNEY: (Exhibit 1) I'm Mike McLarney, and I'm the president and chief executive officer of the United Way of the Midlands in Omaha. I've been with United Way for about 36 years and have been president for about 20 years. That's why I feel 64 (laugh). As you may recall the tragedy of the Von Maur shooting a couple of years ago, Von Maur contacted United Way and asked if we would help with a fund to aid the victims and their families, and, of course, we were happy to do that. But I can tell you that it was a learning experience dealing with this kind of a tragedy; inserting, if you will, my staff and my organization into the middle of this was a little more than I had bargained for. Now the good news is about \$1.3 million was raised from all over the world--virtually every state and several foreign countries. We were able to distribute the \$1.3 million plus interest earned on that money. All of that was distributed to victims and their families, and I thought it was a very good process. Individuals who lost a spouse, as an example, a wage-earner, we provided some money for housing so that with that reduced income they wouldn't lose their house. We provided scholarships for minor children that would have been a burden now for what is now a single parent; provided any and all remaining medical expenses, burial expenses. And then for the two of the survivors who were seriously wounded, the remainder of the money was set up in trust for those two to provide services over time. We think it was a very good process. John Ewing, who's the Douglas County Treasurer, chaired the committee, did a great job. We pulled together folks from the Red Cross and from the Salvation Army and a variety of other local agencies. We had Deloitte provide accounting services, and this was all pro bono, of course, and so there was no cost...no monies taken from the fund for any purpose other than victims and their families, and United Way essentially paid the costs of the process to process this money. Anyway, a couple of learnings from this: Grief turns to anger. United Way...and I'm kind of sensitive about this, I guess, was subjected to what I thought was some really unfair criticism, misinformed and, frankly, kind of cynical kinds of things, accusing us of taking 23 percent off the top as an example; got a fair amount of hate mail. We had a number of donors who cancelled their pledges

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because...to United Way because they heard this and believed it. We had some unfortunate media coverage which was, frankly, misinformed. And it was...I thought I had perhaps made the biggest mistake of my professional life by inserting United Way into this event. The take away from that is that if this were to happen again, I'd be very reluctant to recommend to my board that we step into a situation like this again, because I think the risk to the United Way's reputation and, therefore, its effectiveness in providing its mission would be at risk. So we came to Senator Ashford, a couple of my board members and I, and talked about is there a way that we could create an entity in the state of Nebraska that would be an open, transparent entity that could handle this kind of event in the future, where you have a spontaneous outpouring of public support for victims of tragedy like this. Consequently, LB598 was drafted and approved and now as you put together the oversight committee, I've been asked by the Governor to serve as a member of that committee which I'm...as a volunteer, which I'm most happy to do, assuming approval by this committee. Be happy to answer any questions.
[CONFIRMATION]

SENATOR ASHFORD: Thanks, Mike, very much. And thank you for your efforts in the Von Maur, and it was tough. And...but United Way did a good job under difficult conditions, and I appreciate you bringing this to us a couple of years ago I guess now or 18 months ago. And now you are willing to serve on this commission, which is important and we appreciate it. Any questions of Mike? Seeing none, thank you and thanks for being here in person. [CONFIRMATION]

MIKE McLARNEY: Thanks to you and thanks to the committee. [CONFIRMATION]

SENATOR ASHFORD: Thanks for everything you do for us. Okay, we have one other confirmation applicant appointment on the Crime Reparations Committee, G. Randall Hansen, who has submitted a letter, and you have those letters in your file. So with that, we'll go on to the Community Corrections Council, and Joe Kelly is here. Welcome, Joe.
[CONFIRMATION]

JOE KELLY: Mr. Chairman and members, my name is Joe Kelly, K-e-l-l-y. I'm the Chief Deputy County Attorney in Lancaster County, Nebraska. I've been on the Community Corrections Council since it was first formed, I think that's 1994, and would like to serve another term on that council. When you all are in different rooms this week talking about money, please keep this in mind, that Community Corrections Council was formed with one... [CONFIRMATION]

SENATOR ASHFORD: I think you should ask Mike about the money situation (laugh). We're out here. [CONFIRMATION]

JOE KELLY: ...(laugh) one and only one goal, and that was to avoid building another Tecumseh for as long as we can. And the work that we've seen done with nonviolent

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felony offenders, specifically drug users, and some reductions we've been able to achieve and we've allowed the system to achieve by day reporting centers and by assistance to the drug courts and by beefing up probation's ability to do intensive supervision, we're working towards that goal. So I think it's great work, and I'd like to be a part of it. [CONFIRMATION]

SENATOR ASHFORD: Thanks for your service, Joe. Any questions of Joe? Yes.
[CONFIRMATION]

SENATOR LATHROP: Yeah, I would, as long as we've got you here.
[CONFIRMATION]

JOE KELLY: Sure. [CONFIRMATION]

SENATOR LATHROP: I have an interest in this subject, and I'm wondering what your thoughts are about...are we using...or are we take...do we have a lot of people who should be going through this or you think are good candidates for this type of punishment, if we can call it that, that are ending up in prison right now? And is that a funding issue or where are we at in terms of utilizing community corrections in these alternatives to incarceration? [CONFIRMATION]

JOE KELLY: Well, if you use drug courts and start with Lancaster County,...should I get farther or? [CONFIRMATION]

SENATOR LATHROP: I don't know. The sounding is kind of weird in here today.
[CONFIRMATION]

JOE KELLY: How about this? [CONFIRMATION]

SENATOR LATHROP: You're fine. [CONFIRMATION]

SENATOR ASHFORD: That's not bad. That's a good distance, I think.
[CONFIRMATION]

JOE KELLY: Okay. If you use Lancaster County adult drug court, we are at a hundred percent full maximum capability, and I think that's like 72 people in adult drug court right now. If we had additional staff, we could expand that number. If we expanded the number, there would be in Lancaster County fewer people going to prison, I think. I mean, I can't speak for each individual case, but I think we'd have that capability. If you look at intensive supervision over statewide, you'll see that sometimes it's under utilized in some counties, but again, in Lancaster County and in Douglas I think it's maximized. That's another sign that if the judges are using every slot that's available there, if they had a few more slots I think it's pretty safe to say a few more people might be doing that

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instead of those 18-month to 3-year terms where the guy has already got 6 months in jail, and he goes out to D&E, Diagnostic and Evaluation, and he sits there for about 3 months and we've done nothing with his addiction and he's back out on the street.
[CONFIRMATION]

SENATOR LATHROP: So going back to the...I understand that if our capacity is 72 people in Lancaster County that you are fully utilizing our capacity. How many people are we sending to prison that we could put in this program if we funded it well enough?
[CONFIRMATION]

JOE KELLY: Well, I think a good indication is, in Lancaster County, you will have on any given month two, sometimes three, sometimes four people who have been screened, and they are eligible for drug court, adult drug court. But we do a lottery if we only have four slots for that month, and we don't allow people to come back the next month or the month after. And so, any given month when we're seeing two people, you're eligible but you aren't in, that's two people who are...maybe they get a prison sentence, maybe they get probation that doesn't help them as much, or maybe they...yeah, maybe they go to prison. [CONFIRMATION]

SENATOR LATHROP: There was an article in the World-Herald which is really what piqued my interest in the subject which suggested that it costs us about \$3,000 a year to have somebody in one of these programs versus spending \$33,000-\$34,000 to put them in jail for a year. Are those numbers about right? [CONFIRMATION]

JOE KELLY: The number that we use for the inmates, and Senator Council and I hear it a lot on Community Corrections, is always that 20-ish something, and that's...it is a big number, but I'm never sure if it's that high. Because really what they do is just say, here's what we spend on prisons total, and they divide it by the... [CONFIRMATION]

SENATOR LATHROP: Divide it by the prisoners. [CONFIRMATION]

JOE KELLY: Yeah, and that may or may not give you the exact, but yeah, I mean, there's a huge... [CONFIRMATION]

SENATOR LATHROP: But it's a lot less money to have somebody go through one of these programs. [CONFIRMATION]

JOE KELLY: ...huge, huge...right. It's huge. [CONFIRMATION]

SENATOR ROBERT: And how much more effective is it, do you think, in your program than the other way? [CONFIRMATION]

JOE KELLY: Well, if you...it's hard... [CONFIRMATION]

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SENATOR ROBERT: That's a really abstract question, I understand. [CONFIRMATION]

JOE KELLY: I think it's...okay, well, the short answer is I think those programs are more effective than 18 months to 3 years in the penitentiary, if we're talking about trying to get at their behavioral health problems, their mental health problems, and their drug addiction. [CONFIRMATION]

SENATOR ROBERT: Sorry, Senator Ashford, Senator Lathrop, to jump in, but it is weird (inaudible)... [CONFIRMATION]

SENATOR ASHFORD: Senator Lathrop, do you have any more questions or shall we defer to Senator Robert? (Laugh) [CONFIRMATION]

SENATOR LATHROP: I'll let my second chair do it (laughter). [CONFIRMATION]

SENATOR ROBERT: What do you believe the results are, just for my own opinion, in terms of recidivism, your program versus going to prison? [CONFIRMATION]

JOE KELLY: Well, Community Corrections Council doesn't have a program. [CONFIRMATION]

SENATOR ROBERT: No. [CONFIRMATION]

JOE KELLY: We...but if you want to look at, say, what have we seen overall at the state penitentiary for low-level...for these nonviolent drug offenders coming in, it's been very, very, very flat with a few little downward trends in the last five or six years. And that isn't impressive, because it doesn't go up to the top of the chart, but it is impressive to us, because I'm just...as you look at all the data, I'm convinced that the things that those groups are doing--probation, parole, and drug courts--are having a positive effect. [CONFIRMATION]

SENATOR ROBERT: Thanks, Joe. [CONFIRMATION]

SENATOR ASHFORD: Yes, Senator Council. [CONFIRMATION]

SENATOR COUNCIL: Just quickly, Mr. Kelly, thank you. I appreciate your willingness to seek another term on the Community Corrections Council, because I think one of the important factors to consider and to have that input as we discuss expansion of the program is the prosecutorial perspective and to have someone such as yourself, who's been involved in the Community Corrections Council since its inception, I think is valuable. So I appreciate your willingness to seek reappointment. And I think it's, generally people don't understand why we don't have more people involved in

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community corrections alternatives. I mean, you mentioned drug courts. How many districts in Nebraska have drug courts? [CONFIRMATION]

JOE KELLY: I think we have under...I know we have under 20, and I think we have under 15, and we might have around 12. [CONFIRMATION]

SENATOR COUNCIL: Right. And one of the issues that the Community Corrections Council has been recently struggling with is the lack of day reporting centers throughout the state. Is that correct? [CONFIRMATION]

JOE KELLY: That's correct. [CONFIRMATION]

SENATOR COUNCIL: And the day reporting centers are critical components of intensely supervised probation. So when there is an effort to substantially reduce the Probation Department's budget, it not only affects current day reporting center operations but our ability to expand day reporting centers into areas where, if they were present, we'd have individuals who could avoid being incarcerated. Thank you. [CONFIRMATION]

SENATOR ASHFORD: Thanks, Senator Council. Joe, thanks, and also thank you for coming to this committee with your candor on many occasions, and we appreciate your testimony. Okay, I believe that is our last actual live person (laugh) so with that, we will...we do have letters from Robert Lindemeier, Dallas Massey, and Travis Parker, and we will consider those three along with Joe and Mike and Randall Hansen. We don't have a letter from Frank Peak, so unless... (See also Exhibits 7, 9, and 11) [CONFIRMATION]

JOE KELLY: All right. [CONFIRMATION]

SENATOR COUNCIL: If I may, Mr. Chairman, I noticed that all we had was Mr. Peak's resume. [CONFIRMATION]

SENATOR ASHFORD: Right. [CONFIRMATION]

SENATOR COUNCIL: But as someone who has worked... [CONFIRMATION]

SENATOR ASHFORD: But you know him and... [CONFIRMATION]

SENATOR COUNCIL: ...with Mr. Peak for years in the community, and if you...if I... [CONFIRMATION]

SENATOR ASHFORD: Well, I mean, that's fine. I just didn't have a letter from him, but I think he was ill or something or... [CONFIRMATION]

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SENATOR COUNCIL: Yeah, so just for purposes of the committee's understanding that for Mr. Peak, he is filling a slot on the council that is reserved for a mental health provider, and as you can see from his resume, he's had extensive work in that regard. Mr. Kelly was a reappointment. Mr. Lindemeier is a reappointment. [CONFIRMATION]

SENATOR ASHFORD: Right. [CONFIRMATION]

SENATOR COUNCIL: And he...and that's the ying and the yang. Mr. Kelly is the prosecutorial side. Mr. Lindemeier is the defense side. Mr. Massey and Mr. Parker, they fill the behavioral health position. There's a behavioral health member from each of the Congressional districts. And Mr. Massey has been nominated to replace Lloyd Kimzey, who resigned, and he has the behavioral health background, as reflected on his resume, as well as Mr. Parker has the behavioral health experience reflected on his resume. [CONFIRMATION]

SENATOR ASHFORD: But you feel comfortable then, Brenda, in going forward with Frank Peaks? [CONFIRMATION]

SENATOR COUNCIL: Absolutely. [CONFIRMATION]

SENATOR ASHFORD: Okay. Do I have a...what I would propose we do is we have a motion on Mike McLarney first and...oh, we have to go into Exec Session. I'm sorry. Do we have a motion to go into Exec Session? [CONFIRMATION]

SENATOR COUNCIL: So moved. [CONFIRMATION]

Chairperson

Committee Clerk