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LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

[LR424]

The Department of Correctional Services Special Investigative Committee of the Legislature met at 9:00 a.m., Thursday, September 4, 2014, in Room 1524 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LR424. Senators present: Steve Lathrop, Chairman; Les Seiler, Vice Chairman; Kate Bolz; Ernie Chambers; Bob Krist; Heath Mello; and Paul Schumacher. Senators absent: None.

SENATOR LATHROP: (Recorder malfunction)...9:00, and so I think we'll probably get started. My name is Steve Lathrop. I chair the LR424 committee. We're here today for purposes of conducting our second or third hearing on our investigation, the legislative investigation into some of the problems that have become evident over at the Department of Corrections. Today the focus is going to be upon, but not exclusively perhaps, upon the miscalculation of good time in those instances where inmates have been sentenced to a term of years in the penitentiary that includes a mandatory minimum. I think that's pretty well publicized and people have a good idea what that's all about. And so what we're going to do today is take testimony, I expect, from eight witnesses. So we do have a full day and this may go awhile depending upon how long the questioning takes. Before we begin, I'll have everybody on the panel introduce themselves and we'll begin with Senator Bolz. [LR424]

SENATOR BOLZ: Good morning. Senator Kate Bolz. I represent District 29 in south-central Lincoln. [LR424]

SENATOR SCHUMACHER: Paul Schumacher, I represent District 22 which is Platte, parts of Colfax, and Stanton Counties. [LR424]

SENATOR CHAMBERS: Ernie Chambers, District 11 in Omaha. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SENATOR LATHROP: Molly is our legal counsel. Go ahead, Les. [LR424]

SENATOR SEILER: Les Seiler, District 33, it's all of Adams and all of Hall except for Grand Island. [LR424]

SENATOR MELLO: Heath Mello, District 5, south Omaha and parts of midtown. [LR424]

SENATOR KRIST: Always on time. Senator Bob Krist, District 10 in Omaha and Bennington and unincorporated parts of Douglas County. [LR424]

DAN JENKINS: I'm Dan Jenkins. I am the committee clerk. [LR424]

SENATOR LATHROP: Okay. We will begin the testimony today with Linda Willard, if you would, Linda, come forward, and we'll...before you sit down we'll have you take an oath. Do you swear that the testimony you're about to give this committee will be the truth, the whole truth, and nothing but the truth? [LR424]

LINDA WILLARD: I do. [LR424]

SENATOR LATHROP: Thank you. Have a seat. And for those of you who are going to testify and, Ms. Willard, I'll tell you, that from time to time we may refer to the document that's in front of you, and you'll notice that there are page numbers up in the corner. So if we reference you to the document or page numbers, that's what we're talking about. [LR424]

LINDA WILLARD: Okay. [LR424]

SENATOR LATHROP: Would you start by giving us your name. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

LINDA WILLARD: Linda Willard. [LR424]

SENATOR LATHROP: And where do you live? [LR424]

LINDA WILLARD: Here in Lincoln. [LR424]

SENATOR LATHROP: Okay, and are you employed? [LR424]

LINDA WILLARD: Not currently; I'm retired. [LR424]

SENATOR LATHROP: Okay, why don't you tell us where you last worked or where you were last employed. [LR424]

LINDA WILLARD: I was last employed by the state of Nebraska as an assistant attorney general, a position I held for approximately 32 years. [LR424]

SENATOR LATHROP: Okay, and I'm going to ask you to speak up just a little bit because we want to make sure we get a good record. [LR424]

LINDA WILLARD: Okay. [LR424]

SENATOR LATHROP: And I have trouble hearing people that speak with a soft voice. Could you give us your background, your education and your work experience background? [LR424]

LINDA WILLARD: I have a bachelor's and a master's from the University of Nebraska. I was employed by the state of Nebraska in a couple of positions with the Probation Administration and then the Department of Welfare at that time, then went to University of Nebraska Law School, graduated from there in 1982, and started with the Attorney General's Office and held various positions within the Attorney General's Office. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SENATOR LATHROP: Okay, so from '82, when you got out of law school, until you left your employment with the state of Nebraska you were an assistant attorney general. [LR424]

LINDA WILLARD: Yes, I was. [LR424]

SENATOR LATHROP: Did you have any particular duties there? [LR424]

LINDA WILLARD: Representing the state of Nebraska and employees of the state of Nebraska when they were sued. [LR424]

SENATOR LATHROP: At some point were you assigned to represent the Department of Corrections in litigation that involved the department? [LR424]

LINDA WILLARD: Early in my career when everything...everybody did everything, I represented the department and departmental employees in a number of cases. Later, when Laurie Smith Camp, now Judge Camp, became deputy in the office, I took over her position, I believe it was in 1996, as head of the civil rights or inmate litigation section. [LR424]

SENATOR LATHROP: Okay. So did you...what year did you leave the AG's Office? [LR424]

LINDA WILLARD: I left in May of this year. [LR424]

SENATOR LATHROP: So from '96 to May of this year would you have been involved in representing the Department of Corrections on inmate litigation? [LR424]

LINDA WILLARD: Yes. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SENATOR LATHROP: And would that include inmates who sue not just over the circumstances of their confinement but the circumstances or the calculation of their sentence? [LR424]

LINDA WILLARD: Yes. [LR424]

SENATOR LATHROP: And good time? [LR424]

LINDA WILLARD: Yes. [LR424]

SENATOR LATHROP: You know, just as a matter of background, and I'm...the...I'm going to ask you some questions just so that people who are watching or people who are on the panel and are not familiar with how good time works, and maybe you can walk us through an example that doesn't involve mandatory minimums, okay, just as sort of a starting point if we can. And let's take a hypothetical person who's been sentenced to 20 to 40 years for whatever crime not involving a mandatory minimum. How do we...how do you calculate or how does the good time statute work so that you calculate a parole eligibility date and a tentative release date? Are you familiar with that? [LR424]

LINDA WILLARD: I'm somewhat familiar with that. Usually when these cases came in I would turn to the personnel at the Department of Correctional Services to tell me how it was done in this specific inmate's case because there were, I think, five or six different good time laws that were in effect depending upon when the person was sentenced or their sentence became final. [LR424]

SENATOR LATHROP: Well, then let me just ask it this way and maybe in a more leading fashion: If a person is given 20 to 40 years from the district court and sent down to the penitentiary, the good time statute that we're concerned with basically says that

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

you take half of the lower number and that's when they're eligible for parole, that many years, so ten in this case, and for their temporary release date, or their jam out date, it would be half of the higher number. [LR424]

LINDA WILLARD: Yes. [LR424]

SENATOR LATHROP: Right? [LR424]

LINDA WILLARD: For the most part. [LR424]

SENATOR LATHROP: Yeah. [LR424]

LINDA WILLARD: It may vary somewhat because there...under LB371 there was...good time was partly given as what we'd call mandatory good time and partly given as earned good time. And so actually in those cases they would serve...their jam date would be a little bit more than... [LR424]

SENATOR LATHROP: And I am going to try to keep it simple today... [LR424]

LINDA WILLARD: Okay. [LR424]

SENATOR LATHROP: ...because really what we're talking about is having your sentence...your parole eligibility date or your jam out date cut in half and whether that applies to mandatory minimums or how it's applied to mandatory minimums, okay? [LR424]

LINDA WILLARD: Okay. [LR424]

SENATOR LATHROP: Were you familiar with now-Judge Smith Camp's AG Opinion on how the good time statute applied to sentences with a mandatory minimum? [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

LINDA WILLARD: Yes, I was. [LR424]

SENATOR LATHROP: Okay, and that would have...that Opinion from the Attorney General's Office would have been done before even the Kenney decision or before there was any authority from the Supreme Court. [LR424]

LINDA WILLARD: I believe it was. [LR424]

SENATOR LATHROP: Okay, it was done in 1996 and it's page 1 of the documents. [LR424]

LINDA WILLARD: Yes. [LR424]

SENATOR LATHROP: I'm sure you're familiar with it. But the deputy attorney general sets out what she believed to be the proper course for determining parole eligibility and a tentative release date. [LR424]

LINDA WILLARD: Yes. [LR424]

SENATOR LATHROP: Okay. Did you have any participation in that Opinion? [LR424]

LINDA WILLARD: No. [LR424]

SENATOR LATHROP: Okay, that would have been sort of part of the...part of what you walked into when you assumed the role that she left. [LR424]

LINDA WILLARD: Yes. [LR424]

SENATOR LATHROP: All right. In that Opinion, do you know how...do you recall how

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

she set out the calculation of the parole eligibility date? [LR424]

LINDA WILLARD: I would have to review it again. Do you want me to? [LR424]

SENATOR LATHROP: Okay, no. If you...basically, she set out the parole eligibility date calculation for those who have a mandatory minimum, and that's been the way it's been done. It was correctly stated in her AG Opinion. [LR424]

LINDA WILLARD: Yes. [LR424]

SENATOR LATHROP: Okay, and the rub, if you will, came in calculating the discharge date. [LR424]

LINDA WILLARD: Apparently, yes. [LR424]

SENATOR LATHROP: Okay. Before...you were the attorney representing the state in the Kenney decision, is that right? [LR424]

LINDA WILLARD: I don't recall. [LR424]

SENATOR LATHROP: Really? [LR424]

LINDA WILLARD: I had hundreds of cases that I either handled personally or supervised. [LR424]

SENATOR LATHROP: Johnson v. Kenney, in 2002, that's on page 5, do you see that? [LR424]

LINDA WILLARD: Yes. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SENATOR LATHROP: And you were the attorney representing the state in that case. Do you see that on page 8? Those copies are on both sides of the page. [LR424]

LINDA WILLARD: Oh. Yes. [LR424]

SENATOR LATHROP: So you argued the position of the state in front of the Supreme Court and they rendered the Kenney decision in 2008. [LR424]

LINDA WILLARD: Yes. [LR424]

SENATOR LATHROP: Do you remember doing that? Do you remember that decision? [LR424]

LINDA WILLARD: Not directly, no. [LR424]

SENATOR LATHROP: Do you know what you did with the decision after you got it from the Supreme Court? [LR424]

LINDA WILLARD: Every decision that we received from the Supreme Court or from state district court or, in a few cases, county court was immediately sent to the Department of Correctional Services, to the institution in which the individual was housed, as well as to the legal department. [LR424]

SENATOR LATHROP: Okay, so do you remember doing that in the case of Mr. Johnson? [LR424]

LINDA WILLARD: Yes, it would have been done. [LR424]

SENATOR LATHROP: Okay. Who did you send it to over at legal? [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

LINDA WILLARD: It would have been sent to George Green. [LR424]

SENATOR LATHROP: Have you seen any documentation or reviewed any documentation where you've seen the transmittal letter or a transmittal e-mail to George Green? [LR424]

LINDA WILLARD: It would have been in our files someplace because there was a cover letter that would generally accompany it and I would see where my secretary had sent it to both the facility and the department. [LR424]

SENATOR LATHROP: I appreciate that, Ms. Willard. Do you...have you seen that document, that transmittal letter? You know it exists? [LR424]

LINDA WILLARD: I do not recall seeing it. It was standard practice; we did it on everything. [LR424]

SENATOR LATHROP: Okay. And once you transmitted that Opinion, and now we're talking about Kenney, the Kenney decision in 2002 to the Department of Corrections, do you follow up on it? [LR424]

LINDA WILLARD: No. [LR424]

SENATOR LATHROP: Is that part of the standard practice? Or you just send it over to Corrections and your job is done? [LR424]

LINDA WILLARD: We send it to Corrections, and if they have questions about it they can contact us. [LR424]

SENATOR LATHROP: And because you were involved in litigation involving the penitentiary and its inmates, were you over there visiting with or did you have meetings

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

regularly with legal counsel from the Department of Corrections? [LR424]

LINDA WILLARD: Yes, I did. [LR424]

SENATOR LATHROP: How often were you meeting with folks over at the Department of Corrections? [LR424]

LINDA WILLARD: Actual in-person meetings were rare. There were often telephone calls or e-mail. [LR424]

SENATOR LATHROP: Okay, and tell me why they would call you or e-mail you. If they have their own legal counsel, why are the legal counsel from the Department of Corrections communicating with you over in the AG's Office? [LR424]

LINDA WILLARD: Sometimes it was about a...well, generally, it was about a specific case that we may be working on. It may have been because I asked a question of them as to how did you do this or do you know who is in charge of this area if I needed to get ahold of someone. I contacted the legal department when I needed to set up appointments with staff in the central office. [LR424]

SENATOR LATHROP: Okay. Do you recall ever having a conversation with anybody over at the Department of Corrections, anybody at the Department of Corrections, about the Kenney decision after you transmitted it? [LR424]

LINDA WILLARD: No. [LR424]

SENATOR LATHROP: Are you familiar with that Opinion, or did you read it in preparation for your testimony today? [LR424]

LINDA WILLARD: No, I did not read it in preparation for today. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SENATOR LATHROP: Okay. Do you remember it? [LR424]

LINDA WILLARD: I was looking to see who the judge was on this. I remember that I appealed a case, a decision from one of the Lancaster County judges where...and I believe it was this Johnson case where...yes, Judge Merritt's case, yes. [LR424]

SENATOR LATHROP: Okay. After that case was decided, did, in your judgment, Kenney clarify how you calculate the parole eligibility date for a prisoner who has a mandatory minimum sentence? [LR424]

LINDA WILLARD: Yes. [LR424]

SENATOR LATHROP: And what was the clarification, or what was the conclusion? [LR424]

LINDA WILLARD: That they had to serve their mandatory minimum first before the rest of the calculations would kick in. [LR424]

SENATOR LATHROP: Okay, so we would cut everything greater than the mandatory minimum in half and that would be added to the mandatory minimum to arrive at a parole eligibility date. [LR424]

LINDA WILLARD: Yes. [LR424]

SENATOR LATHROP: Okay. Did you feel like the Kenney decision or was it your interpretation of the Kenney decision that it was instructive on determining the temporary release date? [LR424]

LINDA WILLARD: Well, I assumed it had... [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SENATOR LATHROP: Or not the temporary, pardon me, the tentative release date or the jam out date. [LR424]

LINDA WILLARD: I assumed it applied to all mandatory minimum cases. [LR424]

SENATOR LATHROP: In other words, that the same formula applied in determining the mandatory release date? [LR424]

LINDA WILLARD: Yes. [LR424]

SENATOR LATHROP: Did you ever have a conversation with or communicate with people in Corrections and share that Opinion with them? [LR424]

LINDA WILLARD: The Kenney decision? [LR424]

SENATOR LATHROP: The Kenney decision, yes. [LR424]

LINDA WILLARD: It was sent to them. I... [LR424]

SENATOR LATHROP: Okay, but you didn't say, this is what it means and if you're doing it this way you need to change? [LR424]

LINDA WILLARD: My...I had contacted the Department of Correctional Services when this case came in as to how they did the calculation. They're the ones who said they have to serve the mandatory minimum first before we start calculating when the parole eligibility date is and so, therefore, once we had that confirmed by the Supreme Court, it was an affirmation of what they were doing at that time and what I assumed they continued to do. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SENATOR LATHROP: Did you talk to them about determining the mandatory release date? [LR424]

LINDA WILLARD: No. [LR424]

SENATOR LATHROP: So that wasn't part of the Kenney discussion you had with Corrections either before or after the decision? [LR424]

LINDA WILLARD: I don't recall having a discussion with them about Kenney. We sent the decision to them. My discussion with Corrections on the Kenney case would have been prior to doing my argument in front of the district judge. [LR424]

SENATOR LATHROP: Okay. Just to give some perspective on how the...what your relationship was with the lawyers over at the Department of Corrections, you probably had a number of cases that dealt with determining the proper sentence for inmates. [LR424]

LINDA WILLARD: We had some cases, not a lot. [LR424]

SENATOR LATHROP: Okay. And when you were done with those cases and you got a decision from the Court of Appeals or the Supreme Court, you send it over to George Green or somebody at the legal department at Corrections. [LR424]

LINDA WILLARD: Yes. [LR424]

SENATOR LATHROP: Okay. And did you ever follow up on those? [LR424]

LINDA WILLARD: We did not follow up on them. If they had questions, they could call us. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SENATOR LATHROP: Okay. [LR424]

LINDA WILLARD: But they were attorneys. They can read a decision as well as anyone else, I thought. [LR424]

SENATOR LATHROP: That was the operating or working assumption? [LR424]

LINDA WILLARD: Yes. [LR424]

SENATOR LATHROP: Did you always send a copy to George Green? [LR424]

LINDA WILLARD: It always went to George Green as chief counsel, and that was decisions that came from the inmate litigation section. [LR424]

SENATOR LATHROP: Before...you're familiar, obviously, with the Castillas decision. [LR424]

LINDA WILLARD: Yes. [LR424]

SENATOR LATHROP: Okay, and you were not the lawyer involved in representing the state in that, but you did transmit it to the Department of Corrections. [LR424]

LINDA WILLARD: Right, at the request of James Smith. [LR424]

SENATOR LATHROP: Okay. Between Kenney and Castillas, so between 2004 and 2013, did you have any discussion with anybody over at the Department of Corrections concerning how they were calculating the mandatory release date for inmates who had a mandatory minimum sentence? [LR424]

LINDA WILLARD: No. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SENATOR LATHROP: Then comes the Castillas case. [LR424]

LINDA WILLARD: Yes. [LR424]

SENATOR LATHROP: I know you were asked by Jim Smith, your...I guess he'd be one of the bosses over in the AG's Office, or a coworker at least? [LR424]

LINDA WILLARD: He was...I can't recall if he was at that time or not. [LR424]

SENATOR LATHROP: Okay. He asked you to transmit it or send it over to Corrections. [LR424]

LINDA WILLARD: Yes. [LR424]

SENATOR LATHROP: Did you read it before you sent it? [LR424]

LINDA WILLARD: Yes, I did. [LR424]

SENATOR LATHROP: And so you had...you were familiar with the holding... [LR424]

LINDA WILLARD: Yes. [LR424]

SENATOR LATHROP: ...and what it required of Corrections in determining the interplay between a mandatory minimum sentence and the good time statute? [LR424]

LINDA WILLARD: Yes, and my initial e-mail to Corrections said, it's my understanding this is how you're doing it. And that, based on the other cases where we dealt with mandatory minimum, I thought that was how they were doing it. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SENATOR LATHROP: Okay. In fact, and I'm going to start with this, maybe, with this idea that as you read the Castillas Opinion, and I'm going to read just a couple of sentences from it because it doesn't just deal with parole eligibility, it is instructive on the mandatory discharge date, too, is it not? [LR424]

LINDA WILLARD: Yes. [LR424]

SENATOR LATHROP: And it says, and this is on page 134 if you want to follow it at the bottom: As noted in State v. Kinser, the parole eligibility date is determined by subtracting the mandatory minimum sentence from the court's minimum sentence, halving the difference, and adding that difference to the mandatory minimum. Similarly, the mandatory discharge date is computed by subtracting the mandatory minimum sentence from the maximum sentence, halving the difference, and adding that difference to the mandatory minimum. That was a pretty clear directive on how to deal with not only the parole eligibility date but with the mandatory discharge date. Would you agree with that? [LR424]

LINDA WILLARD: Yes. [LR424]

SENATOR LATHROP: Okay. So you transmit it over to the Department of Corrections. You told me a little bit ago that you always sent a copy to George Green. [LR424]

LINDA WILLARD: Of every case that came out of the inmate litigation section. [LR424]

SENATOR LATHROP: And I have to tell you that I have e-mails that we've subpoenaed and what I got is an e-mail from you to Jeannene Douglass. [LR424]

LINDA WILLARD: Yes. [LR424]

SENATOR LATHROP: But I don't have an e-mail or a copy of an e-mail from you to

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

George Green. So I'm... [LR424]

LINDA WILLARD: I sent... [LR424]

SENATOR LATHROP: Pardon me for a just a second. I'm going to ask you specifically, do you remember sending a copy of that decision to George Green? [LR424]

LINDA WILLARD: No, I did not send a copy of that to George Green. I know that... [LR424]

SENATOR LATHROP: Was there a reason you deviated from what would have been your practice? [LR424]

LINDA WILLARD: Because, as I noted in my note to Ms. Douglass, I sent it saying, it's my understanding you were already doing it this way. I learned when she sent back that, no, they weren't, and then I was out of the office for a hearing and then I saw that she had sent to...the decision to George, and at that point I knew they had it. [LR424]

SENATOR LATHROP: Okay. So while you normally--I just want to be clear about this--while you normally would send a decision like this dealing with an inmate's sentence to George Green who was the chief legal guy over at Corrections, you didn't in this case because you thought they were already calculating the parole eligibility date and the mandatory discharge date consistent with Castillas. [LR424]

LINDA WILLARD: And I sent it to the person that I knew was doing those calculations. [LR424]

SENATOR LATHROP: And that would be Jeannene Douglass. [LR424]

LINDA WILLARD: Yes, she and Mr. Poppert, but she did...she'd been doing it much

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

longer than he had, so. [LR424]

SENATOR LATHROP: Okay, I want to ask you some questions about some...that exchange, and it's on that stack of papers you have in front of you if you want to review that while I'm talking or asking the questions. It's on page 142, 141, and 140. [LR424]

LINDA WILLARD: Okay, I'm getting things mixed up here. [LR424]

SENATOR LATHROP: Try not to if you can help it. [LR424]

LINDA WILLARD: I'm trying not to. Yes. [LR424]

SENATOR LATHROP: Okay. So the first communication looks like an e-mail from you to Jeannene Douglass and Kyle Poppert at 9:41 on February 8, 2013. That's on page 142. [LR424]

LINDA WILLARD: Yes. [LR424]

SENATOR LATHROP: Do you see that? [LR424]

LINDA WILLARD: Yes. [LR424]

SENATOR LATHROP: And would you agree that's the first time you communicated the decision to somebody over at Corrections? [LR424]

LINDA WILLARD: Yes. [LR424]

SENATOR LATHROP: And this all assumes that George Green isn't reading Advance Sheets, right? [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

LINDA WILLARD: Yes, well,... [LR424]

SENATOR LATHROP: Right. Most of us are that practice law. [LR424]

LINDA WILLARD: Right, but there are a lot of things that happen, a lot of cases that come out that don't concern Corrections, so. [LR424]

SENATOR LATHROP: Right. In any case, you transmit it and you say, here is the decision from the Supreme Court. You'll see at the bottom of page 188 in the Opinion they go through the sentence calculation. You say, I think you guys are doing it this way but some people in the office aren't sure that you are, so I'm sending it to you to make sure the calculation is in accordance with the Supreme Court decision. [LR424]

LINDA WILLARD: That's correct. [LR424]

SENATOR LATHROP: And that's the only person you transmitted it to? [LR424]

LINDA WILLARD: At that time, yes. [LR424]

SENATOR LATHROP: Okay. Now that's at 9:41 in the morning and at 11:48 she e-mails back, and that's on page 141, bottom of page 141. [LR424]

LINDA WILLARD: Yes, at... [LR424]

SENATOR LATHROP: Do you see that? [LR424]

LINDA WILLARD: Yes. [LR424]

SENATOR LATHROP: And she says: The statements in this regard, regarding the calculation of parole eligibility, are correct. The manner presented regarding the

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

discharge date is not. [LR424]

LINDA WILLARD: That's correct. [LR424]

SENATOR LATHROP: So do any flags go up at that point? [LR424]

LINDA WILLARD: Yes. [LR424]

SENATOR LATHROP: The records clerk II is now telling you the Supreme Court is wrong. [LR424]

LINDA WILLARD: That's correct. [LR424]

SENATOR LATHROP: Okay, that is a concern. So what do you do next? [LR424]

LINDA WILLARD: I think there was a telephone call. I'm not sure about that. But she was saying that the...this is the right way to do it, the way she explained in this, and then I sent back to her the e-mail about are you going to do the right thing or the correct thing. [LR424]

SENATOR LATHROP: You had a phone call with her. [LR424]

LINDA WILLARD: I'm not sure if it was a phone call or it was just reading what she had said here. [LR424]

SENATOR LATHROP: Okay. And where she was stuck, if you will, is on the Riethmuller memo that was done back in 1996 on how to do this, which became sort of a guide for Corrections all these years, right? It dealt with applying the good time to a mandatory discharge date, am I right? [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

LINDA WILLARD: Yes. [LR424]

SENATOR LATHROP: In other words, she thought the Supreme Court got it right on parole eligibility date... [LR424]

LINDA WILLARD: Yes. [LR424]

SENATOR LATHROP: ...because that was consistent with the way they had been doing it. What was different was the determination of the mandatory discharge date. [LR424]

LINDA WILLARD: Yes. And I know at some time, at some point, she had stated to me--I think it's in the 2:09 (e-mail) or it may have been in a phone call--that this is how the director wanted it done. [LR424]

SENATOR LATHROP: And I'll talk to you about the phone calls in between. But you don't have a specific recollection of a phone call between her 9:41...your 9:41 e-mail to her and her 11:48 e-mail to you. [LR424]

LINDA WILLARD: I would have been out of the office. I had a hearing that morning. [LR424]

SENATOR LATHROP: Okay, so the next communication is from you to her after lunch, right? [LR424]

LINDA WILLARD: Yes. [LR424]

SENATOR LATHROP: And that's at 11...pardon me, 1:19 in the same afternoon. You write back: Note that the Supreme Court said the district court was wrong in how they calculated. If you are going...if you are doing it differently than the Supreme Court said is the "correct" way to calculate, do you decide to stay with the "right" way or do it with

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Transcriber's Office
Rough Draft

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

what the Supreme Court said is the correct way? I've got to tell you, I'm a little puzzled by that e-mail from you because you're the lawyer talking to the records clerk and it sounds like you're asking her, what way do you want to do it? [LR424]

LINDA WILLARD: Well, I was asking, what do you intend to do, are you going to apply the Supreme Court decision or continue with what you're doing, which she considered to be the right way. [LR424]

SENATOR LATHROP: Okay. Did you have a phone call between 1:19 and 1:41 when she writes back? [LR424]

LINDA WILLARD: I don't recall. I do recall though a phone call because of the discussion where she was saying the director wanted it that way because at that point I knew there was an issue that was higher up and that it needed...she...if I said, you're doing it wrong, and her boss actually was saying--and she believed this--that she should do it the other way, she's caught between me and the person who hires and fires her. And we had to get something straightened out and that's where legal would be the one to get that straightened out. [LR424]

SENATOR LATHROP: Okay. When, in relationship...and we have a couple more exchanges, one at 1:41 and one at 2:00. Maybe let's talk about those, then we'll go back to this phone call, because you're not sure where in that sequence of e-mails this conversation took place. Would that be fair? [LR424]

LINDA WILLARD: That's fair. [LR424]

SENATOR LATHROP: All right, so after you say, what are you going to do, the way the Supreme Court says or the right way, presumably continuing to do it the way you've been doing it, right, and the next exchange is Jeannene Douglass writing to you at 1:41 in the afternoon and she says: Wouldn't the right thing to do be to continue the way

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

we've always done it because it, too, was tried and tested; I don't know; it would be a real mess to have to go back and recalculate everyone who has a mandatory minimum sentence; what do you think? That's her e-mail to you at 1:41 in the afternoon. [LR424]

LINDA WILLARD: Yes. [LR424]

SENATOR LATHROP: Right? There is a certain irony in calling this the tried-and-true method since the Supreme Court just said it was wrong. Wouldn't you agree with that? [LR424]

LINDA WILLARD: Yes. [LR424]

SENATOR LATHROP: Okay. And did you have...did you respond to that? [LR424]

LINDA WILLARD: I don't recall where the telephone calls were. [LR424]

SENATOR LATHROP: And I'm thinking they're before 2:00 because the next one sounds like she's had a conversation with you and you're on board with her doing it the same way. [LR424]

LINDA WILLARD: And I was not on board with her doing it the same way. [LR424]

SENATOR LATHROP: Okay. We're going to talk about that and give you a chance to share what your recollection is of the events between 1:41 and 2:09 and that's the next memo or e-mail in the sequence of events, am I right? [LR424]

LINDA WILLARD: Yes. [LR424]

SENATOR LATHROP: And that's page 140 and...on the document in front of you if you care to look at it. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

LINDA WILLARD: That's correct. [LR424]

SENATOR LATHROP: She says: I've had a conversation with Linda Willard regarding the Supreme Court decision. And this is Jeannene Douglass e-mailing George Green--who is the head of legal over in Corrections at the time--you, and Kyle Poppert, right? [LR424]

LINDA WILLARD: That's correct. [LR424]

SENATOR LATHROP: And now she's got...sending the copy of the Castillas Opinion to Green and Poppert if they haven't got it already and says, I've talked to Linda about the attached Supreme Court and while I agree with and we're currently calculating the mandatory minimum terms in the manner expressed, we do not calculate the discharge date in the manner described in this section; Linda asked me if we would continue to calculate the sentence in the right way or go with what the Supreme Court says; I said, and she supported me, that we would do what is in the inmate's best interest, and that being calculating the sentence in the way we've always done it. And then she goes through a calculation. She had...further on: She agreed with me and suggested that I share this with you, Mr. Green, for your input and expertise in the matter. She also said: The inmate obviously would not complain since he will serve time, less by our calculation. Parenthetically: It would serve the director's desires as well not to increase our population any more than we must. So the conversation happened before that e-mail. Would you agree with that? [LR424]

LINDA WILLARD: Oh, yes, definitely. [LR424]

SENATOR LATHROP: Okay, now tell us what you remember of that conversation. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

LINDA WILLARD: That she had stated how they were doing it and her belief that it would be in the best interest and that the director wanted it done that way. I... [LR424]

SENATOR LATHROP: Was this...let me just back up for a second. Was this on the phone? [LR424]

LINDA WILLARD: Yes. [LR424]

SENATOR LATHROP: This was not a face-to-face meeting? [LR424]

LINDA WILLARD: No, it was not. [LR424]

SENATOR LATHROP: Okay, and was anybody else around? It wasn't a conference call or anything like that? [LR424]

LINDA WILLARD: Oh, no. [LR424]

SENATOR LATHROP: Just the two of you? [LR424]

LINDA WILLARD: Yes. [LR424]

SENATOR LATHROP: All right. And she's obviously talking to you about whether we should continue to do the mandatory discharge date calculation as we've always done it or do it as the Supreme Court said. [LR424]

LINDA WILLARD: Yes. [LR424]

SENATOR LATHROP: That's the conversation. [LR424]

LINDA WILLARD: Yes. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SENATOR LATHROP: Now we talked a little bit ago about the decision, and the decision was very clear about how to do the calculation for the mandatory discharge. [LR424]

LINDA WILLARD: Yes. [LR424]

SENATOR LATHROP: And you now have a records clerk II asking, what do we do? [LR424]

LINDA WILLARD: Who was also saying the director wants it done this other way. [LR424]

SENATOR LATHROP: Tell me about that. [LR424]

LINDA WILLARD: That was her belief. I don't know... [LR424]

SENATOR LATHROP: What did she tell you about what the director...that would have been Bob Houston. [LR424]

LINDA WILLARD: Yes. [LR424]

SENATOR LATHROP: Okay. Tell us what she told you about what Bob Houston said or communicated to her that made her believe Houston didn't want her to change how she was calculating the discharge date. [LR424]

LINDA WILLARD: She just indicated that that was how the director wanted things done. I did agree with her that the inmates would not complain if they did it that way. But, as she indicates it, she says that I suggested that she share it with Mr. Green. I said, you can't do this without checking with legal, you need to check with legal on it, because that

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

was where they had to sort this out with...if the director was saying that, then they would be the ones to go to the director and say, no, we can't do it that way, we need to do it this way. [LR424]

SENATOR LATHROP: In the conversation that you had with her, did she relate a recent conversation with the director? [LR424]

LINDA WILLARD: No. [LR424]

SENATOR LATHROP: Did she relate a recent conversation with anybody? In other words, had she shared this dilemma, if you will, about whether to do what the Supreme Court says or to keep doing it the old way? Did she have...relate in her conversation with you that she'd talked to anybody about this since you had transmitted the Opinion earlier in the morning? [LR424]

LINDA WILLARD: No, she did not indicate that she had had a recent discussion with anyone. [LR424]

SENATOR LATHROP: Were you left with the impression that she had a recent discussion? [LR424]

LINDA WILLARD: No, not a recent one. [LR424]

SENATOR LATHROP: Then when she said, this is what the director wants, how did she relate that to you? [LR424]

LINDA WILLARD: Just... [LR424]

SENATOR LATHROP: Did it sound like, this is the way we're running things over here, or was it, I've talked to Mr. Houston about this in the past and this is the way he wants it

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

done? [LR424]

LINDA WILLARD: It was, this is how the director would want to do it or wants to do it. She didn't say that she had had a personal discussion with him. I didn't know how that came to her, if it came to her directly from the warden, if it had been filtered through other people, just that that was her belief. [LR424]

SENATOR LATHROP: Have you ever been over in Corrections in any meetings where they've talked about trying to move prisoners out of there as fast as they can,... [LR424]

LINDA WILLARD: No. [LR424]

SENATOR LATHROP: ...finding whatever means they can to get prisoners discharged to lower the population or the overcrowding problem? [LR424]

LINDA WILLARD: I knew that there was an attempt to at least get people on parole more quickly. [LR424]

SENATOR LATHROP: Okay, but you didn't...you sat in no meetings where the use of good time and interpretations of the good time statute in a way that would move prisoners out of the Department of Corrections, you were not around for any of those kinds of discussions? [LR424]

LINDA WILLARD: I don't recall any discussions about that, no. [LR424]

SENATOR LATHROP: Okay. Now back to your conversation with Jeannene Douglass. The Supreme Court is pretty clear about what they want done when it comes to the calculation of the mandatory release date, and you have a records clerk talking to you about doing it the old way because that's what the director wants and you're a lawyer in the AG's Office. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

LINDA WILLARD: And it's an executive branch of the government. [LR424]

SENATOR LATHROP: And, well, it certainly is, and why is that important to us? [LR424]

LINDA WILLARD: Well, I don't step in and try to run executive departments. [LR424]

SENATOR LATHROP: Okay. But there is no discretion in following a Supreme Court Opinion. Would you agree with that? [LR424]

LINDA WILLARD: I would agree. [LR424]

SENATOR LATHROP: Did you communicate that to Jeannene Douglass or did you just tell her to talk to George Green? [LR424]

LINDA WILLARD: I told her to talk with George Green. She's not legally trained. She is not expected to know the full import of all of that. She was between, okay, here is a Supreme Court decision and here is what I believe the person who hires and fires me wants things done, whatever her reason for believing that. At that point I felt that the legal department was the one that had to take over and straighten out the situation because they would know the full import of a Supreme Court decision. They could explain it to the director if he was saying the other. They could get that directive down to an employee within the department. It was not my place to be telling employees at lower level what they should be doing. That should come from those above them. [LR424]

SENATOR LATHROP: At the Department of Corrections? [LR424]

LINDA WILLARD: Yes. [LR424]

SENATOR LATHROP: The curious thing about the memo or the e-mail that she sends

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

to Green and Poppert is that she says that we've talked about it...I've talked about it with you, Linda Willard, and Linda agrees with me. [LR424]

LINDA WILLARD: That was a curious part of it, yes. [LR424]

SENATOR LATHROP: Well, okay, were you saying that didn't happen or that you did? [LR424]

LINDA WILLARD: I agreed with her that the inmates would not complain; I did not agree with her on how she was calculating that. And when this decision came or this e-mail came in, I called Corrections to say, I do not agree with her. [LR424]

SENATOR LATHROP: I don't want to beat you up over this, okay, but I don't want to leave it until I'm... [LR424]

LINDA WILLARD: Um-hum. [LR424]

SENATOR LATHROP: ...I've made my point or I've been very clear about it. In the e-mail she says, Linda asked me if we'd continue to calculate the sentence in the right way or go with the Supreme Court; I said, and she supported me, that we should do what's in the inmate's best interest, and that's continuing to calculate the sentence in the way we've always done it. Her representation to Green and to Poppert is that you agreed with her decision to continue to do it in the way they've always done it and essentially ignore the Supreme Court decision. Did you agree with her? [LR424]

LINDA WILLARD: No, I did not. [LR424]

SENATOR LATHROP: Okay, and that would be a misstatement. [LR424]

LINDA WILLARD: Yes. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SENATOR LATHROP: You were copied on this. You were one of the recipients of this e-mail. [LR424]

LINDA WILLARD: Yes. [LR424]

SENATOR LATHROP: Did you fire anything back to these...to the other recipients, like Kyle Poppert, George Green, or Jeannene Douglass, and said, wait a minute, I never said that, I didn't, I never said that. [LR424]

LINDA WILLARD: I called Corrections legal, I called George Green, and my recollection is he was not available at the time. I then called Sharon Lindgren, told her that an e-mail had been sent to George saying that I agreed. I did not. I wanted her to make sure that she got that message to George Green. [LR424]

SENATOR LATHROP: But now you're talking to somebody over in the legal department, and it's Sharon Lindgren. [LR424]

LINDA WILLARD: Yes. [LR424]

SENATOR LATHROP: Okay, and so your response to this and the suggestion that you agreed to, with her decision, to ignore the Supreme Court decision was to call legal and now you're talking to somebody who's one of Jeannene Douglass' superiors. [LR424]

LINDA WILLARD: Yes. [LR424]

SENATOR LATHROP: Did you tell Sharon Lindgren that she had a clerk II over at Corrections that was about to ignore a Supreme Court Opinion and somebody needed to get her back on track? [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

LINDA WILLARD: I don't remember the full extent of that discussion. Primarily, because Ms. Lindgren had not received the e-mail, I knew that she had an office next to or very close to Mr. Green, and I trusted that she would let him know immediately that there was an error in that statement. [LR424]

SENATOR LATHROP: You sent no more e-mails regarding Castillas or this calculation? [LR424]

LINDA WILLARD: No more e-mails, no. [LR424]

SENATOR LATHROP: Did you have any more...okay, no more e-mails, not to Green, not to anybody over in legal, or not to Jeannene Douglass or Kyle Poppert. [LR424]

LINDA WILLARD: That's correct. [LR424]

SENATOR LATHROP: Okay. Is that the end of your involvement or do you have any more discussions with anybody in Corrections or even the Attorney General's Office, for that matter, about the Castillas decision and what appeared to be a clerk over in Corrections who was about to ignore a Supreme Court decision? [LR424]

LINDA WILLARD: I had a telephone call from Mr. Green. I can't recall now if he initiated it or if I did, but I did have a phone call with Mr. Green. [LR424]

SENATOR LATHROP: When did that happen, Ms. Willard? [LR424]

LINDA WILLARD: It was after the phone call with Ms. Lindgren but... [LR424]

SENATOR LATHROP: Same day? [LR424]

LINDA WILLARD: I don't recall. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SENATOR LATHROP: But it was close in time to this sequence of events. [LR424]

LINDA WILLARD: It was close in time. [LR424]

SENATOR LATHROP: Did Green initiate that call or did you? [LR424]

LINDA WILLARD: I don't recall which one of us did. [LR424]

SENATOR LATHROP: Okay. Do you remember the subject matter of the call or the purpose of the call? [LR424]

LINDA WILLARD: We discussed the case and the fact that it was being done differently and that that was because Ms. Douglass had a belief that that was what the director thought was best to do. [LR424]

SENATOR LATHROP: Okay. So now you are having a phone call with the chief legal guy at the Department of Corrections, George Green, and you, who has read the Opinion and transmitted it, and you also know the clerk is about to not change things, and you're having a conversation with the chief legal guy about it on the phone. [LR424]

LINDA WILLARD: Yes. [LR424]

SENATOR LATHROP: Close in time to the sequence of events we've just talked about? [LR424]

LINDA WILLARD: Yes. [LR424]

SENATOR LATHROP: And you relate to George Green that Jeannene Douglass, a clerk II over in Corrections, is about to continue to determine or calculate the mandatory

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

release date in a way inconsistent with a decision just handed down and very clear by the Supreme Court? [LR424]

LINDA WILLARD: Yes. [LR424]

SENATOR LATHROP: Okay. Did you tell George Green, you'd better straighten things out, like, you need to change, George, you don't ignore the Supreme Court? [LR424]

LINDA WILLARD: Well, I don't think I used those words. Mr. Green and the members of the legal department were attorneys, knew the full impact of a Supreme Court decision and, in my working with them in the past, had always followed those decisions, and I had full trust in them. [LR424]

SENATOR LATHROP: Did you tell them what Jeannene Douglass was up to? I mean, did you express concern that she's about to ignore the Opinion, like, George, you need to do something, you've got somebody working for you that's about to ignore a Supreme Court decision? [LR424]

LINDA WILLARD: Well, I don't think I said those words. I said, this is what the Supreme Court has said. [LR424]

SENATOR LATHROP: When you communicated that to Mr. Green, was it evident in that conversation that they were doing it incorrectly? [LR424]

LINDA WILLARD: Yes, that they... [LR424]

SENATOR LATHROP: So you're telling them, you guys are doing it one way in the calculation of the mandatory release date, and the Supreme Court just said you need to do it in a different way. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

LINDA WILLARD: Yes. [LR424]

SENATOR LATHROP: And you had that conversation with Green. What did he say?
[LR424]

LINDA WILLARD: I had the impression that they were going to get on it. [LR424]

SENATOR LATHROP: Do something,... [LR424]

LINDA WILLARD: Yes. [LR424]

SENATOR LATHROP: ...or at least talk to Jeannene Douglass and find out what they
want to do. [LR424]

LINDA WILLARD: And I...right, well, and how they were going to implement, deal with
the Supreme Court decision that said this is how it should be done. [LR424]

SENATOR LATHROP: Had...could you tell, had Green read the Opinion by the time you
talked to him? [LR424]

LINDA WILLARD: I believe so, yes. [LR424]

SENATOR LATHROP: He was familiar with it. Did you have any more involvement or
did you follow up? [LR424]

LINDA WILLARD: No. [LR424]

SENATOR LATHROP: When she talked about how it would be a real mess to change
all this, did you talk to her about that? In other words, did she say, boy, Attorney
General Willard, this is going to be a heck of a mess over here at Corrections if we have

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

to go back and change the way we've done it? [LR424]

LINDA WILLARD: That's what happens. [LR424]

SENATOR LATHROP: Did you talk to her about it though? [LR424]

LINDA WILLARD: She mentioned it. I don't know that we talked about it. We didn't talk about it in any depth. She just said that would be oppressive, I think, might have been the way that she would have...she didn't use that word, but going back through all those would be very difficult. But they'd dealt with difficult decisions before. [LR424]

SENATOR LATHROP: There was a Sentence Review meeting on October 31, 2013. That's a document on page 177 in that stack. [LR424]

LINDA WILLARD: Let me make sure I don't get things out of... [LR424]

SENATOR LATHROP: Somebody behind you is going to appreciate that. [LR424]

LINDA WILLARD: Yes, 177? [LR424]

SENATOR LATHROP: 177. [LR424]

LINDA WILLARD: I've already gotten some of these out of sync. Okay. [LR424]

SENATOR LATHROP: This was in October. It looks like some kind of a memo or a memorialization of a meeting that took place on October 31, 2013, and it was, the subject, Sentence Review Committee meeting minutes, and there's a list of people that were present and you're not there, obviously. You don't work at Corrections and that wasn't a meeting that you were going to attend. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

LINDA WILLARD: That's correct. [LR424]

SENATOR LATHROP: Okay. Before that, they take up what do we do with Castillas in this meeting. And my question for you is, between this sequence of events we've...you've testified to this morning and this hearing or this meeting on October 31, 2013, had you had any conversations with people over in Corrections about the interpretation of Castillas, what it mandated, and the changes that needed to happen regarding the calculation of mandatory discharge dates in the wake of Castillas with anybody over at Corrections? [LR424]

LINDA WILLARD: I have no recollections of any of those. I don't believe there were any. [LR424]

SENATOR LATHROP: So your last involvement in Castillas and the miscalculation of good time for mandatory discharge is going to be the conversation you had with George Green. [LR424]

LINDA WILLARD: Yes. [LR424]

SENATOR LATHROP: No others? [LR424]

LINDA WILLARD: I don't recall any others. We were extremely busy with cases, and that was my primary duty was to handle the cases that were being brought. [LR424]

SENATOR LATHROP: You told me that you represented the state of Nebraska in, like, inmate lawsuits and that you worked with the lawyers over in the Department of Corrections regularly. [LR424]

LINDA WILLARD: Yes, yes. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SENATOR LATHROP: So after you visit with George Green on the phone and you tell him that he's, you know, his clerk is about to keep doing things the way they've always done it instead of the way the Supreme Court said to do it, did you ever talk to him again? I mean, you see him regularly because you have a lot of inmate lawsuits and you're connected to the legal people over there, at least in terms of your job responsibilities. Did you ever talk to him again about this? [LR424]

LINDA WILLARD: I don't recall any other conversations about this. There were conversations about a lot of other things. [LR424]

SENATOR LATHROP: Okay. Those are all the questions I have, but now other members have an opportunity to ask questions and...Senator Chambers. [LR424]

SENATOR CHAMBERS: My questions are to clarify for my benefit things that you've already said, so I'm not looking for an expansive answer from you, but you can say whatever you feel you need to, to answer the question. And my reputation is known and in the minds of some people it's not a good reputation, and I want to say they're wrong. It's worse. (Laugh) That's to lighten the mood, I hope. Here's what I would like to ask you: Did you ever have occasion to look at the constitution, since you were representing Corrections, to see which departments or agencies were mentioned specifically in the constitution as being parts of the executive branch? Or did you just know that the Corrections Department was in that category? [LR424]

LINDA WILLARD: Oh, I knew it was in that category. [LR424]

SENATOR CHAMBERS: And was it your job...was it the Attorney General's Office, was it their responsibility to represent the department in all of its litigation? [LR424]

LINDA WILLARD: Yes. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SENATOR CHAMBERS: Even though the Department of Corrections had its own legal staff, that staff was never involved in litigation that pertained to activities connected with the Department of Corrections. Is that true or false? [LR424]

LINDA WILLARD: They were involved in personnel hearings. [LR424]

SENATOR CHAMBERS: But not representing the department in court in... [LR424]

LINDA WILLARD: Not in formal court, no. [LR424]

SENATOR CHAMBERS: Okay. Now this lady named Ms. Douglass and you, if I understand correctly what was going on in your exchanges with Chairman Lathrop, e-mails passed back and forth between you and her. Is that true or false? [LR424]

LINDA WILLARD: That's correct. [LR424]

SENATOR CHAMBERS: E-mails had passed back and forth between you and her prior to her communication to George Green saying that you agreed with her method of calculating good time. [LR424]

LINDA WILLARD: That's true. [LR424]

SENATOR CHAMBERS: You said that you did not, by means of an e-mail to anybody, disagree with what she had said about you agreeing with her position on calculating good time. [LR424]

LINDA WILLARD: I'm confused now as to... [LR424]

SENATOR CHAMBERS: Okay. She sent a communication to Mr. Green saying that you agreed with her position as to how good time ought to be calculated which would have

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

been contrary to what the Supreme Court had said. Her position was that they would continue to do as they had done because in her opinion the Supreme Court got it wrong on calculating the release date. Was that her position? [LR424]

LINDA WILLARD: That was her position, yes. [LR424]

SENATOR CHAMBERS: And she had also said that to continue calculating it the way the department was doing it would be in the best interest of the inmate. [LR424]

LINDA WILLARD: She did say that. [LR424]

SENATOR CHAMBERS: Okay, so there are two things there. The one I want to ask you about was where she indicated that you agreed with her position. [LR424]

LINDA WILLARD: Yes. [LR424]

SENATOR CHAMBERS: And you said that what you were expressing agreement with was the fact that the inmates would not object to continuing to do it the current way even though it was contrary to what the court had said. [LR424]

LINDA WILLARD: That's the one thing I remember agreeing with her on. [LR424]

SENATOR CHAMBERS: All right. And when you made a phone call...let me not ask it in a confusing way to you. Did you express to anybody at Corrections that what Ms. Douglass suggested about your agreeing with the department continuing to calculate the way they were doing? You did call somebody at the department to say that you did not agree with continuing with that method of calculation which would have been contrary to what the court said. Is that correct or incorrect? [LR424]

LINDA WILLARD: That's correct. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SENATOR CHAMBERS: And who was the person that you remember calling and saying that to? [LR424]

LINDA WILLARD: I had said it initially to Sharon Lindgren. She had not seen the e-mail, but I knew that she would get the word to Mr. Green immediately when he returned or when he was available that he needed to look at that carefully and that that statement was incorrect. [LR424]

SENATOR CHAMBERS: All right. [LR424]

LINDA WILLARD: And I also, I believe, expressed that to Mr. Green in a later phone call. [LR424]

SENATOR CHAMBERS: You did say it to Mr. Green also? [LR424]

LINDA WILLARD: I believe I did, yes. [LR424]

SENATOR CHAMBERS: What I want to know: Since you had been exchanging e-mails with Ms. Douglass on issues that I'm sure were not as consequential as this one, why, when she put in an e-mail the suggestion that you agreed with continuing to calculate good time in a way contrary to what the court said, why you did not continue your practice and send an e-mail to her saying that she misstated your position with reference to that issue? I'm asking why you did not send her a correcting e-mail. [LR424]

LINDA WILLARD: Because I wanted Mr. Green to know it, and he was the one who would let her know how to do the calculation whether I agreed with her or not. You know, she's in a... [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SENATOR CHAMBERS: All right. [LR424]

LINDA WILLARD: Okay. [LR424]

SENATOR CHAMBERS: Did you have reason to know that she had sent a copy...well, the e-mail that contained this statement by her was sent by her to Mr. Green. [LR424]

LINDA WILLARD: Yes. [LR424]

SENATOR CHAMBERS: Why did you not send Mr. Green an e-mail correcting what she had stated? [LR424]

LINDA WILLARD: Because most of my communication with the Corrections legal department was by telephone. [LR424]

SENATOR CHAMBERS: Had you ever communicated with Mr. Green by way of e-mail? [LR424]

LINDA WILLARD: I have, but most of it was by telephone. [LR424]

SENATOR CHAMBERS: You had communicated with Ms. Douglass by e-mail? [LR424]

LINDA WILLARD: Yes, because I sent the original message to her by e-mail. [LR424]

SENATOR CHAMBERS: Was there anybody else in the Department of Corrections with whom you communicated by way of e-mail that you can recall? [LR424]

LINDA WILLARD: Yes, I... [LR424]

SENATOR CHAMBERS: So the utilization by you of e-mail communication with

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

employees at the Department of Corrections was not unusual. That could be considered a routine method by which you communicated with people in the Department of Corrections. Is that true or false? [LR424]

LINDA WILLARD: With people in the institutions it was by e-mail. [LR424]

SENATOR CHAMBERS: When we look at the issue that has been raised here today about whether or not the Supreme Court's decision...let me back up before I say that. Is the law what the Supreme Court says the law is when it rules specifically on that particular law? [LR424]

LINDA WILLARD: They get to interpret the law, yes. [LR424]

SENATOR CHAMBERS: And what the Supreme Court says has the weight of law. [LR424]

LINDA WILLARD: Yes. [LR424]

SENATOR CHAMBERS: In this situation we have an employee suggesting that the law is going to be ignored in preference to continuing to do what the Corrections Department had been doing, and to continue to do that would be in violation of the declared law by the Supreme Court. Is that true or false? [LR424]

LINDA WILLARD: It appears to be true. [LR424]

SENATOR CHAMBERS: Have you...prior to that had you communicated by e-mail with Ms. Douglass or anybody else in the Corrections Department? Had any issue been as serious and weighty as this issue involving the declaration that the law as announced by the Supreme Court was going to be ignored? Had you communicated with anybody on an issue as serious as that one? [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

LINDA WILLARD: There were a number of serious issues that I communicated with Corrections on. [LR424]

SENATOR CHAMBERS: That's why I'm asking for a comparison here. [LR424]

LINDA WILLARD: Well,... [LR424]

SENATOR CHAMBERS: Is there any issue...tell me an example of a serious issue that you communicated with the department on by way of e-mail, so I'll have some kind of an idea. What serious issue had you communicated with them on by way of e-mail? Any example. [LR424]

LINDA WILLARD: When you say the department, I... [LR424]

SENATOR CHAMBERS: Any of these people with whom you communicated by e-mail who were connected with the department; I'm leaving it up to you to tell me any person connected with the Department of Corrections in any capacity, anyone in any capacity with the Department of Corrections with whom you had communicated by way of e-mail. What I want you to do is tell me an example of a serious issue involved in any of that communication with anybody connected with the Department of Corrections, because you said you communicated with them on a number of serious issues. [LR424]

LINDA WILLARD: But I'm not sure which ones I may have sent an e-mail and which ones I may have just called. I may have sent an e-mail saying call me because I couldn't get ahold of them and then just... [LR424]

SENATOR CHAMBERS: Well, let me ask the question again so we'll make it a matter of what you actually recollect. Can you recollect any issue that would be as important as an employee telling you that she is going to disregard the law? Can you think of any

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

issue as serious as that which you had communicated with any employee of the department by way of e-mail, any issue as serious as that? First of all, do you consider that a serious issue? [LR424]

LINDA WILLARD: Oh, yes, but I don't know when I communicated by e-mail. This one I started out as an e-mail because I did not think it was a serious issue because I thought that that's how they were doing it, the way that the Supreme Court had said. [LR424]

SENATOR CHAMBERS: But your communication, the communication that was sent to Mr. Green which you saw... [LR424]

LINDA WILLARD: Yes. [LR424]

SENATOR CHAMBERS: ...had said that the way that had been...the way in which the department had calculated good time was not in accord with what the Supreme Court said as far as the release date. It was stated that those two things were at odds, the department's way and the Supreme Court's way. You as a lawyer know that what the Supreme Court says is the law. [LR424]

LINDA WILLARD: Yes. [LR424]

SENATOR CHAMBERS: So there cannot be two correct ways to do this. There is only one way that it can be done, and that's the way that the Supreme Court said. This employee told you that that is not the way it's going to be done over here, "and Attorney Willard agrees with me," and you saw that. [LR424]

LINDA WILLARD: And that's why I...yes. [LR424]

SENATOR CHAMBERS: But it was...it did not strike you as being important enough for you to send an e-mail to George Green and say, that's not what I said. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

LINDA WILLARD: No, I would not have put that in an e-mail. I wanted to get ahold of him immediately to talk to him. [LR424]

SENATOR CHAMBERS: And I'm doing this for clarification. [LR424]

LINDA WILLARD: Yes. [LR424]

SENATOR CHAMBERS: So I don't want to argue with you. [LR424]

LINDA WILLARD: It's not at all unusual that I would not send something to them in an e-mail form about that but instead would call them immediately. [LR424]

SENATOR CHAMBERS: And you didn't reach Mr. Green though because he wasn't available. [LR424]

LINDA WILLARD: That's right. It's my recollection that he was not immediately there. I didn't...don't recall if he was on the phone or if he was away from his desk. [LR424]

SENATOR CHAMBERS: And here's what all of that was getting around to: There is no document that establishes your disagreement with what Ms. Douglass said your position was. [LR424]

LINDA WILLARD: That's correct. I didn't think I would need it. [LR424]

SENATOR CHAMBERS: You did talk directly to Ms. Lindgren, however, about it. Is that correct? [LR424]

LINDA WILLARD: I talked to her about the fact that... [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SENATOR CHAMBERS: And you told...did you bring up specifically the fact that Ms. Douglass had stated your position was position A but your position was position B? In other words, did she understand that you were calling her about the fact that an employee said you agreed with that employee's intent to continue acting in a way that was contrary to what the Supreme Court said? Did Ms. Lindgren understand that to be the subject matter of your discussion with her? [LR424]

LINDA WILLARD: I am not sure. What I do know...I communicated to her that Ms. Douglass was saying that I agreed with her and I did not agree with her... [LR424]

SENATOR CHAMBERS: Okay. [LR424]

LINDA WILLARD: ...and that I wanted to make sure that she got that information to George immediately. [LR424]

SENATOR CHAMBERS: And that was the subject of that discussion. So without asking you to read anybody's mind, if Ms. Lindgren recollects that conversation, she should remember that what you wanted to make clear was that you did not agree with what Ms. Douglass said your position was on the issue. [LR424]

LINDA WILLARD: Right, and that I would not have made that sort of a comment to a person in Ms. Douglass' position. [LR424]

SENATOR CHAMBERS: Okay. Did Ms. Douglass at any time ask you specifically, unequivocally, and directly what the department ought to do with reference to that Supreme Court decision that contradicted what they currently were doing? [LR424]

LINDA WILLARD: No. [LR424]

SENATOR CHAMBERS: Did anybody at the Department of Corrections directly ask you

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

that question? [LR424]

LINDA WILLARD: I don't believe so. [LR424]

SENATOR CHAMBERS: Your duty as a member of the Attorney General's Office was to handle legal matters that involved the Department of Corrections. Is that true or false? [LR424]

LINDA WILLARD: That's a little too broad. [LR424]

SENATOR CHAMBERS: That's too broad? [LR424]

LINDA WILLARD: I handled litigation and occasionally I did the approval of rules and regulations and would either provide Attorney General Opinions or supervise Attorney General Opinions. I did not handle all legal matters. [LR424]

SENATOR CHAMBERS: Okay, but the Department of Corrections in the area where you dealt with them would be considered to have been your client. By yours I meant as an employee of the Attorney General's Office. The Department of Corrections was a client of the Attorney General's Office. Is that true or false? [LR424]

LINDA WILLARD: We never referred to the people that we represent as clients. The state is our client. [LR424]

SENATOR CHAMBERS: The state is your client, and the Department of Corrections, when you were handling litigation for them, was your client. Is that true? [LR424]

LINDA WILLARD: It was... [LR424]

SENATOR CHAMBERS: Was there a lawyer-client relationship between you when you

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

were representing the Department of Corrections and the Department of Corrections?
Was there a lawyer-client relationship? [LR424]

LINDA WILLARD: I think you could call it that. [LR424]

SENATOR CHAMBERS: Okay. Now if a person who worked for your client in the sense that we're discussing it here is going to embark on a path that violates the law, you would not volunteer the information to the Director of Corrections that the department must comply with the Supreme Court decision and there are people in your department who have indicated they are not going to comply. It did not occur to you that you should have talked directly to the Director of Corrections on that issue, did it? [LR424]

LINDA WILLARD: I normally did not talk to the Director of Corrections. He was very difficult to get ahold of, first of all, and secondly, in prior experience, if I talked about a legal issue with the director, the next call I had was from the legal department saying, what's this about, and it was easier and better to go to the legal department. They then would notify the director of what the issues were and inform him that this is what the Supreme Court has said or this is what we should be doing. [LR424]

SENATOR CHAMBERS: Here's the preliminary question I should have asked you: In your representing the department in litigation, had you ever had conversations with the director, or were your conversations always with the legal representatives of the department? [LR424]

LINDA WILLARD: There were times when I had conversations with the director, partly because he was often listed as a defendant in cases and was needed to testify in court. But as far as legal issues, I normally discussed those with the legal department so that they were aware that that legal issue was there and they could advise their client.
[LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SENATOR CHAMBERS: Could the director have become a defendant in a lawsuit or in litigation involving the violation of the law by the department as far as calculating good time? Could the director have become a defendant? [LR424]

LINDA WILLARD: Yes, yes. [LR424]

SENATOR CHAMBERS: But you didn't think that you should...this was important enough for you to bring it to the director's attention what this employee was saying? [LR424]

LINDA WILLARD: I thought that bringing it to the attention of the legal department which was staffed with very competent attorneys--I had dealt with them for years and had high trust in them--that it would be handled. [LR424]

SENATOR CHAMBERS: Okay, and that answers the question I was asking you. I only have a couple more. If there is an Opinion by the Attorney General's Office that says one thing and there is an Opinion by the Nebraska Supreme Court that says another, which trumps which? [LR424]

LINDA WILLARD: Supreme Court always trumps an Attorney General's Opinion. [LR424]

SENATOR CHAMBERS: That's true. I just want to see if I have anything else to ask. If there were litigation involving the Department of Corrections, did the legal staff of the Department of Corrections ever collaborate with the Attorney General's Office in preparing briefs? [LR424]

LINDA WILLARD: Not in preparing briefs. [LR424]

SENATOR CHAMBERS: In what way would they cooperate? [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

LINDA WILLARD: We might have some issue that we needed some clarification on or may have needed some assistance in getting cooperation from someone within the department. [LR424]

SENATOR CHAMBERS: And that's all I have to ask you. Thank you very much. [LR424]

SENATOR LATHROP: I do have a follow-up question or two. I asked you about following up with people over at the Department of Corrections, but you were given the task of transmitting this Opinion over to Corrections by Jim Smith. And your e-mail says that others in the office thought you might be doing it differently, so you must have had some conversation with other people in the Attorney General's Office before you sent Castillas Opinion over to Jeannene Douglass. [LR424]

LINDA WILLARD: I think it was something with Mr. Smith... [LR424]

SENATOR LATHROP: Okay. [LR424]

LINDA WILLARD: ...the fact that they would ask me to even send that out there to Corrections because it's the only time I recall that any other section in the office had requested that I send a copy of a decision from their section. [LR424]

SENATOR LATHROP: Okay. So you think Jim Smith might have said, I'm not sure they're doing it right or they're not doing it right, get this over to Jeannene Douglass. [LR424]

LINDA WILLARD: There was something in the communication. I don't know...recall exactly what it was. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SENATOR LATHROP: Okay. And after this sequence of communications between you and Douglass and you and Green and you and Lindgren, did you ever go back to anybody in the Attorney General's Office and go, jeez, Smith, guess what, there's somebody over there that doesn't want to follow the Nebraska Supreme Court? [LR424]

LINDA WILLARD: No. [LR424]

SENATOR LATHROP: Did you ever talk to Smith about it? [LR424]

LINDA WILLARD: I don't think so. [LR424]

SENATOR LATHROP: Did you ever talk to Cookson about it? [LR424]

LINDA WILLARD: No. [LR424]

SENATOR LATHROP: Did you ever talk to Jon Bruning about it? [LR424]

LINDA WILLARD: No. [LR424]

SENATOR LATHROP: Okay. [LR424]

LINDA WILLARD: I thought that putting it in the hands of competent legal people would take care of it. [LR424]

SENATOR LATHROP: You did...I appreciate that, I really do, and I don't want to argue with you. But you did get a sense that somebody over there was worried that if we change things it's going to exacerbate the overcrowding situation which probably was putting a bunch of lawsuits on your desk at the same time. [LR424]

LINDA WILLARD: Well, yes, but again, the legal department within Corrections or any

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

of the agencies would be the one to enforce that within the department. [LR424]

SENATOR LATHROP: Okay. Senator Krist, I guess, has questions. [LR424]

SENATOR KRIST: Why do we have an Attorney General in the state of Nebraska?
What is the purpose of having an Attorney General in the state of Nebraska? [LR424]

LINDA WILLARD: Well, to represent the state and its...we have one because it's in the
constitution. [LR424]

SENATOR KRIST: So if you're representing the state and you know that the state is
violating the law, is it not the Attorney General's Office's responsibility to inform them
that they are not in compliance or that they are breaking the law? [LR424]

LINDA WILLARD: They were provided with a copy of the Attorney General's Opinion. I
did not know that it was not being enforced after that time. [LR424]

SENATOR KRIST: Does the Attorney General's Office talk inside of its own office? I
mean does Jon Bruning ever have a conference and say, they're in violation and,
therefore,...did you ever feel compelled to let anybody else know in the office that
people were breaking the law in Corrections because of the recent decision? [LR424]

LINDA WILLARD: I did not know that they were breaking the law after they received that
decision. [LR424]

SENATOR KRIST: Well, I'll...again, I think Senator Chambers asked you a question and
you said you were never asked for an opinion. I'll refer you back to that page 141 and
the exchange of e-mails where indeed, I think, when someone asks you a question,
what do you think, they're asking you for an opinion. And indeed, Ms. Douglass on that
day said, we're going to continue to do it this way because no one really cares that's

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

being locked up and it's in the best interest and it's what the Director of Corrections wants, what do you think. And at that point, if I were in your position--and I can only conjecture that I'll never be there--I would say, what I think is you need to go back to George Green because you're breaking the law. And if I didn't have resolution on that, I think I would have taken some action. [LR424]

LINDA WILLARD: Ms. Douglass said in the later e-mail, she said I suggested that she share it with Mr. Green. I said, you need to check with Mr. Green before you do anything. [LR424]

SENATOR KRIST: But if someone asks an Attorney General, what do you think, at that point, I mean, you told Senator Chambers and Senator Lathrop within their conversation that you really thought that you had...you said, and I quote, it was not my place. So my question goes back again: What is the Attorney General there to do? [LR424]

LINDA WILLARD: If someone wants an Attorney General's Opinion, as senators all know, there's a procedure for requesting one. We did not receive a request for an Attorney General's Opinion. [LR424]

SENATOR KRIST: Oh, so if I don't ask you the right question I'm not going to get any legal advice to not put the state in jeopardy of breaking the law. [LR424]

LINDA WILLARD: I informed their legal department within...legal section within the department. As I stated, they were all attorneys, competent attorneys. I had a great deal of confidence in working with them over the many years, and every attorney learns the importance of an Attorney General's Opinion...or, excuse me, there's not much importance there...the importance of a Supreme Court decision. [LR424]

SENATOR KRIST: What I learned in my career is that when you assume things, you know the acronym, you usually don't get things done, that you need to follow through.

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

And in this particular case you can call them competent, you can call the whole profession competent, but I don't think there was enough follow through in the Department of Corrections to keep the state of Nebraska from breaking the law and, therefore, I don't think the Attorney General or anyone in this chain did their job. [LR424]

LINDA WILLARD: I had a stack of cases on my desk and a stack of cases on the desk of the people I supervised, and we were working overtime, often, in order to get through those. We could not do everything that needed to be done and, in this case, it was something that I felt was appropriate for the people within the department to handle once they knew. The attorneys were there; they knew the importance of it. I had other cases I needed to get to. [LR424]

SENATOR KRIST: One more question. You said in your testimony to Senator Lathrop that Corrections told you how they calculate it. Who in Corrections told you how they calculate it? [LR424]

LINDA WILLARD: I contacted the records division whenever I had a case that involved sentence calculation. [LR424]

SENATOR KRIST: Specifically about this case and the 2013 decision, you said that Corrections told you how they calculate it. Who told you how they calculate it? [LR424]

LINDA WILLARD: Well, it depended upon who was there, but... [LR424]

SENATOR KRIST: You don't remember who told you specifically how they were calculating? Was that Jeannene Douglass? [LR424]

LINDA WILLARD: Well, I guess I...do you mean in general or this specific issue here? [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SENATOR KRIST: Well, in your testimony you said that Corrections...when Senator Lathrop asked how they were calculating, you said Corrections told you how they calculate it. And my question is, who in Corrections told you? [LR424]

LINDA WILLARD: When we had a case that involved sentence calculation, I would send a request to the records division and I would send it to whoever was head of the records division and they would provide me with their calculation and the explanation for the calculation in that case because, as I had stated, there were a number of good time laws that were in effect. And so a lot depended upon when the person was sentenced and what good time law applied, how many days of good time they had lost or gained, if it was an earned good time situation. And so I would trust in that. Often...Mr. Riethmuller was head of that department and did that for many years, and Ms. Douglass was a part of the department and tended to be the one who responded to those requests after he left because of her experience there. [LR424]

SENATOR KRIST: Thank you. [LR424]

LINDA WILLARD: And...but the request would go to the head of the department, but I knew that she was doing most of those calculations which was why my e-mail went to her. [LR424]

SENATOR KRIST: Thank you, Chair. [LR424]

SENATOR LATHROP: Senator Schumacher. [LR424]

SENATOR CHAMBERS: Oh, I had...have some. Oh, you don't mind me asking?
[LR424]

SENATOR SCHUMACHER: Go ahead. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SENATOR CHAMBERS: Again, Ms. Willard, by way of a disclaimer, I'm not a member of a grand jury. We are not serving a prosecutorial function. So if my questions seem detailed, it's trying to get clear in my mind what we're doing and so that the record at least, because what we do will be transcribed, will be intelligible in terms of what I was trying to ask you about. You said that you had great confidence in the legal staff at the Department of Corrections and that was why you felt that the right thing would be done and information you transmitted to somebody would be gotten to the appropriate person and the appropriate action would be taken. Generally, is that what you indicated?
[LR424]

LINDA WILLARD: Yes. [LR424]

SENATOR CHAMBERS: Okay. Do you agree or do you...do you agree that the law was violated by the way that the Department of Corrections was calculating good time where minimum mandatory sentences were involved? [LR424]

LINDA WILLARD: At least as far as release dates. [LR424]

SENATOR CHAMBERS: Say it again? [LR424]

LINDA WILLARD: As far as release dates, yes. [LR424]

SENATOR CHAMBERS: Do you feel that the confidence you expressed in that department, in those people, do you feel now, in view of what you know took place, that that confidence was misplaced? [LR424]

LINDA WILLARD: Apparently, I'm...I had so many years of trusting them, I don't know what happened. [LR424]

SENATOR CHAMBERS: But here's what I'm asking you: In view of all that had

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

happened, the conversations you had after transmitting that Supreme Court Opinion to the department, your conversations as you understood them about the need to comply with that decision but you know now that they did not comply with that decision...

[LR424]

LINDA WILLARD: Yes. [LR424]

SENATOR CHAMBERS: ...so your confidence that they would do the right thing was misplaced, wasn't it? [LR424]

LINDA WILLARD: That would be one way of stating it. [LR424]

SENATOR CHAMBERS: Say it again? [LR424]

LINDA WILLARD: That would be one way of stating it. [LR424]

SENATOR CHAMBERS: All right. If you knew then what you know now, would you have been more forceful or taken a different course of action in talking to the Director of Corrections and maybe to the Attorney General himself to say that we have got to ensure that that Supreme Court decision is complied with by the department? If you knew then what you know now, is that the course you would have pursued instead of kind of the hands-off approach that you in fact pursued? [LR424]

LINDA WILLARD: I would think that I would, yes. [LR424]

SENATOR CHAMBERS: Okay, and because there are some questions I'd have about the policy of the office which others who will speak to us might comment on, I'm not going to ask you about those things although I have an overwhelming temptation to do so. Oscar Wilde is one of my favorite writers and he said: The way to eliminate temptation is to yield to it. But in this case I will yield not to temptation. That's all I have

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

to ask you. Thank you. [LR424]

SENATOR LATHROP: Senator Schumacher. [LR424]

SENATOR SCHUMACHER: Thank you, Senator Lathrop. Just three areas briefly to look at. Responsibility of a legislative committee in the big picture is to look for systemic failures, not necessarily point fingers at any individual incident. In that regard, I found curious the reference in language to correct versus right way of doing it. Is that part of the parlance of the department or part of the parlance...did that have any... [LR424]

LINDA WILLARD: No. That was strictly... [LR424]

SENATOR SCHUMACHER: The first time you ever...the first time you ever heard that distinction, the right way of doing it, was this particular case? [LR424]

LINDA WILLARD: It was based upon Ms. Douglass' representation of the right way to do things. [LR424]

SENATOR SCHUMACHER: When I hear "the right way to do things," what it connotes, in my mind at least, is that some authority has said, this is the right way and that's the wrong way. Doesn't that carry that connotation for you? [LR424]

LINDA WILLARD: No, I put the...I think I put quotes around those when I used those and she had...she had indicated that this is the right way to do it, and I was indicating that the Supreme Court decision was the correct way. It was the only time I ever recall using those terms together like that. [LR424]

SENATOR SCHUMACHER: Okay. So the "correct" versus "right," that's not a code for anything. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

LINDA WILLARD: No. No, it's not a code for anything. It was based upon her representation of how they were doing it being the right way. [LR424]

SENATOR SCHUMACHER: Second thing is, the Attorney General's Office is kind of a unique office. It not only gets to play lawyer and represent people in court and issues Opinions as to what their guesstimates of what a court will do with an issue are, but they also have a responsibility as a chief law enforcement officer of the state, do they not? [LR424]

LINDA WILLARD: Yes. [LR424]

SENATOR SCHUMACHER: And as a chief law enforcement officer, that hat is quite a bit different than the hat of an agency attorney who responds to the director of the agency. Is that not correct? [LR424]

LINDA WILLARD: Yes. [LR424]

SENATOR SCHUMACHER: Your job is to enforce the law, not just be a lawyer. Is that correct? [LR424]

LINDA WILLARD: Yes. [LR424]

SENATOR SCHUMACHER: Okay. In this particular case, you were being told, your office was being told that the law was not going to be followed. Is that correct? [LR424]

LINDA WILLARD: By Ms. Douglass. [LR424]

SENATOR SCHUMACHER: Right. And you never received a representation from Mr. Green or from the director that they were going to change that policy, did you? [LR424]

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Transcriber's Office
Rough Draft

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

LINDA WILLARD: No, but I had informed them of the Supreme Court decision and they were lawyers and knew the importance of that. [LR424]

SENATOR SCHUMACHER: Okay. You basically sent to a clerk, in this Castillas case, a copy of the decision, not even the director, not the chief lawyer, just the clerk, sent a little transmittal letter that said, enclosed please find? [LR424]

LINDA WILLARD: I said, it's my understanding this is the way you're doing it. [LR424]

SENATOR SCHUMACHER: And then you got the feedback saying, no, we're not. [LR424]

LINDA WILLARD: No, that we don't do that in the instance of... [LR424]

SENATOR SCHUMACHER: Okay. Okay. And then you talked to the chief lawyer and the chief lawyer made no promises to you that he would change things. [LR424]

LINDA WILLARD: He didn't have to, he...it was the Supreme Court decision. [LR424]

SENATOR SCHUMACHER: Did he tell you, he would get it fixed? [LR424]

LINDA WILLARD: I think he said that he would work on it or...I was...the understanding was that he was going to handle the situation. [LR424]

SENATOR SCHUMACHER: Knowing that there was this confusion, knowing there was a lack of a clear affirmative to say, we've done the job, instead of an e-mail or a phone call, wouldn't it have been appropriate to get one of those pretty pieces of letterhead with the big blue seal on the top and write a letter saying, you need to get this done, or at least a follow-up? And then when you found out, didn't get it, they weren't doing it, to then use the pretty letter? [LR424]

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Transcriber's Office
Rough Draft

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

LINDA WILLARD: They had always followed up on things that we had done...had discussions about in the past. [LR424]

SENATOR SCHUMACHER: Internally within state offices, and this is just not picking on the Attorney General's Office here, but internally, when you have a situation developing that's kind of festering like this, why not go to the Attorney General, the department head or the Governor, whatever, and say, you know, we've got a problem here? [LR424]

LINDA WILLARD: I didn't know we had a problem. I thought the problem had been solved when I spoke with legal in Corrections. [LR424]

SENATOR SCHUMACHER: And that simply was on faith that, yeah, he'd probably do the right thing? [LR424]

LINDA WILLARD: They always had before. [LR424]

SENATOR SCHUMACHER: Even if his boss would have fired him? I mean, he responds to his boss, right? [LR424]

LINDA WILLARD: Yes, but his boss also would listen to him when it came to legal issues. [LR424]

SENATOR SCHUMACHER: Right. But if there was...I mean, the rank there is the director and then the lawyer under the director, right? [LR424]

LINDA WILLARD: Yes. [LR424]

SENATOR SCHUMACHER: Okay. Finally, you made reference that, you know, you

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Transcriber's Office
Rough Draft

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

didn't have time to follow up on this, you just trusted the way things were going and because, you know, that's just the way things are. But the big reason, you had a whole big stack of papers and a lot of other cases on your desk and in the Attorney General's Office. [LR424]

LINDA WILLARD: Well, I had a lot of work to do and I thought that it was being handled. [LR424]

SENATOR SCHUMACHER: Right. And just, you know, when you're up to your ears in alligators, it's hard to think about how you drain the lake. And so, did you ever then go to the Attorney General saying, you know, we're really up to our rear in alligators here and can we get more help? What systemically can we do so that we can look at issues? We got things going on that probably should be followed up on. So that the top man, the one that goes out and talks to the voters and says we can cut the budget or hold the line or everything else, knows that maybe it isn't working right? [LR424]

LINDA WILLARD: I certainly expressed that to my supervisor that we could use help, but... [LR424]

SENATOR SCHUMACHER: And who would be those supervisors? [LR424]

LINDA WILLARD: Um...it would have been Tom Stine or James Smith. They knew that there were issues that we... [LR424]

SENATOR SCHUMACHER: And did you get any response from them? [LR424]

LINDA WILLARD: It's a legislative decision. [LR424]

SENATOR SCHUMACHER: Did you ask the Legislature for a bigger budget? [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

LINDA WILLARD: I was not in a position to do that. [LR424]

SENATOR SCHUMACHER: Okay. Thank you. [LR424]

SENATOR LATHROP: Senator Seiler. [LR424]

SENATOR SEILER: I have a follow-up of Senator Schumacher's questioning. I think that this is not uncommon in our government right now that there are legal departments giving advice to executive sides, is that correct, other than Corrections? [LR424]

LINDA WILLARD: Yes. Yes. [LR424]

SENATOR SEILER: They're scattered out throughout the system. [LR424]

LINDA WILLARD: Yes. [LR424]

SENATOR SEILER: Two lawyers can disagree. [LR424]

LINDA WILLARD: Yes. [LR424]

SENATOR SEILER: If the Attorney General's staff disagrees with the legal department, how is it resolved, in your experiences? [LR424]

LINDA WILLARD: I never had that come up. [LR424]

SENATOR SEILER: Under the statutes and the constitution, wouldn't the Attorney General's decision be the carrying weight? [LR424]

LINDA WILLARD: It should. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SENATOR SEILER: Okay. And as you described that legal department answering to the executive, those lawyers don't answer to the Attorney General, do they? [LR424]

LINDA WILLARD: No, they do not. [LR424]

SENATOR SEILER: Do you think that's a breakdown in the lines of communication to make sure that the Supreme Court or the Legislature's passage of laws are followed? [LR424]

LINDA WILLARD: I think that any competent lawyer would know that the Supreme Court decision controls, and... [LR424]

SENATOR SEILER: Well, I'd be a little more receptive if you take the word "competent" off because... [LR424]

LINDA WILLARD: Well, any attorney... [LR424]

SENATOR SEILER: ...sometimes we don't have competent lawyers. [LR424]

LINDA WILLARD: But the attorneys that I've dealt with within the state agencies were always very good and complied with what we said should be done. If they didn't, I would have gone to my supervisor and probably would have gone up to the top, or something, but. [LR424]

SENATOR SEILER: Going with the questions that you answered of Senator Schumacher that the Attorney General is the chief law enforcement officer in the state and gives advice to the departments and anybody that asks him, it seems to me like we've got a potential now for a serious breakdown with those legal departments scattered throughout giving different advice than the Attorney General's Office, and the Attorney General having no control over a bunch of lawyers running throughout state

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

government giving opinions willy-nilly. [LR424]

LINDA WILLARD: I guess I don't believe that that's normally happening. I think this is an anomaly. [LR424]

SENATOR SEILER: I hope you're right. Thank you. [LR424]

SENATOR LATHROP: I think that's it. Ms. Willard, thanks for coming down today. We appreciate your time and your testimony. We're going to have John Freudenberg come up next. And, John, before you sit down, we'll have you raise your right hand. Do you swear or affirm that the testimony you're going to give this Special Investigative Committee of the Legislature will be the truth, the whole truth, and nothing but the truth? [LR424]

JOHN FREUDENBERG: I do. [LR424]

SENATOR LATHROP: Thank you. Have a seat. Will you recite your name for us and tell us where you're employed? [LR424]

JOHN FREUDENBERG: John Freudenberg, F-r-e-u-d-e-n-b-e-r-g. I'm an assistant attorney general. [LR424]

SENATOR LATHROP: How long have you been with the Attorney General's Office? [LR424]

JOHN FREUDENBERG: Since January of 2007. [LR424]

SENATOR LATHROP: And how long have you been a practicing lawyer in the state of Nebraska? [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

JOHN FREUDENBERG: Since August of 1995. [LR424]

SENATOR LATHROP: Okay. As you've been here all day, so you're perfectly familiar with the fact that we're here to talk about the application of the good time statutes to mandatory minimum sentences. [LR424]

JOHN FREUDENBERG: I am. [LR424]

SENATOR LATHROP: And you actually had some involvement with an inmate. Can we use his name, by the way? Is that a problem? [LR424]

JOHN FREUDENBERG: I see no reason we cannot. [LR424]

SENATOR LATHROP: Okay. He's actually passed away, too, has he not? [LR424]

JOHN FREUDENBERG: He has. [LR424]

SENATOR LATHROP: Okay, a fellow named Lohan (phonetically)? [LR424]

JOHN FREUDENBERG: I think it's Lohman. [LR424]

SENATOR LATHROP: Lohman, pardon me. [LR424]

JOHN FREUDENBERG: Christopher Lohman. [LR424]

SENATOR LATHROP: Lohman. First of all, before your involvement in Mr. Lohman's sentencing, or the fact that he had been discharged early, had you had any involvement in the interpretation of the good time statute and its application to the mandatory minimum sentence? [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

JOHN FREUDENBERG: I had not. [LR424]

SENATOR LATHROP: Okay. So this would be your first involvement with Lohman?
[LR424]

JOHN FREUDENBERG: With the exception of being a practicing prosecutor and then, you know, the good time advisements the courts gave and so forth. I knew it from that standpoint because you had to know it for doing plea bargaining and so forth. [LR424]

SENATOR LATHROP: Okay. [LR424]

JOHN FREUDENBERG: But this is the first time I had any kind of contact with Corrections about it. [LR424]

SENATOR LATHROP: Okay. Tell me what contact...or what was your first involvement?
[LR424]

JOHN FREUDENBERG: I'm sorry, I'm not sure which portion you're saying. [LR424]

SENATOR LATHROP: In Lohman. [LR424]

JOHN FREUDENBERG: Christopher Lohman had a...filed a post-conviction motion probably...I can't remember exactly what year it was, but in the like 2009-ish range. And in doing so, the Cheyenne County Attorney had asked us for assistance with it. I assigned Doug Warner to handle the matter in the case. He was an assistant attorney general who worked in my department. He handled the matter, successfully defended the motion for post-conviction relief and Mr. Lohman then continued to serve his sentence. So that's where we first encounter Mr. Lohman. [LR424]

SENATOR LATHROP: Okay. So you think he's in the Department of Corrections and he

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

turns up out in Scottsbluff. [LR424]

JOHN FREUDENBERG: Yes. Doug Warner left our office to become the Scotts Bluff County Attorney. In January of 2013, he contacted me and said he just read a police report that Mr. Lohman was involved with crime out there. He confirmed that it was the same Mr. Lohman of the case he had been working on previously, and from working on the case previously, he knew he should not be released as of that time. [LR424]

SENATOR LATHROP: Okay. And he communicated that directly to you? [LR424]

JOHN FREUDENBERG: Yes, he did, first in a phone call, then he followed up with some follow-up information in an e-mail that I could use. [LR424]

SENATOR LATHROP: Have you reviewed all that before you came here today? [LR424]

JOHN FREUDENBERG: Yes. [LR424]

SENATOR LATHROP: You're familiar with it? [LR424]

JOHN FREUDENBERG: Yes. [LR424]

SENATOR LATHROP: So he tells you, what's Lohman doing out? I think he should still be in prison. [LR424]

JOHN FREUDENBERG: Right. And he did some of the legwork himself just to confirm his suspicions before he contacted me. [LR424]

SENATOR LATHROP: Okay. What investigation did you undertake given this communication from the county attorney out in Scotts Bluff? [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

JOHN FREUDENBERG: I obtained a bill of exceptions from his sentencing hearing and his sentencing journal from Cheyenne County. [LR424]

SENATOR LATHROP: What did you find? [LR424]

JOHN FREUDENBERG: I found that he had been released too early. I also checked the public Web site from the Department of Corrections and saw that his release date was in error. [LR424]

SENATOR LATHROP: Okay. And all of this is happening back in... [LR424]

JOHN FREUDENBERG: January of 2013. [LR424]

SENATOR LATHROP: January of 2013. [LR424]

JOHN FREUDENBERG: Yes. [LR424]

SENATOR LATHROP: When you investigated, or when you made a determination that he had been released too early, there were really two issues, were there not? [LR424]

JOHN FREUDENBERG: That is correct. [LR424]

SENATOR LATHROP: One had to do with whether his sentences ran concurrently or consecutively. [LR424]

JOHN FREUDENBERG: Correct. [LR424]

SENATOR LATHROP: Why don't you talk about that. What did you find that was done incorrectly in Lohman's case with respect to running his sentences consecutively?

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

[LR424]

JOHN FREUDENBERG: The court had ordered his habitual criminal sentences, which are both mandatory minimums, to be served consecutively, at least portions of them. They had not been figured that way by the Department of Corrections. So that basically cut it in half of what it should have been on that issue. [LR424]

SENATOR LATHROP: Okay. Did you determine how that happened? [LR424]

JOHN FREUDENBERG: It looks like it was just a scrivener's error. They...it should have been consecutive and they put it down as concurrent. [LR424]

SENATOR LATHROP: Was that a mistake at the Scotts Bluff, or at the sentencing end of the system, or at the Corrections end of the calculation? [LR424]

JOHN FREUDENBERG: The data input. The data input portion of the Department of Corrections. [LR424]

SENATOR LATHROP: Okay. So that input puts it in as concurrent, which means two habitual criminal sentence would run side by side and be served at the same time. [LR424]

JOHN FREUDENBERG: Correct. [LR424]

SENATOR LATHROP: And they should have been consecutive, one after the other. [LR424]

JOHN FREUDENBERG: Correct. [LR424]

SENATOR LATHROP: Did you see Lohman...so that would result in him getting out in

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

half the time. [LR424]

JOHN FREUDENBERG: Yes. [LR424]

SENATOR LATHROP: Okay. [LR424]

JOHN FREUDENBERG: He had other sentences besides that for other things, so it didn't work out to be exactly half the time but, yes, significantly less. [LR424]

SENATOR LATHROP: Did you appreciate when you did this investigation that there was a problem with the calculation of the mandatory discharge when you were dealing with a mandatory minimum sentence with the habitual criminal statute and the good time law? [LR424]

JOHN FREUDENBERG: When I looked at the calculations that were on the public Web site, they were far from correct in many different aspects. To say I fully understood what the problem was would probably be overstating, but I knew there was problems...some form of problem other than just the mandatory minimum...consecutive versus concurrent sentence. [LR424]

SENATOR LATHROP: The glaring thing was the...is the concurrent versus consecutive. [LR424]

JOHN FREUDENBERG: That's correct. [LR424]

SENATOR LATHROP: And that halved his sentences. [LR424]

JOHN FREUDENBERG: Right. [LR424]

SENATOR LATHROP: But did you delve into the manner in which the Department of

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

Corrections was calculating a mandatory discharge date in the circumstance where you have a mandatory minimum and a good time law? [LR424]

JOHN FREUDENBERG: No. [LR424]

SENATOR LATHROP: Okay. So in the end, this was just a concurrent versus consecutive problem... [LR424]

JOHN FREUDENBERG: That's correct. [LR424]

SENATOR LATHROP: ...or it was resolved in that fashion. [LR424]

JOHN FREUDENBERG: That was how it was resolved. There were other issues involved, but they weren't really the main issues that were being discussed. [LR424]

SENATOR LATHROP: Did you at any point look at or appreciate that they had miscalculated his mandatory discharge date, even if the sentences were to run concurrently? [LR424]

JOHN FREUDENBERG: I don't believe I did. [LR424]

SENATOR LATHROP: Okay. Did you have any involvement with or communication with the Department of Corrections as an assistant attorney general concerning their miscalculation of mandatory discharge dates for those who have a mandatory minimum sentence? [LR424]

JOHN FREUDENBERG: On this case specific, I did. [LR424]

SENATOR LATHROP: On this case? [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

JOHN FREUDENBERG: On Christopher Lohman, I discussed that they released him too early. If I misunderstood your question, I apologize. [LR424]

SENATOR LATHROP: I'm going to back up. [LR424]

JOHN FREUDENBERG: Okay. [LR424]

SENATOR LATHROP: It sounds like you resolved this by saying, well, you ran the sentences concurrently and not consecutively and that's the problem. Get Lohman, bring him back, and make them run end to end. [LR424]

JOHN FREUDENBERG: Correct. [LR424]

SENATOR LATHROP: Did you look at the fact that they were, in Lohman's case, did you look at the fact that they were miscalculating the mandatory discharge date because of their misunderstanding of the good time law and its intersection with the mandatory minimum sentencing? [LR424]

JOHN FREUDENBERG: I did not. [LR424]

SENATOR LATHROP: Okay. Since Lohman, have you had a conversation with people over at the Department of Corrections regarding that issue? [LR424]

JOHN FREUDENBERG: I have been involved in the reappréhension of the individuals who were mistakenly released, so I've had tangential conversations with them. Nothing of me giving them advice or anything of that sort. [LR424]

SENATOR LATHROP: What's been your involvement? [LR424]

JOHN FREUDENBERG: It was I and my team's job to identify and reappréhension the

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

individuals who had been mistakenly released that were still capable of being reapprehended. [LR424]

SENATOR LATHROP: When were you put on that task? [LR424]

JOHN FREUDENBERG: After mid-June of this year. [LR424]

SENATOR LATHROP: So after this became a World-Herald story and it broke that they were not following Castillas. [LR424]

JOHN FREUDENBERG: Correct. [LR424]

SENATOR LATHROP: But you didn't have any involvement prior to June of 2014? [LR424]

JOHN FREUDENBERG: Nothing beyond the Christopher Lohman matter. [LR424]

SENATOR LATHROP: Okay. I think that's all I have. [LR424]

JOHN FREUDENBERG: Okay. [LR424]

SENATOR LATHROP: Anybody else have questions? Senator Chambers. [LR424]

SENATOR CHAMBERS: Did I understand your name to be pronounced Friedenber (phonetically)? [LR424]

JOHN FREUDENBERG: Yes, Senator. [LR424]

SENATOR CHAMBERS: Okay. Mr. Freudenberg, did you...was there anybody else in the Attorney General's Office who had an ongoing connection to the department in

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

terms of representing them if any litigation occurred, or had you taken over that responsibility? [LR424]

JOHN FREUDENBERG: I had not. And to tell you the truth, that's beyond my scope. What I know now is what you've found out yourself. [LR424]

SENATOR CHAMBERS: But here was the question. You did not talk to anybody else in the Attorney General's Office about whether or not the calculations were being done correctly. [LR424]

JOHN FREUDENBERG: That's correct. [LR424]

SENATOR CHAMBERS: Okay. That's all I would have. [LR424]

SENATOR LATHROP: I don't see any other questions. Thanks for coming down. We appreciate it. [LR424]

JOHN FREUDENBERG: Thank you. [LR424]

SENATOR LATHROP: Next we will take the testimony of Mr. Riethmuller. Do you swear the testimony you're going to give the Special Investigative Committee will be the truth, the whole truth, and nothing but the truth? [LR424]

RON RIETHMULLER: I do. [LR424]

SENATOR LATHROP: Have a seat. Did I pronounce your name right? [LR424]

RON RIETHMULLER: It's Reethmiller (phonetically). Close enough. [LR424]

SENATOR LATHROP: Reekmiller (phonetically), not even close. Pardon me. All right,

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

Mr. Riethmuller, can you tell us where you live? [LR424]

RON RIETHMULLER: I live here in Lincoln, Nebraska. [LR424]

SENATOR LATHROP: Okay. And were you at one time or another employed by the Department of Corrections? [LR424]

RON RIETHMULLER: Yes, I was employed by the Nebraska Department of Correctional Services for 35 years. [LR424]

SENATOR LATHROP: Tell us what your education is or your background and training. [LR424]

RON RIETHMULLER: I have a Bachelor of Arts degree and a lot of other training. [LR424]

SENATOR LATHROP: A lot of other training. [LR424]

RON RIETHMULLER: Yeah. [LR424]

SENATOR LATHROP: But not a law degree. [LR424]

RON RIETHMULLER: But not a law degree. [LR424]

SENATOR LATHROP: And I don't way that as a law degree snob... [LR424]

RON RIETHMULLER: No law degree. [LR424]

SENATOR LATHROP: ...but just to be clear, your background does not include formal education in law. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

RON RIETHMULLER: That's correct. [LR424]

SENATOR LATHROP: Okay. What was your position that you last held at the Department of Corrections? [LR424]

RON RIETHMULLER: I was the records administrator for the Nebraska Department of Correctional Services for the 19 years before I retired. [LR424]

SENATOR LATHROP: Okay. And tell us what the job of a records administrator is. [LR424]

RON RIETHMULLER: Basically running the entire records division. The records administrator position was created in 1989, and there was an evaluation done by the state of Illinois coming into Nebraska and reviewed the records operation. And at that time when I first started in records--just to give you a little bit of brief information--the penitentiary was the main facility. So there was one, basically, main records office. That records office did all the time computation for the Nebraska Center for Women because it was a very small facility at that time. As the department expanded over the years, opening the Omaha Correctional Center, various other facilities, records positions were created for those other facilities, so we had an in-house records person in each facility. There were records managers in all of the facilities. When this evaluation was done, says, you know, you need to come up with a person that is in charge of the records division so each records manager in each facility had someone to go to and you had a consistent operation. [LR424]

SENATOR LATHROP: Okay. [LR424]

RON RIETHMULLER: And that's what the position was created for. I was the first one in that position. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SENATOR LATHROP: Are you keeping track of medical records, legal records, everything that comes through the Department? [LR424]

RON RIETHMULLER: Just the inmate record, not medical records. That's a different division. [LR424]

SENATOR LATHROP: Okay. And does the job of calculating one's parole eligibility date fall to the records manager? [LR424]

RON RIETHMULLER: The...basically the policy and the...is written by the records administrator and the records administrator is the one to advise the records managers in how to implement it. [LR424]

SENATOR LATHROP: And maybe you can give us sort of your...that position's relationship to the other facilities because we've grown since the time you started that position. We have a number of facilities. What's your role and do you have sort of associate recordkeepers out in each of the institutions? [LR424]

RON RIETHMULLER: Absolutely. There was records managers in all of the facilities that...and I would give them technical advice. I would have regular meetings with all the records staff from the facilities. We'd meet a lot of times on a monthly basis, sometimes every couple of months, but we met very, very regular and discussed all of the issues pertaining to records throughout the state. And believe me, we discussed a lot of court cases over the years and we applied a lot of court cases. [LR424]

SENATOR LATHROP: Okay. Did the records department have their own lawyer? [LR424]

RON RIETHMULLER: No. George Green was the attorney for the department that I

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

worked very closely with. [LR424]

SENATOR LATHROP: Okay. So if you, as the records manager, had an issue, you took it up with one of the three lawyers at the Department of Corrections? [LR424]

RON RIETHMULLER: That is correct. [LR424]

SENATOR LATHROP: How is it that the records manager became the person who calculated the parole eligibility date and the mandatory release date? [LR424]

RON RIETHMULLER: Well, the... [LR424]

SENATOR LATHROP: And I'm just going to say, it sounds like a job that keeps track of records and organizes things, and now we're doing a calculation function. How did we get there? [LR424]

RON RIETHMULLER: Well, the calculation function, and if you look at how sentences are calculated, the calculation function starts at the reception facility at the Diagnostic and Evaluation Center. There's a records manager at that facility. They should be...should be trained by the records administrator. I had daily contact with the manager at the Diagnostic and Evaluation Center at that time and discussed sentencing issues. Routine sentences that were pretty basic were entered into the computer system, record was created, not too much of a problem. Complicated issues were discussed with me on a daily basis. It can get very complicated with concurrent consecutive sentences, jail time credits, all these different situations. So there were complicated issues I would discuss with the records managers on a daily basis. And, you know, my primary focus was with the Diagnostic and Evaluation Center since it was the reception center for all the adult males. [LR424]

SENATOR LATHROP: And I was going to ask you that. So somebody is sentenced in,

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Transcriber's Office
Rough Draft

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

let's say, Sarpy County, and they get a particular sentence. Their first stop, a male adult, is going to be at D&E. [LR424]

RON RIETHMULLER: That is correct. [LR424]

SENATOR LATHROP: Diagnostic and Evaluation Center. [LR424]

RON RIETHMULLER: Absolutely. [LR424]

SENATOR LATHROP: Is that where someone is going to calculate their parole eligibility date and their mandatory discharge date? [LR424]

RON RIETHMULLER: Yes. [LR424]

SENATOR LATHROP: Okay. And is there a person over there that's done that over the years? [LR424]

RON RIETHMULLER: I believe it's the records manager that does it right now. During the time I was there, there was a...I believe it was a...I'm not for sure if it was a staff assistant that entered them. I remember the individual. I also worked very closely with him. He had been there for quite a while and was able to do the basic sentences easily. Most sentences aren't that difficult to do. [LR424]

SENATOR LATHROP: Okay. Once they're done over at Diagnostic and Evaluation Center, which sounds a little bit like a branch office in relationship to records, does it come back through your office and somebody approves it? [LR424]

RON RIETHMULLER: No, not at that time. They...basically the calculations were done, if they were routine calculations. I did not review all calculations. The...what I did as the records administrator, I would personally review all of the additional sentences that the

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

inmates receive. It wasn't uncommon for Douglas County to sentence somebody and then they go back out to court after they're there and they had some sentences pending in Sarpy County. They got sentenced in Sarpy County. Then now we had to put in a sentence from Sarpy County, whether it's concurrent, consecutive. I personally reviewed all of those myself to make sure they were done correctly. [LR424]

SENATOR LATHROP: Okay. Do we have a computer program during your time that's doing this, or are you doing this all on a piece of paper? [LR424]

RON RIETHMULLER: We had a computer program that we designed to calculate the good time laws and I did design...I did work with the computer people to design that law. It would work probably fairly well in 90-plus sentences. The things the computer could not do were some of the complicated concurrent, consecutive sentences. It just was not able to factor in all of the weird things that could happen. [LR424]

SENATOR LATHROP: Okay. So in 1996, the Attorney General...so your job would include trying to sort out, what does this statute mean when it's played against this one, and how is a concurrent and a consecutive sentence, and the mandatory minimum, and the parole eligibility given a good time. And that's your...that falls to you? [LR424]

RON RIETHMULLER: That is correct. [LR424]

SENATOR LATHROP: And do you do that with the aid and assistance of the legal department? [LR424]

RON RIETHMULLER: Yes. [LR424]

SENATOR LATHROP: Because now we're interpreting statute, case law, and Attorney General Opinions. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

RON RIETHMULLER: That's correct. [LR424]

SENATOR LATHROP: Okay. So back in 1996, September 18, 1996, Assistant Attorney General Smith Camp, who is now a federal judge,... [LR424]

RON RIETHMULLER: Yes. [LR424]

SENATOR LATHROP: ...writes an AG's Opinion trying to sort out what we do with mandatory minimums for someone who...or good time for someone who has a mandatory minimum. That be true? [LR424]

RON RIETHMULLER: That is correct. Uh-huh. [LR424]

SENATOR LATHROP: Did you ask for that? Or do you know who asked for that? [LR424]

RON RIETHMULLER: No, I believe that that, if I'm not mistaken, the original was done...Senator Wesely, I think, asked for that Opinion. [LR424]

SENATOR LATHROP: Oh, Wesely. Okay. And so when that comes up, does that prompt you to try to develop some policy? [LR424]

RON RIETHMULLER: Yes, it did. [LR424]

SENATOR LATHROP: And that policy became the memo you wrote September 18, 1996, which is found on page 4 of the documents. [LR424]

RON RIETHMULLER: That is correct, yes. Uh-huh. [LR424]

SENATOR LATHROP: Tell us what your conclusions were. Now we haven't had any

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

court cases at all at the time you do your memo. Is that true? [LR424]

RON RIETHMULLER: That is correct. [LR424]

SENATOR LATHROP: Okay. And you are using the Attorney General Opinion from Smith Camp. Are you talking to the legal counsel at that time too? [LR424]

RON RIETHMULLER: Yes. [LR424]

SENATOR LATHROP: Okay. So who did you work with before you...? [LR424]

RON RIETHMULLER: I worked with George Green at that time. [LR424]

SENATOR LATHROP: Okay. So between Smith Camp's AG Opinion and advice from George Green, you then author the memo dated September 18, 1996. [LR424]

RON RIETHMULLER: That is correct. [LR424]

SENATOR LATHROP: And tell us what your conclusions were or how you thought, given the state of the law at the time, one was to calculate the parole eligibility date for someone with a mandatory minimum, given our good time laws. [LR424]

RON RIETHMULLER: Basically the statute...the statute, when it addressed mandatory minimums, it gave a minimum term and it was...and, unfortunately, when the law was written, it was very ambiguous. And I know that's hard to believe that we could have an ambiguous law, but we do occasionally. But it did not address anything for computing mandatory minimums on the maximum term. We still had the six months to the year we had to give for discharge purposes. But it was very clear in the statutes that they had to serve the entire mandatory minimum before they were eligible for parole. And it was in the section for establishing parole eligibility. Upon reviewing that and reviewing the

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

Attorney General's Opinion, I came up with the policy saying they can't get any good time on this at all according to what...because it's in that section of the statute. That's when I devised the policy of the serving the full mandatory minimum plus half of any remaining years that were above and beyond the mandatory minimum term if... [LR424]

SENATOR LATHROP: To determine parole eligibility. [LR424]

RON RIETHMULLER: Right. To determine parole eligibility. [LR424]

SENATOR LATHROP: So your formula, even going back as far as 1996 for parole eligibility, and this has stood the test of time. [LR424]

RON RIETHMULLER: That is correct. [LR424]

SENATOR LATHROP: And that is if someone has...the bottom end is 15 years, they're going...and a mandatory of 5, they're going to have to do the 5 and then they get half the time off of the balance... [LR424]

RON RIETHMULLER: With half the remaining (inaudible), uh-huh. Uh-huh. That's correct, above and beyond. [LR424]

SENATOR LATHROP: ...of 10 years, so they do a total of 10 years and they're eligible for parole. [LR424]

RON RIETHMULLER: Right. [LR424]

SENATOR LATHROP: That's still the...an interpretation, the correct interpretation from Castillas when it comes to determining parole eligibility. [LR424]

RON RIETHMULLER: That's my understanding, yes. I have read Castillas and I would

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

agree with that. Yes. [LR424]

SENATOR LATHROP: Okay. You did express an opinion about how to determine the mandatory discharge date. [LR424]

RON RIETHMULLER: Right. [LR424]

SENATOR LATHROP: Which has not stood the test of time, incidentally. [LR424]

RON RIETHMULLER: That is correct. [LR424]

SENATOR LATHROP: But it was a fair stab at it at the time. [LR424]

RON RIETHMULLER: Yes. [LR424]

SENATOR LATHROP: And what was your conclusion? [LR424]

RON RIETHMULLER: Well, it was conclusion because I think the last paragraph of the Attorney General's Opinion said that we conclude that an inmate has been sentenced to a mandatory minimum term can neither be paroled nor discharged from custody of the Department of Corrections prior to serving the full mandatory minimum. The policy I wrote complied with that. If we look at the Johnson case, which I know you've discussed earlier today, the Johnson case was an individual that was serving ten years for mandatory minimum...for habitual criminal. And the individual sued the Department of Correctional Services, saying he should get out in five years. And we had his parole eligibility as ten years; we had his discharge as ten years. So he sued us; says, no, I should get out in five. And as I recall, the district court in Lancaster County initially ruled in his favor. He then...the state then appealed the case and then basically the state affirmed the way the department had done that case. They were not... [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SENATOR LATHROP: That was with respect to parole eligibility, though, wasn't it?
[LR424]

RON RIETHMULLER: Right and also discharges. Said, no, you know, the discharge date should be ten years also. Unfortunately, on that particular case, since he was only serving 10 years, we didn't have an issue of him serving 15. [LR424]

SENATOR LATHROP: Exactly. [LR424]

RON RIETHMULLER: So it didn't address specifically what to do on the top end. It just said you had to serve the full mandatory minimum. [LR424]

SENATOR LATHROP: And this is Johnson v. Kenney, just to be... [LR424]

RON RIETHMULLER: It was Johnson v. Kenney. [LR424]

SENATOR LATHROP: We've been calling it Kenney, but Johnson v. Kenney. [LR424]

RON RIETHMULLER: Yeah. [LR424]

SENATOR LATHROP: It did say that you should never have somebody discharged before their parole eligibility date. After looking at some legislative history and they said that was the intent, but they really never needed to get to it. [LR424]

RON RIETHMULLER: They didn't get very far because they simply just...like I said, they affirmed the way the department did that sentence... [LR424]

SENATOR LATHROP: Okay. [LR424]

RON RIETHMULLER: ...and it was still unclear to how to do the top end with it. But, as I

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

said, they were still serving the full mandatory minimum before they were discharged, and everybody was. [LR424]

SENATOR LATHROP: Okay. So the Johnson v. Kenney didn't change the way things... [LR424]

RON RIETHMULLER: It did not. [LR424]

SENATOR LATHROP: ...you or the Department of Corrections did anything? [LR424]

RON RIETHMULLER: It did not. It did not. [LR424]

SENATOR LATHROP: And your memo in the meantime becomes gold over at the Corrections. [LR424]

RON RIETHMULLER: It was...(laugh) I guess that's a way of putting it. [LR424]

SENATOR LATHROP: It certainly was for Jeannene Douglass who sent it out to everybody who called her. [LR424]

RON RIETHMULLER: Well, it certainly was, it certainly was. It was a policy and I did discuss that policy freely with everyone that was concerned. I did at least, I believe, at least two district judges' presentations when they have a seminar in the fall. And I did two presentations in front of the district judges and that's one of the things I did explain to them. This was our policy. This is why I wrote it, but I was very clear to say it was the department policy on the discharge. [LR424]

SENATOR LATHROP: And just for people who don't appreciate it and I certainly do after going through this stack of stuff, you have a lot of judges calling your office saying... [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

RON RIETHMULLER: I did have a lot of judges calling my office, I did. [LR424]

SENATOR LATHROP: ...how do I do this? What's it mean? I got to do this truth in sentencing business and I need to tell them what this all means. [LR424]

RON RIETHMULLER: Matter of fact, I can probably tell you that the truth in sentencing when it came in, when I talked to the district judges, I had some suggested wording to comply with that. And it was used by a lot of judges basically saying, you'll have to serve...if it was a ten-year sentence, you'd have to serve five years for discharge purposes, minus any credit for time served, because jail time credit was required to be given,... [LR424]

SENATOR LATHROP: Right. [LR424]

RON RIETHMULLER: ...and it helped with the truth in sentencing. [LR424]

SENATOR LATHROP: Yeah, you did a memo to the Douglas County District Court judges in 2005,... [LR424]

RON RIETHMULLER: I did. [LR424]

SENATOR LATHROP: ...kind of again reaffirming the way you had been doing it. And then in 2007, you do another memo. [LR424]

RON RIETHMULLER: Yes. [LR424]

SENATOR LATHROP: And that's page 15 and 16. [LR424]

RON RIETHMULLER: Yeah. I think, of the 2005 memo, I think the key thing when you

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

look at the memo I wrote to the district judges, I think the key thing is the last paragraph because I explained the whole mandatory minimum computations. And I said, the method listed above in calculating mandatory discharge date is departmental policy. To date, there have not been any court decisions that specifically address calculating discharge dates on the maximum terms that are longer than the mandatory minimum. I was very, very clear that I was waiting for a court case to come along. [LR424]

SENATOR LATHROP: Well, it would come. [LR424]

RON RIETHMULLER: It would come, unfortunately, about six years after...five years after I left, unfortunately. [LR424]

SENATOR LATHROP: But in the meantime, you're getting a little...you're getting people questioning that. [LR424]

RON RIETHMULLER: Yes, I am. [LR424]

SENATOR LATHROP: You're getting people questioning that and you do a memo in 2007. [LR424]

RON RIETHMULLER: Uh-huh. [LR424]

SENATOR LATHROP: And that is April 23, 2007. It's page 15 in the book... [LR424]

RON RIETHMULLER: Yes. [LR424]

SENATOR LATHROP: ...in which you relate to George Green, the head of legal... [LR424]

RON RIETHMULLER: Yes. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SENATOR LATHROP: ...at the Department of Corrections that people are questioning how you determined the mandatory discharge. [LR424]

RON RIETHMULLER: Yes. [LR424]

SENATOR LATHROP: Is that right? [LR424]

RON RIETHMULLER: That is correct. [LR424]

SENATOR LATHROP: What was the issue or what feedback were you getting on the mandatory discharge calculation? [LR424]

RON RIETHMULLER: It is insight...and I can't remember specifically now after these many years, but after reading that memo, I was getting calls and discussing things of whether or not the way that we calculated the discharge date was correct. So I wrote that letter or that memo to George Green saying, hey, you know, should we look at this? What do you think? And I'm sure I had a conversation with George about it. [LR424]

SENATOR LATHROP: It wasn't so much of general musing about the issue because you asked him some particular questions. [LR424]

RON RIETHMULLER: I did. Absolutely. Yes, I did. [LR424]

SENATOR LATHROP: And on the second page in the second paragraph you say, does the ruling--he's talking about Johnson v. Kenney--does the ruling change our current method of comparing the discharge date with the good time to the discharge date without good time? Does the ruling imply the department should use the same method to calculate discharge dates that we use to calculate parole eligibility dates? And then you say, we calculate parole eligibility dates pursuant to a method you laid out. So you

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

asked him some specific questions. [LR424]

RON RIETHMULLER: I did. [LR424]

SENATOR LATHROP: Did you ever get a response to that memo? [LR424]

RON RIETHMULLER: I'm sure I talked to George about this in person. Obviously nothing changed. [LR424]

SENATOR LATHROP: Let me ask this, though, if I can. [LR424]

RON RIETHMULLER: Okay. Sure. [LR424]

SENATOR LATHROP: Did he ever send you back anything in writing responsive to your questions regarding the calculation of the mandatory discharge? [LR424]

RON RIETHMULLER: Not that I remember. [LR424]

SENATOR LATHROP: Okay. Do you remember having any conversations with him after you sent him this memo in April of 2007? [LR424]

RON RIETHMULLER: Not specifically, I don't remember, but I'm sure after a memo like that I did discuss it with him in person. The question may be asked here, why didn't you seek an Attorney General's Opinion on this? [LR424]

SENATOR LATHROP: I'll get to that question. [LR424]

RON RIETHMULLER: Oh, well, I'll let you move on. Okay. [LR424]

SENATOR LATHROP: Before...I want to talk about your conversation with George

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Transcriber's Office
Rough Draft

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

Green though. [LR424]

RON RIETHMULLER: Okay. [LR424]

SENATOR LATHROP: Do you remember anything...do you remember anything about the conversation with George Green? [LR424]

RON RIETHMULLER: I do not. [LR424]

SENATOR LATHROP: Do you remember, or at least can you tell us, did he say that he would get you an answer, or leave it alone, or we're not going there? Did you get anything like that? [LR424]

RON RIETHMULLER: I don't remember. The only thing I would say is that based upon the memo and based upon this and since nothing changed from the time I left in 2008, I obviously would have just said leave it alone and continue the way we're doing it. [LR424]

SENATOR LATHROP: Okay. You remember him telling you to leave it alone? [LR424]

RON RIETHMULLER: Well, I don't specifically remember him saying that, but I'm sure that happened because I would have followed up with this. [LR424]

SENATOR LATHROP: Okay. [LR424]

RON RIETHMULLER: I tried to write memos and to...for points of discussion. [LR424]

SENATOR LATHROP: Okay. [LR424]

RON RIETHMULLER: And this was a pretty good... [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SENATOR LATHROP: You don't remember getting any kind of an opinion from Corrections' legal department telling you to change any of the calculations in your '96 memo? [LR424]

RON RIETHMULLER: That I do know. [LR424]

SENATOR LATHROP: Okay. [LR424]

RON RIETHMULLER: I do know that I did not change anything. I was told...I was not instructed to change anything. [LR424]

SENATOR LATHROP: I want to ask you a question about your experience during this period of time. To what extent was overcrowding becoming an issue and becoming sort of the background at the Department of Corrections during this period of time? [LR424]

RON RIETHMULLER: You know, I don't remember a whole lot with me specifically about overcrowding. I think it was starting to become an issue. I know the Diagnostic and Evaluation Center at that time was starting to fill up and be overcrowded. But specifically, not a whole lot with me. [LR424]

SENATOR LATHROP: Okay. Was that part of your conversation, or was it ever a consideration for Mr. Green in his discussions with you about changing the mandatory discharge date calculation? [LR424]

RON RIETHMULLER: Not that I can remember. [LR424]

SENATOR LATHROP: In your...I'm going to give you a chance to answer this so it doesn't get taken out of context because I think I know what you meant. In your 2007 memo to George Green... [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

RON RIETHMULLER: Okay. [LR424]

SENATOR LATHROP: ...you say the department hasn't challenged...hasn't been challenged on our current method because it benefits the inmate. [LR424]

RON RIETHMULLER: Yes. [LR424]

SENATOR LATHROP: The point is, is that you have to...before you can have a challenge and get a court interpretation, you have to have an inmate be upset and challenge and file some kind of a habeas corpus proceeding. [LR424]

RON RIETHMULLER: Yes. [LR424]

SENATOR LATHROP: That's your point. [LR424]

RON RIETHMULLER: That's...yes. [LR424]

SENATOR LATHROP: It wasn't, they're all sleeping well and getting out early, so don't worry about it. [LR424]

RON RIETHMULLER: Right. Yes. [LR424]

SENATOR LATHROP: Okay. I did want to give you a chance to talk about that. And the last thing, I guess, I have is, why didn't you get an Attorney General's Opinion? We had one from Smith Camp in 1996 that sort of helped develop the controlling memo that you wrote at the same time, and you had the Attorney General's Office available to you. Was there a reason you didn't turn to the AG's Office for an Opinion on the calculation of the mandatory discharge date? [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

RON RIETHMULLER: I can speak to that from an overall perspective and I can't remember specific conversation about this, but I was told that we do not ask for Attorney General's Opinions on anything. And I believe during the time that you'll see the last several years the department had not asked for any. [LR424]

SENATOR LATHROP: Okay. Who told you that? [LR424]

RON RIETHMULLER: Mr. Green. [LR424]

SENATOR LATHROP: And was that in some kind of a meeting or over lunch, or how did he tell you to not ask the AG...? [LR424]

RON RIETHMULLER: Probably in a meeting and it may have been in regards to this memo. I can't specifically say that, but... [LR424]

SENATOR LATHROP: Do you remember telling him that you wanted to go get an opinion from the AG on it? [LR424]

RON RIETHMULLER: I can't...you know, I honestly can't remember, but as I look back at the issues, it certainly would have been something that would have been nice to have been clarified by an Attorney General's Opinion. [LR424]

SENATOR LATHROP: Okay. [LR424]

RON RIETHMULLER: Absolutely. [LR424]

SENATOR LATHROP: When he told you not to go to the AG, do you know what the motivation was? Was it sort of a, we have a legal office here, we handle it inside, keep the AG out of here? [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

RON RIETHMULLER: I believe that would be pretty much the gist of it, yes. [LR424]

SENATOR LATHROP: And what was the date of your separation from the state?
[LR424]

RON RIETHMULLER: March of 2008. [LR424]

SENATOR LATHROP: March of 2008, so well before the Castillas decision. [LR424]

RON RIETHMULLER: Well before the Castillas case. [LR424]

SENATOR LATHROP: And that was where we got unequivocal clarity when it came to the mandatory discharge. [LR424]

RON RIETHMULLER: Yes, we...yes, we did. I...yes. I would have to say that if I was the records administrator during that time period, I would have complied with it. [LR424]

SENATOR LATHROP: Did Jeannene Douglass work for you? [LR424]

RON RIETHMULLER: Jeannene Douglass did work for me. I was kind of surprised by looking at this that she was even involved in this in the first place. Jeannene Douglass had absolutely...by the way, Jeannene Douglass had no authority to change any inmate's sentences anywhere in the Department of Correctional Services. She couldn't have changed that individual's sentence. She couldn't even change Castillas'. The way this is set up in that department, Castillas would have been in a facility someplace in the Department of Corrections. I'm not for sure what facility he was located in, but it would have been the records manager in charge of that facility to change his record. I don't believe the records manager in that facility is even aware of this court case, that I know about. Jeannene Douglass was at central office but was not in charge of time calculations for any inmate. They were all done by the facilities where the inmate

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

resided. We had no inmates residing at central office. She did not have a records...
[LR424]

SENATOR LATHROP: She had to have some responsibility because I've looked through these files and everybody is e-mailing her, including the Attorney General when they get the Castillas Opinion. [LR424]

RON RIETHMULLER: If you look at those, those only go to her after I left. If you look prior to my leaving, you'll notice everything went to my office. [LR424]

SENATOR LATHROP: Okay. [LR424]

RON RIETHMULLER: And please be advised it should have went to the records administrator. That is the person in charge of policy, not Jeannene Douglass. [LR424]

SENATOR LATHROP: Okay. I think that's all I have. Now, we got plenty of people up here probably have more questions. [LR424]

RON RIETHMULLER: Sure. [LR424]

SENATOR LATHROP: Senator Schumacher. [LR424]

SENATOR SCHUMACHER: Thank you, Senator Lathrop. If you were on this side of the table, what questions should we be asking? [LR424]

RON RIETHMULLER: That's a really good question. I think some of the questions you're asking are very good. I would say, is there a fundamental structural breakdown in the department the way the records division was operating? [LR424]

SENATOR SCHUMACHER: And the answer to that would be? [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

RON RIETHMULLER: I think there was. [LR424]

SENATOR SCHUMACHER: At what point did that occur? [LR424]

RON RIETHMULLER: After I left. I was very, very appalled to see that that decision was not complied with, as I had been looking for the decision for years, in my...and I was just appalled when I read that in the paper and went, oh, my. [LR424]

SENATOR SCHUMACHER: What would you suspect was the cause of that? [LR424]

RON RIETHMULLER: Governmental bureaucracy at its finest... [LR424]

SENATOR SCHUMACHER: In what respect? [LR424]

RON RIETHMULLER: ...I'm very facetiously saying. Basically, from my perspective, it's obvious from what I've gathered since then that the records department had no direction and that there was no one to go to. There was no one running that division that had any knowledge of what was going on. It was pretty obvious to the person, if they would have looked at some of the memos I had written in the past, they would notice that we were waiting for an Opinion on that, and it would have been pretty clear with that Supreme Court case what should have been done. [LR424]

SENATOR SCHUMACHER: Whose responsibility would it have been to give the direction? [LR424]

RON RIETHMULLER: The direction, all policy directives for records division came out of the records administrator office, which is the office I held and I believe it's currently held by Kyle Poppert. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SENATOR SCHUMACHER: Any other questions we should be asking? [LR424]

RON RIETHMULLER: I think that's...that's pretty much I can think of right now. [LR424]

SENATOR SCHUMACHER: How big of a mess would it have been, or is it now, to unwind this animal that was created by doing the right thing? [LR424]

RON RIETHMULLER: Well, I think they tried to fix it when the sentence came down. I think that had an individual working overtime to try to fix the mess. I probably could have had it done probably less than two days when I was there, probably would have been fixed. You know, sure, was it a task? Absolutely, but... [LR424]

SENATOR SCHUMACHER: What would have been the policy or administrative reason for not just spending the two days or a week and fixing the mess and being done with it? [LR424]

RON RIETHMULLER: I don't know. [LR424]

SENATOR SCHUMACHER: Thank you. [LR424]

SENATOR LATHROP: Senator Chambers. [LR424]

SENATOR CHAMBERS: Mr. Riethmuller,... [LR424]

RON RIETHMULLER: Yes. [LR424]

SENATOR CHAMBERS: ...I'm glad you came today. And there was an overlap between the time you were working and the time that I was in the Legislature,... [LR424]

RON RIETHMULLER: Absolutely. [LR424]

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Transcriber's Office
Rough Draft

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SENATOR CHAMBERS: ...because most people think that I was here from the beginning. (Laughter) But at any rate, the introduction by the Legislature of mandatory minimums did a lot in complicating the situation because nothing was done to correlate that with these various other statutes that dealt with good time and so forth. Is that a reasonable statement? [LR424]

RON RIETHMULLER: That's a very reasonable statement. [LR424]

SENATOR CHAMBERS: If mandatory minimums were done away with, when a penalty states a minimum and a maximum with no mandatory minimum, the judge has the discretion to give any sentence within the range allowed by that statute. [LR424]

RON RIETHMULLER: That is correct. [LR424]

SENATOR CHAMBERS: And if that were the situation, even somebody educated in OPS, who got a job with Corrections after you left, would be able to properly calculate the parole eligibility date, the mandatory release date, and that tentative release date. [LR424]

RON RIETHMULLER: That is correct. [LR424]

SENATOR CHAMBERS: If the mandatory minimums were done away with, that would go a long way toward eliminating some of the problems that have been created that we're dealing with today. Is that true or false? [LR424]

RON RIETHMULLER: Well, I would say it would be true to the extent that it would make the timekeeping function simpler. If you remember, and you were in the Legislature when this happened, but the reason the good time law originally changed in 1975, what prior to 1975 we had an (inaudible) the old mandatory parole good time law. And if you

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

remember, there was an insurrection at the penitentiary that the inmates were complaining that there was only one person that could do their time. The records manager at the penitentiary was messing with their time because it changed all the time because you had to earn part of your good time, and so your release date was being recalculated every month. And they said this person was the only person that could understand it and figure it out and they were messing with their time. There was an insurrection at the penitentiary. That's when LB567 came into effect to give all the good time up-front and to make any moron--use of the term "moron"--could figure the sentence. Anybody could figure it out. It was so simple that anybody...so it's no...really not much dispute anymore on what a person's release date or parole eligibility date was because it's very, very easy to understand. That's why the good time laws changed to grant all good time up-front. It was because of the confusion and the changing of release dates all the time when you got...and, you know, you can also control your population, obviously, by your disciplinary procedure, too, if you need to take good time. And that's some other related issues, but that's how you controlled. So it didn't really matter whether you earned part of it or you got it all up-front, you could still be managing the population by your disciplinary process. [LR424]

SENATOR CHAMBERS: And by making that change in '75, all the inmates who came into the prison, whether it was for a white collar crime, homicide, theft, or whatever, came in on exactly the same footing with reference to how good time was going to be handled. [LR424]

RON RIETHMULLER: That is correct. [LR424]

SENATOR CHAMBERS: They all knew and they were treated the same. There wouldn't be a situation that existed when they had what they called...what was that term they called when you could earn good time? Anyway, there was a term given to it where if you worked a job, or if you took certain programs, you could earn additional good time. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

RON RIETHMULLER: Yeah. It was meritorious good time. [LR424]

SENATOR CHAMBERS: Yeah, manda... [LR424]

RON RIETHMULLER: Meritorious good time, yes. [LR424]

SENATOR CHAMBERS: I meant meritorious. But if there were not programs available, if there were not jobs available, or if you were not liked, you could not get on the track where you would ever earn meritorious good time. Isn't that true? [LR424]

RON RIETHMULLER: There were some instances that was correct, yes. [LR424]

SENATOR CHAMBERS: All right. So when that change was made in '75, everybody came in and it's like saying, when you come in here, there's some money in the bank. Whether you'll have that money when you get out or not depends on how you manage your money in the sense of the good time is granted up-front. Now, the Legislature...there's an expression: The constitution follows the flag. And it may have been Mr. Dooley who said, I don't know whether it's true that the constitution follows the flag, but the Supreme Court follows elections. In other words, politics will play a part even in judicial decisions. Now, when we have a situation where legislators who are very sensitive to shifts in political wind and they want to stay in office, if the fad of the day is to get tough on crime, then there's a proliferation of offenses. There is a stiffening of sentences. There's the introduction of mandatory minimums so that everybody can say, well, I offered legislation that was tough on crime. When it hit the federal level and they were talking about a death penalty, pretty soon it became similar to England where there was a death penalty for everything. There was one which said there will be a death penalty if a poultry inspector working for the U.S. Department of Agriculture is killed in the process of inspecting poultry, there's a death sentence. Those were things on the books. So a lot of this can be placed right at the doorstep of the Legislature,

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

legislators who do not properly carry out our responsibilities and functions. There are penological determinations that can be made that relate to the role of penology. You punish, you correct bad conduct, and you try to put a person in a position to make it on the outside. But when the Legislature has people like Doug Kristensen, Chris Abboud, and others that I could name who carried bills for the Attorney General and the Governor, and the only reason is to show they're tough on crime, then it makes it hard for somebody like me who has to fight all of that, what I call trash legislation. And, whereas, the people who did this miscalculating, the people who ignored the Supreme Court decision must be held accountable. They are culpable. But when you look at all of the circumstances, the Legislature is far from coming to court with clean hands. And I know because my colleagues made my work hard for me. And while we are up here, not as prosecutors, we're casting a type of judgment in a way by the questions we ask. I saw a movie with Eddie Murphy and some other people called Trading Places. And this one guy went to jail and some bad people did bad things to him and when he was bailed out, he turned around because now he's getting out of jail. He said, that man did such and such to him. That man made my life miserable during the last session of the Legislature because he created a new offense that would increase the number of people in prison and require stiffer sentences. So thou who says don't steal, dost thou steal? Thou who sayeth don't lie, dost thou lie? Quoting the "Bible." I'm doing this with you because you're not a tyro. You've been in the system a long time and you understand things and you've seen how we got to where we are now. And one of the bad things about term limits is that there are not people like me who remember some of that trash that was being done, who did it, and how it got here. Stenberg was good at it. Governor Nelson was good at it. All of them would succumb to that cry from the public, get tough on criminals. And the current Governor even wrote something like that in a response to the Chairman of the Appropriations Committee asking for consideration of a long-term plan to deal with prison overcrowding. The conclusion: Get tough on crime and don't be easy on criminals, or something like that. But as "Professor" Schumacher was getting at, we as members of the Legislature formulate policy. We're gathering information to see what changes in policy ought to be considered. The punishment, the

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

calling to account under criminal statutes is not what the Legislature does. That's for other people. But my view, even when I say that the ones who did wrong need to be punished, I believe in due process for everybody. Unlike some of my colleagues, who like to walk in the presence of Martin Luther King, Mahatma Gandhi, and Mother Teresa, I read their constitution which was written when my people were owned as property like cows, pigs, and chickens, but I take it more seriously than they do. And when they talk about everybody being innocent until proved guilty, you're not talking about moral guilt or societal opprobrium, but whether or not the rules of this game of criminal punishment are followed by the state which put the rules in place. And courts have said, you have to follow the process that is due to every person in order to be treated fairly, every person. It doesn't say citizen. It says every person. So somebody like me has to see that Jack the Ripper is a person. Mata Hari is a person. Even John Dillinger, Jesse James, and John Gotti are persons. And if you're to get them, you have to get them according to the rules. But if we, the rule makers, are going to fashion rules that create problems, then we have to assume some of that responsibility. And here's what all that is for. You were asked a question about how things got to where they are and part of your general answer was, like government, the bureaucracy. But the bureaucracy consists of people. People, place, actions. People are accountable for their actions and those people have names. What you told us today is that there are people, who based on the title they hold and the responsibilities that go along with that title and the job, should not be farming out responsibilities to lower-level clerks as all the Nazi war criminals wanted to do in blaming other people and saying, I just carried out orders. Somebody gave orders. If we, as a Legislature, wanted to start unraveling the problem that exists now, we can't change what happened as far as the individual conduct of people. If we got rid of mandatory minimums, what harm would that do, if you have an opinion, to the system of crimes and punishments in this state? [LR424]

RON RIETHMULLER: (Inaudible) about that. [LR424]

SENATOR CHAMBERS: I want you to think about it while I got access to your brain and

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

your expertise, your experience, your vast knowledge. [LR424]

RON RIETHMULLER: As a citizen no longer employed by the Department of Correctional Services, I totally understand what you're saying. There have been bills and there have been...that I had to deal with over the years that were the fashion of the time. And just like this whole mandatory minimum thing and the thing that came down, you know, like I said, in 1996, it wasn't a huge issue. And the political time was different back in 1996 than it is in 2014. There have been laws that have passed in Nebraska that have, you know, like I said, that was the flavor of the month or the year, whatever it is. But, you know, the department had to deal with them. I had to deal with them. You know, I always kind of liked the simpler, the better, you know, that everybody knows what's...everybody can understand it and we do get complicated. [LR424]

SENATOR CHAMBERS: And you just stated that essence of Occam's razor. William of Ockham said, in effect, if there are several alternatives, pick the one as simplest and least confusing. Now, you are here in your role as a citizen now, not as an employee of the state. If the Legislature were to say today there are no mandatory minimums, a judge would still have the discretion to fashion the sentence given, taking into consideration the granting of good time, the calculation of a mandatory release date, fashioning a sentence which would be severe enough to adequately punish the offense based on the way the Legislature described the offense. Would that be true or false? [LR424]

RON RIETHMULLER: That is correct. In Nebraska, as you are alluding to and you're saying, the sentencing judge has a lot of discretion and authority on sentences. A judge can do at the time of sentencing, he can say right there if he wants them to serve...you know, based upon the parameters, the minimums/maximums of the term statutorily, there's a lot of discretion. If you have an offense that carries anywhere from 1 to 50 years, which is a Class II felony, there's a lot of discretion in there as far as how long that person can be in prison. And the sentencing judge has a lot of authority and power

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

in regards to that sentence. [LR424]

SENATOR CHAMBERS: And now it having been established that you don't have formal training in the law, I'm not asking you this question as though you were a lawyer. Are you aware of the fact that even if a sentence is given within the range allowed by the Legislature, in view of all the circumstances, a person still may be found to have been given a sentence that's unduly harsh? A person can go to court and challenge whether or not a judge views discretion even when the discretion is there. [LR424]

RON RIETHMULLER: That's what I understand, that that can... [LR424]

SENATOR CHAMBERS: So we don't need mandatory minimums to adequately punish people, do we? And since we don't put a mandatory minimum on every crime, it shows that something happened at some point that had a political aroma to it that led some senators to say, I want this particular crime to have a mandatory minimum, and the Legislature does it. And when I was not here for those four years, I look at the damage that this supine, irresponsible, ignorant Legislature did and the fact that a Governor would sign bad laws. I know I'm taking some time. It's my prerogative. But what my colleagues did while I was gone allowed some jailer to tell them, we have people bringing contraband into the jails so we want you to allow the jail to determine when a crime has been committed as far as contraband, so if we post something on a list and that's brought in, it becomes a crime to bring that in. I read about it in the paper and you know what I did? I wrote a letter to the Governor and talked to him and I said, in this state nothing is a crime unless the Legislature says it's a crime. The Legislature cannot delegate to anybody the authority to create a crime. And this boneheaded statute that this Legislature passed in my absence allows a jailer to put something on a card. And if you bring that something in, it's a crime whether it's a stick of gum or a Stetson hat. And what is a crime today can become a noncrime tomorrow if something is taken off that list. And I told the Governor he ought to veto it. He bucked it over to the Legislature and wanted me to talk to the Speaker of the Legislature, who was Flood, and I talked to him.

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

And I told him how much contempt I had for what they did as a Legislature in passing it. And nobody wanted the responsibility. So you know what they did? They went to Senator Wallman, I think, was the one who offered it and got him to ask the Governor to bring the bill back so the damage wouldn't be done. And I have the articles to prove it. That's the kind of work I did in this Legislature when I wasn't even here. And it shouldn't be necessary to have one man standing against all of this trash legislation and then sitting in judgment on those who got caught in a trap that the Legislature helped create. Mr. Riethmuller, could you, based on what the Supreme Court said was a method for determining a mandatory release date where a mandatory minimum is involved, tell me right now what would be the mandatory release date for somebody who was given a ten-year sentence, flat, and it was for a crime that carried a mandatory minimum of ten years? How many years must that person serve before he or she is released? [LR424]

RON RIETHMULLER: It would be ten years for parole eligibility, ten years for discharge minus any credit for time served, so it would be the same on both ends. [LR424]

SENATOR CHAMBERS: So there's really no eligibility for parole because your release date would come at least coextensive with the time for parole. [LR424]

RON RIETHMULLER: That's correct. [LR424]

SENATOR CHAMBERS: Now, let's say that there's a mandatory minimum of 10 years and the judge gives a sentence of 10 to 20. [LR424]

RON RIETHMULLER: Uh-huh. [LR424]

SENATOR CHAMBERS: How many years must that person serve before being eligible for parole? [LR424]

RON RIETHMULLER: It would be 10 years for parole eligibility and it would be,

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Transcriber's Office
Rough Draft

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

according to the Castillas case, would serve 15 years on the top end. It would be ten years plus half of any remaining years. [LR424]

SENATOR CHAMBERS: And you have to say that the half of the top is based on the granting of good time when your sentence in effect begins where good time can be calculated. [LR424]

RON RIETHMULLER: Right. [LR424]

SENATOR CHAMBERS: Suppose a sentence is given of 10 to 15 and the mandatory minimum is 10. You serve ten years, which leaves five years, and you take half of that because of good time. So how many years must a person serve before being eligible for parole? [LR424]

RON RIETHMULLER: Well, if it was 10 to 15, it would be 10 years for parole eligibility and be 12.5 years for discharge. [LR424]

SENATOR CHAMBERS: So 12.5 would be the maximum that you could serve if you get a 10 to 15... [LR424]

RON RIETHMULLER: Right. [LR424]

SENATOR CHAMBERS: ...with the 10-year minimum. [LR424]

RON RIETHMULLER: Right. [LR424]

SENATOR CHAMBERS: How many people, ordinary people walking around, would understand this type of calculating if they were told that's the way it's done and you gave them some examples. Say you get a 13 to 4-year sentence with a 5-year minimum. They'd have some difficulty calculating all of that even if you laid out the

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

formula. Do you think that's true or false? [LR424]

RON RIETHMULLER: That's probably true. [LR424]

SENATOR CHAMBERS: There's one question I could ask you and would terminate my questioning, but I'm not going to ask it. I will terminate my questioning anyway. And I'm going to express appreciation to you because you gave information, you helped give us a point in time at which a change occurred. We didn't have that point in time before you came. You explained how things were being done before that point in time. So even when that point in time came, there was already a system in place that could have been followed if those who came after chose to do so. Is the Department of Corrections one of those departments directly under the Governor's jurisdiction and responsibility based on the constitution listing those departments that would fit that category? [LR424]

RON RIETHMULLER: Yes. [LR424]

SENATOR CHAMBERS: If I'm the captain of the ship, is there any way that I can blame everybody on the ship for what happened and not have any responsibility myself as the captain? [LR424]

RON RIETHMULLER: I imagine the captain has some... [LR424]

SENATOR CHAMBERS: I didn't hear you. [LR424]

RON RIETHMULLER: I would suspect the captain would have some responsibility. [LR424]

SENATOR CHAMBERS: And don't they say, on my watch. And you don't have to have specific knowledge of it. Did you see a movie called The Caine Mutiny? It involved...Humphrey Bogart was in it. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

RON RIETHMULLER: Long time ago. [LR424]

SENATOR CHAMBERS: And the famous thing was where he's sitting there in court with these two metal balls saying, ah, the strawberries; that's where I caught them. But what happened, the ship went in a circle and it cut a cable that was pulling some kind of a target. Now, maybe Humphrey Bogart was manning the helm, but I'm not aware that he was steering the ship, but he's held accountable. Now, if we're going to talk about a bureaucracy, there's a bureaucrat at the top. And if the bureaucrat is given a name under the constitution and that name is Governor, the supreme executive authority is in the Governor. This department is under the Governor's direct control and responsibility. All this law violating is going on. All of these mistakes, crimes if any, were committed on his watch. Then the Governor is going to say, all those who were responsible are going to be called to account, but he excludes himself. He appointed every director who was the director while he was in office. Things happened under those directors. One named Houston, based on what happened in an e-mail, had indicated that it was his desire to have good time continue to be calculated the way it was because they didn't want to increase the population any more than they had to. But I didn't see the Governor saying that we need to call that director to account, because it was his appointee. The Governor is not accepting account. And even those of us in the Legislature, on occasion, will tap, tap, tap dance around the one who bears the responsibility. And that is where I think we, as members of the Legislature, are falling down when it comes to our responsibility. Anything that I do, I put my name to it and I'll accept the consequences for it and I will not deny having done it. Anything I say, I will sign my name to it and I'll take whatever responsibility and consequences follow and I can be called to account like anybody else. And I don't take offense when somebody calls me to account. They just have to know what they're talking about and have their facts correct. So while we're in the process of determining what went wrong, when it went wrong, how it went wrong, who was responsible, and how it can be prevented as a Legislature, we've got to take a lot of responsibility because we formulate state policy.

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

And we know better than to do a lot of the things that we do in that Legislature. I'm going to ask you that question after all. If the Legislature foolishly enacts legislation that creates problems for those who have to operate a correctional system, does it ever seem to you that maybe no consideration is given by the Legislature when it's doing this, the impact it's going to have, not just on the people who are locked up, but those who must administer that system? [LR424]

SENATOR LATHROP: Can you move closer to the mike so...we need to make sure we're certainly getting Senator Chambers. You've relaxed a little bit and it's hard to hear. [LR424]

RON RIETHMULLER: Okay. Sure. Sure. [LR424]

SENATOR CHAMBERS: Let me ask it a different way. Was your job, when you were handling records, complicated by the changes that were made in good time laws from time to time? [LR424]

RON RIETHMULLER: Answer to that is yes. [LR424]

SENATOR CHAMBERS: When changes are made in the sentencing structure, and the result is overcrowding, are those who operate the prison free to say, we're not going to accept these ten people because they add to the overcrowding? Can the Department of Corrections say that? [LR424]

RON RIETHMULLER: No. [LR424]

SENATOR CHAMBERS: They must accept those people because the Legislature said they must go there. Isn't that true? [LR424]

RON RIETHMULLER: During the whole time I was there, that is correct. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SENATOR CHAMBERS: So, if we lengthen sentences, if we make it harder to get parole, if we create new crimes and put in mandatory minimums, the Department of Corrections is not responsible for any of those actions. Is that true or false? [LR424]

RON RIETHMULLER: They're just responsible for the implementation of it. [LR424]

SENATOR CHAMBERS: What is the agency responsible for those things happening? I didn't hear you. [LR424]

RON RIETHMULLER: The agency, well, it would be the...I mean, the Legislature? They're the ones that pass... [LR424]

SENATOR CHAMBERS: You don't have to make a question out of it. Who creates crimes in the state? [LR424]

RON RIETHMULLER: The Legislature. [LR424]

SENATOR CHAMBERS: Who determines sentences? [LR424]

RON RIETHMULLER: The judges. [LR424]

SENATOR CHAMBERS: Who sets the parameters within which sentences can be set? [LR424]

RON RIETHMULLER: The Legislature. [LR424]

SENATOR CHAMBERS: So, ultimately, the Legislature. Who is the only entity...and I say who because it comprises people, who can create mandatory minimums? [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

RON RIETHMULLER: The Legislature. [LR424]

SENATOR CHAMBERS: When we say that there is a 57 percent excess in capacity right now in terms of the people in prison, whose policies created that situation? [LR424]

RON RIETHMULLER: I suspect it would be...you know, looking at it from my perspective, the overcrowding issue is based upon all the crimes in Nebraska and the individuals that are caught and sentenced for the crimes and they're sentenced to incarceration. [LR424]

SENATOR CHAMBERS: And who created those? [LR424]

RON RIETHMULLER: Well, all the crimes, of course, are created by the Legislature, absolutely. [LR424]

SENATOR CHAMBERS: Now, if overcrowding does exist in fact, and that there are legal limits on whom can be paroled and the circumstances, for example, you cannot be given...you cannot be released on parole unless you serve any mandatory sentence that you were given. Is that true? [LR424]

RON RIETHMULLER: You can't be released before you serve the mandatory. That is correct. [LR424]

SENATOR CHAMBERS: Right. So if there's overcrowding and there are people in that group who cannot be released, the only thing you can do, I guess, maybe build new prisons. You have to create new space. Is that true? [LR424]

RON RIETHMULLER: That would be correct. [LR424]

SENATOR CHAMBERS: But the Legislature doesn't want to spend money to build new

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

prisons. So then they might come up with the idea of sending people in the state institution to county jails. And my colleagues don't care, but there are people who have fewer rights in these county jails than they had in the penitentiary. And do my colleagues who created that situation, over my objection, care about it? Heavens no. Religious activities allowed in prison are not allowed in these county jails where my colleagues said these people must go. They were sentenced to the penitentiary, not a county jail in Grand Island. And every right that they would have in that state facility, they should have in those county jails. But the Governor, the legislators, and all of the rest don't care. And I get the letters. I get the calls from the family members. But it's a moneymaker for the counties. And we who are asking all these questions dare not look behind us because in the same way that Marley, of Scrooge and Marley, who had died was walking through the afterlife with chains to which were attached cash boxes, ledgers, and all the evidence of his wrongdoing. You know why I'm saying this now? I want it on a record of what we as a Legislature have done and are allowing to continue to be done and don't care. I had tendered my resignation from this committee and I was asked by leaders of the Legislature to stay on the committee. I think my original decision was the right one, so I publicly am acknowledging that I blundered and I made a grievous error of judgment by agreeing to stay on this committee. Nobody made me stay on, so I won't quit and I'll try to carry my share of the load, but I'm not enjoying what I'm doing. I don't have a religious corpuscle in my body, but because those who are religious can dull their conscience to the extent that they have done, maybe I need to get some religion so I won't be so sensitive to the injustices heaped on other people, the hypocrisy of our sitting in judgment when we help create the circumstances that engendered the very things we're sitting in judgment on, our continuing to fail to do what we ought to do to ensure that it doesn't happen again. When it comes to doing what I think is right, I will do it. I don't care what anybody else thinks. I don't care what anybody else says and that's why on this committee, I'm taking this time at this point to say what I want to say. It's my platform and I'll stand behind everything that I said. But some of my colleagues who are not going to be here next session of the Legislature created problems that I am going to have to continue to deal with. But I'm going to tell one of my

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

colleagues one thing. I'm looking for a lawyer because I don't have the time to do it, but I'll work with that lawyer and I will pay the lawyer out of my pocket to challenge a bill that was passed by the Legislature, LB961, I think it was. And it has...it's a Christmas tree bill, all kind of things that I think would make that bill unconstitutional. And I'm going to tell you something else I'm going to do. I saw where the State Patrol and some local law enforcement agencies were given \$40,000 in grants to set up some kind of a scheme where they would crack down on drunk drivers. I have been railing against the ready availability of guns in my community. I have been critical of the State Patrol for not doing anything, the police and all the rest of them. Not going out and busting people's heads and breaking down their doors, but I point out how I've seen these different law enforcement agencies put together what they call multidiscipline entities--the FBI, State Patrol, county sheriffs, and local police--to go after methamphetamine because it affects white people, put together these cross-discipline groups of law enforcement to go after these liquor kegs where these white kids were having keg parties to make sure that those who supply the liquor to white kids would be punished. And I, for years, have talked about the inflow of guns into the black community and nothing is done, nothing. You don't do away with an epidemic of malaria by killing a mosquito at a time. You go where the mosquitoes are bred. And if the kids in my community know where to get these guns, the police have to know. The FBI has to know. The State Patrol has to know. So I think they are complicit with these shootings and these killings in my community. We can have, as black people, all of the memorial marches we want, all of the prayer meetings, the crying, the pleading, the begging, a community on our knees which is where white people want to see us because the guns are not in the white community. But if they were, and former prosecutor Marty Conboy agreed, if the guns were in the white community like they are in my community, they would go after the source of the guns and they would stop it. So here is what I intend to do. I'm a man of means by no means. But I'm going to contact the director, the superintendent of the State Patrol, and I'm going to offer him a \$40,000 grant--and I'll be responsible for the money--if he will establish a multidiscipline task force, talk to the FBI, talk to the U.S. Attorney, the sheriff, and the police, and make sure they're not going to be rouge

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

people, and find and dry up the source of the guns coming into my community. How are kids in their lower teens going to have the kind of guns that these cops carry? And the cops can't find the source of the guns but the kids know where they are? I see more State Patrol cars in my community now, but the proliferation of guns has not been abated. When my colleague Senator Mello had trucks that carried livestock and the livestock produced manure and they were driving through the streets, we got legislation to address that. I mentioned legislation by the Legislature to address methamphetamine, liquor to minors. But when it comes to the guns, I feel like Humphrey Bogart. Ah, yes, when it comes to the guns. That's what tells me what law enforcement really is. And you know what some people have the nerve to do? Tell me that I should clean out the guns in my community. I'm not a cop, I'm not a sworn officer, and I'm not going to do the work that is their responsibility to do. And I'm not going to tell the community in which I live that we have to become enforcers of the law. And what I'm saying is like blowing in the wind. But I'm going to contact Colonel Sankey and I'll tell him that I will put a cashier's check in his hand if he will agree to set up a task force to address the source of the guns coming into my community. I still live there. I'm not like other black people who white people call leaders who move out of the community and now they've got five digits in their address. This won't mean anything to anybody here, but I live on 19th and Binney, which is right in the middle of the black community. I've lived there all my life, not in that house but in that general area, and I always will. Whatever confronts my community, I want to confront it with them. Whatever risks are faced by people in my community, I have a responsibility to assume those risks. I have to be where the people are and share the life they live--the life of the people who put me in office. And I feel that what I'm saying here is more relevant to what this committee is to be about than what we're talking about. I'm not saying what we're talking about is irrelevant. I've got people in jail and in the penitentiary who should not be there. I got a letter today. A black woman, she works out in west Omaha. She left her job to go for a walk. She takes a ten-minute walk. And a white cop came up and accosted her and asked her did she just come out of Baker's. She said, no, I just came off my job. Well, somebody in Baker's said a black woman wearing black pants stole some groceries and

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

put them in a car, she and a man. She said, well, there's no man with me. The cop told her, well, you could have let him get away. So I want to take you back to the store and let them identify you. She said, I haven't done anything. Well, if you don't go, I'm going to have to cuff you. And this is in a parking lot in west Omaha. The people she works with are watching her accosted by this cop. It's around 90th. Cars are backing up and people are watching. And they got this desperado black woman out there who is probably guilty of some kind of gun crime. So when they told her they would cuff her, she was humiliated already. She didn't want the handcuffs and she's seen these cops throw black women down and assault them. And Chief Schmaderer and all the rest of them and Mayor Stothert, they don't care. And they let you white people think everything is fine with the way these white people and cops do in our community. So rather than get the handcuffs, she got in the police car. They dragged her back to Baker's and asked for the manager and the manager wouldn't come out. So a kid was sent out and the kid said, no, she's not the one who did it. So now, you know what? She has to be eternally grateful to these white, racist, cowardly cops because they didn't knock her down and beat her up and take her to jail and charge her with a crime. And she hadn't done anything except be black. That's what I deal with. You all couldn't deal with what I deal with and function in the way I function in this environment around white people every day. All of the wrongs being done by white people are the things that white people are dealing with. You don't see black people who caused us to be here today--white people. And yet when I say white people are the sources of our problems, white people want to say, you're a racist. Why do you say white people? I say, because white people did it. Ask me why a bacteriologist sees bacteria everywhere. Because they are everywhere. You know what I feel like doing right now? Walking out of here and not coming back. But I'm not a person who acts on the basis of my feelings. I don't have that privilege. I don't have that prerogative. I have to stay in the belly of the beast. And as quiet as it's kept, I can do more than one thing at a time. I can fight to stop this butchery of mountain lions while fighting to make sure that children are not mistreated in the criminal justice system, making sure that manure is not spilled in the streets of Senator Mello's district, that people in public housing which is infested by bed bugs will

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

have some recourse and some redress, somebody who is insulted by a medical person at a hospital...and thanks to Senator Lathrop and others, they got signs in there because I saw one in a hospital the other day. If you assault one of these workers, it's a felony. But what happens if one of those workers insults or threatens a citizen? Nothing. It's always a one-way street. And I'm always on the underside of the garment looking at all of this going on. And you know who come to my office while I'm down here more than any other group? White people. You know who they're complaining about? White people, and generally a white man. These are people who work for Corrections, who work in various offices which I won't identify because they might be retaliated against. So I have to ask myself, what am I even doing here? Why do I waste my time? And it is a waste of time. You all will know the answer to a question, then you'll spend all day asking it over and over, and after it's answered, nothing happens. Mr. Riethmuller, I'm going to tell you like they used to tell slaves when they would beat them and then find out the slave hadn't done anything wrong. Well, you probably did something wrong that you got away with before, so this is for that, and never any acknowledgment that person had been unfairly treated. Mr. Riethmuller, you may not have done anything today to merit what's happening to you now. But somewhere at sometime in your life, you got away with something, and this was retribution day. [LR424]

RON RIETHMULLER: Thank you, Senator. [LR424]

SENATOR LATHROP: Okay. Senator Krist has questions for you. [LR424]

SENATOR KRIST: I thank you for coming and for listening and for your testimony. When you were in your position, did you chair or was there a Sentence Review Committee meeting on a regular basis? [LR424]

RON RIETHMULLER: There was no such committee when I was there. [LR424]

SENATOR KRIST: Okay. So this committee that we have notes from, who include most

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

of Corrections, they review the sentence review...they are the Sentence Review Committee. And I don't need to read this. The only other question I have for you is, if you would please, you were a bit indignant about the fact that the actual calculation would fall to the level it fell to or was at after your departure. Is that because...did you have the advice, did the Attorney General tell you when something changed that would affect your job? Or were you educating yourself and looking for these kinds of rulings? Because as I see it, this ends up being a single point of failure, single point of success. Can you talk to that for just a second? [LR424]

RON RIETHMULLER: I worked very closely with the Attorney General's Office when I was the records administrator. And if there were any court decisions that came down that pertained anything to records, I was notified. I knew what was going on and if I had access to all the records that probably still exist in the department--at least I would hope so--you will see that we met regularly in records staff, had staff meetings, and we discussed all these court cases and all the things that came down. And I had a handle on it. There was, as Senator Chambers alluded to, there was, a lot of times, very difficult things based upon statutes and laws, and we talked about different laws being passed, how we're going to interpret them or how we're going to implement them and whether it was a new good time law or some type of sentencing issues. But that's what the records administrator position was created for. Frankly, it was created to prevent this very same thing from happening. [LR424]

SENATOR KRIST: Thank you. Thank you, Chair. [LR424]

SENATOR LATHROP: Senator Bolz. [LR424]

SENATOR BOLZ: A follow-up question: In all of those conversations, in court case reviews, was there ever a circumstance in which you...the ultimate outcome of that discussion was to disregard the Supreme Court decision and to instead maintain the policy, the practice of the Corrections Department? [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

RON RIETHMULLER: Never. [LR424]

SENATOR BOLZ: Thank you. [LR424]

SENATOR LATHROP: Senator Schumacher. [LR424]

SENATOR SCHUMACHER: Thank you, Senator Lathrop. And thank you for your testimony. I can't speak for the rest of the committee, but you've established a lot of credibility with me and, therefore, I'm going to ask you just a couple of...ask your advice. First of all, back in 2007, you know, you were concerned about whether or not the tentative date for release should equal the parole eligibility date. You went to Green. And basically the perception that I take it you got from Green was, leave it alone. [LR424]

RON RIETHMULLER: Correct. [LR424]

SENATOR SCHUMACHER: Okay. And then at another time you were told, we don't ask for Attorney General's Opinions on anything. [LR424]

RON RIETHMULLER: That's correct also. [LR424]

SENATOR SCHUMACHER: Okay. That couldn't have left you with a warm and fuzzy feeling. [LR424]

RON RIETHMULLER: No. [LR424]

SENATOR SCHUMACHER: Okay. [LR424]

SENATOR LATHROP: I'm going to ask you speak up so we make sure we're recording

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

all this. [LR424]

RON RIETHMULLER: Sure. No, it would not. [LR424]

SENATOR SCHUMACHER: Okay. So what can we do in designing the system so that somebody in a position of a fair amount of responsibility like you had who is left with a not warm and fuzzy feeling does not have to be concerned about getting his boss mad at him, losing his job, not having a paycheck to pay his mortgage, and can say to some other authority, be it legislative or executive, look, here is something that I don't have a warm and fuzzy feeling about and I don't feel is being handled correctly? What we have here is the director of Corrections can claim plausible deniability. The Attorney General can claim plausible deniability. The chief of staff of the Governor can claim plausible deniability. The Governor can: Nobody told me that we had a problem. And it would look like, in that particular scenario, Mr. Green is the fall guy. What can we do to make sure that doesn't happen, because this could have been corrected pretty easy. I mean, it just took one newspaper to run an article and all of a sudden it all unwound. What would have made you feel comfortable to blow the whistle on this or at least raise questions in another forum besides at Mr. Green's desk? [LR424]

RON RIETHMULLER: During that time, like I said, it was still unclear as to...and, you know, I did have the concerns as I indicated in that memo. It would have been nice to have an Attorney General's Opinion, I think, especially on this issue. But it still, like I said, the court cases still weren't clear enough to give us a definitive answer. And absent any Attorney General's Opinion, I still felt that the policy that I wrote was as good as anything at that particular moment because I didn't have any other direction. Fast-forwarding to 2013, I think the Supreme Court was very clear overruling my opinion. And like I said, they...their Opinion was based upon things that weren't in the statute, but it was their Opinion to interpret state statutes and you comply with it and you do it. And I do not know what happened, why it was not complied with because I was not there. I was, like I said, I was very, very surprised that it was not complied with.

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

[LR424]

SENATOR SCHUMACHER: And then one final follow-up, somewhat following up on the theme that Senator Chambers raised. Prior to 1976, our criminal code had become a mishmash of a lot of laws developed over the years. And there was a major renovation in it--very clean, very understandable criminal code that in the years after 1976, because of the flavors of the day and the various political actions, got adulterated with all kinds of ideas and popular and unpopular things. New court decisions came down in the interim dealing with the death penalty and minors and second-degree murder. But for the most part, the criminal code stood the test of time but was subjected to the forces that have been discussed today. From a perspective that you had, a very unique perspective of watching people being processed through the system, how much would we lose by rolling back the clock to the criminal code of 1976? [LR424]

RON RIETHMULLER: Are you referring to making it simpler and not having like all the mandatory minimums and the exceptions to the rules, basically? [LR424]

SENATOR SCHUMACHER: Right. The special deals, the exceptions to the rules, the mandatory minimums, the oh, gee, this a bad thing this year so we're going to make it a triply bad thing. [LR424]

RON RIETHMULLER: I'm always a person that wants to make the thing the simplest as possible so everybody can understand it. And that wasn't always possible. There were...I remember some legislation being passed if a person received...you know, had a misconduct report, some things about drug offenses and they couldn't be eligible for things. And it just got really...it was quite complicated at times to administer all the different bills that were passed in regards to a lot of things. And I can't remember all of them right now because I've been out of it long enough now, but it did make it difficult. There was always these exceptions to the rules. It did make it difficult. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SENATOR SCHUMACHER: Thank you. [LR424]

SENATOR LATHROP: I see no other questions. I, too, want to thank you for coming down. I do think that in the chronology of events, what's clear to me is that in 1996 and in the years that followed, your memo became the gold standard for how we interpret this intersection of mandatory minimum sentences and the good time up to Castillas and probably or maybe in Kenney. If someone would have read enough into it, they might have questioned, as you ultimately did. But, yeah, thank you for your testimony and your service to the state. [LR424]

RON RIETHMULLER: I would like to make one other point before I leave. In this, I feel I have to mention this. On August 4, there was an article in the Omaha World-Herald that talked about some prison sentences recalculations not disclosed. And they talked about some individuals that were on parole. And that they brought their...they said that they were released on parole because they did not have their mandatory minimums computed correctly, and their paroles were rescinded and brought back to the department which I thought was pretty odd because I thought based upon everything I heard that the mandatory minimum parole eligibility was done correctly. So I thought that was odd. I went to the state public Web site and reviewed the cases and did my manual calculations very quickly, which I still remember how to do after six years. Anyway, I ran across some and I thought this is very interesting that the three individuals they...and there was one by the name of Johnnie Davis that I looked at. And I looked at his sentence on-line and it showed that he had the prior good time law. And I...immediately the light went off saying, well, the reason he didn't have a mandatory minimum in the first place was because the mandatory minimum statute did not go into effect until after he committed his crime. So therefore, you couldn't apply it if it wasn't a law when he committed the offense when the mandatory minimum was put on. So someone in the Department of Correctional Services saw that it dated back to 1996 and changed it--made it a mandatory minimum. I am the one that called the Department of Correctional Services that Monday and said, hey, I think you made a mistake. And I do

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

believe Johnnie Davis is back out on parole now. They did check with the Attorney General's Office to see if my opinion was correct, and it was affirmed by the Attorney General's Office saying I was correct. I just want to let you know that that happened after I left, and I was the one that alerted the department. Otherwise, to this day no one would have caught it. [LR424]

SENATOR LATHROP: He would be hiring lawyers instead of out on parole. [LR424]

RON RIETHMULLER: It could be happening later on down the road, absolutely. [LR424]

SENATOR LATHROP: Yeah, yeah, litigating with the state. [LR424]

RON RIETHMULLER: But I just want to make part of the... [LR424]

SENATOR LATHROP: Thanks for that too. [LR424]

RON RIETHMULLER: Okay. [LR424]

SENATOR CHAMBERS: I have one thing. [LR424]

SENATOR LATHROP: Yes, sir. [LR424]

SENATOR CHAMBERS: Not a lecture. I am the reason the citizens of Nebraska put term limits in place. And because it was in the constitution, that's the only way they could dislodge me, because my constituents wanted me back here. At my advanced age, I even got an article where Harold Andersen was saying I couldn't cut the mustard and I wouldn't be sent back because of my age. But I came back. That puts you in a position where maybe, under the right circumstances, you would consider coming back. Would you? [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

RON RIETHMULLER: I don't believe so. [LR424]

SENATOR CHAMBERS: Why not? I'm just curious. [LR424]

RON RIETHMULLER: They couldn't pay me enough. [LR424]

SENATOR CHAMBERS: What would it take? [LR424]

RON RIETHMULLER: It would take a considerable amount more money than they can afford to pay me. [LR424]

SENATOR CHAMBERS: And more than I could come up with as a man of no... [LR424]

RON RIETHMULLER: Yes, I think so. [LR424]

SENATOR CHAMBERS: Okay. (Laughter) But see, look, let me ask you this: What about consulting? See, when there are people with knowledge and the experience and who really understand the system, has anybody from the state approached you about doing any consulting or assisting and helping to... [LR424]

RON RIETHMULLER: No, no one has. No one has approached me. [LR424]

SENATOR CHAMBERS: Would you consider any--not that I could do it--but would consider something like that? Or is that off the table as far as you're concerned also? [LR424]

RON RIETHMULLER: I suspect that could be a possibility. [LR424]

SENATOR CHAMBERS: Can you and I talk about something? [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

RON RIETHMULLER: Absolutely. [LR424]

SENATOR CHAMBERS: Okay. You're on record now. (Laughter) [LR424]

SENATOR LATHROP: And under oath. [LR424]

RON RIETHMULLER: Glad to. [LR424]

SENATOR CHAMBERS: Oh, right. [LR424]

SENATOR LATHROP: Okay. That's going to do it for this morning. I apologize to those who showed up. And, you know, when we...whether you're in a trial or taking testimony as we are today, it's a guess when you're trying to figure out how long witnesses are going to take. We're going to take a break until 1:30. We will resume. I will remind everybody on the panel that we still have five more people to do. And we are going to be here until we're done with them. So we appreciate your appearance. We'll be back at 1:30. And we will take up Ms. Douglass, Mr. Poppert, and then hear from legal counsel from Corrections. Thank you all. [LR424]

BREAK

SENATOR LATHROP: Welcome back and good afternoon, everyone. My name is Steve Lathrop. I'm Chair of the committee. And most of you were here before so we'll skip the additional introductions. We're back on the record, and it is 1:37. We will start the afternoon with the testimony of Jeannene Douglass who will come up and be sworn in before you sit down. I will remind the witnesses, because we're going to try to make a record of these proceedings, my friend Dan Jenkins over here is trying to make sure we get a good, clear recording. So we'll have you speak into the mike so that everybody in the room can hear you and we're recording it and getting a good record. Okay. And with

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

that, we'll ask you to raise your right hand before you're seated. Do you swear that the testimony you will give today before this special investigative committee will be the truth, the whole truth, and nothing but the truth? [LR424]

JEANNENE DOUGLASS: I do. [LR424]

SENATOR LATHROP: All right, have a seat. You're here with your attorney, Mr. Reagan. [LR424]

JEANNENE DOUGLASS: Yes, I am. [LR424]

SENATOR LATHROP: Okay. And he's seated with you at counsel table. [LR424]

JEANNENE DOUGLASS: Yes. [LR424]

SENATOR LATHROP: Okay. Ms. Douglass, let's have you start by reciting your name for us and spelling your last name. [LR424]

JEANNENE DOUGLASS: My name is Jeannene Douglass; and it's D-o-u-g-l-a-s-s. [LR424]

SENATOR LATHROP: Okay. And do you live here in Lincoln? [LR424]

JEANNENE DOUGLASS: Yes, I do. [LR424]

SENATOR LATHROP: Okay. And I will not ask you to give us your address. But you are a former employee of the Department of Corrections. [LR424]

JEANNENE DOUGLASS: Yes, I am. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SENATOR LATHROP: Ms. Douglass, can we start out with having you give us your educational background? [LR424]

JEANNENE DOUGLASS: I graduated from Nebraska Wesleyan University with a Bachelor of Arts and Science. [LR424]

SENATOR LATHROP: And what year was that? [LR424]

JEANNENE DOUGLASS: Nineteen seventy-two. [LR424]

SENATOR LATHROP: Seventy-two. And when did you begin your work with the Department of Corrections? [LR424]

JEANNENE DOUGLASS: June of '73. Well, it was with the Parole Board. [LR424]

SENATOR LATHROP: That was with the Parole Board. [LR424]

JEANNENE DOUGLASS: With the Parole Board. And then the Legislature merged the Parole Board with the Department of Corrections, I believe it was in November of 1992, I think. [LR424]

SENATOR LATHROP: So you were a Parole Board employee until '92. [LR424]

JEANNENE DOUGLASS: Until '92. [LR424]

SENATOR LATHROP: And after the merger, it was the Department of Corrections. [LR424]

JEANNENE DOUGLASS: Right. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SENATOR LATHROP: How long did you stay? [LR424]

JEANNENE DOUGLASS: I retired in June of 2013. [LR424]

SENATOR LATHROP: What was your position with the Department of Corrections?
[LR424]

JEANNENE DOUGLASS: I was a records manager. [LR424]

SENATOR LATHROP: And tell us what a records manager does. [LR424]

JEANNENE DOUGLASS: My responsibilities were to maintain the central office inmate file, take care of it, make sure that all the information in the file was up to date and current for the Parole Board so they would have current information to make their decisions. [LR424]

SENATOR LATHROP: Do we have, during the time you were there, physically have a file on each inmate? [LR424]

JEANNENE DOUGLASS: Yes, we do. [LR424]

SENATOR LATHROP: This isn't an electronic file but actually a physical paper file.
[LR424]

JEANNENE DOUGLASS: Correct. [LR424]

SENATOR LATHROP: And are those maintained in the central office or are they maintained out in the various institutions? [LR424]

JEANNENE DOUGLASS: The files I was responsible for were all maintained in central

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

records office. [LR424]

SENATOR LATHROP: Okay. And would you have all of the inmates' files there?
[LR424]

JEANNENE DOUGLASS: Yes. [LR424]

SENATOR LATHROP: Okay. There were other records people in the various
institutions of the Department of Corrections. [LR424]

JEANNENE DOUGLASS: Yes, yes. [LR424]

SENATOR LATHROP: What was your relationship to them? Were you the superior or
were you the central records person or what's your relationship to those folks? [LR424]

JEANNENE DOUGLASS: I was on an equal level with them. My job was kind of like a
check and balance with them. They would do...whatever information they had, they
would share with me and then we would work together to make sure that we had the
information recorded appropriately. [LR424]

SENATOR LATHROP: Okay. And you've told me what your education is. Obviously,
and again, I'm not a lawyer snob or a law snob, but you didn't have any training in the
law. [LR424]

JEANNENE DOUGLASS: No, I did not. [LR424]

SENATOR LATHROP: Okay. Did you have any authority to promulgate policy at the
Department of Corrections? [LR424]

JEANNENE DOUGLASS: No, I did not. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SENATOR LATHROP: Who was the person or the office during the time you were there that was responsible for promulgating policy? [LR424]

JEANNENE DOUGLASS: That would be the records administrator. [LR424]

SENATOR LATHROP: Okay. So the records administrator relative to records would promulgate policy and that would include the calculation of sentences and the application of good time. [LR424]

JEANNENE DOUGLASS: Correct. [LR424]

SENATOR LATHROP: Once that policy is promulgated or once is it set by the records administrator, which when you first were there it was... [LR424]

JEANNENE DOUGLASS: Riethmuller. [LR424]

SENATOR LATHROP: ...Riethmuller, right, who we heard from this morning. Once that was done, what was your responsibility with respect to calculating the parole eligibility date and the tentative release date? [LR424]

JEANNENE DOUGLASS: It was our responsibility to enter the correct information. We had a computer database that did a lot of the...did the calculating. But the records managers would do that data entry. And then...I'm lost, I'm sorry. [LR424]

SENATOR LATHROP: That's okay. And if you need me to repeat a question just ask me, okay? [LR424]

JEANNENE DOUGLASS: Would you mind saying that again so I can make sure I... [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SENATOR LATHROP: Okay. What I just said? [LR424]

JEANNENE DOUGLASS: Yes. [LR424]

SENATOR LATHROP: If you need me to repeat a question, sometimes people get a little nervous in this circumstance and that's not what we're... [LR424]

JEANNENE DOUGLASS: Oh, yeah. We do. [LR424]

SENATOR LATHROP: Yeah. That's not what we're trying to do. And what I'll tell you is if you don't hear a question or you want it to be repeated or rephrased, just tell me, okay? [LR424]

JEANNENE DOUGLASS: Thank you. [LR424]

SENATOR LATHROP: I want to make sure that we're talking about the same thing when you answer one of my questions, okay? [LR424]

JEANNENE DOUGLASS: Yeah. Would you repeat that, the last question I was trying to answer? [LR424]

SENATOR LATHROP: Sure. Sure, if I can remember it. We were talking about your responsibilities with respect to calculating the parole eligibility date and the tentative release date. My question...next question is we heard from the last witness, Mr. Riethmuller, that a lot of the men who are sentenced to prison start out at the Diagnostic and Evaluation Center. [LR424]

JEANNENE DOUGLASS: Correct. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SENATOR LATHROP: That would be your understanding as well. [LR424]

JEANNENE DOUGLASS: Correct. [LR424]

SENATOR LATHROP: And there, at their first stop in the system, if you will, they will have someone at D&E calculate their parole eligibility date as well as their tentative release date. Would that be true? [LR424]

JEANNENE DOUGLASS: Correct. That's true. [LR424]

SENATOR LATHROP: Once that's done over at Diagnostic and Evaluation, where's it go? Does it go to your office or does it go Poppert or who gets that calculation done by somebody over at Diagnostic and Evaluation? [LR424]

JEANNENE DOUGLASS: That calculation. Well, when they do it at the Diagnostic and Evaluation Center, they...it just stays in the records office there and becomes a part of the permanent record of that...with that inmate at that facility. A copy of that... [LR424]

SENATOR LATHROP: It... [LR424]

JEANNENE DOUGLASS: Go ahead. [LR424]

SENATOR LATHROP: No. Go ahead. [LR424]

JEANNENE DOUGLASS: A copy of that commitment order would be sent to me in central office, and I was just kind of a check and balance. And so I would...I could calculate it myself just to make sure that what they did...that they didn't miss something in doing the data entry at the facility. [LR424]

SENATOR LATHROP: Did you oversee that calculation for every prisoner? [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

JEANNENE DOUGLASS: Yes. [LR424]

SENATOR LATHROP: So whether my entry point into the system is Diagnostic and Evaluation or the Omaha Correctional Center, you will look at whatever the records person does at that facility in terms of the calculation. [LR424]

JEANNENE DOUGLASS: Just as a check and balance, yes. [LR424]

SENATOR LATHROP: To ensure that it's correct. [LR424]

JEANNENE DOUGLASS: Right. [LR424]

SENATOR LATHROP: In 1996, Mr. Riethmuller did his first memo that you handed out to an awful lot of people. And it sort of became your measure for the proper determination of or how do you address mandatory minimums and good time. Would you agree with that? [LR424]

JEANNENE DOUGLASS: Yes. [LR424]

SENATOR LATHROP: And that was done...that was the memo Riethmuller did in August of 1996. [LR424]

JEANNENE DOUGLASS: Yes. [LR424]

SENATOR LATHROP: Is that right? [LR424]

JEANNENE DOUGLASS: I believe so. [LR424]

SENATOR LATHROP: Were you working for him at the time? Or when you started in

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

this position, was he the records administrator? [LR424]

JEANNENE DOUGLASS: Yes. [LR424]

SENATOR LATHROP: Okay. So you were working with him. [LR424]

JEANNENE DOUGLASS: Yes. [LR424]

SENATOR LATHROP: Yes? Okay. And he sent this memo out which followed an AG Opinion. And that became sort of the standard for how you determine parole eligibility and a tentative release date for an inmate who was sentenced with a mandatory minimum sentence. Would you agree with that? [LR424]

JEANNENE DOUGLASS: Correct. I would agree. [LR424]

SENATOR LATHROP: Okay. And at some point in the time line, and while you're still working as a records manager... [LR424]

JEANNENE DOUGLASS: Manager, yes. [LR424]

SENATOR LATHROP: ...okay, records manager, the Kenney decision comes down, right, Kenney v. Johnson? [LR424]

JEANNENE DOUGLASS: Okay. [LR424]

SENATOR LATHROP: Or Johnson v. Kenney, rather. Were you familiar with that or did you know anything about it? [LR424]

JEANNENE DOUGLASS: I don't remember that one. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SENATOR LATHROP: Okay. Did you have any discussion? Well, if you don't remember it, you probably don't. Before Castillas...all right, let's talk about that. [LR424]

JEANNENE DOUGLASS: Okay. [LR424]

SENATOR LATHROP: You had some people that were communicating with you and expressing some concern that there were prisoners who were becoming...who were at mandatory release before they were ever eligible for parole. Do you remember that happening from time to time? [LR424]

JEANNENE DOUGLASS: It probably did. I don't really remember. [LR424]

SENATOR LATHROP: You had a number of people that would call you up. [LR424]

JEANNENE DOUGLASS: Oh, yeah. [LR424]

SENATOR LATHROP: Right? [LR424]

JEANNENE DOUGLASS: Right. [LR424]

SENATOR LATHROP: Tell us what kind of people or what kind of offices, if you will,... [LR424]

JEANNENE DOUGLASS: I would get... [LR424]

SENATOR LATHROP: ...would call you up to talk to you about how do you calculate the mandatory release date for somebody with a mandatory minimum sentence. [LR424]

JEANNENE DOUGLASS: I would get calls from the district judges, from attorneys, from victims' families, from offenders' families. We'd get letters from the offenders. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SENATOR LATHROP: All inquiring as to how the proper calculation of... [LR424]

JEANNENE DOUGLASS: Yeah. How did you come up with that? Yeah. [LR424]

SENATOR LATHROP: Okay. [LR424]

JEANNENE DOUGLASS: Yeah. [LR424]

SENATOR LATHROP: And what would be your response before the Castillas Opinion? [LR424]

JEANNENE DOUGLASS: Before that Opinion, I would have explained that our current policy in figuring mandatory minimums is, like Mr. Riethmuller said, on eligibility, you'd take...you need to figure the mandatory minimum plus half of the remaining balance for eligibility. For the discharge date, it would have been the mandatory minimum date or it would have been half of the maximum sentence, whichever one is longer. [LR424]

SENATOR LATHROP: Okay. [LR424]

JEANNENE DOUGLASS: We had to ensure that that mandatory minimum sentence was served. [LR424]

SENATOR LATHROP: And that was the standard set out in the Riethmuller memo back in 1996. [LR424]

JEANNENE DOUGLASS: Right, right. [LR424]

SENATOR LATHROP: And that became your only instruction on the subject before Castillas was decided. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

JEANNENE DOUGLASS: Correct. [LR424]

SENATOR LATHROP: And you would share that when people would call and say, how is this calculated or how do I do this or I have a concern. Reading the documents that I've received it looks like you would respond by sending them a copy of the 1996 Riethmuller memo, the AG Opinion, and the Kenney decision, oftentimes. [LR424]

JEANNENE DOUGLASS: Yes. [LR424]

SENATOR LATHROP: And you thought the three of them affirmed the way you were doing it. [LR424]

JEANNENE DOUGLASS: Yes. [LR424]

SENATOR LATHROP: And that was true up until the time the Castillas Opinion was decided in 2013. [LR424]

JEANNENE DOUGLASS: Yes. [LR424]

SENATOR LATHROP: When did Mr. Poppert become your boss? When did he take that position? [LR424]

JEANNENE DOUGLASS: It was shortly after Mr. Riethmuller retired. [LR424]

SENATOR LATHROP: So 2007, '08, somewhere in there? [LR424]

JEANNENE DOUGLASS: Somewhere in there. I forgot what year he retired. [LR424]

SENATOR LATHROP: Okay. But did you ever have anybody before the Castillas

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

Opinion was decided tell you that you were doing it incorrectly? [LR424]

JEANNENE DOUGLASS: No. [LR424]

SENATOR LATHROP: Did you ever have anybody question how, under the formula that you were using, there were some prisoners who were being discharged, in other words, they jammed out before their parole eligibility date? [LR424]

JEANNENE DOUGLASS: Would you say that again, please? [LR424]

SENATOR LATHROP: Yes, I'd be happy to. Did you ever have anybody question why there were prisoners or inmates who were being released because they're at mandatory release before their parole eligibility date? [LR424]

JEANNENE DOUGLASS: I imagine we did. I can't remember but I'm sure we did. [LR424]

SENATOR LATHROP: And I might lead you a little bit, but I don't want to have you just agree with me. But as I look through the e-mails that would go back and forth, it seemed like there were a number of people that said, you know, how is this possible that we have people who are jamming out before their parole eligibility date? And the response seemed to be, coming from your office, well, it's an anomaly because there's a mandatory minimum sentence. [LR424]

JEANNENE DOUGLASS: And that's possible. [LR424]

SENATOR LATHROP: Were you telling people that? [LR424]

JEANNENE DOUGLASS: I probably would have said it would have depended on the structure of the sentence. I don't know. I don't remember. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SENATOR LATHROP: Okay. Did you review anything to get ready for your testimony today? [LR424]

JEANNENE DOUGLASS: No. [LR424]

SENATOR LATHROP: Okay. [LR424]

JEANNENE DOUGLASS: I don't have anything to review. [LR424]

SENATOR LATHROP: Well, we've got that book in front of you, so if we need you to look at something we'll ask you. I want to talk about the Castillas decision and what was done with it, how you got it, and what you did with it, okay? [LR424]

JEANNENE DOUGLASS: Okay. [LR424]

SENATOR LATHROP: And you weren't here this morning perhaps when Ms. Willard testified. [LR424]

JEANNENE DOUGLASS: No, I was not. [LR424]

SENATOR LATHROP: Okay. So we sort of have a little bit of an insight into the exchange that took place, but as I understand it, the Castillas decision comes down February 8, 2013. Does that sound about right to you? [LR424]

JEANNENE DOUGLASS: Yes. [LR424]

SENATOR LATHROP: You have no reason to argue with it. [LR424]

JEANNENE DOUGLASS: I have no reason to argue with you, right. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SENATOR LATHROP: Okay, let's say that that's the date, because near as I can tell, it is. And it's on the Opinion. It looks like it comes to you by way of Linda Willard. Do you remember that? [LR424]

JEANNENE DOUGLASS: Yeah, kind of. Vaguely I do, yes. [LR424]

SENATOR LATHROP: Vaguely? [LR424]

JEANNENE DOUGLASS: Yeah. [LR424]

SENATOR LATHROP: Okay. If you want to open that book up to page 142, we'll walk through a couple of e-mails if we can. [LR424]

JEANNENE DOUGLASS: Okay. [LR424]

SENATOR LATHROP: Do you see that? On page 142 there is an e-mail from Linda Willard to Kyle Poppert and Jeannene Douglass. [LR424]

JEANNENE DOUGLASS: Okay. [LR424]

SENATOR LATHROP: Do you see that? [LR424]

JEANNENE DOUGLASS: Yeah. [LR424]

SENATOR LATHROP: And is that the e-mail that you received that included as an attachment the Castillas Opinion? [LR424]

JEANNENE DOUGLASS: Say that again, please. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SENATOR LATHROP: Is that the e-mail you received from... [LR424]

JEANNENE DOUGLASS: Yes. [LR424]

SENATOR LATHROP: ...Linda Willard that included the Castillas Opinion? []

JEANNENE DOUGLASS: From Linda to me. Yeah, that would...yeah. Yes. [LR424]

SENATOR LATHROP: In your job, are you accustomed to reading Supreme Court Opinions? Is that part of what you do? [LR424]

JEANNENE DOUGLASS: Yes. [LR424]

SENATOR LATHROP: So did you have an opportunity to read the Castillas Opinion after it was sent to you by Linda Willard? [LR424]

JEANNENE DOUGLASS: Yes. [LR424]

SENATOR LATHROP: After you read it, did you feel like it provided for a method of determining the mandatory discharge date that was different than the method you had been using? [LR424]

JEANNENE DOUGLASS: Yes. [LR424]

SENATOR LATHROP: Okay. So you recognized there was some difference between the Riethmuller memo that had been the guide for so long and the way the Supreme Court decided the Castillas case. [LR424]

JEANNENE DOUGLASS: Yes. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SENATOR LATHROP: Okay. That e-mail to you is at 9:41 in the morning. Do you see that on there? [LR424]

JEANNENE DOUGLASS: Okay. Yes. [LR424]

SENATOR LATHROP: And if you turn over to page 141, we're going to follow the exchange if we can. [LR424]

JEANNENE DOUGLASS: Okay. [LR424]

SENATOR LATHROP: The next e-mail appears to be from you to Linda Willard and you've copied Kyle Poppert. And that's at 11:48 in the morning. [LR424]

JEANNENE DOUGLASS: Okay. [LR424]

SENATOR LATHROP: Do you agree? [LR424]

JEANNENE DOUGLASS: Yes. [LR424]

SENATOR LATHROP: Did you have any conversation with anyone between the time you got the Castillas Opinion from Linda Willard at 9:41 and the time you wrote the e-mail at 11:48 in the morning to Linda Willard and Kyle Poppert? [LR424]

JEANNENE DOUGLASS: I don't remember if there was any conversations or not. [LR424]

SENATOR LATHROP: Okay. So you think the next thing you did was to send this reply e-mail? [LR424]

JEANNENE DOUGLASS: Send the replied e-mail? [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SENATOR LATHROP: Yeah. You get the Opinion at 9:41 in the morning and you read it, right? [LR424]

JEANNENE DOUGLASS: Right. [LR424]

SENATOR LATHROP: And after you read it, you respond to Linda Willard and you copy Kyle Poppert. Would that be true? [LR424]

JEANNENE DOUGLASS: Yes. [LR424]

SENATOR LATHROP: And you do that at 11:48 the same day, in the morning. [LR424]

JEANNENE DOUGLASS: Yeah. [LR424]

SENATOR LATHROP: Okay. And in that...and I'm just going to read the first sentence or two. The statements in this--a reference to the Opinion--regarding the calculation of parole eligibility are correct. The manner presented regarding the discharge date calculation is not correct. That was your response to reading the Castillas Opinion. [LR424]

JEANNENE DOUGLASS: Yes. [LR424]

SENATOR LATHROP: Then, in the third paragraph, moving down you say, the discharge date is not calculated in the same manner as the parole eligibility date. This is a reference to the way you'd been doing it since the Riethmuller memo came out in 1996. [LR424]

JEANNENE DOUGLASS: Yes, the way we did it under the current...at the policy at that time, yes. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SENATOR LATHROP: Okay. So tell me, did you think the Supreme Court got it wrong? Or what are we communicating in this e-mail back to the Attorney General's Office and your boss? [LR424]

JEANNENE DOUGLASS: I think what I was trying to say was that there's a difference in opinion here how to do this. And we need some advice as to how to follow through. [LR424]

SENATOR LATHROP: Okay. [LR424]

JEANNENE DOUGLASS: What do I do? Do I stick with current policy? Do we change the policy and implement the Supreme Court decision? [LR424]

SENATOR LATHROP: Okay. I want to ask this question, and I'm asking it sincerely. But in your own mind, did you not regard the Supreme Court Opinion as more authoritative than the old Riethmuller memo of 1996? [LR424]

JEANNENE DOUGLASS: No, I...I'm...say that again, please. I'm sorry. [LR424]

SENATOR LATHROP: Let me ask it differently. What did you think was the responsibility of the Department of Corrections once the Supreme Court spoke on the subject? [LR424]

JEANNENE DOUGLASS: I felt like we needed to change our policy and implement that. But I was not...I did not have the authority to make that decision, so that's why I forwarded it on to the records administrator and to our legal division for their advice as in how to handle this. Also, because I knew it would involve more than one situation, one inmate. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SENATOR LATHROP: Okay. And you don't forward it on to your lawyer yet, do you? The first thing you do is respond or send a note...or get a response, rather, from Linda Willard at 1:19 in the afternoon, which is the next e-mail up. [LR424]

JEANNENE DOUGLASS: Yeah. Yeah. [LR424]

SENATOR LATHROP: Do you see that one? [LR424]

JEANNENE DOUGLASS: Yes. [LR424]

SENATOR LATHROP: And this is just between the two of you, Willard sending you an e-mail at 1:19 in the afternoon. And she said: Note the Supreme Court said the district court was wrong in how they calculated. If you are doing it differently than what the Supreme Court said is the correct way to calculate, do you decide to stay with the right way or go with what the Supreme Court said is the correct way? What did you make of that e-mail? That's the Attorney General's Office asking you... [LR424]

JEANNENE DOUGLASS: Yeah. [LR424]

SENATOR LATHROP: ...which way you're going. [LR424]

JEANNENE DOUGLASS: Yeah. Well, I couldn't, like I said, I couldn't really say which way we'd go because I didn't know. I couldn't make that decision. I did not have the authority. [LR424]

SENATOR LATHROP: Okay. But you did respond to her 20 minutes later, didn't you? [LR424]

JEANNENE DOUGLASS: Yeah. Wouldn't it be the right thing... [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SENATOR LATHROP: At 1:41, you then send her an e-mail that says: Wouldn't the right thing to do to continue the way we've always done it because it, too, was tried and tested? I don't know. It would be a real mess to have this go back and recalculate everyone who has a mandatory minimum sentence. What do you think? That was directed to Willard, was it not? [LR424]

JEANNENE DOUGLASS: Yes. [LR424]

SENATOR LATHROP: And is it a fair interpretation of your e-mail that you're suggesting the right thing to do is to continue the way we've always done it? You can take a second to read that over. [LR424]

JEANNENE DOUGLASS: I don't think I knew what the right thing to do at the time was. That's why I was asking. [LR424]

SENATOR LATHROP: But that's not a question so much. Well, you, in the end, you ask Willard what she thinks. [LR424]

JEANNENE DOUGLASS: Yeah. [LR424]

SENATOR LATHROP: But don't you suggest that the right thing to do is to continue doing what you have been doing? [LR424]

JEANNENE DOUGLASS: Well, and she had already said that. [LR424]

SENATOR LATHROP: You had in this string of e-mails, Kyle Poppert had been...received at least the one from you to Linda Willard. And he had also received a copy of the Opinion from Linda Willard in the very first one. Would that be true? [LR424]

JEANNENE DOUGLASS: Yes. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SENATOR LATHROP: Did you have any conversation with Mr. Poppert, let's just say the morning of February 8, about this situation, the Castillas Opinion and the fact that the Supreme Court had just said that you need to do it? They just came up with a different formula than the one you'd been using. Did you talk to Poppert about that? [LR424]

JEANNENE DOUGLASS: I don't remember. [LR424]

SENATOR LATHROP: Did you talk to Mr. Green about it? [LR424]

JEANNENE DOUGLASS: I don't remember. [LR424]

SENATOR LATHROP: Did you talk to anybody else about it? [LR424]

JEANNENE DOUGLASS: I think all I did was forward that on via e-mail asking for their advice. And then I dropped...I just let it be. [LR424]

SENATOR LATHROP: I'm not trying to trap you. [LR424]

JEANNENE DOUGLASS: That's all right. [LR424]

SENATOR LATHROP: I want you to turn the page to page 140 because there's one more e-mail that you sent, and I want to talk about this one. This is on page 140. [LR424]

JEANNENE DOUGLASS: Yes. [LR424]

SENATOR LATHROP: Do you see that? It's an e-mail from you dated February 8, 2013, at 2:09 in the afternoon. And it's sent to George Green, Linda Willard, and Kyle Poppert.

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

Is that right? [LR424]

JEANNENE DOUGLASS: Yes. [LR424]

SENATOR LATHROP: And it suggests in there, well, you're forwarding the Castillas Opinion along with...as an attachment to this e-mail, are you not? [LR424]

JEANNENE DOUGLASS: Yes. [LR424]

SENATOR LATHROP: Okay. And it suggests in there in the first line that you've been having some conversation with Linda Willard regarding the attached Supreme Court Opinion on the calculation of mandatory minimum sentences. [LR424]

JEANNENE DOUGLASS: Yes. [LR424]

SENATOR LATHROP: Would that be true? [LR424]

JEANNENE DOUGLASS: Yes. [LR424]

SENATOR LATHROP: Do you recall having conversations with Linda Willard after she sent you the Opinion and before you sent this e-mail at 2:00 in the afternoon? [LR424]

JEANNENE DOUGLASS: I kind of think we did, yes. [LR424]

SENATOR LATHROP: Okay. This e-mail certainly sounds like it. [LR424]

JEANNENE DOUGLASS: It sounds like it, yeah. I can't remember that far, but... [LR424]

SENATOR LATHROP: Okay. Well, let me go on in the e-mail and then I'll...you say in

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

the second paragraph...well, after you indicate that you'd had some conversation with Linda, you say in the first paragraph: While I agree with and we are currently calculating the mandatory minimum terms in the manner expressed in the decision, we do not calculate the discharge date in the manner described in this decision. Next paragraph: Linda asked me if we would continue to calculate the sentence in the right way or go with what the Supreme Court says. I said--this is you talking--I said, and she supported me, that we would do what is in the inmate's best interest, that being continue calculating the sentences the way we've always done it. Did you suggest to Linda Willard that you were going to continue calculating, after Castillas and after you read the Opinion, that you were going to continue to calculate the mandatory discharge date in the same manner that you always had? [LR424]

JEANNENE DOUGLASS: I believe I was. [LR424]

SENATOR LATHROP: So the letter...the e-mail, as much of it as I've read so far, would suggest that you had a conversation with someone in the Attorney General's Office, Linda Willard. [LR424]

JEANNENE DOUGLASS: Yes. [LR424]

SENATOR LATHROP: And that the two of you discussed: Am I going to do it the way we've always done it, or am I going to change and have our calculation reflect the Supreme Court's Opinion? Do you remember talking to Linda Willard about that before you wrote this e-mail? [LR424]

JEANNENE DOUGLASS: Yes, yeah. [LR424]

SENATOR LATHROP: Did you talk in person or on the phone? [LR424]

JEANNENE DOUGLASS: On the phone. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SENATOR LATHROP: And did you call her or did she call you, if you know? [LR424]

JEANNENE DOUGLASS: I don't remember. [LR424]

SENATOR LATHROP: Okay. And what was the substance of the conversation as it relates to whether you were going to change the way you do things or continue to do them the way you always had? [LR424]

JEANNENE DOUGLASS: What was the substance of it? [LR424]

SENATOR LATHROP: Yeah. [LR424]

JEANNENE DOUGLASS: Think about that a minute. Because I didn't have the authority to change anything, I probably told...did I tell her that? Should have, that I needed to forward this on for direction from my superiors because I couldn't make those changes. I didn't have the authority. [LR424]

SENATOR LATHROP: This e-mail would suggest that you had made some kind of a decision. And I don't want to quarrel with you, because I'm glad... [LR424]

JEANNENE DOUGLASS: No, that's... [LR424]

SENATOR LATHROP: ...you're here today and so forth. But... [LR424]

JEANNENE DOUGLASS: I probably... [LR424]

SENATOR LATHROP: ...I said, and she supported me, that we would do what's in the inmate's best interests, that being calculating sentences the way we've always done it. That doesn't sound like you are waiting for permission... [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

JEANNENE DOUGLASS: Yeah. That's right. [LR424]

SENATOR LATHROP: ..or waiting for further direction. You've talked to somebody in the AG's Office, and now you want to continue to do it the way you always had. So it's almost like an election has already been made at that point in time. Am I right about that? [LR424]

JEANNENE DOUGLASS: That's the way it sounds. [LR424]

SENATOR LATHROP: Further down in the e-mail, it said: She agreed with me and suggested I share this with you, Mr. Green, for your input and expertise in the matter. So not withstanding the fact that you'd talked and you thought this would be in the best interests of the inmate, you're forwarding it on to George Green, the chief legal counsel inside the Department of Corrections. [LR424]

JEANNENE DOUGLASS: Yes. [LR424]

SENATOR LATHROP: She also said the inmate obviously would not complain since he will serve less time in our calculations. Did you have a discussion about the inmates not being upset with the fact that the policy wasn't going to change? [LR424]

JEANNENE DOUGLASS: Did we have a discussion? [LR424]

SENATOR LATHROP: Yeah, did you and Ms. Willard talk about the inmates aren't going to complain if we don't change the policy because they'll serve less time? [LR424]

JEANNENE DOUGLASS: Must have. It's written there. [LR424]

SENATOR LATHROP: Then the last thing in the second paragraph, you say

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Transcriber's Office
Rough Draft

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

parenthetically: It would also serve the director's desires as well to not increase our population any more than we must. Do you see that? [LR424]

JEANNENE DOUGLASS: Yes. [LR424]

SENATOR LATHROP: And you're communicating...or you're referencing the director's desires. Did you talk to then-Director Houston about this matter before you sent the e-mail? [LR424]

JEANNENE DOUGLASS: No. [LR424]

SENATOR LATHROP: You suggest that you have some insight into what the director wants or his desires with respect to overcrowding or the population in the prison. [LR424]

JEANNENE DOUGLASS: Yes. [LR424]

SENATOR LATHROP: Okay. Tell us, have you ever been in a meeting with Director Houston where he has talked about the overcrowding situation and the role good time plays in alleviating overcrowding? [LR424]

JEANNENE DOUGLASS: Not with the director, I haven't. [LR424]

SENATOR LATHROP: Who...well, okay, so not with the director. Have you been in any meetings with any deputy directors or higher-ups we'll call them where the role of good time was discussed as a means to alleviate overcrowding in the penitentiary? [LR424]

JEANNENE DOUGLASS: The only meetings I would have been in would have been records managers' meetings. And we always discuss all kinds of issues that affected the inmates and their good time and their sentencing. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SENATOR LATHROP: Okay. My question had to do with overcrowding... [LR424]

JEANNENE DOUGLASS: Overcrowding. [LR424]

SENATOR LATHROP: ...because your comment at the end of this e-mail suggests that you're in tune with the director's interest in alleviating overcrowding and the use of the good time law to aid in alleviating overcrowding. [LR424]

JEANNENE DOUGLASS: May I say this? As I've said, as a records manager, I did not have any authority to change any policy or write policy. But I was also involved in, like I said, the records managers' meetings. I worked closely with people above me from the director's area. And it's not uncommon to have conversations or hear people talk about the overcrowding and saying, well, we need to do this, we need to do that, we need to... [LR424]

SENATOR LATHROP: What is the "this" and the "that"? [LR424]

JEANNENE DOUGLASS: The "thises" and "thats," they were finding ways to...they, the director and his staff, were trying to find ways to lessen the population to alleviate... [LR424]

SENATOR LATHROP: How do you know that? [LR424]

JEANNENE DOUGLASS: Just from conversations and... [LR424]

SENATOR LATHROP: Conversations with whom? [LR424]

JEANNENE DOUGLASS: Well, they would restore good time. They would change policy as to how good time was taken. They...there was one instance where they...I was

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

directed to...I, we records managers were directed to continue to give an inmate...a parolee, once his parole was revoked, we were still supposed to credit their sentence with the parole good time which would bring their discharge date earlier. I knew that was wrong by statute, but I was ordered to do it so I had to do it. [LR424]

SENATOR LATHROP: Who ordered you to do that? [LR424]

JEANNENE DOUGLASS: Our records administrator. [LR424]

SENATOR LATHROP: And that, by the way, ended up being the subject of an Attorney General Opinion letter that said you're breaking the law. [LR424]

JEANNENE DOUGLASS: That's what I understand. That happened after I retired. [LR424]

SENATOR LATHROP: But you knew that it was wrong and you did it because you'd been admonished to or directed to. [LR424]

JEANNENE DOUGLASS: Exactly. [LR424]

SENATOR LATHROP: And that would have been by Kyle Poppert. Yes? [LR424]

JEANNENE DOUGLASS: Yes. I'm sorry. [LR424]

SENATOR LATHROP: Unfortunately, the record won't pick up you shaking your head... [LR424]

JEANNENE DOUGLASS: I understand. I'm sorry. [LR424]

SENATOR LATHROP: ...so I'm going to ask you to give verbal responses. So tell us

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

how...when we had Willard in here this morning, she...and I don't want to misquote her and so I'll paraphrase or tell you what my understanding is. It sounded like overcrowding was an issue in a phone call you had, and it was a motivating consideration in your interpretation or your decision on how you were going to proceed. Do you remember having a conversation with her about how overcrowding was a consideration in what you were going to do going forward? [LR424]

JEANNENE DOUGLASS: Oh, I don't remember that. [LR424]

SENATOR LATHROP: Did you visit with Kyle Poppert about what was going to...you know, what are we going to do? We have the Castillas Opinion, and it's not the same as the way we've been doing it. [LR424]

JEANNENE DOUGLASS: I don't remember if we talked or not. I'm thinking just via the e-mails. [LR424]

SENATOR LATHROP: Do you guys office near each other? Is he like down the hall from you? [LR424]

JEANNENE DOUGLASS: No, he's on second floor. I was on first. [LR424]

SENATOR LATHROP: On...so, any more conversations with Linda Willard? [LR424]

JEANNENE DOUGLASS: I don't remember any. [LR424]

SENATOR LATHROP: Okay. Did you ever discuss any of this calculation of good time with George Green, the lawyer, or any of the lawyers in the office? [LR424]

JEANNENE DOUGLASS: No. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SENATOR LATHROP: So you send this e-mail to Poppert. I do want to go back to the overcrowding thing. You said that you had...in conversations everybody was talking about the fact that there was overcrowding. [LR424]

JEANNENE DOUGLASS: Yes. [LR424]

SENATOR LATHROP: Yes? And that you gave me an example of where the Department of Corrections changed an interpretation of awarding good time to parole violators. [LR424]

JEANNENE DOUGLASS: Yes. [LR424]

SENATOR LATHROP: And they were beginning to award good time to parole violators so that when they got back to Corrections, they'd have less time to serve and, therefore, it would ease incrementally the overcrowding problem at the Department of Corrections. [LR424]

JEANNENE DOUGLASS: Yes. [LR424]

SENATOR LATHROP: And you thought that was against the law, but you'd been ordered to do it anyway. [LR424]

JEANNENE DOUGLASS: Yes. [LR424]

SENATOR LATHROP: Besides that, who did you discuss overcrowding with that would make you put a remark in an e-mail that suggests that leaving things the same would suit the director's desires to alleviate overcrowding? [LR424]

JEANNENE DOUGLASS: Probably with other records managers. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SENATOR LATHROP: Those would be individuals doing your job at the various institutions. [LR424]

JEANNENE DOUGLASS: Yes. [LR424]

SENATOR LATHROP: Anyone else? [LR424]

JEANNENE DOUGLASS: I don't remember. [LR424]

SENATOR LATHROP: I want to ask a general question this way. Do you remember any conversation or any meeting where you sat in, in a group of people from Corrections where they said, here's the deal: Director wants to get rid of people so that we get the number down to somewhere near, say, 140 percent or whatever the number was they were comfortable with; we need to figure out how to move people and how we interpret good time is part of that solution? [LR424]

JEANNENE DOUGLASS: I don't remember sitting in any meetings like that. [LR424]

SENATOR LATHROP: Did you ever have anybody, other than the parole violators which you already described, tell you how or suggest that the way you interpret the Castillas Opinion or the way you go forward after Castillas should be in any way influenced by the overcrowding? [LR424]

JEANNENE DOUGLASS: No. [LR424]

SENATOR LATHROP: Can you turn that to page 164? [LR424]

JEANNENE DOUGLASS: One sixty-four. [LR424]

SENATOR LATHROP: I've got a question about a couple of e-mails there. Do you see

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

those e-mails there on page 164? [LR424]

JEANNENE DOUGLASS: Yes. [LR424]

SENATOR LATHROP: And the first one is...now this is about nine days after Castillas is decided, am I right? [LR424]

JEANNENE DOUGLASS: Looks like it, yes. [LR424]

SENATOR LATHROP: Okay. And the first e-mail is from Kyle Poppert, your boss, to you and someone named Ginger Shurter. Do you see that, on February 17, 2013? [LR424]

JEANNENE DOUGLASS: Yes. [LR424]

SENATOR LATHROP: Who's Ginger Shurter? [LR424]

JEANNENE DOUGLASS: She's another records manager in central records. [LR424]

SENATOR LATHROP: Is she a coworker of yours? [LR424]

JEANNENE DOUGLASS: Yes. [LR424]

SENATOR LATHROP: Does the same thing? [LR424]

JEANNENE DOUGLASS: She's more responsible for discharge records. But now she's...does more of the same thing I did. [LR424]

SENATOR LATHROP: Okay. And he says in this e-mail, and it's to both of you and it's regarding Castillas, and he said: I need you to work with Ginger and draft a response to

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

George Green for my review on Friday. Had George Green requested something?
[LR424]

JEANNENE DOUGLASS: I don't know. [LR424]

SENATOR LATHROP: He goes on to ask: I'd like you--and he's asking you to draft something that's responsive to a concern Green has, apparently. And he says: I'd like you to explain our current practice, the expected practice under the ruling of the Supreme Court, and why you believe our current practice is the proper course. Do you remember getting that directive from Mr. Poppert? [LR424]

JEANNENE DOUGLASS: Yes. [LR424]

SENATOR LATHROP: His last paragraph he says: I do want to caution folks. Our current efforts to reduce our inmate population has nothing to do with how we apply the good time laws. The law is the law and we'll act accordingly. Do you remember getting a kick out of that? [LR424]

JEANNENE DOUGLASS: I don't remember that until I'm looking at it now. [LR424]

SENATOR LATHROP: Did you think that was a curious thing for him to say? [LR424]

JEANNENE DOUGLASS: Yeah, that would be. [LR424]

SENATOR LATHROP: Well, the next e-mail that goes out is immediately above that. February 19, at 8:39, you forward Poppert's e-mail to somebody named Mickie Baum. Who's Mickie Baum? [LR424]

JEANNENE DOUGLASS: She, at that time, she was records manager at the penitentiary. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SENATOR LATHROP: Okay. Records manager of the penitentiary? [LR424]

JEANNENE DOUGLASS: Yes. [LR424]

SENATOR LATHROP: So your contemporary over at the pen. [LR424]

JEANNENE DOUGLASS: Exactly. [LR424]

SENATOR LATHROP: And you say: I thought you'd get a kick out this e-mail from KP, being Kyle Poppert, especially the last sentence, which had to do with our current efforts to reduce inmate population has nothing to do with how we apply the good time laws. [LR424]

JEANNENE DOUGLASS: Yes. [LR424]

SENATOR LATHROP: So it suggests to me that there was some humor you found in that because it was so far from the truth. [LR424]

JEANNENE DOUGLASS: Right. [LR424]

SENATOR LATHROP: Right? [LR424]

JEANNENE DOUGLASS: Yes. [LR424]

SENATOR LATHROP: Okay. So now I'm going to ask you again. In what way was overcrowding driving the bus when it came to the interpretation of the good time statutes as they applied to mandatory minimum sentences, Ms. Douglass? Were you getting pressure from someone at the Department of Corrections to leave things the way they were and not change the way you did it after Castillas because of

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

overcrowding? [LR424]

JEANNENE DOUGLASS: Was I getting pressure? [LR424]

SENATOR LATHROP: Were you getting pressure to leave things the way they were and they'd always been done and not change them after the Castillas Opinion because of the problem with overcrowding at the Department of Corrections? [LR424]

JEANNENE DOUGLASS: I don't know. [LR424]

SENATOR LATHROP: Well, let's just say the question has given you pause. So tell me where the pressure was coming from about your interpretation and how you were going to go forward because of overcrowding. Where was the pressure coming from? [LR424]

JEANNENE DOUGLASS: Well, it had to be coming from people higher than me. [LR424]

SENATOR LATHROP: And who would that include? You told us you weren't in any meetings... [LR424]

JEANNENE DOUGLASS: That could be... [LR424]

SENATOR LATHROP: ...with the director. Who would be giving you pressure to leave things the way they were instead of changing them to be in compliance with the Supreme Court's Opinion? [LR424]

JEANNENE DOUGLASS: I don't know that I was getting pressure to leave things the way they were. I was asking for advice as to how to do this, how to go about it so that we could do what we were supposed to do according to the Supreme Court. But I did not get any direction, so until I got direction I could not change anything. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SENATOR LATHROP: You seem like you're getting upset. [LR424]

JEANNENE DOUGLASS: I am. [LR424]

SENATOR LATHROP: I don't mean to upset you. I really, truly don't. The exchange of e-mails and the suggestion that when Kyle Poppert says, we're not trying to reduce our inmate population with the good time laws and we're trying to do the right thing, and you think it's funny enough to send to somebody and make a point of that suggests that you didn't think he was sincere in the comment he made in his e-mail. And that, in turn, would suggest to me that overcrowding was a consideration in the decision whether to keep doing what we're doing or to get into compliance with the Supreme Court Opinion. And all I'm after is the truth. [LR424]

JEANNENE DOUGLASS: I know. I'm trying to tell you. I think it was the overall atmosphere of the whole division. [LR424]

SENATOR LATHROP: Was the... [LR424]

JEANNENE DOUGLASS: Everybody was getting pressure. And it just comes on down. It's kind of like when you're showing your dog in a dog show. How you feel travels right down that leash to that dog. The same thing is happening here. [LR424]

SENATOR LATHROP: I think that's a perfect analogy. Tell us about the atmosphere. [LR424]

JEANNENE DOUGLASS: There was...it was quite well known that we had to reduce the population and that there was a lot pressure to find ways to do it. And I think it was coming from the Governor on down. That's just an opinion. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SENATOR LATHROP: Is that based upon conversations you've had with people at Corrections? [LR424]

JEANNENE DOUGLASS: Yes. [LR424]

SENATOR LATHROP: I trust that's not something that somebody wrote in a memo and sent to you. [LR424]

JEANNENE DOUGLASS: No, they did not. [LR424]

SENATOR LATHROP: Were you in meetings where you felt that pressure? [LR424]

JEANNENE DOUGLASS: Sure, we felt that pressure in our records meetings. Yes. [LR424]

SENATOR LATHROP: Who is running the records meetings? Is that Mr. Poppert? [LR424]

JEANNENE DOUGLASS: Yes. [LR424]

SENATOR LATHROP: Do you remember any meeting in particular when he talked about the importance of interpreting good time laws in a way that will assist in alleviating overcrowding? [LR424]

JEANNENE DOUGLASS: No. [LR424]

SENATOR LATHROP: No particular or specific recollection. [LR424]

JEANNENE DOUGLASS: No. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SENATOR LATHROP: But you felt it. [LR424]

JEANNENE DOUGLASS: You could feel it, yeah. [LR424]

SENATOR LATHROP: Back to this e-mail if I can, the one from Poppert to you and to Ginger Shurter. [LR424]

JEANNENE DOUGLASS: Um-hum. [LR424]

SENATOR LATHROP: And he asks you to do sort of...it almost sounds like an analysis. And now I'm looking at page 164 again. Almost looks like he's asking you to do an analysis or tell us...break it down for us, Jeannene. Is that how you saw that e-mail? [LR424]

JEANNENE DOUGLASS: Yeah, I believe so. [LR424]

SENATOR LATHROP: I don't see another e-mail from you to Poppert and Green in all the things that I've gotten or at least that we've been able to distill out of tens of thousands of pages that we've had delivered to our office until March 11 of 2013. Do you think it took you almost a month to respond to that request from Poppert for an explanation? [LR424]

JEANNENE DOUGLASS: I don't think so. If he wanted it by Friday, Ginger and I would have had it to him by Friday. [LR424]

SENATOR LATHROP: Okay. I'm going to ask you to look at page 168. Do you see that e-mail there? [LR424]

JEANNENE DOUGLASS: Yes. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SENATOR LATHROP: It's dated...it's an e-mail from you to Poppert with a copy to George Green dated March 11, 2013. [LR424]

JEANNENE DOUGLASS: Yes. [LR424]

SENATOR LATHROP: Do you see that? [LR424]

JEANNENE DOUGLASS: Yes. [LR424]

SENATOR LATHROP: Is that your first response, or do you think you responded to Poppert's request for sort of a breakdown before that date? [LR424]

JEANNENE DOUGLASS: I would...I don't know. But I'm...we probably just wrote something, typed, put something on the computer and printed off and gave it to him. I don't know. [LR424]

SENATOR LATHROP: But he asked you for a little bit of an analysis back in February 17, in his e-mail to you. And you said you thought you and Ginger would have done something in a timely manner. [LR424]

JEANNENE DOUGLASS: We would have... [LR424]

SENATOR LATHROP: And this e-mail doesn't even include Ginger on it. So I'm wondering was there something in between that I haven't seen. [LR424]

JEANNENE DOUGLASS: That I don't know. [LR424]

SENATOR LATHROP: Do you remember sending in response to Poppert's request that you break down how we used to do it, how the Supreme Court wants us to do it, and what we're going to do going forward? Do you think you gave him a response within a

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

couple days, you and Ginger? [LR424]

JEANNENE DOUGLASS: I think we would have, yes. [LR424]

SENATOR LATHROP: Do you remember doing that? [LR424]

JEANNENE DOUGLASS: I remember us getting together and talking about it. I don't remember when we did it. [LR424]

SENATOR LATHROP: And when you say "us getting together", are you talking about Ginger? [LR424]

JEANNENE DOUGLASS: Ginger and me. Yes, Ginger and me. [LR424]

SENATOR LATHROP: Okay. And do you remember that meeting with Ginger? [LR424]

JEANNENE DOUGLASS: Yeah. [LR424]

SENATOR LATHROP: What was discussed? [LR424]

JEANNENE DOUGLASS: Probably just tried to figure out how we're going to answer his questions and get it on paper and give it to him. [LR424]

SENATOR LATHROP: Is this March 11 e-mail that effort? [LR424]

JEANNENE DOUGLASS: No, I don't think so. [LR424]

SENATOR LATHROP: You think there's another one. [LR424]

JEANNENE DOUGLASS: I think there must have been a handwritten memo or a...not a

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

handwritten but a typed memo, not an e-mail. [LR424]

SENATOR LATHROP: Where you told Mr. Poppert how it was going to go. [LR424]

JEANNENE DOUGLASS: Yes. [LR424]

SENATOR LATHROP: This is the way we're doing it. This is the way the Supreme Court says. And this is what I would suggest going forward. [LR424]

JEANNENE DOUGLASS: In other words, we probably developed into a hard copy and presented that to him, not by e-mail but a hard copy. [LR424]

SENATOR LATHROP: Okay. Do you remember if you made a recommendation in that? In other words, I think he asked you to tell him the way it was done, the way the Supreme Court said to do it, and what you thought was...yeah, and why you believe it's the proper course. Did you tell him why you thought it was the proper course to just stay and continue to do it the way you did it? [LR424]

JEANNENE DOUGLASS: I don't remember what was said. [LR424]

SENATOR LATHROP: Okay. Do you remember getting any response from Mr. Poppert after you delivered that? [LR424]

JEANNENE DOUGLASS: No. [LR424]

SENATOR LATHROP: Did you have any more discussions with him? [LR424]

JEANNENE DOUGLASS: I don't remember. [LR424]

SENATOR LATHROP: We do have the March 11 e-mail from you to Poppert and Green

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

in which you say: You asked me for something in writing explaining how we calculate mandatory minimum sentences. I'm attaching a memorandum, 9-18-1996 from Riethmuller, then records administrator, regarding a procedure of calculating mandatory minimums. This is the procedure we've been using. It has been supported by the Attorney General's Office as well as court Opinions. You send that to Poppert. Do you remember doing that? [LR424]

JEANNENE DOUGLASS: I must have. It's here. [LR424]

SENATOR LATHROP: Yeah. You don't have any quarrel with the fact that you did it. [LR424]

JEANNENE DOUGLASS: But I don't remember it, no. [LR424]

SENATOR LATHROP: Okay. Do you remember getting a response or any other involvement in the discussion about calculating good time? [LR424]

JEANNENE DOUGLASS: No. [LR424]

SENATOR LATHROP: Did you have any more involvement in the decision about or were you involved in any meetings with Poppert or anybody else regarding ultimately whether Corrections was going to continue to do it the old way or change in response to the Castillas decision? [LR424]

JEANNENE DOUGLASS: No. [LR424]

SENATOR LATHROP: But you continued to calculate mandatory discharge dates for new inmates that had mandatory minimum sentences. Would that be true? [LR424]

JEANNENE DOUGLASS: The way the previous policy was? [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SENATOR LATHROP: After this e-mail, after you send all this stuff to Mr. Poppert and Mr. Green. By the way, they don't talk to you about it anymore. Is that true? [LR424]

JEANNENE DOUGLASS: Right. [LR424]

SENATOR LATHROP: You send this stuff to Poppert and Green and then you go back to your job, right? [LR424]

JEANNENE DOUGLASS: Right. [LR424]

SENATOR LATHROP: You're determining what the mandatory discharge date is for, among other people, inmates who have a mandatory minimum sentence. [LR424]

JEANNENE DOUGLASS: Yes. [LR424]

SENATOR LATHROP: And at that point you would have noticed, because you've been doing this a long time,... [LR424]

JEANNENE DOUGLASS: Yeah. [LR424]

SENATOR LATHROP: ...that you're still doing it the old way. [LR424]

JEANNENE DOUGLASS: Right, which I had to do until I was further directed by my supervisor. [LR424]

SENATOR LATHROP: Never got that direction. [LR424]

JEANNENE DOUGLASS: Never got that direction. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SENATOR LATHROP: Did you ever talk to anybody and say, you know, that Castillas Opinion, we're not doing it that way? We had this conversation, you asked me about this, Mr. Poppert or Mr. Green. We're still doing it the old way. [LR424]

JEANNENE DOUGLASS: I never followed through with that. I mean normal procedure is I forwarded it on to my supervisor and legal, and I went ahead with daily business until further directed and didn't even think about it. [LR424]

SENATOR LATHROP: Because you don't make policy. [LR424]

JEANNENE DOUGLASS: Because I don't make policy. [LR424]

SENATOR LATHROP: Have we covered everything about your involvement in the calculation of or in the response to the Castillas Opinion? [LR424]

JEANNENE DOUGLASS: Have we covered it? [LR424]

SENATOR LATHROP: Yeah. [LR424]

JEANNENE DOUGLASS: I think so. [LR424]

SENATOR LATHROP: You had no other meetings, no other phone calls, no other memos, nothing like that. [LR424]

JEANNENE DOUGLASS: Not that I can remember. [LR424]

SENATOR LATHROP: Okay. Well, that's all the questions I have then. [LR424]

JEANNENE DOUGLASS: Thank you. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SENATOR LATHROP: We'll start at this end and work our way around this way.
[LR424]

JEANNENE DOUGLASS: Okay. [LR424]

SENATOR LATHROP: Senator Krist. [LR424]

SENATOR KRIST: Thank you, Senator Lathrop. Could you look at page 177 for me,
please? Now you retired in what month? [LR424]

JEANNENE DOUGLASS: June of '13. [LR424]

SENATOR KRIST: Okay. So this happened...this is a Sentence Review Committee
meeting minutes. This happened after you were officially retired. [LR424]

JEANNENE DOUGLASS: Correct. [LR424]

SENATOR KRIST: But I see on that list Mickie Baum who was a records manager.
[LR424]

JEANNENE DOUGLASS: Correct. [LR424]

SENATOR KRIST: So I'm going to assume that if there were other of these meetings,
that you would have been invited to these meetings. Or did these exist when you were
employed by the Department of Corrections? [LR424]

JEANNENE DOUGLASS: I don't remember when that committee was formed, but I was
never invited to be a part of it. [LR424]

SENATOR KRIST: Okay. Well, Mr. Poppert was in attendance and I think he'll be able

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

to tell us when he comes up. But thanks for testifying. I know it was tough. [LR424]

JEANNENE DOUGLASS: Thank you. [LR424]

SENATOR KRIST: Thanks for telling the truth. Thank you, Chairman. [LR424]

SENATOR SEILER: Yeah, I do. [LR424]

SENATOR LATHROP: Senator Seiler. [LR424]

SENATOR SEILER: I'd like to go back. And again, appreciate your testimony. There's one thing that struck me kind of funny in all the e-mails. They were going the wrong direction. If you're down here, all the e-mails were coming back asking questions from the lower people. [LR424]

JEANNENE DOUGLASS: Yeah. [LR424]

SENATOR SEILER: You never got any e-mails coming from Linda Willard, the administrators above you giving you directions. Is that your testimony? [LR424]

JEANNENE DOUGLASS: As far as the calculation is concerned? [LR424]

SENATOR SEILER: Right. [LR424]

JEANNENE DOUGLASS: Right. [LR424]

SENATOR SEILER: Did that add to your frustration? [LR424]

JEANNENE DOUGLASS: Yes. [LR424]

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Transcriber's Office
Rough Draft

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SENATOR SEILER: Okay. Thank you. [LR424]

SENATOR LATHROP: Anyone on my right? Oh, Senator Schumacher. [LR424]

SENATOR SCHUMACHER: Thank you, Senator Lathrop. A similar question to what I asked an earlier witness: We're struggling to find out where the decision-making gap occurred or where the decision was made to continue on interpreting things in the old way because that would help out with the prison population issue. Who should we be asking those questions to? Who would know? [LR424]

JEANNENE DOUGLASS: Say the questions again, please. [LR424]

SENATOR SCHUMACHER: Okay. Who should we be asking? And you're kind of familiar with the chain of command there. [LR424]

JEANNENE DOUGLASS: Of command, yes. [LR424]

SENATOR SCHUMACHER: Who should we be asking about how the decision was made to basically not pay attention to the Supreme Court decision and just go on as business as usual? Legal? [LR424]

JEANNENE DOUGLASS: I would say legal and probably the records administrator. [LR424]

SENATOR SCHUMACHER: Okay. And that's probably where those discussions would have occurred. [LR424]

JEANNENE DOUGLASS: That's where they should have occurred, yeah. [LR424]

SENATOR SCHUMACHER: Okay. And when you talk about the feeling of the dog

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

being at the end of the leash and it was just this feeling, some mechanism has to be used to communicate feelings otherwise you wouldn't know you had them. [LR424]

JEANNENE DOUGLASS: Yeah. [LR424]

SENATOR SCHUMACHER: What was that mechanism? What was the source of the tension. We've had that alluded to several times with your testimony and other testimony we've heard that there was this constant worry about the population. How was that articulated? How did you get the impression? You mentioned before that the downtown offices had or the Governor's Office you thought was probably the source of that signal. What is it that gives you that impression, that causes you to believe...? [LR424]

JEANNENE DOUGLASS: To have that feeling? [LR424]

SENATOR SCHUMACHER: Right, right. [LR424]

JEANNENE DOUGLASS: My office was located on the same floor in the same wing with the Parole Board. And so not only did I hear...I would hear their conversations and I would also hear conversations from the administration on second floor if I'd be involved in something up there for some reason or other. So you can just sense the feeling sometimes. [LR424]

SENATOR SCHUMACHER: Do you recall any particular conversations or things that were said that kind of lit up a light bulb and you said, oh, gee, they want us to move people through here? [LR424]

JEANNENE DOUGLASS: I don't remember any conversations, no. [LR424]

SENATOR SCHUMACHER: So in overhearing these various things coming through the

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

walls, able to identify any particular issue, any particular thing that might have been said that alerted you that this was a desire? [LR424]

JEANNENE DOUGLASS: To lessen the population? [LR424]

SENATOR SCHUMACHER: Right. [LR424]

JEANNENE DOUGLASS: Well, I know there was a big push on paroling people to get them out of the facilities because they needed the space. [LR424]

SENATOR SCHUMACHER: And did that carry over at all to the application of good time? [LR424]

JEANNENE DOUGLASS: Of good time? I don't think so. [LR424]

SENATOR SCHUMACHER: Thank you. [LR424]

JEANNENE DOUGLASS: Uh-huh. [LR424]

SENATOR LATHROP: Any further questions? I see none. [LR424]

SENATOR CHAMBERS: I just... [LR424]

SENATOR LATHROP: Oh, I'm sorry, I didn't see your hand, Senator Chambers. [LR424]

SENATOR CHAMBERS: Just for the record. [LR424]

SENATOR LATHROP: Yes. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SENATOR CHAMBERS: Ms. Douglass, so that you won't feel like you're out there by yourself on a limb, and maybe what I'm going to say won't make any difference in that regard, but I want the record to be clear that I am one who encouraged the use of good time to help thin the overpopulation. And here's what I had said. I've looked at kites that inmates have written. I've looked at the way some of these disciplinary hearings have been conducted, and I think there are a lot of trifling write-ups that result in people losing good time. And that's not something that I want to see happen. I do not want the taking away of good time to be in the hands of guards and others who can use it as a club to get even with an inmate that he or she may not like. And when I read that a person lost good time because of a hostile statement or a gesture or a look, I didn't think good time should ever be taken for that and I made that clear. I also was emphasizing publicly, and I'd say it here on the floor of the Legislature and anywhere else I was talking about the prison situation, that I wanted as many people paroled as possible; that I wanted the Parole Board to look at whether or not if the only thing that keeps a person from being paroled is that he or she had not completed a program and the programming was not available to that inmate but he or she obviously had done everything to qualify, I wanted the Parole Board to find a way to let those people out. I'm not in a position where I have to jump and run now and say, well, I didn't know anything about this, I didn't say anything about it, I didn't do anything about it. I wanted everything that could get people out of prison to get them out of prison. But what it seems that we're kind of getting now is that there was a lack of awareness that the people at the top of the administration knew anything. They knew. They had to know. Even if they were not doing their job as they should, if they were not supervising and overseeing as they should, they nevertheless knew what was going on and they do not have clean hands. So with all that having been said, I want to ask you a question or two for my understanding. When did you say you retired? [LR424]

JEANNENE DOUGLASS: June of '13. [LR424]

SENATOR CHAMBERS: And was it based on all of this stuff going on? [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

JEANNENE DOUGLASS: No. [LR424]

SENATOR CHAMBERS: You had planned to retire at that time anyway. [LR424]

JEANNENE DOUGLASS: Yes. [LR424]

SENATOR CHAMBERS: So it was strictly coincidental. [LR424]

JEANNENE DOUGLASS: Right. [LR424]

SENATOR CHAMBERS: When... [LR424]

JEANNENE DOUGLASS: I had almost 45 years in with the state. It was time to let somebody else take over. [LR424]

SENATOR CHAMBERS: Well, I've been (laugh) in the Legislature...well, I won't go into that. (Laughter) But when did you become aware that you were going to become the heavy in all of this? And remember, the reason I pay particular attention to your name is because it's spelled the same way Frederick Douglass spelled his name, and naturally he took it from the slave owners and so forth. But at what point did it become clear to you that you were going to be the heavy? And here's what I mean. Before you retired, were you aware of that developing? [LR424]

JEANNENE DOUGLASS: No. [LR424]

SENATOR CHAMBERS: How long after you retired did it become clear to you that fingers were pointing in your direction? [LR424]

JEANNENE DOUGLASS: When it hit the Omaha World-Herald a couple months ago.

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

[LR424]

SENATOR CHAMBERS: And that was after you had retired. [LR424]

JEANNENE DOUGLASS: Yes. [LR424]

SENATOR CHAMBERS: And your retirement had nothing to do with what was going to happen. Had you talked to anybody from the World-Herald... [LR424]

JEANNENE DOUGLASS: No. [LR424]

SENATOR CHAMBERS: ...before their story came out... [LR424]

JEANNENE DOUGLASS: Oh, wait. [LR424]

SENATOR CHAMBERS: ...about this situation? [LR424]

JEANNENE DOUGLASS: Did they call me? I'm trying to remember. I think I talked to...was it them? Somebody called me on my cell phone and I didn't know it was the press and I took the call. [LR424]

SENATOR CHAMBERS: But here's what I'm asking. Now after you had retired, some things developed that got the World-Herald's attention. Would that call have come to you after you retired but before the article appeared in the World-Herald? Do you remember? [LR424]

JEANNENE DOUGLASS: I think it was after the article hit the paper. [LR424]

SENATOR CHAMBERS: When you read what was in the article, did you note the prominent role that you were being shown to have had in a lot of this? Did it come to

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Transcriber's Office
Rough Draft

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

you, as you read it, that you were going to be considered a heavy in this activity that was going on? [LR424]

JEANNENE DOUGLASS: It kind of felt like it, yes. [LR424]

SENATOR CHAMBERS: After you retired and after that article came out, did you have conversations with anybody, who could be considered an upper echelon official or employee at the Department of Corrections, about what had happened after the article came out? [LR424]

JEANNENE DOUGLASS: Not... [LR424]

SENATOR CHAMBERS: Did anybody from...so... [LR424]

JEANNENE DOUGLASS: Anybody from Corrections call me? [LR424]

SENATOR CHAMBERS: Yes. [LR424]

JEANNENE DOUGLASS: No. [LR424]

SENATOR CHAMBERS: Did you feel that you were being given a greater role in what happened than really was the role that you would have played, if any? [LR424]

JEANNENE DOUGLASS: Yes. [LR424]

SENATOR CHAMBERS: You said repeatedly that you did not formulate any policy or make any decisions about how things were going to be done. [LR424]

JEANNENE DOUGLASS: Correct. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SENATOR CHAMBERS: If you did anything, it was based on what had already been established as a policy by somebody else. [LR424]

JEANNENE DOUGLASS: Correct. [LR424]

SENATOR CHAMBERS: You were an employee carrying out the wishes and your understanding of what the requirements of your job would have been. [LR424]

JEANNENE DOUGLASS: Correct. [LR424]

SENATOR CHAMBERS: What would have happened if you had said, I'm not going to do it this way? [LR424]

JEANNENE DOUGLASS: I probably would have been disciplined. [LR424]

SENATOR CHAMBERS: Were you aware before you retired that the method being used to calculate good time was contrary to what the Supreme Court said was the way that it should have been used? In other...let me ask it in a less-convoluted way. Had the Supreme Court decision come down which stated how the calculation should be made when there was a mandatory minimum in figuring the mandatory release date? Were you aware of that decision and what it required prior to the time that you retired? [LR424]

JEANNENE DOUGLASS: Yes. [LR424]

SENATOR CHAMBERS: Could you have told whoever was your supervisor, I'm not going to calculate in this manner that we've been doing? And before you answer that question, let me ask you this. If you had told your supervisor you were going to calculate in the way that the Supreme Court said the calculation should have been made, and if you did that, say, for inmate B, would the fact that you calculated it that way cause the

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Transcriber's Office
Rough Draft

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

department to say, all right, then we accept your new way of calculating and that's what we're going to do from now on? In other words, would your trying to comply with the Supreme Court decision have led to a change of policy in terms of how the calculations would be made? [LR424]

JEANNENE DOUGLASS: If I would have followed that order? [LR424]

SENATOR CHAMBERS: Right. Would anything you did have changed the policy out there? [LR424]

JEANNENE DOUGLASS: That's a good question. [LR424]

SENATOR CHAMBERS: I'm not trying to trap you. [LR424]

JEANNENE DOUGLASS: I'm just trying to think a minute here how that would have worked if I'd have done that. [LR424]

SENATOR CHAMBERS: Well, let me ask it this way. Not commenting on your age, but when I was growing up they had iceboxes and a person would come in with a heavy leather pad and a chunk of ice and tongs and put that in the icebox. [LR424]

JEANNENE DOUGLASS: Uh-huh. [LR424]

SENATOR CHAMBERS: Now suppose I'm delivering the ice and I didn't think that any person delivering ice should carry more than a 25-pound block, so that's what I start doing. Would that change the policy of the company that I work for and they say, okay, Ernie, from now on everybody will carry a 25-pound block? Would my doing that change the company's policy, do you think? [LR424]

JEANNENE DOUGLASS: It could. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SENATOR CHAMBERS: Do you think it would,... [LR424]

JEANNENE DOUGLASS: Maybe. [LR424]

SENATOR CHAMBERS: ...realistically speaking? [LR424]

JEANNENE DOUGLASS: Maybe. [LR424]

SENATOR CHAMBERS: If I were working for General Motors and I said something is wrong with this switch and it ought to be changed, would General Motors take what I said and change the switch? [LR424]

JEANNENE DOUGLASS: Well, they should at least look into it and see if they agree with your interpretation. [LR424]

SENATOR CHAMBERS: If there are memos that would show that they knew that what I said was correct, yet they didn't change the switch, which is what happened, would that be an indication that if a--and don't take this as a slam against you--would that indicate that what a low-level employee says is going to change the policy that the upper echelon people intend to keep in place? If it was their intention that calculations be made a certain way, would your objecting to it cause them to change that policy because you objected? [LR424]

JEANNENE DOUGLASS: I'd say no. [LR424]

SENATOR CHAMBERS: And so would I. Now, on pain of endangering your immortal soul, do you really think, as you look at everything that has happened, everything that has developed, the Governor running for cover and not responsible for anything, Mr. Houston not remembering anything, not knowing anything, not having been told

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

anything, and other people who really had the responsibility, on pain of losing your immortal soul, do you think that with the position that you held you could have influenced all those upper echelon people to change a policy that they had no intention of changing? [LR424]

JEANNENE DOUGLASS: If they didn't want to change it, they're not going to change it because of something I said. [LR424]

SENATOR CHAMBERS: And the fact that it was not changed when the Supreme Court said change it, then it's pretty clear that they're not going to change it just because you say it. Would you agree? [LR424]

JEANNENE DOUGLASS: I would agree. [LR424]

SENATOR CHAMBERS: Do you feel that you've been...I'm trying to phrase my questions carefully. Would it be easy for people who are high placed to see that something bad has happened, would they be able, if they chose to do that, to shift the blame for it onto a low-level employee? [LR424]

JEANNENE DOUGLASS: That could happen. [LR424]

SENATOR CHAMBERS: Do you think it does happen? [LR424]

JEANNENE DOUGLASS: Yes, I do. [LR424]

SENATOR CHAMBERS: I think the record that the Chairman and other people's questions have developed will speak for itself, so I don't have any more questions. And thanks for coming. [LR424]

JEANNENE DOUGLASS: Thank you very much. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SENATOR LATHROP: I think that's it. Thank you once again for your...I was going to say willingness to be here. Maybe that isn't the right word. [LR424]

JEANNENE DOUGLASS: No, that's fine. [LR424]

SENATOR LATHROP: Thanks for being here today and we appreciate your candor with your answers and your time. [LR424]

JEANNENE DOUGLASS: Thank you. [LR424]

SENATOR LATHROP: Next we will take up Kyle Poppert. Would you raise your right hand. Mr. Poppert, do you swear the testimony you're about to give to this special legislative committee will be the truth, the whole truth, and nothing but the truth? [LR424]

KYLE POPPERT: I do. [LR424]

SENATOR LATHROP: Thank you, sir. Have a seat. And why don't we begin by having you recite your name and spell your last name for us. [LR424]

KYLE POPPERT: Kyle J. Poppert, P-o-p-p-e-r-t. [LR424]

SENATOR LATHROP: What community do you live in, Mr. Poppert? [LR424]

KYLE POPPERT: In Lincoln. [LR424]

SENATOR LATHROP: Are you an employee of the state of Nebraska? [LR424]

KYLE POPPERT: I am. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SENATOR LATHROP: And in what agency are you employed? [LR424]

KYLE POPPERT: With the Department of Corrections. [LR424]

SENATOR LATHROP: How long have you been employed by the Department of Corrections? [LR424]

KYLE POPPERT: Since July 5, 1994. [LR424]

SENATOR LATHROP: What did you do before that? [LR424]

KYLE POPPERT: Before Corrections? [LR424]

SENATOR LATHROP: Yeah. [LR424]

KYLE POPPERT: Um... [LR424]

SENATOR LATHROP: Was that your first job? [LR424]

KYLE POPPERT: No, I worked in a lot of different jobs. My wife and I actually had a business at the time and I was kind of more focused in looking for a job with a regular paycheck and hours. We had a child that was in kindergarten at the time. And so I just was looking... [LR424]

SENATOR LATHROP: Good time to do it. [LR424]

KYLE POPPERT: ...for the future I guess. [LR424]

SENATOR LATHROP: And you landed in the Department of Corrections. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

KYLE POPPERT: I did. [LR424]

SENATOR LATHROP: What's your background? Can you tell us what your education is? [LR424]

KYLE POPPERT: I spent a couple of years at the University of Nebraska in Lincoln. My most recent education is that I'm a certified public manager through UNO. [LR424]

SENATOR LATHROP: Certified public... [LR424]

KYLE POPPERT: Public manager. [LR424]

SENATOR LATHROP: ...manager? [LR424]

KYLE POPPERT: Yes, sir. [LR424]

SENATOR LATHROP: When...is that a degree or some certification? [LR424]

KYLE POPPERT: It's a certification. I do not have a degree. [LR424]

SENATOR LATHROP: What year did you get the certification from UNO? [LR424]

KYLE POPPERT: I'm not sure. It was within about the last five years. [LR424]

SENATOR LATHROP: Okay. Were you the records administrator before or after that degree or certification? [LR424]

KYLE POPPERT: Before that. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SENATOR LATHROP: Pardon me? [LR424]

KYLE POPPERT: Before that. [LR424]

SENATOR LATHROP: So you went to UNO and got the certification since they made you records administrator. [LR424]

KYLE POPPERT: I believe so, yes. [LR424]

SENATOR LATHROP: What did you do at Corrections before you became the records administrator? [LR424]

KYLE POPPERT: I've had about 14 different jobs with Corrections, from food service, I was an officer on third shift, promoted through corporal, sergeant. I was a records manager at the facility. I was an administrative assistant for a while at central office. I was a senior parole officer and worked in classification, inmate records, and now special services as well. [LR424]

SENATOR LATHROP: Okay. Were you always moving up the food chain? [LR424]

KYLE POPPERT: Yes, uh-huh. [LR424]

SENATOR LATHROP: So all these various jobs that you've had have all been promotions, one after the other,... [LR424]

KYLE POPPERT: Yes. [LR424]

SENATOR LATHROP: ...until you found yourself as the records administrator. [LR424]

KYLE POPPERT: Correct. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SENATOR LATHROP: When did that happen? [LR424]

KYLE POPPERT: I believe it was June of 2008. [LR424]

SENATOR LATHROP: Were you here for Mr. Riethmuller's testimony? [LR424]

KYLE POPPERT: Yes. [LR424]

SENATOR LATHROP: Would you agree with him on the duties of that position?
[LR424]

KYLE POPPERT: Yes. [LR424]

SENATOR LATHROP: Did they change when you became the director or, pardon me,
the records administrator? [LR424]

KYLE POPPERT: A little bit because one of the things that I wanted to do was, you know, when Ron retired, he was a decades-long employee, had a lot of knowledge. But when he left abruptly, all of that knowledge went with him. And so that was kind of one of my major goals was is that we had records managers in all the facilities. We had Ms. Douglass who had worked with him for decades at central office. Jeannene (sic) Shurter at the time was a Records Manager I that worked with the discharge records. And I just wanted to make sure that, you know, instead of having one expert, my goal was to have ten experts within the department. I... [LR424]

SENATOR LATHROP: So you were going to decentralize decision making. [LR424]

KYLE POPPERT: Well, not so much decentralize decision making, but I didn't want to leave the department in a bad position if something happened to one person. You know,

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

we had always talked about succession planning and that. And you know, what...the questions at the time were always asked, well, what happens if you get hit by a bus? And you know, I just didn't...I wanted to make sure we in Nebraska, I think we have a unique system with the way we calculate time and that in the institutions, and I just wanted to make sure we had as many experts in that field as we did so that as vacancies came available and that, there wasn't a learning curve. [LR424]

SENATOR LATHROP: Okay. So by the way, you're not trained in that law. Would that be true? [LR424]

KYLE POPPERT: No. Correct. [LR424]

SENATOR LATHROP: Okay. You were Jeannene Douglass' supervisor? [LR424]

KYLE POPPERT: Yes, sir. [LR424]

SENATOR LATHROP: And you've just given us a little background on your philosophy, which involved having ten experts instead of one. [LR424]

KYLE POPPERT: Uh-huh. [LR424]

SENATOR LATHROP: But Mr. Riethmuller testified earlier today that the calculation of...the calculation of parole eligibility date and the mandatory discharge date were done at the various institutions and that information, in turn, provided to the central office. [LR424]

KYLE POPPERT: Correct. [LR424]

SENATOR LATHROP: Did you hear him say that? [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

KYLE POPPERT: Yes. [LR424]

SENATOR LATHROP: And did you hear Jeannene Douglass say that? [LR424]

KYLE POPPERT: Yes. [LR424]

SENATOR LATHROP: Do you agree that that also happened during your watch?
[LR424]

KYLE POPPERT: Yes, because... [LR424]

SENATOR LATHROP: Okay. [LR424]

KYLE POPPERT: ...that was basically our only check and balance, was that we wanted two independent people basically looking at that sentence, independent calculations.
[LR424]

SENATOR LATHROP: Sure. And you were at the central office. [LR424]

KYLE POPPERT: Correct, basically. [LR424]

SENATOR LATHROP: You ran all of those people. [LR424]

KYLE POPPERT: Yes. [LR424]

SENATOR LATHROP: They were all your charge. [LR424]

KYLE POPPERT: Well, no. I was only in charge of the records managers at central office. The ones that are at the facilities are supervised by the various facilities. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SENATOR LATHROP: Okay. But their work product is sent to the central office...
[LR424]

KYLE POPPERT: Correct. [LR424]

SENATOR LATHROP: ...where you are charged with checking to make sure it's correct.
[LR424]

KYLE POPPERT: Yes. [LR424]

SENATOR LATHROP: Would that be true? [LR424]

KYLE POPPERT: Right. [LR424]

SENATOR LATHROP: Okay. When you became the records administrator, were you familiar with Mr. Riethmuller's September 18, 1996, memo regarding the calculation of good time? [LR424]

KYLE POPPERT: Yes, uh-huh. [LR424]

SENATOR LATHROP: Yes? [LR424]

KYLE POPPERT: Yes. [LR424]

SENATOR LATHROP: And I'm going to correct you, not to be obnoxious about it, but I've got to have... [LR424]

KYLE POPPERT: Right. Yes, sir. [LR424]

SENATOR LATHROP: ...an audible answer. And an "uh-huh" and a "huh-uh" is hard for

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

the transcribers to sort out. [LR424]

KYLE POPPERT: Okay. [LR424]

SENATOR LATHROP: Okay? It would be fair to say that Riethmuller's memo was the standard for determining good time for those on mandatory minimum sentences... [LR424]

KYLE POPPERT: Yes. [LR424]

SENATOR LATHROP: ...and was certainly true through Castillas Opinion. [LR424]

KYLE POPPERT: Yes. [LR424]

SENATOR LATHROP: Mr. Poppert, maybe you didn't run your railroad the same as Mr. Riethmuller, and so I want to make sure I'm not making some assumptions. Did you feel like your office had a role in determining what the parole eligibility date was for an inmate as well as the inmate's mandatory discharge date? [LR424]

KYLE POPPERT: Well, I believe my role in that was making sure that all the records managers understood the methodology and the correct way of applying those sentences. I wasn't involved in the day-to-day calculations of those sentences. [LR424]

SENATOR LATHROP: If somebody came across a tough one, we listened to Mr. Riethmuller this morning, he said if there was a wrinkle, I mean the routine stuff would all be done by the records managers,... [LR424]

KYLE POPPERT: Uh-huh. Right. [LR424]

SENATOR LATHROP: ...but if there was a wrinkle they called me. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

KYLE POPPERT: Right. If... [LR424]

SENATOR LATHROP: Did you hear him say that? [LR424]

KYLE POPPERT: Yes. [LR424]

SENATOR LATHROP: Do they...has that been the case since you are the records administrator... [LR424]

KYLE POPPERT: I think... [LR424]

SENATOR LATHROP: ...or do you have a different approach to how you run your railroad? [LR424]

KYLE POPPERT: I think the wrinkles that I would address were probably bigger wrinkles than what Ron would address at the time. I came into this position...and, you know, as people want to characterize Jeannene as a low-level clerk and that's not accurate. She's a Records Manager II in the department, which is the next step below, in our chain of command, of the records administrator. [LR424]

SENATOR LATHROP: Mr. Poppert,... [LR424]

KYLE POPPERT: Yes. [LR424]

SENATOR LATHROP: ...was Jeannene Douglass, did you ever see her take a meeting with George Green? [LR424]

KYLE POPPERT: I don't remember her ever seeing that but, you know, these... [LR424]

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Transcriber's Office
Rough Draft

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SENATOR LATHROP: Could she make policy over at the Department of Corrections?
[LR424]

KYLE POPPERT: No. [LR424]

SENATOR LATHROP: Okay. Did you take meetings with George Green? [LR424]

KYLE POPPERT: Yes. [LR424]

SENATOR LATHROP: And were you involved in making policy on some issues?
[LR424]

KYLE POPPERT: Involved in making policy, yes. [LR424]

SENATOR LATHROP: Okay. So you were Jeannene Douglass' superior and she
couldn't make policy. Would that be true? [LR424]

KYLE POPPERT: Correct. Yes. [LR424]

SENATOR LATHROP: And she wasn't taking meetings with the director of the legal
office at Corrections. Would that also be true? [LR424]

KYLE POPPERT: There may have been occasion when she had questions and would
go to legal about that, but if there was a big wrinkle, that was my responsibility. Yes.
[LR424]

SENATOR LATHROP: Fair enough. [LR424]

KYLE POPPERT: Uh-huh. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SENATOR LATHROP: And that's what we're here to talk about. [LR424]

KYLE POPPERT: Right. Uh-huh. [LR424]

SENATOR LATHROP: Were you aware of or how did you first become aware of the Castillas Opinion, February 8 of 2013? [LR424]

KYLE POPPERT: That was through the e-mails, the e-mail exchange between Jeannene Douglass and Linda Willard. [LR424]

SENATOR LATHROP: You have the book in front of you. [LR424]

KYLE POPPERT: Okay. [LR424]

SENATOR LATHROP: I'm going to invite you to open it up and open it to page 142, Mr. Poppert. The e-mail from Linda Willard to Jeannene...to...it's actually to you and Jeannene Douglass. Do you see that? [LR424]

KYLE POPPERT: Yes. [LR424]

SENATOR LATHROP: And it has, as an attachment to that e-mail, the Castillas Opinion from the Nebraska Supreme Court that was, I trust, issued just shortly before that e-mail went to you. [LR424]

KYLE POPPERT: Yes. [LR424]

SENATOR LATHROP: Have you worked with Linda Willard in the past? [LR424]

KYLE POPPERT: No, not really. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SENATOR LATHROP: Do you know who she is or where she worked? [LR424]

KYLE POPPERT: Yes, uh-huh. Yes. [LR424]

SENATOR LATHROP: Did you know she was a deputy attorney general when she sent you that e-mail? [LR424]

KYLE POPPERT: Yes. [LR424]

SENATOR LATHROP: And would you in the past receive some direction or case law from the Attorney General's Office concerning how sentences are to be carried out inside the Department of Corrections,... [LR424]

KYLE POPPERT: This... [LR424]

SENATOR LATHROP: ...at least as it relates... [LR424]

KYLE POPPERT: Yeah. [LR424]

SENATOR LATHROP: ...to the records office? [LR424]

KYLE POPPERT: This was the first time I recall ever receiving anything from the AG's Office... [LR424]

SENATOR LATHROP: Okay. [LR424]

KYLE POPPERT: ...regarding a case. [LR424]

SENATOR LATHROP: When it came to you, could you tell it was from the Attorney General's Office? [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

KYLE POPPERT: Oh yes, uh-huh. [LR424]

SENATOR LATHROP: Okay. So now you know it's one of the lawyers over in the Attorney General's Office sending you an e-mail. [LR424]

KYLE POPPERT: Correct. [LR424]

SENATOR LATHROP: And the subject line is sentence calculation, true? [LR424]

KYLE POPPERT: Yes. [LR424]

SENATOR LATHROP: And the sentence calculation is in your wheelhouse over at the Department of Corrections. [LR424]

KYLE POPPERT: Correct. [LR424]

SENATOR LATHROP: Okay. So it's logical for her to send it to you. [LR424]

KYLE POPPERT: Yes. [LR424]

SENATOR LATHROP: Maybe it should have been sent to Green as well. [LR424]

KYLE POPPERT: Maybe, yes. Uh-huh. [LR424]

SENATOR LATHROP: We can talk about that with... [LR424]

KYLE POPPERT: Right. [LR424]

SENATOR LATHROP: ...Mr. Green perhaps. But it's logical to send to you, and you got

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

it and you got it at 9:41 in the morning. [LR424]

KYLE POPPERT: Yes. [LR424]

SENATOR LATHROP: All right. Did you read it? [LR424]

KYLE POPPERT: Yes. [LR424]

SENATOR LATHROP: And after you read it, you had been familiar with Riethmuller's memo that had been sort of the gold standard for determining parole eligibility and mandatory release for those inmates who are in on a mandatory minimum sentence,... [LR424]

KYLE POPPERT: Uh-huh. [LR424]

SENATOR LATHROP: ...right? [LR424]

KYLE POPPERT: Yes. [LR424]

SENATOR LATHROP: Did you appreciate, after reading the Opinion, the Castillas Opinion, that the Supreme Court was telling...was providing a different approach or spelling out a different way to determine the mandatory discharge date for people incarcerated with a mandatory minimum sentence? Did you get that out of the Opinion when you read it? [LR424]

KYLE POPPERT: Well, I...they mentioned that there was...that, in their Opinion, that the sentence should be calculated differently. [LR424]

SENATOR LATHROP: All right. Do you think they were ambiguous or equivocal in their pronouncement? [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

KYLE POPPERT: Well, I think a couple of things. Number one, that case was affirmed and so there was never any direction back to a district court to provide the Department of Corrections. As I understand it, at least was explained to me by legal, that, you know, nobody was really directing us in that Opinion to do anything differently. But what did cause me concern in that was in the second e-mail exchange when Ms. Douglass did reply to Ms. Willard that we weren't doing things in accordance with what appeared to be at the time the Supreme Court decision. [LR424]

SENATOR LATHROP: Okay. Let me talk to you about what you thought the significance of the Castillas Opinion was. Once it was decided, did you think it had any effect upon your calculations of the mandatory discharge date for someone doing a mandatory minimum sentence? [LR424]

KYLE POPPERT: I think it was possible that it had some impact. And again, you know I'm not an attorney so my role in this was to discuss with our legal counsel and get an interpretation from them so we could determine what our methodology would be in that calculation. [LR424]

SENATOR LATHROP: Okay. Before I went to law school I was an undergrad, and when I was an undergrad I took a business law class, which was just enough law for some of those guys at Creighton to get interested in the law. But it was just enough law for people that go off into business... [LR424]

KYLE POPPERT: Uh-huh. [LR424]

SENATOR LATHROP: ...to at least get that we have the constitution, we have the statute, and we have case law. [LR424]

KYLE POPPERT: Yes. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SENATOR LATHROP: You understood that... [LR424]

KYLE POPPERT: Yes. [LR424]

SENATOR LATHROP: ...before you read Castillas. [LR424]

KYLE POPPERT: Yes. [LR424]

SENATOR LATHROP: And you understood that when the Supreme Court makes a decision regarding sentencing, the broad principles of an Opinion apply not just to the inmate, the particular inmate defendant or petitioner, but to all inmates. [LR424]

KYLE POPPERT: Well, that...that... [LR424]

SENATOR LATHROP: Would you agree with that or no? [LR424]

KYLE POPPERT: Not necessarily. That... [LR424]

SENATOR LATHROP: You don't...you didn't think it applied to all, all the people in the Department of Corrections? [LR424]

KYLE POPPERT: That was one of the questions I had with our legal department was that, you know, I didn't know. Does this apply just to Castillas or, you know,...because, first of all, we're not a party to that, that case at the time, so I wasn't sure how this would be applied to us. [LR424]

SENATOR LATHROP: Well, now...now your question...now your statement that we weren't a party sounds like you've been talking to a lawyer. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

KYLE POPPERT: Well, I was talking to our legal team at the time and that's what their advice throughout all of this was is that the Department of Corrections was not a party to this decision. [LR424]

SENATOR LATHROP: Who told you that? [LR424]

KYLE POPPERT: George. [LR424]

SENATOR LATHROP: Who told you that somehow the fact that the Department of Corrections wasn't a defendant meant that this became nonbinding on the Department of Corrections? [LR424]

KYLE POPPERT: I believe that was...that's pretty much paraphrased between what Sharon Lindgren said and George Green said as well. [LR424]

SENATOR LATHROP: And would that have been in the October 31, 2013, meeting? [LR424]

KYLE POPPERT: It was reiterated at that meeting, but it was...that was the advice that I got from Mr. Green prior to that October meeting. [LR424]

SENATOR LATHROP: So Mr. Green said, because we weren't a party to it, the court's interpretation of a statute passed by the Legislature isn't something we need to follow? Did you say George Green told you that? [LR424]

KYLE POPPERT: Yes. His advice was that we were not...this is not a case that's been remanded back to a district court for instructions to us; we're not a party of this case; the Supreme Court has not directed us to do anything. However, they did say, you know, this kind of puts us on notice as far as what our policy is, so. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SENATOR LATHROP: Kind of? [LR424]

KYLE POPPERT: Well, I mean I'm paraphrasing. But,... [LR424]

SENATOR LATHROP: Well,... [LR424]

KYLE POPPERT: ...you know, we were put... [LR424]

SENATOR LATHROP: ...it's remarkable to me, Mr. Poppert, really, it's remarkable to me that someone would tell you, you don't have...we have...this is what I've picked up so far today. Okay? Mr. Riethmuller does a memo in 1996 and he says, with all the information we have available to us, which is primarily an AG Opinion by Smith Camp, this is how we think you should do the parole eligibility date calculation and the mandatory discharge calculation. You with me so far? [LR424]

KYLE POPPERT: Yes. [LR424]

SENATOR LATHROP: And along the way he questions himself about, is this the right thing to do? I'm not sure. Maybe this mandatory discharge calculation isn't right. And he told us today, well, there were some other memos or some other things where I said, we need...we actually need one of these inmates to challenge this so that we get some clarity on what to do with a mandatory discharge. And then Castillas was that,... [LR424]

KYLE POPPERT: Uh-huh. [LR424]

SENATOR LATHROP: ...right? [LR424]

KYLE POPPERT: Yes, but it's... [LR424]

SENATOR LATHROP: You read it. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

KYLE POPPERT: Right. [LR424]

SENATOR LATHROP: It said how to do it. [LR424]

KYLE POPPERT: You are correct, but at the time, based upon the legal advice to me was--and again, I'm not a lawyer, I'm relying on them to provide me with legal guidance on this--is that, you know, this isn't a direction. This case and Johnson v. Kenney and all of these cases before this were affirmed and so there was no remand back for the department to do anything different. I mean I... [LR424]

SENATOR LATHROP: This is coming from George Green. [LR424]

KYLE POPPERT: Yes. And I mean I understand the confusion, but this... [LR424]

SENATOR LATHROP: Well, we'll talk to Mr. Green about that in a little bit. Let me ask you, in the sequence of events, Linda Willard sends this over to you, a copy to you and to Jeannene Douglass, and you read the Opinion. What did you do after that? What's the next thing you did after you read that Opinion? [LR424]

KYLE POPPERT: Well, the first thing I did was when Jeannene Douglass sent the response back to Linda Willard explaining that we are not following what the intention of the Supreme Court was, and at that time I discussed that issue briefly with my supervisor, Larry Wayne. And his instruction to me was that, you know, we need to get Jeannene right, was kind of her stuff. So I can't remember if I went down to Jeannene's office or called her, but it's my recollection I had contact with her and said, well, what do you mean we're not doing this right? And you know, she has 20 years of experience, you know, three times the experience that I had in that office. She grew up working very closely with Mr. Riethmuller, who was an expert in this. And I basically said, you know, there's obviously case law in this. I don't understand, you know, why we're not following

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

this; I need you to discuss this with Ms. Willard and we need to come up with an answer on this and have clear direction on what we should do. And I think that's evident in the e-mails that were exchanged there because Jeannene...ultimately one of the last e-mails I see from her is that she states she's discussed it with Jeannene (sic) and they, amongst their discussions, have come to a conclusion that we should continue to do what we're doing in the department. [LR424]

TIM THALKEN: Discussed with Linda. [LR424]

KYLE POPPERT: Discussed with Linda, yeah. [LR424]

SENATOR LATHROP: So you thought it was the all clear,... [LR424]

KYLE POPPERT: Not necessarily all clear because... [LR424]

SENATOR LATHROP: ...because let's go through that. Let's go through that sequence, because I'm not sure... [LR424]

KYLE POPPERT: ...because in that sequence there's also Linda Willard or apparently is advising Jeannene to share this with Mr. Green for his opinion and expertise. And after visiting with Mr. Green then, he wanted some background on this case, why do we do things the way we're doing, why... [LR424]

SENATOR LATHROP: Okay. Let's take it from the first one. [LR424]

KYLE POPPERT: Okay. Sure. [LR424]

SENATOR LATHROP: You get a copy of the Castillas Opinion and read it and you appreciate that you guys are calculating the mandatory discharge rate...mandatory discharge date differently than the Opinion in Castillas. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

KYLE POPPERT: Correct. [LR424]

SENATOR LATHROP: And you might have some conversation with Jeannene Douglass, who, by the way, is your employee,... [LR424]

KYLE POPPERT: Yes. [LR424]

SENATOR LATHROP: ...a clerk in your office. [LR424]

KYLE POPPERT: Well, she's a Records Manager II. I don't think it's fair to... [LR424]

SENATOR LATHROP: She doesn't make policy, however. [LR424]

KYLE POPPERT: Correct. That's correct. [LR424]

SENATOR LATHROP: And she has...doesn't take regular meetings with the legal team,... [LR424]

KYLE POPPERT: Correct. [LR424]

SENATOR LATHROP: ...true? [LR424]

KYLE POPPERT: Yes. [LR424]

SENATOR LATHROP: Okay. And you have a conversation with her and she's telling you that the Supreme Court is wrong. [LR424]

KYLE POPPERT: Yes. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SENATOR LATHROP: Did you tell her, do what the Supreme Court says to do?
[LR424]

KYLE POPPERT: No, what I told her was, I want you to visit with Linda Willard. She was very adamant at the time on... [LR424]

SENATOR LATHROP: Who is "she"? [LR424]

KYLE POPPERT: Jeannene Douglass was very adamant at the time that what we are doing is the correct way of doing it. So I wanted her to visit with Linda Willard, explain her position, why she thought we were on the correct path, and come to a resolution over this. [LR424]

SENATOR LATHROP: Well, the next two e-mails between Willard and Douglass you weren't even copied on, so you wouldn't know what they were saying to one another in the e-mail, would you? [LR424]

KYLE POPPERT: No, not in...not in that exchange. [LR424]

SENATOR LATHROP: In fact, the next time we see you show up on one of the e-mails in this sequence of events on the day Castillas gets decided is at 2:00 in the afternoon. [LR424]

KYLE POPPERT: Yes. [LR424]

SENATOR LATHROP: And that's Jeannene Douglass sending an e-mail to Green, Willard, and you. [LR424]

KYLE POPPERT: Yes. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SENATOR LATHROP: She indicates that she's talked to Willard, right? [LR424]

KYLE POPPERT: Yes. [LR424]

SENATOR LATHROP: This is on page 140 if you need it. [LR424]

KYLE POPPERT: Yes, uh-huh. [LR424]

SENATOR LATHROP: She indicates she's talked to Willard and says that we don't calculate the discharge date in the manner described in the decision. [LR424]

KYLE POPPERT: Correct. [LR424]

SENATOR LATHROP: Okay? She's telling you this... [LR424]

KYLE POPPERT: Yes. [LR424]

SENATOR LATHROP: ...and she's telling Green this. She talks about continuing to do it the way that she was before. [LR424]

KYLE POPPERT: Yes. [LR424]

SENATOR LATHROP: Who's going to complain? Not the inmates because they're getting out sooner, right? [LR424]

KYLE POPPERT: Yes. [LR424]

SENATOR LATHROP: And she agreed with me, and we heard this morning, that the inmates aren't going to complain, and suggested I share her thoughts with you, Mr. Green, for your input and expertise in this matter. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

KYLE POPPERT: Yes. [LR424]

SENATOR LATHROP: So she's not making a decision. She didn't turn it over to Linda Willard. Linda Willard suggested she turn it over to George Green. Is that true? [LR424]

KYLE POPPERT: Correct. Yes. [LR424]

SENATOR LATHROP: That was your understanding. [LR424]

KYLE POPPERT: My understanding was that after their conversation that Linda Willard agreed with Jeannene, that we should continue to do things the way we're doing them, but that she wanted Mr. Green's opinion and expertise on the matter as well. [LR424]

SENATOR LATHROP: Okay. Did...if that was the conclusion, were you troubled by it? [LR424]

KYLE POPPERT: Somewhat, yes. [LR424]

SENATOR LATHROP: Why? [LR424]

KYLE POPPERT: Well, because, again, it didn't seem to make sense, you know, that... [LR424]

SENATOR LATHROP: Well, you ran the department and you got to make a little bit of policy over there, didn't you? [LR424]

KYLE POPPERT: Well, I helped draft policy. The director is the one that actually makes policy. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SENATOR LATHROP: Your predecessor wrote the policy that preceded this. [LR424]

KYLE POPPERT: Yes. [LR424]

SENATOR LATHROP: You could have written the policy on this and had it approved by legal or somebody, couldn't you? [LR424]

KYLE POPPERT: Yes. [LR424]

SENATOR LATHROP: Okay. And instead, you watched it get turned over to George Green. [LR424]

KYLE POPPERT: Yes. [LR424]

SENATOR LATHROP: And in here--and I want to get to this--in here it says: It would serve the director's desires as well not to increase our population any more than we must. Did you see that in the e-mail? [LR424]

KYLE POPPERT: Yes. [LR424]

SENATOR LATHROP: And what did you make of that comment? [LR424]

KYLE POPPERT: Well, I was pretty frustrated by that comment because that...it has nothing to do...sentence calculations have nothing to do with population reduction. [LR424]

SENATOR LATHROP: The interpretation of the good time statutes have nothing to do with population? Because I think I just heard Ms. Douglass talk about the parole violators and how you guys changed your interpretation... [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

KYLE POPPERT: Well, in... [LR424]

SENATOR LATHROP: ...three years ago until the Attorney General's Office told you to stop it. [LR424]

KYLE POPPERT: That's correct, but in... [LR424]

SENATOR LATHROP: And that that was driven by overpopulation or overcrowding conditions in the Department of Corrections, was it not? [LR424]

KYLE POPPERT: Partly. [LR424]

SENATOR LATHROP: Okay. [LR424]

KYLE POPPERT: What we...if I could... [LR424]

SENATOR LATHROP: So... [LR424]

KYLE POPPERT: ...take a moment to explain, the department in the last few years has moved towards more evidence-based practice, and what we were trying to do is...sentence calculations have nothing to do with population. Inmates are...their sentence was calculated however the law determines that they should be calculated. But what we were looking at were ways that was it appropriate, for example, like Senator Chambers said, to simply lock somebody up for 30 more days for various issues when there might be a better way to resolve that matter. And parole good time was an issue that was addressed as well. In 2011 we were looking at a way of enhancing good time for inmates by LB191 giving them the additional three days a month for good behavior. There were safeguards, so to speak, to be put in there where they would continue to earn this time as... [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SENATOR LATHROP: So the good time statute was becoming a tool to alleviate overcrowding and some of those were bills that were proposed and laws that were passed by the Legislature. Is that what you're saying? [LR424]

KYLE POPPERT: But our intention to alleviate the overcrowding was to reduce the recidivism rate. We weren't... [LR424]

SENATOR LATHROP: Well, let me ask you about that, because reducing the recidivism rate, and we sit on Judiciary Committee and listened to this for eight years,... [LR424]

KYLE POPPERT: Uh-huh. [LR424]

SENATOR LATHROP: ...people talk about recidivism and reducing the recidivism rate, and all I hear is it's about programming. And what we're doing is sending people out the door before they've got the programming and telling them to go find it in the street. So this isn't about...you can't tell me it's about reducing recidivism, Mr. Poppert, because I won't believe it. [LR424]

KYLE POPPERT: Well, sir, it...and you're... [LR424]

SENATOR LATHROP: It's about being at 160 percent of capacity. [LR424]

KYLE POPPERT: ...you're absolutely right. And we made the conclusion that to give an inmate 30 days' loss of good time for a drug write-up simply wasn't a best practice. We needed to, rather than take their good time, revoke their parole. There were options that they could continue the programming, continue having a job out there in the community. And that was our goal was trying to protect the public beyond the fence. [LR424]

SENATOR LATHROP: Okay. Okay. What did you do after this memo that...or the e-mail that Jeannene Douglass wrote February 8 that you were copied on? Did you just

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

assume that George Green was taking care of it? [LR424]

KYLE POPPERT: I visited with George Green. The e-mail where she's sending the Castillas information, I visited with George Green about that and asked what the... [LR424]

SENATOR LATHROP: When? [LR424]

KYLE POPPERT: It was sometime after that February 8 e-mail. I don't recall exactly. [LR424]

SENATOR LATHROP: Within the same day or within the same week or when would you have next had a... [LR424]

KYLE POPPERT: I believe it was within the same week that that happened. [LR424]

SENATOR LATHROP: Okay. I'm going to say this. You have to let me finish my question... [LR424]

KYLE POPPERT: Okay. [LR424]

SENATOR LATHROP: ...or we're going to have a record that won't make sense. Okay? My question was, when did you have a conversation with Mr. Green after this e-mail from Jeannene Douglass? [LR424]

KYLE POPPERT: After the February 8 e-mail? [LR424]

SENATOR LATHROP: Yes. Yes, sir. [LR424]

KYLE POPPERT: I believe it was within a couple of days, because that's at the time

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

when George Green, he wanted some information, you know, a paragraph about what our current practice was and why we believed it was the correct course of action.

[LR424]

SENATOR LATHROP: Okay. Was that a meeting attended by more than the two of you or was it just the two of you that spoke on that occasion? [LR424]

KYLE POPPERT: You know, I don't remember. At that time I visited with Mr. Green, I believe Sharon Lindgren was involved in a couple of those conversations. I just don't remember. [LR424]

SENATOR LATHROP: So you had more than one? [LR424]

KYLE POPPERT: I believe so, yes. [LR424]

SENATOR LATHROP: How many conversations did you have with Mr. Green about the Castillas Opinion and what the Department of Corrections was going to do about calculating mandatory discharge? [LR424]

KYLE POPPERT: I would say just a couple. [LR424]

SENATOR LATHROP: And were they all within, say, the first two weeks of the Castillas Opinion? [LR424]

KYLE POPPERT: I think they spanned a longer period of time than that. [LR424]

SENATOR LATHROP: You think you had one within the first couple of days. [LR424]

KYLE POPPERT: I think it was pretty close to that. I just don't remember exactly when the time was. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SENATOR LATHROP: Okay. And I know that there's a meeting of the Sentencing Review Committee--something that was put together, maybe you put it together--... [LR424]

KYLE POPPERT: Yes. [LR424]

SENATOR LATHROP: ...back in October 31 of 2013. Is that the second... [LR424]

KYLE POPPERT: Yes. [LR424]

SENATOR LATHROP: ...occasion you had to visit with Mr. Green, or did you visit with him more than once in between? [LR424]

KYLE POPPERT: I think we visited a couple of times in between that, because that was, at the time and the main purpose of us getting together a Sentencing Committee was because I still didn't have anything in writing from legal on what course of action to take on this. [LR424]

SENATOR LATHROP: I appreciate that. My question was about Mr. Green and meetings you had with Mr. Green, and I'd like to stay on that subject. Okay? What happened at the first meeting? [LR424]

KYLE POPPERT: First meeting with Mr. Green? [LR424]

SENATOR LATHROP: Yes. You and Mr. Green meet and you've got this thing from...e-mail from Jeannene Douglass. [LR424]

KYLE POPPERT: Right. [LR424]

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Transcriber's Office
Rough Draft

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SENATOR LATHROP: She's asking for Mr. Green's input,... [LR424]

KYLE POPPERT: Right. [LR424]

SENATOR LATHROP: ...not Linda Willard's but Mr. Green,... [LR424]

KYLE POPPERT: Yes. [LR424]

SENATOR LATHROP: ...the guy that works in the same office you do... [LR424]

KYLE POPPERT: Yes. [LR424]

SENATOR LATHROP: ...or the central office. [LR424]

KYLE POPPERT: Uh-huh. [LR424]

SENATOR LATHROP: And she says, what's your thoughts? You go and have a meeting with him and you talk about what do we do about Castillas. [LR424]

KYLE POPPERT: Correct. [LR424]

SENATOR LATHROP: Okay. What was said and what was the conclusion of that meeting? [LR424]

KYLE POPPERT: Well, Mr. Green wanted some further information. You know, I think his direction to me was prepare a couple of paragraphs about what our current practice is, what the Castillas case is saying in this, and... [LR424]

SENATOR LATHROP: Wait a minute. This is the chief of the legal department at Corrections asking you to interpret the Castillas case? [LR424]

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Transcriber's Office
Rough Draft

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

KYLE POPPERT: I believe he was asking me what our thoughts were on this case and why we believed that our current course of action was the correct course of action. [LR424]

SENATOR LATHROP: Now you just said "we." [LR424]

KYLE POPPERT: Well, I mean... [LR424]

SENATOR LATHROP: Why...let me finish my question, okay, so we don't get a bad record. You just said why "we" thought our current course was the best course of action. So had you embraced the idea of continuing to apply the same formula to the mandatory discharge of those who were there, Riethmuller's formula for mandatory discharge? [LR424]

KYLE POPPERT: No, but that was the only methodology we had at the time. We didn't have a decision to change our methodology so that effectively was department policy... [LR424]

SENATOR LATHROP: Did you have... [LR424]

KYLE POPPERT: ...that had not changed. [LR424]

SENATOR LATHROP: Okay. Did you have any sense that he had spoken to the director in the meantime? [LR424]

KYLE POPPERT: No. [LR424]

SENATOR LATHROP: Did you have any conversation with the director? [LR424]

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Transcriber's Office
Rough Draft

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

KYLE POPPERT: No. [LR424]

SENATOR LATHROP: Tell me, did you have any thoughts at that point in time, when you saw that there's one way to do this and we've been doing it this way and now the Castillas Opinion is there? Did you say to yourself, oh, my God, that's going to affect a lot of guys that have been released already? [LR424]

KYLE POPPERT: I... [LR424]

SENATOR LATHROP: Did that hit you yet? [LR424]

KYLE POPPERT: No, I wasn't really concerned about the amount of people that it affected. I was concerned... [LR424]

SENATOR LATHROP: I didn't ask you if you were concerned about them. I asked you if you figured out that it was going to affect a lot of people that have been released. [LR424]

KYLE POPPERT: I don't think I knew at the time how many people it would affect. [LR424]

SENATOR LATHROP: When did you figure that out? [LR424]

KYLE POPPERT: I don't know. That...the number... [LR424]

SENATOR LATHROP: How many people did it end up affecting? [LR424]

KYLE POPPERT: Yeah, I don't...I don't remember. I think we... [LR424]

SENATOR LATHROP: Ballpark it for me. [LR424]

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Transcriber's Office
Rough Draft

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

KYLE POPPERT: ...did...I think the list that we got were maybe around 500-600 inmates at the time. [LR424]

SENATOR LATHROP: Five or six hundred inmates. [LR424]

KYLE POPPERT: Yes, sir. [LR424]

SENATOR LATHROP: Do you think that's a big enough deal to go talk to the director about it? [LR424]

KYLE POPPERT: Well, I talked to my supervisor about that, so. [LR424]

SENATOR LATHROP: Okay. You have had meetings with the director, am I right? You've met with Bob Houston. You know who he is... [LR424]

KYLE POPPERT: Yes. [LR424]

SENATOR LATHROP: ...and you've had meetings with him? [LR424]

KYLE POPPERT: Yes. [LR424]

SENATOR LATHROP: And you can take problems to him? [LR424]

KYLE POPPERT: Yes. [LR424]

SENATOR LATHROP: Did you think this one that was going to affect 500 guys that have been released was something you should take up with the director? [LR424]

KYLE POPPERT: Well, at the time I didn't know it affected 500 people. I didn't know

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Transcriber's Office
Rough Draft

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

that until after we started running the list in June of this year how many people were affected. [LR424]

SENATOR LATHROP: Okay. So you didn't know if it was 500 or a couple hundred. [LR424]

KYLE POPPERT: Correct. [LR424]

SENATOR LATHROP: And didn't think it was worth Bob Houston's attention. [LR424]

KYLE POPPERT: Well, it was worth the attention of my...I mean there are serious issues but, you know, I brought it to my chain of command, who is a direct report to the director. Both George Green and Larry Wayne are direct reports to the director. [LR424]

SENATOR LATHROP: Did you have a conversation in that first meeting with George Green about whether he was going to talk to Bob Houston about this? [LR424]

KYLE POPPERT: I don't remember that, no. [LR424]

SENATOR LATHROP: You'd remember it if it happened, wouldn't you? [LR424]

KYLE POPPERT: I think so. [LR424]

SENATOR LATHROP: And you don't remember it. [LR424]

KYLE POPPERT: Yeah. No. [LR424]

SENATOR LATHROP: That was the first meeting. When was the second meeting you had with George Green? [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

KYLE POPPERT: I think it was... [LR424]

SENATOR LATHROP: By the way, I'm sorry, let me back up. Where did you leave it with him after the first meeting? [LR424]

KYLE POPPERT: Well,... [LR424]

SENATOR LATHROP: Did he give you some homework or something you needed to do? [LR424]

KYLE POPPERT: Well, after the first meeting, his expectation that we would get some information to him, and I asked Jeannene Douglass to work with Ginger Shurter in getting the information that Mr. Green requested regarding our practice. [LR424]

SENATOR LATHROP: And that's the e-mail we've talked about earlier... [LR424]

KYLE POPPERT: Yes. [LR424]

SENATOR LATHROP: ...where you said, tell us what we're doing now, tell us what Castillas requires, and tell us what you think we should do. [LR424]

KYLE POPPERT: Correct. [LR424]

SENATOR LATHROP: You're asking your clerk that. [LR424]

KYLE POPPERT: I'm asking a Records Manager II to do that, yes. [LR424]

SENATOR LATHROP: Okay. And that's so you can get something up to George Green. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

KYLE POPPERT: Correct. Yeah. [LR424]

SENATOR LATHROP: Okay. Did you...you got something, I assume. [LR424]

KYLE POPPERT: Well, she...I was a little disappointed that she didn't create more of a work product than just simply sending the e-mail or the memo that Mr. Riethmuller created. You know, Jeannene, again, she had worked for 20 years with Mr. Riethmuller. She knew the case law. She knew why we had made decisions that we had made up until that point. She was much more intimately involved in those. And I don't mean that to say that she's responsible for any of that policy or anything because she's not. But she did know more of the history of why things were done, and that's what I wanted to relate to Mr. Green was kind of the history of what was... [LR424]

SENATOR LATHROP: It took three weeks for her to send that Riethmuller memo. In response to your request, it took her three weeks. [LR424]

KYLE POPPERT: Yes. [LR424]

SENATOR LATHROP: Did you talk to her in the meantime? [LR424]

KYLE POPPERT: I don't remember. I mean there... [LR424]

SENATOR LATHROP: So you know you're not doing it the way the Supreme Court said,... [LR424]

KYLE POPPERT: Yes. [LR424]

SENATOR LATHROP: ...and you're going to continue to not do it the way the Supreme Court said. And the lawyer wants to talk to you about it. You ask your employee to spell it out and three weeks go by? There was no conversations, nothing happened in the

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

meantime? [LR424]

KYLE POPPERT: I don't remember. [LR424]

SENATOR LATHROP: You don't remember any conversations. [LR424]

KYLE POPPERT: No, I mean no...nothing specific. [LR424]

SENATOR LATHROP: It just sat there for three weeks and then you don't get a...she doesn't lay anything out in the memo she sends to you in March of 2013, does she? [LR424]

KYLE POPPERT: Correct. Yes. [LR424]

SENATOR LATHROP: She just sends you the old tried and trusted Riethmuller formula... [LR424]

KYLE POPPERT: Yes. [LR424]

SENATOR LATHROP: ...from 1996. [LR424]

KYLE POPPERT: Uh-huh. Yes. [LR424]

SENATOR LATHROP: So what did you do with it? [LR424]

KYLE POPPERT: Well, then I talked to George Green again at that point and said, you know, do we need to move forward on this? Is there any course of action we need to take? And his advice to me was that we would continue to do things the way we were doing them. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SENATOR LATHROP: Did he say to you or did he ever indicate to you that he was waiting on Linda Willard or somebody over in the AG's Office to come up with some pronouncement about how to proceed? [LR424]

KYLE POPPERT: No. [LR424]

SENATOR LATHROP: He just said, we're going to keep going. [LR424]

KYLE POPPERT: Yes. [LR424]

SENATOR LATHROP: Now you understand the consequences or the significance of case law enough to appreciate that you are now going forward with a formula that has...where the Supreme Court has said that's not the right way to do it. [LR424]

KYLE POPPERT: Yes. [LR424]

SENATOR LATHROP: Did you say to George, when he said we're going to keep doing it the old way, did you say, have you talked to Bob about this, Bob Houston? Did you ask him that? [LR424]

KYLE POPPERT: I don't remember asking him that, no. [LR424]

SENATOR LATHROP: Did he tell you whether he had run it by the director? [LR424]

KYLE POPPERT: No, he didn't mention that. [LR424]

SENATOR LATHROP: Did you get a little uneasy with doing it the wrong way and not following the precedence of the Supreme Court of the state of Nebraska,... [LR424]

KYLE POPPERT: Well,... [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SENATOR LATHROP: ...the highest authority on interpreting Nebraska law? [LR424]

KYLE POPPERT: ...I was getting uneasy because over that course of that summer we had a number of different questions about sentencing that were coming up with legal, and I didn't have a solid written opinion that, like you said, that I could use as policy and go back to. [LR424]

SENATOR LATHROP: I get that and I know where you're going. [LR424]

KYLE POPPERT: Right. [LR424]

SENATOR LATHROP: You want to talk about that...something that happened later on. And I'm curious about how you felt after that second meeting with Bob...or with George Green. [LR424]

KYLE POPPERT: Well,... [LR424]

SENATOR LATHROP: Did he talk to you about overcrowding and why that was the reason we weren't going to change our policy? [LR424]

KYLE POPPERT: No. [LR424]

SENATOR LATHROP: That never came up. [LR424]

KYLE POPPERT: No. [LR424]

SENATOR LATHROP: Never. [LR424]

KYLE POPPERT: Never. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SENATOR LATHROP: Did he tell you or did you have any idea that he had talked to or hadn't talked to Director Houston about this issue? [LR424]

KYLE POPPERT: I had no indication that he had talked to him. [LR424]

SENATOR LATHROP: Did either of you at that point have an appreciation at all that this decision, if you would have followed Castillas, would have affected 500 people? [LR424]

KYLE POPPERT: I didn't know the extent of that at the time, no. [LR424]

SENATOR LATHROP: What would 500 more prisoners back at the Department of Corrections do to your census? [LR424]

KYLE POPPERT: Well, that, if you suddenly moved in 500 people, that would have a significant impact. But we weren't moving 500 more people in, you know, I mean. [LR424]

SENATOR LATHROP: Because a lot of them got credit for the time they had spent on the outside, so you didn't round them all up. You rounded up the ones that still had time left, true? [LR424]

KYLE POPPERT: That's true, yes. [LR424]

SENATOR LATHROP: Still affected your...and exacerbated your overcrowding situation. [LR424]

KYLE POPPERT: Yes. [LR424]

SENATOR LATHROP: If we move forward, move the clock forward to October 31,

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

2013,... [LR424]

KYLE POPPERT: Okay. [LR424]

SENATOR LATHROP: ...do you remember having a Sentencing Review hearing...
[LR424]

KYLE POPPERT: Yes. [LR424]

SENATOR LATHROP: ...or meeting? [LR424]

KYLE POPPERT: Yes. [LR424]

SENATOR LATHROP: And I guess my next question is going to be, between the time your second visit with George Green and the time this Sentencing Review Committee got together at the end of October 2013, had you done anything, anything to address the difference between what the practice was in Corrections and the direction from the Supreme Court in the Castillas Opinion? [LR424]

KYLE POPPERT: No. [LR424]

SENATOR LATHROP: Had anybody had any more conversation with you about it?
[LR424]

KYLE POPPERT: I think so, yes, because we were still getting...you know, we had a question from a Douglas County Attorney at the time regarding the application of Castillas on that. We still had judges that were, in their sentencing orders, some were following kind of the rules of Castillas, some were still telling inmates that they would be released using the old calculation. And so, yeah, there was still lingering questions about it and it made me... [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SENATOR LATHROP: How do you know that? [LR424]

KYLE POPPERT: What's that? [LR424]

SENATOR LATHROP: How do you know that? [LR424]

KYLE POPPERT: How do I... [LR424]

SENATOR LATHROP: Were some of the judges calling you? Were you getting calls from county attorneys going,... [LR424]

KYLE POPPERT: We were getting calls from... [LR424]

SENATOR LATHROP: ...you guys are still doing it the old way and the Supreme Court has ruled on it already? [LR424]

KYLE POPPERT: We were getting calls from some county attorneys, yes, but I don't think we took a call from a judge. We were just, when we were looking at their sentencing orders, the truth in sentencing was not accurate. [LR424]

SENATOR LATHROP: Okay. So did that cause you any pause or concern? [LR424]

KYLE POPPERT: Yes. It did. [LR424]

SENATOR LATHROP: What did you do about it before October 31, 2013? [LR424]

KYLE POPPERT: Nothing. [LR424]

SENATOR LATHROP: What? [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

KYLE POPPERT: Nothing. [LR424]

SENATOR LATHROP: So it caused you concern. You got lawyers and judges telling you that something is not right, and we didn't do anything. [LR424]

KYLE POPPERT: Correct. [LR424]

SENATOR LATHROP: Whose desk do you think it was on or whose responsibility do you think it was at that point in time? Did you...when you leave the office at night, sometimes you go, God, I got something still hanging fire? Did you feel like this was still your problem or was it somebody else's problem at that point? [LR424]

KYLE POPPERT: I felt at that point, as far as I was concerned, the problem was resolved. I may not have completely agreed with that, but I didn't think I was in a position... [LR424]

SENATOR LATHROP: Who resolved it, in your mind? [LR424]

KYLE POPPERT: I... [LR424]

SENATOR LATHROP: Was it resolved by George Green? [LR424]

KYLE POPPERT: I believe it was resolved partially by George Green because he had that and told us that we were not a party to that. I had the e-mail from Jeannene Douglass stating that after their discussions, Linda Willard agreed with her on that, so... [LR424]

SENATOR LATHROP: Wait a minute. Linda Willard and that e-mail was like two e-mails ago and two meetings with George Green ago. Are you telling me you thought Linda

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

Willard gave you... [LR424]

KYLE POPPERT: That was... [LR424]

SENATOR LATHROP: ...direction that you relied on? [LR424]

KYLE POPPERT: That was the last information that I had from Linda Willard... [LR424]

SENATOR LATHROP: Okay. [LR424]

KYLE POPPERT: ...was that she agreed with what we were doing at that point. [LR424]

SENATOR LATHROP: You keep saying that and I'm just going to say, as I look at the e-mail I can tell that you were copied on something where Jeannene Douglass said, Linda agrees with me but we're sending this over to George for his input. And then you have two meetings with him, and the last one he tells you leave it alone. [LR424]

KYLE POPPERT: Yes. [LR424]

SENATOR LATHROP: Would that be true? [LR424]

KYLE POPPERT: And Linda Willard was also copied with that e-mail, so I would have expected that if she didn't agree with that she would have raised that concern. [LR424]

SENATOR LATHROP: Really? Because how many times did you not agree with the conclusion people reached to ignore Castillas and do nothing? You wanted...you wanted Linda Willard to come over from the Attorney General's Office and straighten things out when you knew you weren't doing it correctly and you did nothing about it? [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

KYLE POPPERT: Well, in all... [LR424]

SENATOR LATHROP: Is that your standard for Linda Willard? [LR424]

KYLE POPPERT: No, but in all other previous cases, the Attorney General's Office had rendered an Opinion, sent us a letter, and still to this day... [LR424]

SENATOR LATHROP: Do you have a copy of one of those letters? [LR424]

KYLE POPPERT: There is one in here, I believe, that Mr. Riethmuller had where he, in 1996, referenced that Opinion. [LR424]

SENATOR LATHROP: In 1996? [LR424]

KYLE POPPERT: Yeah, and I have not had an Opinion since then on any. [LR424]

SENATOR LATHROP: (Laugh) Okay. They've had a few on sentencing since then. I guess I'm troubled because you keep bringing it back to the fact that Linda Willard should have done something. And frankly, she thinks she's turned it over to George Green. You told me you thought you turned it over to George Green, that George Green told you after two meetings to leave it alone. And I think I got the answer and you keep going back to Linda Willard, which was like...I don't understand why you keep doing that. [LR424]

KYLE POPPERT: No, I'm not going back to her. I'm saying that that was the latest information that I had. [LR424]

SENATOR LATHROP: Okay. [LR424]

KYLE POPPERT: It appeared to me everybody was on the same page. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SENATOR LATHROP: Including you. [LR424]

KYLE POPPERT: Well,... [LR424]

SENATOR LATHROP: Which is you were on the same page, let's leave it alone.
[LR424]

KYLE POPPERT: I'm...you know, no, I'm on the page of doing what I was advised to do
by our legal counsel, you know? [LR424]

SENATOR LATHROP: Okay. [LR424]

KYLE POPPERT: I mean it's not my decision to determine what that policy should be in
calculating those. These are cases that are case law that attorneys...and it's their duty I
believe to decide and give us advice and counsel on what we should do. [LR424]

SENATOR LATHROP: Okay. Even if you know it's wrong. I mean you read the Opinion;
you knew... [LR424]

KYLE POPPERT: Well, but how? I'm not an attorney. [LR424]

SENATOR LATHROP: ...you knew, when George Green said don't do anything, that
that wasn't the thing to do. [LR424]

KYLE POPPERT: Well, as far as I knew, we were waiting for then some type of
directive from the Supreme Court. I mean I don't know how those cases work. [LR424]

SENATOR LATHROP: Okay. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

KYLE POPPERT: In every other case, sir, that we've had, these have been remanded to a district court and the district court sends us clear instruction that...to do this. And that's not the case here. [LR424]

SENATOR LATHROP: Look, you won't convince a lawyer in the room that the district court sends you information on what to do with Opinions of the Supreme Court. It just doesn't happen. That's not what they do. [LR424]

KYLE POPPERT: Well, sir, when an appellate court issues a decision, it's my understanding that their instructions are to the lower court to act, whatever court sentenced. So in a lot of cases...if, for example, if Johnson v. Kenney would have been reversed and remanded, the district court would have instructed us to discharge him immediately, you know. [LR424]

SENATOR LATHROP: Well, okay, I think we've gone as far as we're going with that line. So let me ask you if you remember having a meeting on October 31, 2013. [LR424]

KYLE POPPERT: Yes. [LR424]

SENATOR LATHROP: Did you call that meeting? [LR424]

KYLE POPPERT: Yes. [LR424]

SENATOR LATHROP: And the documentation of that meeting is found at page 177 and 178, is it not? [LR424]

KYLE POPPERT: Yes. [LR424]

SENATOR LATHROP: So it says it started at 9:00 a.m. Is that right? [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

KYLE POPPERT: I believe so, yes. [LR424]

SENATOR LATHROP: Where did this happen at? [LR424]

KYLE POPPERT: In the central office lower level conference room. [LR424]

SENATOR LATHROP: And it says those present were yourself, Kyle Poppert, right?
[LR424]

KYLE POPPERT: Yes. Uh-huh. [LR424]

SENATOR LATHROP: Kathy Blum, who's Kathy Blum? [LR424]

KYLE POPPERT: Kathy Blum is one of our legal attorneys for the department. [LR424]

SENATOR LATHROP: Jeff Beaty. [LR424]

KYLE POPPERT: Jeff Beaty is the director of research. He's also an attorney. [LR424]

SENATOR LATHROP: So we got two lawyers so far. [LR424]

KYLE POPPERT: Yes. [LR424]

SENATOR LATHROP: Mickie Baum. [LR424]

KYLE POPPERT: Mickie Baum is the one, she took over Jeannene Douglass' position
as a Records Manager II in the department. [LR424]

SENATOR LATHROP: George Green. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

KYLE POPPERT: Our legal representative. [LR424]

SENATOR LATHROP: He's the head of it. [LR424]

KYLE POPPERT: Yes. [LR424]

SENATOR LATHROP: Sharon Lindgren. [LR424]

KYLE POPPERT: Our legal team as well. [LR424]

SENATOR LATHROP: Ginger Shurter. [LR424]

KYLE POPPERT: She was a Records Manager II. [LR424]

SENATOR LATHROP: And Nikki Peterson. [LR424]

KYLE POPPERT: She was a Records Manager I at the time. [LR424]

SENATOR LATHROP: And did you conduct this meeting? [LR424]

KYLE POPPERT: Yes. [LR424]

SENATOR LATHROP: Did you talk to George Green, Sharon Lindgren, or Kathy Blum about what you wanted to take up at this meeting? [LR424]

KYLE POPPERT: Yes. [LR424]

SENATOR LATHROP: So they all knew what we were going to talk about...what you were going to talk about when they got there. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

KYLE POPPERT: Yes. [LR424]

SENATOR LATHROP: And that included, on the second page, State v. Castillas. [LR424]

KYLE POPPERT: Yes. [LR424]

SENATOR LATHROP: Right? [LR424]

KYLE POPPERT: Yes. [LR424]

SENATOR LATHROP: And now this is like February, March, April, May, June, July, August, September, October, we're eight months after the Castillas Opinion. [LR424]

KYLE POPPERT: Yes. [LR424]

SENATOR LATHROP: Anything transpire in the meantime? We've talked about it all. [LR424]

KYLE POPPERT: Nothing specifically related to Castillas. We had a number of sentencing issues and questions that were being raised at the time and... [LR424]

SENATOR LATHROP: Okay. There's some confusion between you not changing and the law the judges are reading. [LR424]

KYLE POPPERT: Yes. [LR424]

SENATOR LATHROP: Okay. And the World-Herald hasn't dug into this yet. [LR424]

KYLE POPPERT: Correct. [LR424]

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LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SENATOR LATHROP: And so with one, two, three, four lawyers in the room, you take up what to do with the Castillas Opinion. [LR424]

KYLE POPPERT: Yes. [LR424]

SENATOR LATHROP: And this account in here says: The Nebraska Supreme Court affirmed the district court's decision. However, the Supreme Court has made an assumption of how the DCS is calculating sentences on the maximum term when there is a mandatory minimum. Issue: Our current practice is different than that of the court's assumption. Status: We need to clarify exactly what the Supreme Court's intention is on this before we act...before as a department act...before we as a department act. Conclusion: We've been performing calculations our current way for years. We are now aware of this situation, that started eight months ago. That's me editorializing. We will act when we are specifically told our current way is wrong and it needs to be changed. [LR424]

KYLE POPPERT: That was the... [LR424]

SENATOR LATHROP: That was the conclusion. [LR424]

KYLE POPPERT: That was the direction from our legal team during that meeting, yes. [LR424]

SENATOR LATHROP: Who is taking minutes? [LR424]

KYLE POPPERT: Nikki Peterson. [LR424]

SENATOR LATHROP: Who put this together? Did she put this document together? [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

KYLE POPPERT: Yes. [LR424]

SENATOR LATHROP: Do you think it accurately reflects what took place at this meeting? [LR424]

KYLE POPPERT: Yes. There was some...I think you somewhere have a draft of the meeting minutes where she more accurately describes who was saying what at the time of the meeting. [LR424]

SENATOR LATHROP: I don't think I have that... [LR424]

KYLE POPPERT: Okay. [LR424]

SENATOR LATHROP: ...so why don't you tell me what took place at this meeting as it relates to the Castillas Opinion. [LR424]

KYLE POPPERT: At that meeting, I believe Sharon Lindgren and George Green were advising us exactly that language there that we are not a party to that decision, that this is not direction to the Department of Corrections, and until we're specifically told in some manner that our way is wrong, we should continue doing what we're doing. [LR424]

SENATOR LATHROP: Okay. Overcrowding had to come up before somebody said that. [LR424]

KYLE POPPERT: I don't think so. [LR424]

SENATOR LATHROP: Did anybody talk to or suggest at that meeting that they had had a conversation with Bob Houston? [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

KYLE POPPERT: No. [LR424]

SENATOR LATHROP: Did anybody in the room, with four lawyers and people who were fairly high up in the Department of Corrections, say, you know what, before we do this somebody better run this by Bob Houston? [LR424]

KYLE POPPERT: I don't recall anybody saying that, no. [LR424]

SENATOR LATHROP: Did anybody say, maybe we ought to run this by the Attorney General? [LR424]

KYLE POPPERT: Not that I remember, no. [LR424]

SENATOR LATHROP: Did you appreciate that by doing nothing you wouldn't have to go retrieve those people you had released early? [LR424]

KYLE POPPERT: That wasn't my concern. I just wanted to do the right thing. You know, I just...again, I wanted this meeting to get this information clarified, reduce it to writing so that we had clear instruction. You know there, with the records issues, we need to be able to show, you know, a decade later why we made a particular decision, and at this point we didn't have anything in writing. And my whole intent was to get the legal team in the room and get their opinion reduced to writing. [LR424]

SENATOR LATHROP: And you did. [LR424]

KYLE POPPERT: Yes. [LR424]

SENATOR LATHROP: And it was leave it alone. [LR424]

KYLE POPPERT: Yes. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SENATOR LATHROP: And not only leave it alone but leave it alone because we weren't a party to the lawsuit and so it doesn't apply to us. [LR424]

KYLE POPPERT: Yes. [LR424]

SENATOR LATHROP: If the Supreme Court tells you how to interpret the good time statute, besides Corrections, who do you think it applies to? Anybody talk about that? [LR424]

KYLE POPPERT: No. [LR424]

SENATOR LATHROP: The only institution in the state of Nebraska that the good time statute could apply to is the Department of Corrections. [LR424]

KYLE POPPERT: Yes. [LR424]

SENATOR LATHROP: Whose idea was it to leave it alone? I mean you're in the room. Do you get a sense of who was leading the charge? [LR424]

KYLE POPPERT: I believe that was an opinion shared by Ms. Lindgren and Mr. Green. [LR424]

SENATOR LATHROP: Did this Jeff Beaty have anything to say about it? [LR424]

KYLE POPPERT: I don't remember him making any comments at the time. [LR424]

SENATOR LATHROP: How about Kathy Blum? [LR424]

KYLE POPPERT: I don't remember her making any comments about it. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SENATOR LATHROP: There was a point in time when you took your concern to Larry Wayne, Deputy Wayne. Is it Larry? [LR424]

KYLE POPPERT: Yes. About Castillas? [LR424]

SENATOR LATHROP: Yeah. [LR424]

KYLE POPPERT: Yes. [LR424]

SENATOR LATHROP: When in the time line, Mr. Poppert, did you take that up with Mr. Wayne? [LR424]

KYLE POPPERT: The very first time I believe was after Jeannene Douglass sent the e-mail to Linda Willard explaining that we were not doing the sentence calculations in accordance with the Supreme Court decision. [LR424]

SENATOR LATHROP: So the day of. [LR424]

KYLE POPPERT: I believe so, yes. [LR424]

SENATOR LATHROP: That e-mail I think was on February 8, the day of the Opinion. [LR424]

KYLE POPPERT: Yes. Uh-huh. [LR424]

SENATOR LATHROP: So you think close in time to the day of the Opinion you had a conversation with Larry Wayne. [LR424]

KYLE POPPERT: Yeah. I think it was shortly after Jeannene sent that e-mail back. You

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

know, that caused me some concern at the time. [LR424]

SENATOR LATHROP: Okay. And so why did you go to Mr. Wayne? [LR424]

KYLE POPPERT: Because he's my supervisor. [LR424]

SENATOR LATHROP: And when you went to him, did you do that by e-mail or did you call him on the phone? [LR424]

KYLE POPPERT: No, I spoke to him personally, I believe. [LR424]

SENATOR LATHROP: Okay, like walk into his office and talk to him. [LR424]

KYLE POPPERT: Yes. [LR424]

SENATOR LATHROP: Okay. [LR424]

KYLE POPPERT: Our offices are across the hall. [LR424]

SENATOR LATHROP: What did you express to him? [LR424]

KYLE POPPERT: Well, I expressed concern that we had this e-mail Opinion and that Jeannene Douglass is writing back the Attorney General saying we're not doing things in accordance with Ms. Willard's concerns. [LR424]

SENATOR LATHROP: What did he say? I mean where did it go? You're talking to your boss. [LR424]

KYLE POPPERT: He said go down and visit with Jeannene and figure out what's going on in this and basically get it straightened out. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SENATOR LATHROP: Okay. Well, we kind of hit a dead end, right? You talk to her. Almost a month later she sends you something. [LR424]

KYLE POPPERT: Right. Yes. [LR424]

SENATOR LATHROP: Does Mr. Wayne stay involved in this at all? [LR424]

KYLE POPPERT: I kept him updated on that and, you know, around March I believe that I talked to him and told him I think the issue is resolved, you know, based upon the information that I had at the time. [LR424]

SENATOR LATHROP: Because George Green said keep doing what you're doing. [LR424]

KYLE POPPERT: And because of the...what appeared to be that the Attorney General's Office was on board as well. That was what I read from those e-mails. [LR424]

SENATOR LATHROP: Did you call the Attorney General's Office at all, Mr. Poppert, to ask them... [LR424]

KYLE POPPERT: No. No. [LR424]

SENATOR LATHROP: ...what their Opinion was? [LR424]

KYLE POPPERT: No. [LR424]

SENATOR LATHROP: Okay. So what you have is an e-mail representation by Jeannene Douglass about something Willard said. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

KYLE POPPERT: With Ms. Willard copied as well and... [LR424]

SENATOR LATHROP: Okay. [LR424]

KYLE POPPERT: ...I mean, had that been me and somebody made a representation in an e-mail of, for example, if Jeannene wrote in this e-mail Kyle said to stay the course and that wasn't the case, I mean I would have immediately challenged such a thing and... [LR424]

SENATOR LATHROP: She told us this morning that she did. She actually talked to Mr. Green and Ms. Lindgren and told them, I never said that, I agreed that the guys aren't going to complain, but I never agreed that you should keep doing this. [LR424]

KYLE POPPERT: That's what came out in the Jackson Lewis investigation, but I had no knowledge of that exchange of information. The last information I have is... [LR424]

SENATOR LATHROP: And Mr. Green never brought it up either. [LR424]

KYLE POPPERT: No. [LR424]

SENATOR LATHROP: Okay. I think that's...well, any other involvement with Mr. Wayne other than you're keeping him updated on the fact that nothing is happening? [LR424]

KYLE POPPERT: Keeping him updated. Again, I told him I thought the situation, I believed in March, was resolved. [LR424]

SENATOR LATHROP: Okay. [LR424]

KYLE POPPERT: So yes. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SENATOR LATHROP: And then... [LR424]

KYLE POPPERT: And then... [LR424]

SENATOR LATHROP: ...something between March and October... [LR424]

KYLE POPPERT: Right. We had a number of things. You know, Jeannene was retiring, Mickie Baum was coming on, and we had a new director. Mr. Houston had retired and Mr. Kenney took his place. And at the time, we were still getting questions from attorneys and it was out there, and I talked to Mr. Wayne about my frustrations about getting an opinion reduced to writing and explained to him that I was going to bring them together as the Sentencing Committee so that we could get this resolved with a final determination. [LR424]

SENATOR LATHROP: Okay. Okay. I do want to cover something and perhaps quickly. [LR424]

KYLE POPPERT: Okay. [LR424]

SENATOR LATHROP: At one point in time we started to put people in jail for felony DWIs and the sentencing legislation says that they shall do at least... [LR424]

KYLE POPPERT: Whatever, yes. [LR424]

SENATOR LATHROP: ...five years or whatever it is,... [LR424]

KYLE POPPERT: Yes. [LR424]

SENATOR LATHROP: ...some period of time. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

KYLE POPPERT: Yes. [LR424]

SENATOR LATHROP: And that was interpreted by Corrections to mean...to be a mandatory minimum. [LR424]

KYLE POPPERT: That was under the advice of our legal department. We were going through these questions with sentencing at the time. And as you know from the previous testimony, the records manager at the reception center, the Diagnostic and Evaluation Center, calculates the initial time. [LR424]

SENATOR LATHROP: Right. [LR424]

KYLE POPPERT: She received a commitment order on an inmate and that commitment order seemed to imply that this was a mandatory minimum. So we looked at the statute and what the statute says we... [LR424]

SENATOR LATHROP: We? You and...you and... [LR424]

KYLE POPPERT: The records manager and I. [LR424]

SENATOR LATHROP: Okay. [LR424]

KYLE POPPERT: And there may have been a couple of other people, but in that statute it said, "at least." So we brought that to our legal team, I believe it was Ms. Lindgren and Mr. Green, and said, should we interpret this language, where it says, "you shall serve at least," as a mandatory minimum term? [LR424]

SENATOR LATHROP: And they said yes. [LR424]

KYLE POPPERT: Yes. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SENATOR LATHROP: And then somewhere along the way the Attorney General said no. [LR424]

KYLE POPPERT: Correct. [LR424]

SENATOR LATHROP: And it changed. [LR424]

KYLE POPPERT: Yes. [LR424]

SENATOR LATHROP: And some guy got caught up in it too. [LR424]

KYLE POPPERT: Yes. [LR424]

SENATOR LATHROP: Right? Okay. It sounds...I'm just going to make this observation. It sounds like you got along just fine trying to figure out the DWI thing. I mean you're there. You and the records manager are looking at it. You bring in Mr. Green. Everybody gets on the same page, might have been the wrong one but everybody gets on the same page and they cooperate and you get an answer like that. [LR424]

KYLE POPPERT: Yes. Well, we didn't have anything in writing, but that was, again, our direction of what we should do. [LR424]

SENATOR LATHROP: Okay. When you thought they were mandatory minimums for DWIs, felony DWIs, did you calculate the mandatory discharge dates the same? [LR424]

KYLE POPPERT: The same as per the 1996 decision, yes. [LR424]

SENATOR LATHROP: Yeah. Okay. I think those are all the questions I got. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

KYLE POPPERT: Okay. [LR424]

SENATOR LATHROP: I suspect that...maybe not. Yeah, Senator Schumacher does. [LR424]

SENATOR SCHUMACHER: Thank you, Senator Lathrop. February 8 of 2013, you receive what appears to be a directive from the chief law enforcement officer of the state of Nebraska. It says, in very, very clear language, the attached case came down from the Supreme Court today. Starting at the bottom of page 188, they discuss sentencing. It's my understanding that this is how you currently do the calculation. Others in the office thought so differently. I am sending this to you so you can make sure you are doing the calculation in accordance with the Supreme Court's decision. Is there anything ambiguous about that? [LR424]

KYLE POPPERT: Other than the fact that it appeared to me from the e-mail, sir, that in the Attorney General's Office, they were conversations, and that how we were doing this...they appeared through that e-mail, when they say others in the office basically disagreed, to me that meant there was some discussion. [LR424]

SENATOR SCHUMACHER: Do they...let's read that. Let's read that over again. [LR424]

KYLE POPPERT: Uh-huh. [LR424]

SENATOR SCHUMACHER: Does it say they disagree with the Supreme Court or that they disagree with knowing whether you are doing it in accordance with the court or not? [LR424]

KYLE POPPERT: They disagree with what our current practice was, yes. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SENATOR SCHUMACHER: It's my understanding this is how you are doing it. She's telling you, we think you are in compliance with the Supreme Court, but others in the office thought you might be doing it differently. So I am sending you this so you know you better comply with the Supreme Court. [LR424]

KYLE POPPERT: Yes. [LR424]

SENATOR SCHUMACHER: That's what that says. [LR424]

KYLE POPPERT: Yes. [LR424]

SENATOR SCHUMACHER: All right. You've got your directive from the chief law enforcement officer of the state of Nebraska. [LR424]

KYLE POPPERT: Yes. [LR424]

SENATOR SCHUMACHER: How is it then that, let's see, eight months later you have a meeting in which you conclude, we will do it the way we always have unless somebody tells us differently? [LR424]

KYLE POPPERT: Because, sir, at that point I had that information, which I believed from Jeannene to be that she had discussed this in further depth and detail with Ms. Willard and... [LR424]

SENATOR SCHUMACHER: So... [LR424]

KYLE POPPERT: ...and that whatever reasons they discussed and came up with, that that was a proper way of doing business. [LR424]

SENATOR SCHUMACHER: So a clerk in your office writes an e-mail and says, I talked

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

with the Attorney General's Office and they said, ah, well, forget it. [LR424]

KYLE POPPERT: Well, she's a records manager with 20 years' experience working at this. She was experienced in visiting with Ms. Willard, with other attorneys, with the Ombudsman's Office and that. It wasn't unusual for her to communicate this with her (inaudible). [LR424]

SENATOR SCHUMACHER: And let me ask you this then. Is it your desk that is...ultimately cuts people loose, says, you've done your time, there's the key, you can leave? [LR424]

KYLE POPPERT: No, we calculate the sentence and discharges are effected at the institutions. You know, the sentences are calculated; we put them into our computer, in the database; the records managers at the various facilities monitor those discharge dates and they are the ones that process those discharges at the facility level. [LR424]

SENATOR SCHUMACHER: But in the chain of command that date is set at your level and put in the computers for them to execute when the magic day occurs. Is that correct? [LR424]

KYLE POPPERT: I don't know what you mean by "set at my level." I mean... [LR424]

SENATOR SCHUMACHER: It's calculated as a result of decisions, formulas that are arrived at, at your desk. [LR424]

KYLE POPPERT: I provide the records managers with the methodology, but I'm relying on someone else to tell me, for example, a legal opinion, on how we do that. So, yes, I'm responsible for disseminating that information to the records managers, but I'm not the one that's going to look at a Supreme Court decision and simply, on my own accord, or any other court decision, make a policy decision on how we should calculate those

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

sentences. [LR424]

SENATOR SCHUMACHER: And in this particular case you had a directive from the chief law enforcement officer of the state, not countermanded anywhere, in writing telling you to do just that. And based upon a hearsay memo from a clerk saying, ah, well, she agrees with me now, you decided just to take no action. [LR424]

KYLE POPPERT: Well, there's more than one e-mail. There's a series of e-mail exchanges in there, sir, so yes. [LR424]

SENATOR SCHUMACHER: There is...is there any other e-mails from Linda Willard saying blow this off, I was wrong... [LR424]

KYLE POPPERT: I don't believe so. [LR424]

SENATOR SCHUMACHER: ...when I sent you that thing on February 8? [LR424]

KYLE POPPERT: No, sir. [LR424]

SENATOR SCHUMACHER: None at all. [LR424]

KYLE POPPERT: No. [LR424]

SENATOR SCHUMACHER: Anything from Jon Bruning? [LR424]

KYLE POPPERT: No. [LR424]

SENATOR SCHUMACHER: Anything from anybody else in the Attorney General's Office? [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

KYLE POPPERT: No. [LR424]

SENATOR SCHUMACHER: So the last written document you had from the Attorney General's Office was a direct order to calculate in accordance with the Supreme Court decision. [LR424]

KYLE POPPERT: Yes. [LR424]

SENATOR SCHUMACHER: Thank you. [LR424]

SENATOR SEILER: I have one question. [LR424]

SENATOR LATHROP: Okay. Senator Seiler. [LR424]

SENATOR SEILER: You were in court...or in the room this morning when Linda Willard testified. [LR424]

KYLE POPPERT: Just at the very end, sir. [LR424]

SENATOR SEILER: Okay. Did you hear her mention that she did not want to interfere with your legal department that was advising you? [LR424]

KYLE POPPERT: I don't remember what her testimony was. [LR424]

SENATOR SEILER: Okay. So at any time did you call Linda and ask her any questions concerning this Opinion? [LR424]

KYLE POPPERT: No, sir. [LR424]

SENATOR SEILER: Okay. I have nothing further. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SENATOR LATHROP: Senator Mello. [LR424]

SENATOR MELLO: Thank you, Chairman Lathrop. Mr. Poppert, who is Larry Wayne?
[LR424]

KYLE POPPERT: Larry Wayne is the deputy director of programs and community services. He is my supervisor. [LR424]

SENATOR MELLO: Is he your direct supervisor? [LR424]

KYLE POPPERT: Yes, uh-huh. [LR424]

SENATOR MELLO: I guess in hearing some of your answers today to some of the questions, I find it a little strange you haven't mentioned his name very, very little at all in any of your testimony in regards to the chain of command, so to speak, as it starts with Jeannene Douglass, goes up to you. And then from where you've been sitting at and giving us testimony today it seems that most of your communication went to George Green and not directly up to your supervisor, which would be Larry Wayne.
[LR424]

KYLE POPPERT: Correct. Yes. [LR424]

SENATOR MELLO: Did...was Mr. Wayne involved at all in any of these conversations, any of these meetings? He also is a deputy director on the same level as George Green, answers directly to Bob Houston. [LR424]

KYLE POPPERT: Right. He was invited to the meeting with the Sentencing Committee. I don't know why he wasn't there, if there was a scheduling conflict or not. But, no, I don't remember him being in any of these meetings with the legal counsel. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SENATOR MELLO: Did you ever over the course of that nine-month period from February 2013 through the end of 2013, let's say, have conversations or meetings with Mr. Wayne about this issue and how there hasn't been, so to speak, a resolution that's come forward yet as you were still waiting to hear... [LR424]

KYLE POPPERT: Yes. [LR424]

SENATOR MELLO: ...some word back from George Green? [LR424]

KYLE POPPERT: Yes. [LR424]

SENATOR MELLO: What was his response to that? [LR424]

KYLE POPPERT: His response was basically he wanted to know what my strategy was for moving forward on that. And at the time I told him I want to get together a committee and get our legal team in a room where we could talk about this and a number of other cases and get their opinion reduced to writing, so. [LR424]

SENATOR MELLO: Did he offer to provide any additional assistance to you in regards to helping come forward with that proposed recommendation that you had? [LR424]

KYLE POPPERT: No. [LR424]

SENATOR MELLO: Did he give any suggestion, any recommendation, any advice that he could take to Director Houston to help speed up this process at all? [LR424]

KYLE POPPERT: No. [LR424]

SENATOR MELLO: So simply he, as essentially an employee that answers to him, he

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

simply said, I trust you're going to do the right thing,... [LR424]

KYLE POPPERT: Yes. [LR424]

SENATOR MELLO: ...let me know somewhere down the road what ends up happening? [LR424]

KYLE POPPERT: Yes. [LR424]

SENATOR MELLO: Is that normally standard management practices in the Department of Corrections? [LR424]

KYLE POPPERT: That is between me and Mr. Wayne. I mean I think we discuss things on a regular basis. He expects me to do my job and that if there's anything out there that I need assistance with, I would come to him with that, so. [LR424]

SENATOR MELLO: And you did come to him for assistance though. [LR424]

KYLE POPPERT: Well, I discussed it with him and told him what my strategy and my plan was in dealing with it, yes. [LR424]

SENATOR MELLO: But you didn't ask for any further assistance from him in regards to solving this problem. [LR424]

KYLE POPPERT: No. No, sir. No. [LR424]

SENATOR MELLO: Okay. I guess something that...and Senator Chambers asked a previous testifier, have you had any conversations at all prior to today's public hearing with anyone from the executive branch regarding this particular issue outside of the Department of Corrections? [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

KYLE POPPERT: What do you mean, executive branch, with the Governor's Office or...? [LR424]

SENATOR MELLO: Have you had any...have you had any communication, written, verbal, in person with any other executive branch agency, whether it's the Attorney General's Office, the Governor's Office, the Policy Research Office, any other entity or agency? Have you had any conversations with any staff within those agencies regarding this issue? [LR424]

KYLE POPPERT: Outside of our department, no. [LR424]

SENATOR MELLO: So you've simply only spoken...anyone you've spoken to about this issue has only been within the Department of Corrections. [LR424]

KYLE POPPERT: Yeah. I believe there are people in our department that are better suited to visit with those. Again, I, in the investigations with Jackson Lewis and that, Mr. Green, Ms. Lindgren state that they didn't expect that I would have a conversation with the AG's Office, that that would come from legal, you know, lawyers talking to lawyers. And I believe Mr. Wayne even said in his interview that he didn't expect that that would be at my level, to have that conversation. So, no, I speak to my supervisors and Mr. Green (inaudible). [LR424]

SENATOR MELLO: Okay. Thank you. [LR424]

SENATOR LATHROP: Senator Krist. [LR424]

SENATOR KRIST: Thank you Chair. Ever see The Wizard of Oz? [LR424]

KYLE POPPERT: Yes. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SENATOR KRIST: There's a scene in there where the scarecrow is pointing in different directions. And what I've heard so far and being part of this committee it seems like almost everyone who has come into this room has had plausible deniability to point in another direction. And to be honest, how many days were you suspended without pay after... [LR424]

KYLE POPPERT: Ten. [LR424]

SENATOR KRIST: Ten...ten days. [LR424]

KYLE POPPERT: Yes, sir. [LR424]

SENATOR KRIST: You had a large role in this and you had an opportunity, I think, to make some changes. And what comes to mind, I guess, is if you look at page 177, what was the dissemination of that meeting? Where did you send that information to? [LR424]

KYLE POPPERT: We have an agency...what we call the agency Q drive, which is available to most people in the department. And there is an area there where I try to, anytime we have decisions regarding records or memos and stuff, post that information there to make it readily available to everyone. [LR424]

SENATOR KRIST: So I would describe this in a prior life as a document that's basically CYA. [LR424]

KYLE POPPERT: Yes, sir. [LR424]

SENATOR KRIST: Cover your own. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

KYLE POPPERT: Absolutely. [LR424]

SENATOR KRIST: And I have to note that at the top of that piece of paper, it's not Bob Houston anymore, it's Governor Heineman and it's Mike Kenney. So can I assume that dissemination in that inner-agency program that you talk about that Mike Kenney, at this point, was apprised of the fact that...and Senator Lathrop read it: We have been performing calculations our current way for years. We are not aware of any situation. We will act...we were specifically told...until we're specifically told that the current way is wrong. Would you assume that the two names at the top of that piece of paper might have heard about the meeting? [LR424]

KYLE POPPERT: I don't think that's a fair assumption. [LR424]

SENATOR KRIST: You don't? [LR424]

KYLE POPPERT: We post things to the Q drive, but I don't think the director would have any way of knowing to go there and look for something, you know. Again, I report to my supervisors; they have a direct connection to the director and... [LR424]

SENATOR KRIST: Okay, thank you, Mr. Poppert. [LR424]

KYLE POPPERT: Yes, sir. [LR424]

SENATOR LATHROP: Senator Chambers. [LR424]

SENATOR CHAMBERS: Thank you, Mr. Chairman. Mr. Poppert, I'm not going to wear kid gloves with you. [LR424]

KYLE POPPERT: Yes, sir. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SENATOR CHAMBERS: Had the World-Herald not spilled the beans, you would not have had a day off; everything would have continued as it was going, in violation of what the Supreme Court said. Isn't that true? [LR424]

KYLE POPPERT: Yes, but also too, sir, I was the one still continuing to bring up the issue. So I mean it... [LR424]

SENATOR CHAMBERS: That's not what I'm saying. [LR424]

KYLE POPPERT: Right. [LR424]

SENATOR CHAMBERS: But now that you've brought it up, I want you to tell me to whom were you bringing it up? You weren't telling Director Houston, were you? [LR424]

KYLE POPPERT: No. [LR424]

SENATOR CHAMBERS: You didn't tell anybody in the Governor's Office, did you? [LR424]

KYLE POPPERT: No. [LR424]

SENATOR CHAMBERS: So you must have told Mr. Wayne, correct? [LR424]

KYLE POPPERT: Yes. [LR424]

SENATOR CHAMBERS: And Mr. Wayne didn't choose to do anything, did he? [LR424]

KYLE POPPERT: No. [LR424]

SENATOR CHAMBERS: And the Governor has not taken any action against Mr.

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

Wayne, has he? [LR424]

KYLE POPPERT: No, not that I'm aware of, no. [LR424]

SENATOR CHAMBERS: So, a general...do you know the difference between tactics and strategy? Tactics are little day-to-day operations and activity. The strategy, that which is strategic, covers the waterfront. [LR424]

KYLE POPPERT: Yes. [LR424]

SENATOR CHAMBERS: The broad picture. [LR424]

KYLE POPPERT: Yes. [LR424]

SENATOR CHAMBERS: So the general who is in charge of strategy did not see the need to inform himself of how that strategic plan was being carried out and things go astray. Have you seen where generals were sacked because they didn't properly do the duties that adhered to their office? Are you aware of generals having been fired, in other words, recently? [LR424]

KYLE POPPERT: No. I mean... [LR424]

SENATOR CHAMBERS: Do you read the newspaper? [LR424]

KYLE POPPERT: Not very much, not lately anyway. [LR424]

SENATOR CHAMBERS: But you read the World-Herald when they spilled the beans, didn't you? [LR424]

KYLE POPPERT: I don't think I read that article at the time, no. I mean, I was informed

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

through our public information officer. [LR424]

SENATOR CHAMBERS: You're in your denial mode and shifting blame now. So that's why I'm not going to wear the kid gloves with you. What did the World-Herald know when they wrote their article that you did not know? What did they know that you did not know? [LR424]

KYLE POPPERT: I think they had an interpretation of what we were supposed to be doing at the time and with Castillas and that. [LR424]

SENATOR CHAMBERS: What do you mean interpretation? [LR424]

KYLE POPPERT: I did not know that we should be doing anything different. Up until... [LR424]

SENATOR CHAMBERS: The Supreme Court decision...did you read that Supreme Court decision? [LR424]

KYLE POPPERT: Yes. [LR424]

SENATOR CHAMBERS: I'm going to be...I'm not going to be as nice as the Chairman. It would take a fool to let anybody tell him that a Supreme Court decision that relates to his job does not apply to him. You're going to say Mr. Green carries more weight than the Supreme Court decision. Isn't that what you're telling me? [LR424]

KYLE POPPERT: I'm going to rely on his legal opinion to review that. [LR424]

SENATOR CHAMBERS: That's not what I asked you. I want you to answer me. You came to this hearing...are you under subpoena? [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

KYLE POPPERT: Yes, sir. [LR424]

SENATOR CHAMBERS: That means the judge ordered you to answer questions. Isn't that true? [LR424]

KYLE POPPERT: Yes. [LR424]

SENATOR CHAMBERS: And the judge indicated that anything you said here could not be used against you in a criminal proceeding. Is that true? [LR424]

KYLE POPPERT: As it relates to Castillas. But I'm still under the perjury oath. [LR424]

SENATOR CHAMBERS: And you're under oath here today. [LR424]

KYLE POPPERT: Yes. [LR424]

SENATOR CHAMBERS: And you're to answer questions, correct? [LR424]

KYLE POPPERT: Yes. [LR424]

SENATOR CHAMBERS: Here's my question to you. I'm asking you for your understanding. Who carries more weight when it comes to issuing a statement, the Nebraska Supreme Court or George Green? [LR424]

KYLE POPPERT: I believe the Supreme Court does. But I don't understand what their...how that Opinion relates to me or the department. [LR424]

SENATOR CHAMBERS: Did you read that Opinion? [LR424]

KYLE POPPERT: Yes. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SENATOR CHAMBERS: Did it relate to how calculations should be made when there's a mandatory minimum sentence? [LR424]

KYLE POPPERT: Yes. Yes, but I think there are other... [LR424]

SENATOR CHAMBERS: Was that case involving an individual who had had his time calculated by somebody in your department? [LR424]

KYLE POPPERT: Yes. [LR424]

SENATOR CHAMBERS: And it was said by the court that that calculation was wrong. Is that true? [LR424]

KYLE POPPERT: It laid out a formula for the calculation. [LR424]

SENATOR CHAMBERS: Did the Supreme Court say that the calculation made by your department was wrong? [LR424]

KYLE POPPERT: It didn't specifically say that. It laid out a calculation... [LR424]

SENATOR CHAMBERS: Then why did they say that the man's calculation was not right? Isn't that the same way of saying that it was wrong? Did the inmate calculate his own time? [LR424]

KYLE POPPERT: No, sir. [LR424]

SENATOR CHAMBERS: Who calculated it? [LR424]

KYLE POPPERT: The department did. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SENATOR CHAMBERS: Then your department made a calculation that the Supreme Court said was wrong. Is that true? [LR424]

KYLE POPPERT: Yes. [LR424]

SENATOR CHAMBERS: Then the Supreme Court told you that the way you were calculating was not right. Isn't that true? [LR424]

KYLE POPPERT: In their comments they laid out a formula that was different than ours, yes. [LR424]

SENATOR CHAMBERS: Did the Supreme Court tell you that the way you did it was wrong, yes or no? [LR424]

KYLE POPPERT: The Supreme Court didn't talk to me on that, sir. [LR424]

SENATOR CHAMBERS: Oh, you're going to be cutesy with me, huh? [LR424]

KYLE POPPERT: Well, I'm trying to answer the question that you're asking. [LR424]

SENATOR CHAMBERS: You are still a state employee. Is that right? [LR424]

KYLE POPPERT: Yes. [LR424]

SENATOR CHAMBERS: The Governor is your boss? [LR424]

KYLE POPPERT: Yes. [LR424]

SENATOR CHAMBERS: Did he tell you to come in here and answer the questions in

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

the way you're answering them? [LR424]

KYLE POPPERT: I haven't talked to the Governor. [LR424]

SENATOR CHAMBERS: Is that man sitting next to you your lawyer? [LR424]

KYLE POPPERT: Yes, sir. [LR424]

SENATOR CHAMBERS: Did he tell you to answer like this? [LR424]

KYLE POPPERT: No. He said be truthful about what's going on. [LR424]

SENATOR CHAMBERS: Now, are you being truthful when you tell me that you honestly believe that the Supreme Court did not say that your calculations were wrong? Do you believe the Supreme Court did not say that in their decision? [LR424]

KYLE POPPERT: The Supreme Court said that in their decision. I didn't know specifically how it applied to us and how we should interpret that decision. [LR424]

SENATOR CHAMBERS: Well, you're not the manager of the records department, are you? [LR424]

KYLE POPPERT: I'm the administrator of the department. [LR424]

SENATOR CHAMBERS: Are you the top person in that... [LR424]

KYLE POPPERT: As far as records, yes, sir. [LR424]

SENATOR CHAMBERS: How can somebody so dumb have that position? There's got to be somebody smarter than you that you answer to. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

KYLE POPPERT: I think nobody else wanted the job, sir. (Laugh) [LR424]

SENATOR CHAMBERS: So they picked a throwaway. Did you say you had 14 jobs before, something like that? [LR424]

KYLE POPPERT: Yes, sir. [LR424]

SENATOR CHAMBERS: Are you the one who said that? [LR424]

KYLE POPPERT: Yes, sir. [LR424]

SENATOR CHAMBERS: And you couldn't keep any of them, could you? [LR424]

KYLE POPPERT: Well, I like to think I tried to enhance my service to the state. [LR424]

SENATOR CHAMBERS: So wound up in a job that nobody else wanted. Is that...that's what you told me, isn't it? [LR424]

KYLE POPPERT: Well, I believe at the time there were a couple other people that applied for the job. [LR424]

SENATOR CHAMBERS: So then when you said it's a job nobody else wanted, that wasn't true, was it? That was being cute, wasn't it? [LR424]

KYLE POPPERT: Well, I don't mean to be cute, but... [LR424]

SENATOR CHAMBERS: If you be cute with me and this committee, then I think you'll be cute other places. Now you're not in a position where you can say you don't know what has unfolded and what has happened. But because you tell me you don't read the

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

newspaper very much, I'm going to assume you don't know anything that happens in the outer world, and Mr. Wayne is so incompetent himself that he retains a person like you who doesn't know anything. So I'm going to ask you questions and see if maybe you know more than you think you know. Have you ever heard of Socrates? That's my first question. [LR424]

KYLE POPPERT: Yes. [LR424]

SENATOR CHAMBERS: Was he a philosopher? [LR424]

KYLE POPPERT: I believe so. [LR424]

SENATOR CHAMBERS: Was he a German philosopher or a Greek philosopher? [LR424]

KYLE POPPERT: I believe Greek. [LR424]

SENATOR CHAMBERS: You believe or do you know? [LR424]

KYLE POPPERT: I don't know for sure. [LR424]

SENATOR CHAMBERS: Well, what gives you that belief that he was a Greek? [LR424]

KYLE POPPERT: That just seems like the right thing; I just...you know. [LR424]

SENATOR CHAMBERS: Have you heard of the Socratic method? If you haven't, just say no. [LR424]

KYLE POPPERT: I haven't. No. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SENATOR CHAMBERS: Are you aware that if Socrates was approached by somebody with an issue that Socrates would ask that person a series of questions until by asking the questions he elicited from that person the answer to that person's question? Had you heard anything like that, if you hadn't heard it exactly that way? [LR424]

KYLE POPPERT: No, I haven't heard anything like that. [LR424]

SENATOR CHAMBERS: You haven't heard of that. [LR424]

KYLE POPPERT: No. [LR424]

SENATOR CHAMBERS: Well, I'm going to use that method with you. Here's what Socrates...the role he played. He knew that most people have information, but it's undifferentiated. If they had that information organized, then they would be able to deal with more issues than they thought they could. But here's where the person needed a teacher: After answering the questions, the person may have answered every question correctly, but without that teacher, he would not have known that he finally had answered the question correctly so he still needed a mentor. So I'm going to be Socrates; you're going to be my student. What was in the World-Herald article about the calculating of good time that you did not know was going on? [LR424]

KYLE POPPERT: I don't think anything. But again I didn't...I don't remember reading that article. [LR424]

SENATOR CHAMBERS: Well, just wait a minute, you knew everything was going on that the World-Herald expose made public. Is that correct? [LR424]

KYLE POPPERT: Sir, I don't... [LR424]

SENATOR CHAMBERS: Is he whispering answers to you? [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

KYLE POPPERT: No, I... [LR424]

SENATOR CHAMBERS: I don't want him to answer. I want you to answer. [LR424]

KYLE POPPERT: I don't know what was in the article. [LR424]

TIM THALKEN: Senator, with respect, I have not said a word. [LR424]

KYLE POPPERT: I don't know what was in that article. So I... [LR424]

SENATOR CHAMBERS: You didn't read the article you told me, right? [LR424]

KYLE POPPERT: Right. I was instructed that our public information officer had got a call from a reporter and she had asked me if I knew anything about the Castillas case. And I told her I did but that our legal department had advised us it doesn't apply to us. We were not supposed to do anything different. And my next instruction was that we were going to start recalculating the sentences on these inmates. [LR424]

SENATOR CHAMBERS: Who gave you that instruction? [LR424]

KYLE POPPERT: That was our public information officer relayed that to me. [LR424]

SENATOR CHAMBERS: So then you take orders from the public information officer. That is your supervisor. Is that correct? [LR424]

KYLE POPPERT: That's not my supervisor, so I don't know who she got that direction from. [LR424]

SENATOR CHAMBERS: But she directed you to start recalculating. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

KYLE POPPERT: Yes. [LR424]

SENATOR CHAMBERS: And you followed her order. [LR424]

KYLE POPPERT: Yes. [LR424]

SENATOR CHAMBERS: So you took orders from the public information officer. [LR424]

KYLE POPPERT: Yeah. At the time when she... [LR424]

SENATOR CHAMBERS: That's from whom...that's the person from whom you take direction, correct? [LR424]

KYLE POPPERT: That day it was, yes. [LR424]

SENATOR CHAMBERS: Who is your supervisor? [LR424]

KYLE POPPERT: Larry Wayne. [LR424]

SENATOR CHAMBERS: Why didn't Larry Wayne tell you? [LR424]

KYLE POPPERT: I don't remember he being involved in it at the time. [LR424]

SENATOR CHAMBERS: Did she tell you Mr. Wayne told her to tell you? Or she just told you and you started doing it? [LR424]

KYLE POPPERT: I don't remember her telling me who made the decision on it. [LR424]

SENATOR CHAMBERS: Did she tell you why you should do it other than the fact that

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

she ordered you to do it? [LR424]

KYLE POPPERT: She relayed to me that we were doing the sentence calculations incorrectly; that we should do them in accordance with the Castillas decision as reported in the World-Herald. [LR424]

SENATOR CHAMBERS: And you told her to go jump in the lake, didn't you, because you had already been told that the Castillas decision had nothing to do with the department. Isn't that what you told her? [LR424]

KYLE POPPERT: No. [LR424]

SENATOR CHAMBERS: Well, wait a minute, teach Socrates something, student. John Wayne...I mean, John (sic) Green is the legal mind that told you the decision has nothing to do with you. Is that correct? [LR424]

KYLE POPPERT: Yes. [LR424]

SENATOR CHAMBERS: Then some information officer, not trained in the law, said--but it does have something to do with you, so discount what Mr. Wayne, the legal counsel said and do what I told you. Isn't that what it boils down to? [LR424]

KYLE POPPERT: Yes. Right. [LR424]

SENATOR CHAMBERS: Why did you pay more attention to her than you did Mr. Green? [LR424]

KYLE POPPERT: Because she seemed to have other direction regarding that. We, at the time when we had talked about this, she brought myself... [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SENATOR CHAMBERS: Well, let's not go too far. Let's take it a step at a time. You said she seemed to have other direction. [LR424]

KYLE POPPERT: Yeah, I mean... [LR424]

SENATOR CHAMBERS: What other direction did she seem to have? [LR424]

KYLE POPPERT: I don't know who...she didn't say anything to me who she had talked to. [LR424]

SENATOR CHAMBERS: Then why did you think she had other direction? [LR424]

KYLE POPPERT: She brought us together in a meeting with myself; the public information officer; Mickie Baum, one of the records managers. [LR424]

SENATOR CHAMBERS: I don't care about all these people. [LR424]

KYLE POPPERT: I believe George Green was there. And I believe the director was there at the time. [LR424]

SENATOR CHAMBERS: But you said this woman told you, you were going to recalculate and you didn't say she told you that at this meeting. You said she gave you a call. Or did I misunderstand you? [LR424]

KYLE POPPERT: That was her direction that we were going to start doing this. [LR424]

SENATOR CHAMBERS: And that was by way... [LR424]

KYLE POPPERT: I don't know who she spoke to or anything. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SENATOR CHAMBERS: And that was by way of a phone call, correct? [LR424]

KYLE POPPERT: That was what? [LR424]

SENATOR CHAMBERS: That was...she told you in a phone call. [LR424]

KYLE POPPERT: No, I believe she called me down... [LR424]

SENATOR CHAMBERS: You said that a reporter called her. [LR424]

KYLE POPPERT: ...to her office and we discussed that. And then we called a meeting with those people that I explained in the director's office there at the time. [LR424]

SENATOR CHAMBERS: So she did not tell you on the phone that you were going to start recalculating. [LR424]

KYLE POPPERT: I believe she told me that we had been doing it wrong... [LR424]

SENATOR CHAMBERS: Listen, wait a minute. As the director said...I meant the Chair said, let's do it one at a time. I'm going to ask a question and I'll give you a chance to answer it. [LR424]

KYLE POPPERT: Okay. [LR424]

SENATOR CHAMBERS: Did you say that she gave you a call after a reporter had made some calls and inquiries? Did you say that public information office called you? [LR424]

KYLE POPPERT: I believe she called me and asked me to come down to her office. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SENATOR CHAMBERS: Did she tell you in that phone call that you were to start recalculating? [LR424]

KYLE POPPERT: I don't think it was in that phone call. I think when we were in her office she... [LR424]

SENATOR CHAMBERS: Let's take it a step at a time... [LR424]

KYLE POPPERT: Okay. [LR424]

SENATOR CHAMBERS: ...and I'll ask you the questions. [LR424]

KYLE POPPERT: All right. [LR424]

SENATOR CHAMBERS: You led me. After the phone call which summoned you to her office, you went to her office, true or false? [LR424]

KYLE POPPERT: True. [LR424]

SENATOR CHAMBERS: Who was in the office other than you and her? [LR424]

KYLE POPPERT: I believe it was just her and I at the time. [LR424]

SENATOR CHAMBERS: And is that the point at which she directed you to start recalculating? [LR424]

KYLE POPPERT: I don't think at that time she directed. I believe she told me we were going to do the recalculating because we couldn't... [LR424]

SENATOR CHAMBERS: Now wait a minute. You were the one who said you got the

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

directive from her and I continue to use what you said. But you want to modify that and say she did not direct you to do it; all she said is we're going to start calculating differently. Is that what you said she said? [LR424]

KYLE POPPERT: Yes, because we couldn't...we didn't even have a list at that point to do any recalculation. [LR424]

SENATOR CHAMBERS: I'm not interested in that. I want to find out the nature of your conversation with her and I don't want you to seem to say one thing, then say something else. So I'm asking you questions. [LR424]

KYLE POPPERT: Okay. [LR424]

SENATOR CHAMBERS: When you were in that office and you and she were talking, did you tell me that she said--we are going to start recalculating these dates? [LR424]

KYLE POPPERT: I don't remember if it happened right at that particular moment. [LR424]

SENATOR CHAMBERS: So you don't remember what you and she talked about? [LR424]

KYLE POPPERT: I remember she was pretty upset at the fact that she was answering a reporter's question that... [LR424]

SENATOR CHAMBERS: That's not what I asked you, Mr. Poppert. [LR424]

KYLE POPPERT: Yeah, I mean... [LR424]

SENATOR CHAMBERS: And I don't want to seem like I'm popping off, but I'm going by

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

what you told me. At first, you got the information by way of a phone call. Then you said you were in her office. You said while you were in your office she said--we are going to start recalculating. Do you want to modify that statement and that's not really what she told you at that time? [LR424]

KYLE POPPERT: I believe at the time when she called me down to her office, she had asked me questions, if I knew anything about Castillas. And I told her that it had come up months before; that we didn't think we were a party to that. And I believe she mentioned something about that we were going to have to start recalculating sentences on all of these individuals. [LR424]

SENATOR CHAMBERS: So in that conversation, she did say that you're going to have to recalculate on all these individuals. [LR424]

KYLE POPPERT: I believe so. [LR424]

SENATOR CHAMBERS: Did she tell you why? [LR424]

KYLE POPPERT: Because we were doing it without...against the ruling of the Supreme Court at the time. [LR424]

SENATOR CHAMBERS: She said you were doing it in a way that was wrong. [LR424]

KYLE POPPERT: Yes. [LR424]

SENATOR CHAMBERS: And the reason it was wrong, because it was contrary to that Supreme Court decision. [LR424]

KYLE POPPERT: Yes. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SENATOR CHAMBERS: And Mr. Green had told you that the Supreme Court decision had nothing to do with the department. Isn't that true? [LR424]

KYLE POPPERT: Yes. [LR424]

SENATOR CHAMBERS: That's what you told us. [LR424]

KYLE POPPERT: Yes. [LR424]

SENATOR CHAMBERS: Well, the mere fact that she told you that the decision had something to do with the Supreme Court, had something to do with the Department of Corrections, you accepted that statement from her at face value. Is that true or false? [LR424]

KYLE POPPERT: Yes, true. [LR424]

SENATOR CHAMBERS: And did she tell you at that time, during that meeting, to set up a meeting with all of these people that you ultimately met with? [LR424]

KYLE POPPERT: She didn't have me set up the meeting. She said we were going to meet with the director. I believe she set up the meeting with those people. [LR424]

SENATOR CHAMBERS: When she said the "directors," who was she talking about? [LR424]

KYLE POPPERT: With the director. There was Director Kenney; I believe George Green was part of that meeting; Mickie Baum, our records manager; and myself. [LR424]

SENATOR CHAMBERS: And this was after the World-Herald expose. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

KYLE POPPERT: Yeah...well, this was after the World-Herald had called. I don't know if the article was written at the time or not. [LR424]

SENATOR CHAMBERS: But she was upset, so she knew something was in the works that could be embarrassing to the department. [LR424]

KYLE POPPERT: Yes. [LR424]

SENATOR CHAMBERS: That's the impression you got. [LR424]

KYLE POPPERT: Yes. [LR424]

SENATOR CHAMBERS: And you knew that something serious was afoot, even if you didn't have all the details at that point. [LR424]

KYLE POPPERT: Yes. [LR424]

SENATOR CHAMBERS: So then did she call the meeting? [LR424]

KYLE POPPERT: I believe so, yes. [LR424]

SENATOR CHAMBERS: Who summoned you to the meeting to tell you where it would be and when it would be? [LR424]

KYLE POPPERT: She did. [LR424]

SENATOR CHAMBERS: And when you got to that meeting, Director Kenney was there. Is that true? [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

KYLE POPPERT: I believe so, yes. [LR424]

SENATOR CHAMBERS: Associate or Deputy Director Wayne was there. Is that true?
[LR424]

KYLE POPPERT: I don't think so, no. [LR424]

SENATOR CHAMBERS: So "directors" should not be plural, it should be singular--the
director was there. [LR424]

KYLE POPPERT: Yes. [LR424]

SENATOR CHAMBERS: What other person who could qualify as a "director" was
there? There was no other person, right? [LR424]

KYLE POPPERT: No. Correct. [LR424]

SENATOR CHAMBERS: Okay. So who was directing the meeting? Mr. Kenney?
[LR424]

KYLE POPPERT: I believe Dawn-Renee was explaining the situation in that... [LR424]

SENATOR CHAMBERS: Who is Dawn-Renee? [LR424]

KYLE POPPERT: She is the... [LR424]

SENATOR CHAMBERS: The public information officer? [LR424]

KYLE POPPERT: ...public information officer-legislative coordinator. [LR424]

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Transcriber's Office
Rough Draft

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SENATOR CHAMBERS: And what was she explaining to all you professionals? First of all, is she a penological expert? Does she have a degree in penology? [LR424]

KYLE POPPERT: I don't know. [LR424]

SENATOR CHAMBERS: Does she have a journalism degree? [LR424]

KYLE POPPERT: I don't know. [LR424]

SENATOR CHAMBERS: Does she have a degree in communication? [LR424]

KYLE POPPERT: I don't know. [LR424]

SENATOR CHAMBERS: Does she have a degree in management? [LR424]

KYLE POPPERT: I don't know. She has some degree, I don't know what it's in. [LR424]

SENATOR CHAMBERS: But she has a lot of authority in the Department of Corrections, true or false? [LR424]

KYLE POPPERT: I don't know what you would define as "a lot of authority." [LR424]

SENATOR CHAMBERS: Well, if the "top dog" is there and somebody other than the "top dog" is running the meeting, that person running the meeting has to have some authority, in my opinion. [LR424]

KYLE POPPERT: Yes. [LR424]

SENATOR CHAMBERS: So she has some authority, correct? [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

KYLE POPPERT: Yes. [LR424]

SENATOR CHAMBERS: And she was explaining to all you experts what the Supreme Court decision meant. Is that what she was doing? [LR424]

KYLE POPPERT: Yes. [LR424]

SENATOR CHAMBERS: And she was explaining it to George Green also? [LR424]

KYLE POPPERT: Yes. [LR424]

SENATOR CHAMBERS: Because she, obviously, knew more about the law and the application of Supreme Court decisions than George Green since she was doing the explaining. Is that correct? [LR424]

KYLE POPPERT: I don't know. [LR424]

SENATOR CHAMBERS: And she knew more about how the Department of Corrections should operate than Mr. Kenney since she was explaining while Mr. Kenney was there. I can assume that, can't I? [LR424]

KYLE POPPERT: I don't know that you can assume that. [LR424]

SENATOR CHAMBERS: Okay now, when you came to this meeting, how many meetings before that had you attended where Dawn-Renee was in charge and explaining everything? How many meetings had you attended where she was present? [LR424]

KYLE POPPERT: I was in a couple of meetings with her where she was the public information officer running that meeting. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SENATOR CHAMBERS: And she was explaining everything at those meetings?
[LR424]

KYLE POPPERT: Yes. [LR424]

SENATOR CHAMBERS: And was the director there? [LR424]

KYLE POPPERT: I don't recall. [LR424]

SENATOR CHAMBERS: This meeting was unique and special though because it was in response to a possible news story that could be embarrassing to the department. Isn't that true? [LR424]

KYLE POPPERT: Yes. [LR424]

SENATOR CHAMBERS: And she was the one who knew what should be told to everybody in terms of what ought to be done. Since she was doing the explaining, it was felt by those present that she knew better how to do this than anybody else in the room. Is that true? If somebody else knew how to do it better, why wasn't that person doing the explaining? [LR424]

KYLE POPPERT: Yeah, I don't know. [LR424]

SENATOR CHAMBERS: So I'll ask you again. Somebody assumed that she knew better how to explain it better than anybody else in the room. Is that correct? [LR424]

KYLE POPPERT: Somebody assumed that, yes. [LR424]

SENATOR CHAMBERS: Well, the director assumed it too, didn't he, because she was

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

explaining...? [LR424]

KYLE POPPERT: Well, I mean he was involved in the meeting too. I think she was giving the director at the time the background. He didn't understand at the time...I don't think he knew that the Castillas case existed out there. [LR424]

SENATOR CHAMBERS: Well, you can answer my question then. I said she knew more about what was going on and could explain it better than anybody else in the room,... [LR424]

KYLE POPPERT: Apparently, yes. [LR424]

SENATOR CHAMBERS: ...including the director. [LR424]

KYLE POPPERT: Yes. [LR424]

SENATOR CHAMBERS: So she knew more about this situation than the director knew. [LR424]

KYLE POPPERT: Yes. [LR424]

SENATOR CHAMBERS: She knew more about it than you knew. [LR424]

KYLE POPPERT: Yes. [LR424]

SENATOR CHAMBERS: She knew more about it than Mr. Green knew. [LR424]

KYLE POPPERT: I guess. [LR424]

SENATOR CHAMBERS: Yet, this is what you all deal with all the time. But if she's the

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

public information officer, these are not the things that she dealt with. So in that short time between when the reporter called her and that meeting occurred, she did a crash course of study and learned more about the situation than all of you collected experts knew about it. Isn't that true; isn't that what we have to assume? [LR424]

KYLE POPPERT: We can assume that. [LR424]

SENATOR CHAMBERS: Did you assume she knew more than anybody else and that's why she was explaining? [LR424]

KYLE POPPERT: I assumed that she had direction from somebody higher up than myself in that meeting. [LR424]

SENATOR CHAMBERS: Higher than somebody else in the meeting. [LR424]

KYLE POPPERT: Well, higher than...I assumed that she had direction from somebody that would have been my supervisor at the time, I mean, so... [LR424]

SENATOR CHAMBERS: Okay, now let's go to the meeting for her explanation. Did she bring up the Castillas case? [LR424]

KYLE POPPERT: Yes. [LR424]

SENATOR CHAMBERS: And she said at some point that this case involved a decision handed down by the Nebraska Supreme Court. [LR424]

KYLE POPPERT: I believe so, yes. [LR424]

SENATOR CHAMBERS: And she indicated that that decision handed down by the Nebraska Supreme Court dealt directly with the Department of Corrections and how it

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

was calculating the impact of good time in certain situations. She said that along the way, didn't she? [LR424]

KYLE POPPERT: I think so, yes. [LR424]

SENATOR CHAMBERS: And what she said was contrary to what George Green said, wasn't it? [LR424]

KYLE POPPERT: Yes. [LR424]

SENATOR CHAMBERS: And what George Green said was contrary to what the Nebraska Supreme Court said. Isn't that right? [LR424]

KYLE POPPERT: Yes. [LR424]

SENATOR CHAMBERS: So, Dawn-Renee and the Supreme Court agreed, correct? [LR424]

KYLE POPPERT: I believe so, yes. [LR424]

SENATOR CHAMBERS: And George Green disagreed, correct? [LR424]

KYLE POPPERT: At the time. But during that meeting we were all on the board on what we were going to do with it. That was the turning point and when we made the decision to change our policy. [LR424]

SENATOR CHAMBERS: But it wasn't based on legal knowledge because that's what...that's what Mr. Green had. This was a political decision ordered by somebody higher than you because the department was about to be embarrassed for ignoring a Supreme Court decision. In a nut shell, isn't that what brought us to that meeting?

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

[LR424]

KYLE POPPERT: I don't know who made the decision. [LR424]

SENATOR CHAMBERS: That's why I say "us." [LR424]

KYLE POPPERT: Yeah, right. [LR424]

SENATOR CHAMBERS: It includes everybody in the world. [LR424]

KYLE POPPERT: Yes. [LR424]

SENATOR CHAMBERS: And somebody among that group is...gave the order for us to be there, right? [LR424]

KYLE POPPERT: Yes. [LR424]

SENATOR CHAMBERS: And that person made the decision that, all things considered, the Supreme Court, when it issues an interpretation of the law, has stated authoritatively what the law is and it applies to everybody. That's what that higher-up concluded, correct? [LR424]

KYLE POPPERT: Someone made that decision, yes. [LR424]

SENATOR CHAMBERS: Now, let me put you in a position where you were persuaded by George Green that a decision by the Supreme Court did not have anything to do with the Department of Corrections. Let's say that a person was stopped on the highway, not an employee of the Department of Corrections, did not work in the records division. And that person had been stopped for driving a car with more than the amount of alcohol in his system than was allowed by law without being in violation of the law. The case was

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

appealed to the Nebraska Supreme Court. And the evidence was taken. And the evidence showed that the law says, the law which creates the crime of driving under the influence, that if you have this amount or more of alcohol in your system, you have violated this law and the punishment is thus and so. That's what the court said, the Nebraska Supreme Court said that. And the one who is before the court was "John Q. Public." Now, you work for the Department of Corrections. Could George Green tell you, Poppert, you are not a party to that action. You're not involved so it doesn't apply to you. Would you accept what he said? And that you, because you are not a party to that action, could drive with that amount of alcohol in your system and not be in violation of the law? Could he convince you that the Supreme Court decision that made that ruling with reference to "John Q. Public" did not mean the decision to apply to you too? Is that what you believe? [LR424]

KYLE POPPERT: I think the legislation applies to everybody. But if that case were under appeal, I don't know if that would apply... [LR424]

SENATOR CHAMBERS: I'm not talking about the legislation, I'm talking about what the Supreme Court said. The Supreme Court interpreted the law and the Supreme Court said, this is what this law means. That Opinion would apply to everybody, wouldn't it? [LR424]

KYLE POPPERT: I think so, but there is a lot of things that can happen in that Opinion. And if it were completely clear and everything, we wouldn't even have the argument before the Supreme Court. [LR424]

SENATOR CHAMBERS: Now when an inmate files a lawsuit and alleges that his good time was improperly calculated and therefore he should be let out, to simplify everything, and that inmate is bringing an action that would say that if you're being held without legal cause then they got to let you go. So it's the inmate bringing the lawsuit. And when the Supreme Court gets that case, the issue is whether or not his good time

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

had been properly calculated and whether the good time law had been properly applied in his case, and the Supreme Court had all of the facts and all of the information. The Supreme Court read the law and had said there are different laws related to good time, here is what we are going to do. We are authoritatively going to make a ruling in this case. We're going to say that if you have a law over here on the left hand, and a law on the right hand, and they both deal with the same subject, but not exhaustively, so you're not able to say exactly what the consequences are when you look at these two laws. The Supreme Court says that when the court is going to construe a law it does so when the ordinary meaning of words will not give an answer, or if, in using those words, it comes into conflict with other laws on the same subject. The court's job in construing an enactment by the Legislature is to give it a construction that is reasonable and not absurd, one that carries out the intent of the Legislature rather than one that will defeat the intent of the Legislature. And in looking at the legislative history, the court can determine what the intent of the Legislature is. These laws, individually or collectively, are not unconstitutional. So it is the court's responsibility to harmonize these laws and construe them in such a way that they carry out the intent of the Legislature. When the Legislature passes a law that imposes a mandatory minimum sentence, the person must serve all of that sentence and cannot be let out on parole, nor can that person be discharged. Every day of that sentence must be served. And no good time can be granted for any of the period of time comprised by that mandatory minimum sentence. That's what this case involves. So the court is going to take all of these laws, make sense out of what otherwise might appear to be nonsense, and carry out the will of the Legislature. For the Legislature to have imposed a mandatory minimum, meaning that the entire period must be served, a different law which, if applied, would allow this person to be discharged prior to the serving of that mandatory minimum, the full time, cannot have any application. The mandatory minimum must be served. And we're not dealing with a flat sentence where when you serve the time of that sentence, eligibility for parole occurs and mandatory discharge occurs at the same time. But you have a minimum and a maximum. So you serve the minimum and whatever remains after that becomes, in effect, the sentence for purposes of calculating good time. If ten years

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

more than that mandatory minimum remain, then you apply the good time law which says--day for day that you would be required to serve, you get a day of good time which cuts that remainder of the sentence in half. So instead of having another full ten years to serve, you get good time starting after you serve that mandatory ten. Discount it for the purpose of calculating good time only, because now the good time we're talking about would have to do with reducing the number of years before you got to the mandatory discharge date. Is that correct so far? [LR424]

KYLE POPPERT: Well,... [LR424]

SENATOR CHAMBERS: Or did I lose you? [LR424]

KYLE POPPERT: ...I think there's a couple of things in there. For example, Castillas, it's the first time when they changed the wording a little bit in the rule... [LR424]

SENATOR CHAMBERS: Let's not talk about... [LR424]

KYLE POPPERT: Well, but... [LR424]

SENATOR CHAMBERS: The court...the court was... [LR424]

KYLE POPPERT: ...but in order to explain your question... [LR424]

SENATOR CHAMBERS: Well, wait a minute. Then let me go on with my example.
[LR424]

KYLE POPPERT: Okay. [LR424]

SENATOR CHAMBERS: The court presented it in the way that I'm presenting it. And the court said, this is how you calculate good time when there's a mandatory minimum

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

and you're talking about the mandatory discharge date. You do not say, like you ordinarily would, you take this half of the minimum to determine eligibility for parole and half of the maximum to determine discharge. It's confusing the court would acknowledge. But from henceforth, we're telling you how these mandatory minimums impact on sentencing for the purpose of determining a mandatory discharge date. And this is what the court is saying. And the only circumstances involving good time at all will occur in the Department of Corrections. The Department of Corrections was the one who calculated this inmate's good time. The court said that was wrong. And his good time is going to be reckoned on the basis of what the court is telling you. And that applies to the calculation of good time from now on. And the court is not going to say, oh, by the way, we're going to tell the Department of Corrections that this decision applies to them. They didn't have to do that, in the same way that they don't say, Ernie Chambers, this drunk driving decision applies to you too. And you know good and well, or you should know, that any decision handed down by the Supreme Court related to the Department of Corrections affects the Department of Corrections. If it did not, then the Attorney General's Office would not have sent it to the Department of Corrections. There would not have been any of those discussions. Everybody now is trying to run for cover. Everybody is trying to shift blame and place responsibility somewhere else. And as I listen to your testimony, and I've listened to the testimony of others, I can see why things are in chaos and in shambles over there. There is no oversight by the Governor; no management by the director of Corrections; no assumption of responsibility by people such as you who are in charge of various little offices and whatever they call them over there; no assumption by Mr. Green of his duty under the code of responsibility that governs lawyers. We have a situation where nobody is responsible for anything. We have people who will sit up and tell this committee with a straight face that they don't believe that a Supreme Court decision applies to them. Why? Because somebody told them it doesn't. Now, I have a couple of questions I want to ask you. Did you at any point read what the World-Herald wrote about you guys miscalculating?
[LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

KYLE POPPERT: About the Castillas decision and that? No. [LR424]

SENATOR CHAMBERS: About the miscalculation of good time by the department. Did you read any World-Herald story describing how the department miscalculated good time? [LR424]

KYLE POPPERT: I don't believe so. I think there were a couple of stories that came after that fact that I read. [LR424]

SENATOR CHAMBERS: Did any of those stories say that the department miscalculated good time? [LR424]

KYLE POPPERT: I believe they lead with every story that it's a continuing type of thing that we calculated... [LR424]

SENATOR CHAMBERS: Which one of those stories contained anything that you did not already know? And what was it that the story contained that you did not already know? [LR424]

KYLE POPPERT: I don't know that there is anything in the story. [LR424]

SENATOR CHAMBERS: So you knew what the World-Herald knew also. Is that true? [LR424]

KYLE POPPERT: From what I read, I didn't see any...there are,... [LR424]

SENATOR CHAMBERS: Either you did or you didn't. [LR424]

KYLE POPPERT: ...I think, there are some inaccuracies that were reported in the World-Herald. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SENATOR CHAMBERS: Did you know, with reference to any factual statement contained in a World-Herald story, did you know as much as the World-Herald knew or declared about that factual statement? Did you know that there had been a Supreme Court decision that said that the department was calculating these sentences incorrectly? [LR424]

KYLE POPPERT: Yes. [LR424]

SENATOR CHAMBERS: And you knew that already, didn't you? [LR424]

KYLE POPPERT: Yes. [LR424]

SENATOR CHAMBERS: When the World-Herald indicated that Supreme Court decisions represent the law of the land, so to speak--those are my words--was that a shock to you that the Supreme Court...that a Supreme Court decision represents the law of the state? Did that shock you to find that out? [LR424]

KYLE POPPERT: I know the Supreme Court decisions have impact. But I know they're also not legislation. [LR424]

SENATOR CHAMBERS: Did you know that when the Supreme Court interprets a law, the interpretation the Supreme Court gave is what, in fact, that law is and the only one who can change it is the Legislature by passing another law that directly overturns the Supreme Court decision? Are you aware of that? [LR424]

KYLE POPPERT: Sort of, I mean, but... [LR424]

SENATOR CHAMBERS: Sort of... [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

KYLE POPPERT: ...again, I don't know that...in any other case, sir, when there is an appellate court and a decision is made... [LR424]

SENATOR CHAMBERS: I've heard that already. I don't even need to hear that and I don't want to hear it again. [LR424]

KYLE POPPERT: But...but that's my... [LR424]

SENATOR CHAMBERS: Let me ask you a direct question. What department of government did the Castillas case deal with if not the Department of Corrections? [LR424]

KYLE POPPERT: Well, with the judicial branch as well. [LR424]

SENATOR CHAMBERS: Who did it deal with? [LR424]

KYLE POPPERT: The Department of Corrections, but I believe it's also... [LR424]

SENATOR CHAMBERS: Now, what did it say with reference to what the Department of Corrections was doing in the calculation of good time where a mandatory minimum was involved? Did it say that the way the department was calculating that time was wrong? Is that what the Supreme Court decision said? [LR424]

KYLE POPPERT: The Supreme Court laid out a formula that was contrary to what we did. But it never...I don't think it said the Department of Corrections is doing this incorrectly. [LR424]

SENATOR CHAMBERS: That's stupid. What did you think the court was saying? That it's going to say, Mr. Poppert, what you're doing is wrong, and if it doesn't say that then it doesn't apply to the records department? To what department do you think the court

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

was directing its statement? Were they directing it to the Department of Health and Human Services? [LR424]

KYLE POPPERT: It was directing its statement to the parties that were in court at the time. I mean, I understand what you're saying. [LR424]

SENATOR CHAMBERS: I don't think you do, so I won't pursue that because...you know what, if I see that a man is a fool and I continue to pursue him, I'm as big a fool as he is. I know what the significance of a Supreme Court decision is; you don't know. As old as you are, if you don't know by now, I cannot teach you. But I want the record to be crystal-clear on all of this ducking and dodging that you as an official are doing, how the Governor gave you one day in the street and you're sitting right at the top. And the ones who are catching all of the flak are these lower-level employees. Two lawyers can jump out of the heat by quitting and we're left with a situation where General MacArthur says: "Private" Schumacher is responsible for the failure of that battle, and if it hadn't been for "Private" Schumacher, we would have won that battle. Then they say, well, let's go see what...who is that crazy guy who had the pearl-handled pistols... [LR424]

SENATOR SEILER: Patton. [LR424]

SENATOR CHAMBERS: ...or ivory? [LR424]

SENATOR SEILER: Patton. [LR424]

SENATOR CHAMBERS: Patton, because he said he didn't have pearl, he had ivory. Pimps use pearl handles and he wasn't a pimp. So Patton says: Well, I think you're wrong to say that "Private" Schumacher did it and he's responsible; "Corporal" Seiler is responsible. But in no case is a general responsible. In no case is a colonel responsible. In no case is a major responsible. In no case is a lieutenant responsible. In no case is a sergeant major responsible. In no case is a sergeant first class responsible. But from

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

corporal on down, that's where the blame lies, by God. And for my part, my questioning of you was for the purpose only of showing to what lengths a person who was a would-be bureaucrat will go in manifesting ignorance, incompetency, willing under oath to deny knowing what he knows. I know more of what you know than you know. I know that as old as you are that you know when the Supreme Court issues a decision that impacts the Department of Corrections, the Department of Corrections is bound by it. But I want to ask you this question. Do you believe now that the Castillas case applies to the Department of Corrections? [LR424]

KYLE POPPERT: Yes. [LR424]

SENATOR CHAMBERS: Why do you believe it now? [LR424]

KYLE POPPERT: Because there...we've gone over this again and the decision was made. It's not really a question of what I believe, but what are told to implement the methodology is on these sentences. [LR424]

SENATOR CHAMBERS: Who told you something that you hadn't already known? When you thought this case...or you say you thought this case did not apply to the Department of Corrections, what piece of information was given you after that which made you believe that it does, in fact, apply? What piece of information that you did not already know was given to you that made you change your mind? That's what I'm asking you. What was that piece of information? Was it that Dawn-Renee Smith told you that it applies? Is that what convinced you? [LR424]

KYLE POPPERT: I don't know. But as far as implementing the change in the methodology, you know, that came from someone other than me. We implemented it at the time after the World-Herald came out. I don't know who made that decision to change that decision. But that's the... [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SENATOR CHAMBERS: Do you feel pretty good about your testimony today? [LR424]

KYLE POPPERT: Well, I don't know. [LR424]

SENATOR CHAMBERS: I'm asking how you feel. I want your opinion. Do you feel pretty good about your testimony? [LR424]

KYLE POPPERT: I think we could always do better and be able to shed more light on the situation. [LR424]

SENATOR CHAMBERS: That's not what I asked you. You're walking "box-ankle." You're wishy-washy. I'm asking you...do you know what your own opinion is about your testimony or are you going to have to have somebody give it to you? [LR424]

KYLE POPPERT: I think I could always do better. [LR424]

SENATOR CHAMBERS: Do you feel pretty good about your testimony, that's what I'm asking you? [LR424]

KYLE POPPERT: Like I said, I think we could always be more prepared and do better at the time. [LR424]

SENATOR CHAMBERS: Did you undertake any preparation before you came today? [LR424]

KYLE POPPERT: Yes. [LR424]

SENATOR CHAMBERS: Is that gentleman sitting to your left and my right your lawyer? [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

KYLE POPPERT: Yes. [LR424]

SENATOR CHAMBERS: Did that lawyer help prepare you for your testimony today?
[LR424]

KYLE POPPERT: We met for the first time this morning, so we had about an hour to
visit about the case. [LR424]

SENATOR CHAMBERS: But here's what I'm asking you: Did that lawyer help prepare
you for your testimony today? [LR424]

KYLE POPPERT: Somewhat, yes. [LR424]

SENATOR CHAMBERS: Did that lawyer tell you certain things you should not answer?
[LR424]

KYLE POPPERT: No. [LR424]

SENATOR CHAMBERS: Did that lawyer tell you that there were certain questions about
which if you give an answer you should not be too expansive in your answer. [LR424]

TIM THALKEN: Mr. Chairman, I do object based on attorney-client privilege as to what
our preparation was. [LR424]

SENATOR CHAMBERS: You don't run this hearing. [LR424]

TIM THALKEN: I'm just stating an objection. [LR424]

SENATOR CHAMBERS: Well, you can object all you want to. And I object to you. Are
you here to testify? [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

TIM THALKEN: I am not; I'm here to protect my client... [LR424]

SENATOR CHAMBERS: Are you here... [LR424]

TIM THALKEN: ...and provide the due process you mentioned earlier. [LR424]

SENATOR CHAMBERS: Then there...what am I asking your client that you think is improper? [LR424]

TIM THALKEN: You're asking what we discussed. [LR424]

SENATOR CHAMBERS: I didn't ask what you discussed. [LR424]

TIM THALKEN: You said: What did he tell you? [LR424]

SENATOR CHAMBERS: Let's go back to me and you. I asked you not what he told you; I asked you were there certain things he indicated you should not answer too expansively. That's the question I asked, didn't I? [LR424]

KYLE POPPERT: No. No. [LR424]

SENATOR CHAMBERS: And he didn't tell you any type of thing... [LR424]

KYLE POPPERT: He told me to be completely truthful, to try and relax, to answer the questions that are before me. [LR424]

SENATOR CHAMBERS: Is he your personal lawyer? [LR424]

KYLE POPPERT: We just met today. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SENATOR CHAMBERS: Did you retain him as your lawyer? [LR424]

KYLE POPPERT: Yes. [LR424]

SENATOR CHAMBERS: So there is a lawyer-client relationship between you and him?
[LR424]

KYLE POPPERT: Yes. [LR424]

SENATOR CHAMBERS: And he's representing you here today. [LR424]

KYLE POPPERT: Yes. [LR424]

SENATOR CHAMBERS: You felt when you came before this committee you needed
legal representation? Obviously, you did, didn't you? [LR424]

KYLE POPPERT: I felt better if there were somebody sitting here beside me to advise
me, yes. [LR424]

SENATOR CHAMBERS: Did you think you might say something that you should not
say? [LR424]

KYLE POPPERT: I think we're all concerned about that. You know, I don't want to
bring...I want to be truthful with the committee, answer the questions as best I can, but
I... [LR424]

SENATOR CHAMBERS: Are you aware that you're here pursuant to a subpoena?
[LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

KYLE POPPERT: Yes. [LR424]

SENATOR CHAMBERS: Are you aware that the subpoena directed you to answer the questions that are put to you? [LR424]

KYLE POPPERT: Yes. [LR424]

SENATOR CHAMBERS: Are you aware that the subpoena made it clear that anything you said here could not be used against you in any criminal proceeding? [LR424]

KYLE POPPERT: I'm not aware that the subpoena said that, no. [LR424]

SENATOR CHAMBERS: Well, if it does say that, there wouldn't be anything that you would have to worry about saying, would there be, other than it might be embarrassing? It can't be used against you to charge you with a crime or prove a crime against you. So what could you say that would require you to have legal representation, in your opinion, because you brought him here? Did he tell you that he should be brought here with you? [LR424]

KYLE POPPERT: I asked him to come here and be with me. [LR424]

SENATOR CHAMBERS: Okay. And you...he became your lawyer just this morning? [LR424]

KYLE POPPERT: I had retained his firm and he was the one available to come here today. [LR424]

SENATOR CHAMBERS: So then you've had representation in some form from his firm. This morning is not the first contact you had with him or his firm. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

KYLE POPPERT: With his firm, no; with him, yes. [LR424]

SENATOR CHAMBERS: Okay, so you felt that at some point in this matter you would need legal representation and you didn't retain him just for the purpose of coming before this committee? [LR424]

KYLE POPPERT: No. [LR424]

SENATOR CHAMBERS: Okay. Now, you took an oath to tell the truth and I'm going to presume that you did not lie. And you notice I phrased it differently. You took the oath to tell the truth and I'm saying I don't think that you lied, because there's a legal definition for a lie. Words that are factually true can, nevertheless, constitute a lie or perjury if it's a statement which under the circumstances, although the words are true, is deceptive and designed to mislead. But I don't think you have done that with the intent of not telling the truth. I think you've told the truth in as slippery a way as you could. My last question that might have about 15 parts to it: When you came before the committee today, you had no knowledge...I'm framing it as a question, are you saying that you did not know that a pronouncement by the State Supreme Court constitutes the law of the land in Nebraska on the issue that the Supreme Court gave a decision on? You were not aware that that had the force of law, did you, if I understood you. [LR424]

KYLE POPPERT: I didn't know exactly how that impacted us; that's why I sought the advice of our legal counsel. [LR424]

SENATOR CHAMBERS: So your understanding was...and I guess you talked about it with your lawyer. I'm not going to ask you if you did or not, because I wouldn't lay that on him myself. You had the opinion that a decision handed down by the Supreme Court that said categorically, clearly, unequivocally that the way the Department of Corrections was calculating good time under these circumstances of the mandatory minimum sentence was wrong. You didn't think that it was necessary for the department

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

to alter the way it was calculating good time and it could continue to calculate it in the way that the Supreme Court had said was wrong. You believed that it was okay for the department to continue to calculate good time in a way that the Supreme Court had said is wrong. That was your opinion, obviously. Isn't that true? [LR424]

KYLE POPPERT: I believe that I wanted to ask legal on how that applied to us... [LR424]

SENATOR CHAMBERS: Now I'm asking for your opinion now. [LR424]

KYLE POPPERT: My opinion? I don't know. If I knew the answer with complete certainty I wouldn't have sought legal advice. [LR424]

SENATOR CHAMBERS: You don't know...I'm asking for an opinion. You didn't have an opinion about that? [LR424]

KYLE POPPERT: My opinion was that we should be following the Supreme Court's ruling. [LR424]

SENATOR CHAMBERS: Okay. And the department was not doing that, was it? [LR424]

KYLE POPPERT: But there's a lot of other things in that Supreme Court ruling that could be considered. [LR424]

SENATOR CHAMBERS: Just a minute...and the department was not doing what, in your opinion, the department should have done. Isn't that true? Stay on the path of righteousness where you set your shaky feet and stay on it and walk it. You knew that the Supreme Court said that the way the department was calculating was wrong and, in your opinion, the department should have followed what the Supreme Court said. Was it within your prerogative to change the way the department was calculating good time?

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

[LR424]

KYLE POPPERT: No. [LR424]

SENATOR CHAMBERS: Could you have made that decision? [LR424]

KYLE POPPERT: No. [LR424]

SENATOR CHAMBERS: You couldn't? [LR424]

KYLE POPPERT: No. [LR424]

SENATOR CHAMBERS: Okay, who would make that decision? [LR424]

KYLE POPPERT: I believe that would come from our legal department to create a methodology on what we should do, or it...we would seek an Opinion from the Attorney General's Office. [LR424]

SENATOR CHAMBERS: But who in the Department of Corrections would make a decision such as that? Would the director of Corrections make that decision? Or you don't understand that? [LR424]

KYLE POPPERT: I don't know. You know, we have never had to completely change a policy before. So this, again we...it would be my understanding that we would visit with the legal department and make a policy decision. All policies within our department, all administrative regulations are approved by the director. [LR424]

SENATOR CHAMBERS: If there was a competent... [LR424]

KYLE POPPERT: If we were going to change our policy, then that would come from the

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

director. [LR424]

SENATOR CHAMBERS: "Professor" Schumacher had asked a witness what questions should be asked if we were going to ask the right questions. Starting with the director, whom should the Governor fire if the Governor is going to be competent and do the right thing? Starting with the director, whom should he fire; of if he started with the director, where should he stop in going down the chain? [LR424]

KYLE POPPERT: I don't have an answer for that question. [LR424]

SENATOR CHAMBERS: Okay. [LR424]

KYLE POPPERT: I don't think it's something I should determine. [LR424]

SENATOR CHAMBERS: Self-preservation is the first rule of nature and you carried that off very well. [LR424]

KYLE POPPERT: I don't have an opinion on it. I mean, it just... [LR424]

SENATOR CHAMBERS: That's all I have. [LR424]

SENATOR LATHROP: Senator Schumacher. [LR424]

SENATOR SCHUMACHER: Just a couple follow-up questions: At some point you get a call from the public information officer. Is that the public information officer for your department? [LR424]

KYLE POPPERT: Yes. [LR424]

SENATOR SCHUMACHER: And, basically, the message is, Houston, we've got a

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

problem. [LR424]

KYLE POPPERT: Yes. [LR424]

SENATOR SCHUMACHER: And you go down to her office and she says we're going to have to do some changes; we're going to have a little meeting in a little bit. And then you and Kenney and Green and some other people have a little meeting with the public information officer. Who's wearing...who is the commander in that meeting? [LR424]

KYLE POPPERT: Well, the director is, obviously. [LR424]

SENATOR SCHUMACHER: No, who actually is in charge of that meeting? [LR424]

KYLE POPPERT: Well, I believe the public information officer at that point is bringing the director up to speed on what has happened to this point. And so I don't know that there's any clear person that's in charge of that meeting. We came together to meet as a group and to formulate a strategy on how to move forward. [LR424]

SENATOR SCHUMACHER: An Attorney General's letter, much discussion behind the scenes over many months, the director completely ignorant of the situation, the public information officer has got to bring him up to speed. And that happened real fast when it starts hitting the press, doesn't it? [LR424]

KYLE POPPERT: Yes. [LR424]

SENATOR SCHUMACHER: What's wrong with that picture? [LR424]

KYLE POPPERT: I don't know. [LR424]

SENATOR SCHUMACHER: Why did you have less authority to bring the director up to

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

steam than the public information officer? [LR424]

KYLE POPPERT: At the time, you know, she had apparently talked to someone and that we were making the change to change our methodology. I don't know who she visited with, who made that decision. She could have talked to the director before that. She could have talked to George Green. I can only offer speculation of what happened there. [LR424]

SENATOR SCHUMACHER: Look at a dollar bill, there's a pyramid. On top of the pyramid is an all-seeing eye. You suppose that's where it came from? [LR424]

KYLE POPPERT: I don't know. [LR424]

SENATOR SCHUMACHER: One final line of questioning: When Ron Riethmuller left the department, he was...had the title of records administrator. Is that correct? [LR424]

KYLE POPPERT: Yes. [LR424]

SENATOR SCHUMACHER: And was his position ever advertised? [LR424]

KYLE POPPERT: Yes. [LR424]

SENATOR SCHUMACHER: It was advertised? [LR424]

KYLE POPPERT: Yes. [LR424]

SENATOR SCHUMACHER: And when you were assigned his position, did you receive an increase in your classification as a state employee? [LR424]

KYLE POPPERT: Yes. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SENATOR SCHUMACHER: And you are now a... [LR424]

KYLE POPPERT: Records administrator. [LR424]

SENATOR SCHUMACHER: Is there such a thing as an administrator III? [LR424]

KYLE POPPERT: There is an administrative assistant III, I believe, in the department. I believe that's a state personnel classification. [LR424]

SENATOR SCHUMACHER: Is that your classification? [LR424]

KYLE POPPERT: No, I'm a records administrator. [LR424]

SENATOR SCHUMACHER: Okay, that's different from an administration III? [LR424]

KYLE POPPERT: Yes. [LR424]

SENATOR SCHUMACHER: And you had the same rank and the pay schedule and everything as your predecessor has? [LR424]

KYLE POPPERT: I don't have the same pay as my predecessor has. I mean, there...I'm assuming that when he was in the department for a period...a number of years that he is not...that at the time he left he was above the midpoint in pay. [LR424]

SENATOR SCHUMACHER: Okay, so there's a disparity. [LR424]

KYLE POPPERT: There's a range, yes. [LR424]

SENATOR SCHUMACHER: You wish you were paid what he was. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

KYLE POPPERT: We all would like a little more money. [LR424]

SENATOR SCHUMACHER: Thank you. [LR424]

KYLE POPPERT: (Inaudible.) [LR424]

SENATOR LATHROP: Senator Bolz. [LR424]

SENATOR BOLZ: Something Senator Chambers said triggered a question for me. You've held multiple roles in the Department of Corrections and that says to me that you're familiar with the population that we're working with. [LR424]

KYLE POPPERT: Yes. [LR424]

SENATOR BOLZ: You understand the records so you know the criminal history of individuals that we're working with. You asked multiple times for clarification about this practice. Were you motivated in any way by concern for public safety because of your experience? [LR424]

KYLE POPPERT: Public safety in what respect, I mean...? [LR424]

SENATOR BOLZ: It concerns me that there were people who were released before they had an opportunity for parole eligibility. And I think parole is one of the gatekeepers of public safety for our state. [LR424]

KYLE POPPERT: Yes. [LR424]

SENATOR BOLZ: So was that ever an issue that was of concern to you or any of the rest of the legal team? [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

KYLE POPPERT: Because if...well, I do know that's one of the goals that we were working towards recidivism and reducing recidivism was trying to get...work with the Board of Parole and get as many people out on parole as we could, because in evidence-based practices, they're twice as likely to succeed if they've spent a period of incarceration...a period of supervision in the community rather than just releasing somebody out onto the streets with no supervision. So parole was key to that, that effort. [LR424]

SENATOR BOLZ: And by "succeed" might you mean, not commit another crime against... [LR424]

KYLE POPPERT: Not commit another crime. I mean, that's our whole mission and goal is to put people back into the communities as responsible citizens. [LR424]

SENATOR BOLZ: But fundamentally, I think my point is that it's concerning to me that a deeper conversation about what all of this meant to public safety wasn't more paramount within your discussions about what the policy should be. Thank you. [LR424]

SENATOR LATHROP: Oh, Senator Mello. [LR424]

SENATOR MELLO: Thank you, Chairman Lathrop. Mr. Poppert, could you turn to page 179 in the book. [LR424]

KYLE POPPERT: Yes. [LR424]

SENATOR MELLO: Senator Chambers and Senator Schumacher walked you...asked you questions regarding a meeting that Dawn-Renee Smith called in regards to sentence recalculation. And if you look at page 179 and page 180, there is an e-mail from Dawn-Renee Smith to a Jen Rae Wang, a Robert Bell, a Sue Roush, Director Mike Kenney; and Deb Collins, who I believe is with the Nebraska State Patrol. Do you know

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

who those BCC e-mails are to: Diane Sabatka-Rine, Win Barber, Benny Noordhoek, Joe Baldassano and Richard Cruickshank? [LR424]

KYLE POPPERT: Diane Sabatka-Rine is the Warden at the Nebraska State Penitentiary. Win Barber is an administrative assistant III, I believe, with the Nebraska State Penitentiary. I believe he's their public information officer. Benny Noordhoek is one of our department investigators. Joe Baldassano is currently the deputy warden at the Community Corrections Center in Lincoln. And Rich Cruickshank is currently the warden at the Community Corrections Center in Lincoln. But...and I think some of those roles may have changed between May and now. But that's what their current status is. [LR424]

SENATOR MELLO: And you mentioned multiple times, I think, with some of the questioning that Senator Chambers and Schumacher had asked you regarding that Dawn-Renee Smith, when she called this meeting to discuss the recalculation of sentences, that there was some kind of higher...she had some kind of higher clearance or had some kind of higher directive. [LR424]

KYLE POPPERT: Um-hum. [LR424]

SENATOR MELLO: Do you know who Jen Rae Wang, Robert Bell and Sue Roush...who those individuals are? [LR424]

KYLE POPPERT: Jen Rae Wang is the communications director for the Governor. Sue Roush, I believe, is the deputy communications director for the Governor. Robert Bell, I forget. I get them kind of confused there, but I know he is either with planning and research or with the director...or the Governor's Office. [LR424]

SENATOR MELLO: Possibly the Policy Research Office? [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

KYLE POPPERT: Could be, yeah. [LR424]

SENATOR MELLO: Okay. If you look at page 180, that's actually an e-mail from Dawn-Renee Smith on May 9, 2014, discussing the World-Herald's inquiry from Todd Cooper regarding the sentence calculations for mandatory minimums. Was this about the time frame in which you had your meeting called by Dawn-Renee Smith was in May or was it in June? [LR424]

KYLE POPPERT: You know, I don't remember. My recollection was...I believe it was in June that this all happened. [LR424]

SENATOR MELLO: Do you think, perhaps, by reading this e-mail, this e-mail from May 9, 2014, that maybe that kind of higher directive came from maybe anyone on this particular e-mail or anyone possibly from the Governor's Office? [LR424]

KYLE POPPERT: I don't have any idea. [LR424]

SENATOR MELLO: Have you ever spoken with Jen Rae Wang, Robert Bell, or Sue Roush? [LR424]

KYLE POPPERT: Regarding this particular case? [LR424]

SENATOR MELLO: In general. [LR424]

KYLE POPPERT: In general, at one point in time I was a alternate public information officer for the department. So, I believe, on occasion I spoke with Jen Rae, Sue Roush; there may have been a occasions when I've talked to Robert Bell on a few things as well. [LR424]

SENATOR MELLO: On any issues regarding the Castillas Supreme Court ruling?

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

[LR424]

KYLE POPPERT: No. [LR424]

SENATOR MELLO: No...any conversations at all with either one of those three?
[LR424]

KYLE POPPERT: No. No. No. [LR424]

SENATOR MELLO: Okay, thank you. [LR424]

SENATOR LATHROP: Senator Krist. [LR424]

SENATOR KRIST: One follow-up. You said, as a result of the investigation...personnel investigation...the recommendation or the penalty that was handed down by Mike Kenney was ten days? [LR424]

KYLE POPPERT: Yes. [LR424]

SENATOR KRIST: Can you tell us how you serve those ten days? [LR424]

KYLE POPPERT: I have a schedule. It's a...we have a number of things going in the department. For example, one of those is the director has requested a whole systematic review of the records department. And, for example, next week we have people coming in from the National Institute of Corrections. So they want me there to be part of this, to provide them as much information as I can. So they did not give me two weeks straight, for example. It's over the next...I serve two days a week suspension for the next five weeks. [LR424]

SENATOR KRIST: So this infraction was not serious enough to take you out of the

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

game longer than two days at a time over a five-week period of time. [LR424]

KYLE POPPERT: I don't know that...you know, the penalty is the same. I mean it's still ten days' loss of pay is what it amounts to. I don't know that, you know, there...there's still things that they...you know, we want to move forward with this review and try to do everything we can. If I'm out for two weeks then that just delays that review and the director wants that to be completed as quickly as possible. [LR424]

SENATOR KRIST: Thank you. [LR424]

SENATOR LATHROP: Are appealing that? [LR424]

KYLE POPPERT: No, sir, I'm not. [LR424]

SENATOR LATHROP: I've listened to you all day long...or for the last couple of hours. You must be horribly offended by having lost ten days of pay, because it doesn't sound like you accept responsibility for one thing that happened in this. [LR424]

KYLE POPPERT: No, I'm not offended. It's part of the process. I've accepted that sanction. [LR424]

SENATOR LATHROP: What do you think you did wrong? [LR424]

KYLE POPPERT: Well, I think, you know, looking back in hindsight there's always things that we could have improved upon. At the time I felt I was taking the proper course of action. [LR424]

SENATOR LATHROP: So...true,... [LR424]

KYLE POPPERT: Yeah. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SENATOR LATHROP: ...and we could all say that about our past. [LR424]

KYLE POPPERT: Um-hum. [LR424]

SENATOR LATHROP: What do you think you did wrong? Anything? Do you think you did anything wrong? [LR424]

KYLE POPPERT: I think that, again, looking in hindsight, I could have escalated that much further. But... [LR424]

SENATOR LATHROP: In other words, gone to the director or... [LR424]

KYLE POPPERT: Gone to the director; let him know what's going on about that. I respect the opinion of the legal counsel on what we should do. I feel that's the role of the agency legal counsel; and I place a lot of trust in them to provide the guidance of what we should do. If we can't count on that there's no... [LR424]

SENATOR LATHROP: So the answer to my question is...you're kind of going on and on and you don't... [LR424]

KYLE POPPERT: Well, I think it's a tough call, you know, because at the time, you know, I wish I...if, in hindsight, there's a lot more information that's come out about Linda Willard's opinion and everything else. I think at the time I could have escalated that up. But, you know, discussing it with Larry and everything else, laying out the facts to him that I knew at the time, I didn't get any advice or direction to do anything differently. [LR424]

SENATOR LATHROP: You ever participate in something called a quarterly general... [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

KYLE POPPERT: Staff meeting? [LR424]

SENATOR LATHROP: Yeah. [LR424]

KYLE POPPERT: Yes. [LR424]

SENATOR LATHROP: Tell us what that is. [LR424]

KYLE POPPERT: What's that? [LR424]

SENATOR LATHROP: What's a quarterly general central staff meeting? [LR424]

KYLE POPPERT: That, I believe, if I'm understanding it correctly, is when we have a meeting at central office where pretty much everybody that's available in the building to get together and discuss issues and that gives the director an opportunity at the time to explain what's going on in the department, what our initiatives are. We also use that time for any employee recognition at the time. [LR424]

SENATOR LATHROP: Okay. So honor somebody who has been there ten years. But besides that, you have Bob Houston in the room. [LR424]

KYLE POPPERT: Yes. [LR424]

SENATOR LATHROP: And you do this quarterly? [LR424]

KYLE POPPERT: Generally, yes. [LR424]

SENATOR LATHROP: Who shows up at these things? [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

KYLE POPPERT: Well, again, there is usually the representation from the senior management; the director tries to be there. There are deputy directors there at the time, department heads. And really that's a meeting that's in the central office building and it's open to all the staff that are in the building that are able to come. [LR424]

SENATOR LATHROP: Okay. Did you go to these things? [LR424]

KYLE POPPERT: Yes. [LR424]

SENATOR LATHROP: And was Bob Houston at these things? [LR424]

KYLE POPPERT: Usually, yes. [LR424]

SENATOR LATHROP: And would he use these central general...quarterly general central staff meetings as an opportunity to talk about strategies for reducing overpopulation? [LR424]

KYLE POPPERT: I don't know really laying out specific strategies. But I think what he would do at these is try to keep staff updated on what's going on in the department and what we're doing. Yes. [LR424]

SENATOR LATHROP: Right. [LR424]

KYLE POPPERT: Uh-huh. [LR424]

SENATOR LATHROP: I didn't ask about specific staff,... [LR424]

KYLE POPPERT: Right. [LR424]

SENATOR LATHROP: ...specific recommendations, or specific policy. My point is

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

though, he would use them to impress upon the senior staff, we got a huge overcrowding problem and we're looking for answers and, by the way, given his memo, the no-cost options. Right? [LR424]

KYLE POPPERT: Yes. [LR424]

SENATOR LATHROP: He was talking to you guys about the importance of finding ways to get people out the door because we're getting very close to, what, 150, 160 percent of capacity? [LR424]

KYLE POPPERT: Yes, but, you know, and I think to take that in context too... [LR424]

SENATOR LATHROP: Did he do that or not? [LR424]

KYLE POPPERT: Yes. [LR424]

SENATOR LATHROP: Okay, that's all I have. [LR424]

KYLE POPPERT: Okay. [LR424]

SENATOR LATHROP: Any other questions? [LR424]

SENATOR CHAMBERS: I have. [LR424]

SENATOR LATHROP: Senator Chambers. [LR424]

SENATOR CHAMBERS: Mr. Poppert, are you familiar with a bill, the number was LB91, that had to do with making available to inmates additional opportunities to earn good time above and beyond what the ordinary good time law would give? [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

KYLE POPPERT: I believe it was LB191, sir. Yes. [LR424]

SENATOR CHAMBERS: And Mr. Houston testified for that bill. The Governor supported it. The Governor signed it. The Governor calculated how much money was going to be saved by virtue of giving more good time...and I guess eliminating some of the population, and he was so confident in it that he included the savings to be realized in his budget. So there was a concerted effort to use good time as a means of reducing the overcrowding. Is that your...do you understand that to have been the case or you don't see it that way? [LR424]

KYLE POPPERT: Well, I don't know what was included in the budget. I do know that LB191 resulted...we were trying to look at ways to incentivize the inmate population with their behavior and with good time. And we thought by doing this...again, we're trying to make people more responsible, treat them like citizens. [LR424]

SENATOR CHAMBERS: And I'm agreeing...I agree. [LR424]

KYLE POPPERT: And that they could earn this additional time. [LR424]

SENATOR CHAMBERS: I would have offered the bill if I were here; I would have supported it were I here. But what I'm seeing is everybody running away from those kind of things. Not everything done... [LR424]

KYLE POPPERT: Well, in that bill, sir, too, we also increased the amount of good time that you could earn while you are on parole from the three days to the ten days. [LR424]

SENATOR CHAMBERS: And what I'm going to fight against doing, just so that it's on the record, any significant changes in the good time law, such as saying people have to earn it--that was tried and it failed; reducing the amount of good time made available; taking good time for trifling reasons; and multiplying the amount of good time that can

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

be taken. To deal with this particular blip on the radar screen, which for a future Legislature and a future administration in Corrections to try to contend with, stability, predictability are needed. And all of the politicians who want to attack something, even those running for Governor and don't know anything about Corrections or good time, are attacking good time. And the reason they're doing that, it wouldn't cost money like talking about building another prison. It's not talking about studying to see what kind of effective programs can be made available in prison that will give people something they can use when they get out, none of those things. But good time is the red cape to wave in front of the public, which is the enraged bull, and say, well, do something about good time. Let's say we take away all good time. Then the population mushrooms and you got to build new prisons. [LR424]

KYLE POPPERT: Well, I don't know if I agree with that because, for example, sir, if we change legislation today, it only affects people that are sentenced after today. Correct? [LR424]

SENATOR CHAMBERS: But the point...but the point I'm making. [LR424]

KYLE POPPERT: And I believe that the judges would adjust their sentences accordingly. [LR424]

SENATOR CHAMBERS: The point I'm making is that not everything with reference to good time is done by statute. There are rules and regulations that the department can put in place pursuant to a directive from a Governor to name certain activities which will result in the loss of good time and the amount of good time that will be taken. That can be done by the department without any legislation. Were you not aware of that? [LR424]

KYLE POPPERT: Yes, and through the promulgation of rules and that. But the director is also working very hard in making it through these meetings and other things that we should look at other ways to try and affect inmates' behavior in a positive manner.

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

[LR424]

SENATOR CHAMBERS: Did you hear what all the things that I was saying? [LR424]

KYLE POPPERT: Yes. [LR424]

SENATOR CHAMBERS: I'm for good time. I'm going to stop, to the extent I can, anybody taking away good time. [LR424]

KYLE POPPERT: I think that's the one thing that you and Mr. Houston agreed upon. [LR424]

SENATOR CHAMBERS: But the point I'm making is this, for the public who may not understand, like you and I understand, even though you play like you don't. If we passed a law today and said from this day forward nobody will get any good time and we're going to toughen the sentences and lengthen the amount of time people spend in prison, that will make the prison population mushroom. People will be coming in without that many going out; because even with parole, we're about 50-something percent above capacity. So if you took away all good time, then the population is going to, I said mushroom, it's going to explode. And the only way to relieve that pressure would be to build more prisons. Prisons cost a lot of money. If you gave the public what they're asking for, they find out that it's not what they wanted. And that's why some legislators have to put a brake on that runaway train or stagecoach and say, you can talk all you want to about diminishing good time, but you're not going to be able to do it as long as I'm here. I can take the criticism; I can take the condemnation. I know something about what happens in Corrections. I was dealing with those issues when I first came down here. I was instrumental in getting rid of that old bastille and building a new prison; do away with segregation in the prison, which you may not realize was there; got rid of a warden, when they had farms, who was taking the produce and selling it and profiting from it, who was farming out inmates to do work for people and making money from it.

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

None of that was dealt with before I came. So I'm aware of the fact that there are people outside of the bars who ought to be on the other side. What we're trying to do with these hearings is to put on record the information that will be utilized in the Legislature formulating policies. But along the way, a message has to be given, and it's going to be rejected, that when there are people at the top who have responsibilities, they cannot always say we're going to get to the bottom of it. We have to get to the top of it. That's what happened finally when they got rid of Nixon, they got rid of Agnew, and some of these other high rollers connected with Watergate. On a smaller scale, that, unfortunately, is what I'm seeing with this prison scandal. Had the World-Herald not broken the story, nothing would have changed. Had an inmate with permission from the institution to be out, had he not shown up for a court hearing in a suit, none of this would have happened, none of it. That's what caught the World-Herald's attention. That's what caught everybody's attention--anything out of the ordinary. With all of the talk and editorializing, even by the World-Herald, against good time, they saw no need to do any research into how good time is calculated or anything else. The only thing they said was it cuts the sentence in half. But we know there's a lot more to it than that. So people should be alert to try to do the right thing because they never know when some happenstance incident will occur that will blow the lid off something. If you have done everything the way it should have been done, but you operate a large institution, a large operation that might deal with manufacturing or whatever, there are going to be some things other than the way they ought to be. But when you look at the totality of the picture, you can see that some things are the ordinary failings that occur in an operation of this size. But when you can find what appears to be a deliberate violation of the law, then it creates a sour taste in everybody's mouth and a different approach is taken so that some things which may legitimately have been mere errors in judgment begin to fit into that pattern of deliberate, intentional violation of the law, ignoring the duty of oversight, unwillingness to call people to account who have responsibilities that they're not fulfilling. So I'm hoping that some people, the next Governor's administration, will learn something from what happens here. And I doubt that I'm going to have to do too much in the Legislature in terms of saying clean house at the Department of Corrections

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

because I think they'll have sense enough to do that, from the director on down: wardens, deputy wardens, even people in your position, and start all over again. The Legislature, instead of saying that the department has an itch over here so we'll build another arm with a hand to scratch it and we have this multiarmed, multihanded monster scratching all over its body, when we ought to take the infestation-ridden carcass and put it in a tub of hot, soapy water and cleanse it once and for all. So I think while you're working still, you should enjoy your time; make this the 15th job that you held. And I think that it is a mockery for the Governor to create the impression that somebody got a suspension and then it's, oh, come in whenever you want to, do a little bit of time here, a little time off there, and you don't really feel it. There are a lot of people who wind up in jail who wish they could serve their time at their convenience, who could shift blame to somebody else and get away with it. I think the Governor, so far, has gotten away like Jesse James and nobody is going to call the Governor to account. The only thing I can try to do is make sure that the University of Nebraska, the various campuses that comprise that university, and the Medical Center will not fall under the corrupt, inept management of somebody like that man. Who imposed the suspension on you, the director or the Governor? [LR424]

KYLE POPPERT: The director. [LR424]

SENATOR CHAMBERS: Do you think he was directed by the Governor to do so? [LR424]

KYLE POPPERT: I don't know. [LR424]

SENATOR CHAMBERS: If you knew would you tell me? [LR424]

KYLE POPPERT: If I knew...I'm under...I have no reason not to tell you. [LR424]

SENATOR CHAMBERS: Okay. That's all that I have. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SENATOR LATHROP: Senator Schumacher. [LR424]

SENATOR SCHUMACHER: One quick follow-up: If we had been told that there's a culture in the department that if you want to get along, want to keep your job, live the good life, you don't tell higher-ups what they don't want to hear. You get along, you do the minimum that it takes without rocking the boat in order to do your job, would we have been told inaccurately? [LR424]

KYLE POPPERT: I think everybody has a different opinion about that. In my particular area, we are challenged every day to try and do the best job we can to serve the people of the state. You know, there's been criticism about some of these programs and allegations that people's job was on the line. Well, my job is not on the line for population reduction or anything. But we're all working towards common goals of protecting the citizens and giving these returning citizens opportunities when they leave the department. And we are working towards that mission and there's a lot of good people every day that work towards that mission, because we're part of the community as well. [LR424]

SENATOR SCHUMACHER: What do you... [LR424]

KYLE POPPERT: And there may be some culture of people that are there that are...feel that they can do the minimum to get by. And I just...I don't see that. We're not encouraged (inaudible). [LR424]

SENATOR SCHUMACHER: What do you suppose would have happened to you had you woke up one morning and said, you know, I'm really unsure we're doing the right thing with this particular good time calculation, and you'd have waltzed down to the director's office and asked to see him and sat down with him for a minute and said, I think we have a problem here? And you just busted through that whole tier of plausible

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

deniabilities and bureaucracy and said, you know, I know, Director, you come to these meetings every quarter with us. And you kind of want to know what's going on, and I want to make sure that this message didn't get lost in the maze. I think we're screwing up something. What would have happened? [LR424]

KYLE POPPERT: I think the director would have made time to see me, to listen to my concerns and that. But I can't speculate on what his actions would be, you know. But I know he would have listened to my concerns and at least give me the time to express them. [LR424]

SENATOR SCHUMACHER: Would, in walking in that door, you'd have the slightest bit of fear that this was going to... [LR424]

KYLE POPPERT: No, no. [LR424]

SENATOR SCHUMACHER: ...take you down? [LR424]

KYLE POPPERT: No. [LR424]

SENATOR SCHUMACHER: Okay, thank you. [LR424]

SENATOR CHAMBERS: Just one question. Mr. Poppert, are you aware of the fact that very recently the state entered a \$777,000 settlement with black Corrections officers based on racism... [LR424]

KYLE POPPERT: I believe so, yes. [LR424]

SENATOR CHAMBERS: ...and discrimination they confronted? [LR424]

KYLE POPPERT: Yes. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SENATOR CHAMBERS: Now if I, as a black man, see that guards are going to be mistreated like that, how am I to feel about the way the inmates are treated? If the racism is so intense and allowed to be ongoing and the only way the men can do anything about it is to go to court, why should I believe you when you say you're all on the same page trying to do such good work? And you don't even have to answer that, but I wanted that in the record, that you are aware of that. That's a lot of money, \$777,000 by way of a settlement, admitting wrongful conduct. That's unacceptable. [LR424]

SENATOR LATHROP: I think that's it. You know what? I'm going to have Mr. Thalken enter his appearance just so that the record reflects who your lawyer was that was sitting here and the guy that was sitting next to you all afternoon. [LR424]

TIM THALKEN: Sure. Tim Thalken, Fraser Stryker PC LLO, Omaha, Nebraska. [LR424]

DAN JENKINS: Can you spell your name, please? [LR424]

TIM THALKEN: T-i-m T-h-a-l-k-e-n. [LR424]

SENATOR LATHROP: Okay, I think that's it. Given that it's 5:30 and some of us have been sitting here since 1:30, we're going to take ten minutes before we go into the next witness. So we'll be back in ten minutes. [LR424]

BREAK

SENATOR LATHROP: We're back on the record. Again, we're here...it's now 5:43. We're back on the record after a short break. And now we'll take the balance of the witnesses, I expect, before we adjourn for the night, which will be followed by a short Exec Session with the committee to discuss what we want to do next. We have three

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

witnesses left and we'll call...the next witness will be Ms. Blum. Is it Blum or Bloom (phonetically)? [LR424]

KATHY BLUM: Blum. [LR424]

SENATOR LATHROP: Blum. Okay, we're going to have you raise your right hand--thanks--and be sworn in before you testify. Do you swear the testimony you're about to give this committee will be the truth, the whole truth, and nothing but the truth? [LR424]

KATHY BLUM: I do. [LR424]

SENATOR LATHROP: All right. Have a seat. Ms. Blum, do you live here in Lincoln? [LR424]

KATHY BLUM: I do. [LR424]

SENATOR LATHROP: Okay. And are you employed? [LR424]

KATHY BLUM: At the Department of Corrections. [LR424]

SENATOR LATHROP: Okay. And you have a little bit of a soft voice... [LR424]

KATHY BLUM: Okay. [LR424]

SENATOR LATHROP: ...so I'm going to ask you to make sure you talk into the mike so that we can capture all of your testimony. How long have you been employed at the department? [LR424]

KATHY BLUM: Since 1989. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SENATOR LATHROP: '89? [LR424]

KATHY BLUM: Yes. [LR424]

SENATOR LATHROP: You are an attorney? [LR424]

KATHY BLUM: No, I started as a mental health counselor. [LR424]

SENATOR LATHROP: Okay. A mental health counselor? [LR424]

KATHY BLUM: Yes. [LR424]

SENATOR LATHROP: All right. At some point did you graduate from law school?
[LR424]

KATHY BLUM: In '85. [LR424]

SENATOR LATHROP: '85? [LR424]

KATHY BLUM: Yes. I had a law degree. [LR424]

SENATOR LATHROP: So you were a lawyer and you did some mental health work too.
[LR424]

KATHY BLUM: I had a law degree and didn't practice law. [LR424]

SENATOR LATHROP: Okay. And at some point, you find yourself in the legal team of
the Department of Corrections. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

KATHY BLUM: In 1997. [LR424]

SENATOR LATHROP: Before '97, did you practice law somewhere? [LR424]

KATHY BLUM: No. [LR424]

SENATOR LATHROP: Okay. Just various jobs in Corrections and then you land in the law department. [LR424]

KATHY BLUM: Yes. I was a mental health counselor for about six years and then I was one of those admin assistant III's for a couple of years. [LR424]

SENATOR LATHROP: Okay. We're obviously here to talk about the miscalculation of the good time, particularly after the Castillas case. [LR424]

KATHY BLUM: Yes. [LR424]

SENATOR LATHROP: Before Castillas, did you have any involvement in determining what the right or the correct formula was for determining the mandatory discharge date for someone who was doing time with a mandatory minimum? [LR424]

KATHY BLUM: No. [LR424]

SENATOR LATHROP: What was your first involvement into that issue? [LR424]

KATHY BLUM: With calculating? I've not been involved in the sentence calculations. I mean, obviously, now I'm aware of the Castillas case. [LR424]

SENATOR LATHROP: Okay. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

KATHY BLUM: But prior to that time, I had no involvement in calculating sentences.
[LR424]

SENATOR LATHROP: Okay. You were at the October 31, 2013, meeting that was called as a Sentence Review Committee... [LR424]

KATHY BLUM: Yes. [LR424]

SENATOR LATHROP: ...to discuss, among other things, the Castillas case? [LR424]

KATHY BLUM: Yes. [LR424]

SENATOR LATHROP: Okay. Now I got a general question for you. Many lawyers...and certainly lawyers can get behind on Advance Sheets, but do you generally read the Opinions from the Supreme Court as they come out? [LR424]

KATHY BLUM: I would scan them. I would look for any cases that involved the department or department employees or issues that were among the things I worked on at the department. [LR424]

SENATOR LATHROP: Tell us what you worked on. That's a good...what kind of things did you do over at the department as one of their attorneys? [LR424]

KATHY BLUM: I worked with the religion department, the mental health department. I did NEOC responses. I did some contracts. I worked on records requests. Oh, and sex offender issues. Those were the main duties. [LR424]

SENATOR LATHROP: Okay. Did you have anything to do with interpreting Supreme Court Opinions as it relates to the calculation of an inmate's sentence? [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

KATHY BLUM: I had not. [LR424]

SENATOR LATHROP: Okay. And if you are scanning the Advance Sheets or reading them, as we do on Fridays, hopefully,... [LR424]

KATHY BLUM: Yes. [LR424]

SENATOR LATHROP: ...did the Castillas case come to your attention? [LR424]

KATHY BLUM: No. [LR424]

SENATOR LATHROP: Okay. At some point, you are involved with Mr. Freudenberg on the Lohman matter. Is that right? [LR424]

KATHY BLUM: Yes. Yes. [LR424]

SENATOR LATHROP: What was your involvement in the Lohman matter? [LR424]

KATHY BLUM: He called me to tell me that he'd gotten a call from a county attorney who had seen an inmate and the county attorney had questioned why the inmate had been rearrested because he didn't think the inmate should be out. [LR424]

SENATOR LATHROP: Why did he call you? [LR424]

KATHY BLUM: I had met him at some meetings with Health and Human Services, mental health and administrative staff, DCS mental health and administrative staff. And then he came to those meetings. They concerned sex offender management. [LR424]

SENATOR LATHROP: So you guys knew each other? [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

KATHY BLUM: Yes. [LR424]

SENATOR LATHROP: He talks to you about Lohman's circumstance, which he testified to today. It really mostly involved not having him do consecutive sentences versus concurrent sentences for the habitual criminal. [LR424]

KATHY BLUM: Yes. What I recall being explained to me was that some of the documentation that Corrections had didn't have some of the information that was on the journal entry that he provided. And so that we had not recorded the sentence correctly. [LR424]

SENATOR LATHROP: Okay. "We" being people in records? [LR424]

KATHY BLUM: The department. [LR424]

SENATOR LATHROP: Yeah. [LR424]

KATHY BLUM: Yes. [LR424]

SENATOR LATHROP: Okay. In the course of your conversations with this deputy attorney general, did you talk about the Castillas case, which was decided close in time to that exchange? [LR424]

KATHY BLUM: I was at one of those sex offender management meetings with him in early February. And he told me there was a case coming out at the Supreme Court. And I do remember him saying there was a sentencing issue involved. And then, he... [LR424]

SENATOR LATHROP: This is like lawyer talk at a...you're sort of at a work function or a work setting but he's talking to you about, jeez, we got this case coming out that deals

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

with sentencing? [LR424]

KATHY BLUM: It was a casual conversation. We were milling around before the meeting started and, you know, exchanging hellos and how-are-yous and what's new. And he mentioned they had a case. I don't remember that he mentioned the name of the case. [LR424]

SENATOR LATHROP: Had it been decided at that point in time? [LR424]

KATHY BLUM: No. [LR424]

SENATOR LATHROP: Or was he talking about a case that they expected a decision on soon? [LR424]

KATHY BLUM: What I recall, it was they were expecting the decision soon. [LR424]

SENATOR LATHROP: Did you know it dealt with mandatory minimums after your conversation? [LR424]

KATHY BLUM: I don't...no. No. I didn't grasp that. I know he mentioned a sentencing issue. I don't remember him...I didn't walk away with details about what that issue was. [LR424]

SENATOR LATHROP: Okay. So he might have been talking and you might not have been listening to all of it, huh? [LR424]

KATHY BLUM: I don't know, it's possible. [LR424]

SENATOR LATHROP: Okay. The...ultimately does Mr. Freudenberg e-mail you the decision? [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

KATHY BLUM: He e-mailed me the cite. [LR424]

SENATOR LATHROP: Yeah? When did that happen? [LR424]

KATHY BLUM: That was on February 19, 2013. [LR424]

SENATOR LATHROP: '13. So about 10 days, 11 days after the decision. [LR424]

KATHY BLUM: Yes. [LR424]

SENATOR LATHROP: Okay. Did you look it up or did you read it? [LR424]

KATHY BLUM: No. I didn't read it. [LR424]

SENATOR LATHROP: And just to have some perspective on where you were at, that wasn't your...it wasn't an issue for...it wasn't an issue you were working on or concerned with? [LR424]

KATHY BLUM: No. I understood the case to involve something to do with sentencing. I did not understand it. I didn't know there was a problem with the way the department was calculating sentences or that that case would resolve any of that sort of thing. So I...the discussion of the case didn't have a lot of significance for me and I just didn't read the case. You know, I told myself I'll have to read that. And then it just got lower and lower on the pile. [LR424]

SENATOR LATHROP: Okay. After you get the case, after Castillas is decided, does anybody come to you with this dilemma about--because you're in the legal department--does anybody come to you with this dilemma about, do we continue to do the way we've always done it or should we change and observe what the Supreme

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

Court has instructed us on the proper application of...or the proper calculation, rather, of the mandatory discharge date? [LR424]

KATHY BLUM: No. [LR424]

SENATOR LATHROP: No involvement? [LR424]

KATHY BLUM: No. [LR424]

SENATOR LATHROP: Did you hear any of it? I mean, George Green, anybody around the office? It's a small space, I assume. The three of you office near one another? [LR424]

KATHY BLUM: No. I didn't... [LR424]

SENATOR LATHROP: No one is talking to you about it? [LR424]

KATHY BLUM: No. [LR424]

SENATOR LATHROP: Not on your radar screen at all? [LR424]

KATHY BLUM: No. [LR424]

SENATOR LATHROP: The next time we see you in the records, however, is October 31, 2013. [LR424]

KATHY BLUM: At the meeting. [LR424]

SENATOR LATHROP: At the meeting. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

KATHY BLUM: Yes. [LR424]

SENATOR LATHROP: And that's a meeting to...well, it's pulled together by Poppert, but it's called the Sentence Review Committee meeting minutes. [LR424]

KATHY BLUM: Yes. [LR424]

SENATOR LATHROP: How many of those meetings have you attended? [LR424]

KATHY BLUM: One. [LR424]

SENATOR LATHROP: That was it. [LR424]

KATHY BLUM: That was it. [LR424]

SENATOR LATHROP: It wasn't a regular thing? [LR424]

KATHY BLUM: No. [LR424]

SENATOR LATHROP: Okay. Have you read Castill since? [LR424]

KATHY BLUM: Now I have, yes. [LR424]

SENATOR LATHROP: Okay. And would you agree that the holding in Castillas, which is that the mandatory minimum...people serving a mandatory minimum, the same process we have been using in determining the parole eligibility date needs to be applied to the top number in determining a mandatory discharge date? [LR424]

KATHY BLUM: Yes. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SENATOR LATHROP: Okay. You would agree that that's in there and it's pretty clear.
[LR424]

KATHY BLUM: Yes. [LR424]

SENATOR LATHROP: And would you agree that when the Supreme Court made that decision, that it would apply to how the Department of Corrections should be calculating the mandatory discharge rate for inmates who are there with a mandatory minimum?
[LR424]

KATHY BLUM: Yes. [LR424]

SENATOR LATHROP: There's...it's not gray. Would you agree with that? [LR424]

KATHY BLUM: I agree. [LR424]

SENATOR LATHROP: Okay. You walk into the meeting without the benefit of having read the Castillas case. What happens? [LR424]

KATHY BLUM: I recall some brief discussion. I don't recall specifically what was said. I think Kyle...I'm remembering Kyle, perhaps, asking do we have anything new or is there anything more on this case? And I remember an exchange between George and Kyle. Again, I don't remember the specifics of what was said. But the gist was that...and my impression was that there had been prior discussions about it and that it was being handled. [LR424]

SENATOR LATHROP: Okay. If you want to turn to page 177 in that book, actually 178.
[LR424]

KATHY BLUM: Okay. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SENATOR LATHROP: You see where it says State v. Castillas in the middle of the page? [LR424]

KATHY BLUM: Yes. [LR424]

SENATOR LATHROP: And this is some kind of a memorialization of what took place or at least the conclusions and sort of the outline of the problem? [LR424]

KATHY BLUM: Yes, these are minutes from the meeting. [LR424]

SENATOR LATHROP: Yeah. It doesn't really give us a play-by-play like Kyle said this and George said that. [LR424]

KATHY BLUM: No. [LR424]

SENATOR LATHROP: But while you were there, you got the impression that these guys had talked about it a few times before. [LR424]

KATHY BLUM: Yes, that there had been some prior discussion. [LR424]

SENATOR LATHROP: And you were here for Mr. Poppert's testimony? [LR424]

KATHY BLUM: Yes. [LR424]

SENATOR LATHROP: You heard him testify that after the Castillas Opinion, they decided to continue to do it the way they always had. [LR424]

KATHY BLUM: I heard him say that. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SENATOR LATHROP: And that pretty soon, he was starting to get calls from lawyers and judges saying, you know, we're trying to do this truth in sentencing thing and tell the inmates about their sentence. And we have the Castillas case in front of us saying one thing and you guys are apparently doing another. Right? You heard Poppert talk about that. [LR424]

KATHY BLUM: Yes. [LR424]

SENATOR LATHROP: Did that conversation...was that part of the meeting? Did somebody say, you know, we've kept--I'm paraphrasing--we've kind of kept a lid on this for a while but it's getting to be a problem because we now have lawyers and judges calling and saying Castillas says to do it this way and we're still doing it a different way? [LR424]

KATHY BLUM: I don't remember that coming up at the meeting. [LR424]

SENATOR LATHROP: Okay. Do you remember any discussion about the fact that...or was it evident in the meeting that Mr. Green had already said, keep doing it the old way? [LR424]

KATHY BLUM: No. That wasn't evident in the meeting. You know, my recollection is the question was asked, is there anything more, anything new. And the response was, you know, essentially, no. [LR424]

SENATOR LATHROP: What was your involvement in this meeting? You hadn't read the case. The issue comes up. [LR424]

KATHY BLUM: Yeah. [LR424]

SENATOR LATHROP: Do you speak at all? [LR424]

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Transcriber's Office
Rough Draft

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

KATHY BLUM: I don't know that I spoke at all. I don't remember saying anything about anything at the meeting. [LR424]

SENATOR LATHROP: Did you appreciate, while you were sitting there, that the Supreme Court had given a direction that was different than the way Corrections had been calculating these sentences? [LR424]

KATHY BLUM: Oh, do I remember that specifically? [LR424]

SENATOR LATHROP: Not specifically, generally. [LR424]

KATHY BLUM: I remember having the impression that there was a question about whether or not we should be adhering to the Supreme Court ruling. [LR424]

SENATOR LATHROP: Okay. And by the time you leave, everybody says, no. Right? [LR424]

KATHY BLUM: What...that we hadn't... [LR424]

SENATOR LATHROP: Well, let's put it this way, by the time you leave after everybody talks about it--and there's four lawyers in the room--nothing changes. [LR424]

KATHY BLUM: That's true. [LR424]

SENATOR LATHROP: The minutes, if you will, from this meeting--and they're in front of you--it says, the Nebraska Supreme Court affirmed the district court's decision. However, the Supreme Court has made an assumption of how DCS is calculating sentences on the maximum term when there is a mandatory minimum issue. Our current practice is different than the court's assumption. Assumption may be a bad use

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

or a bad word. It would be the holding of the court, right? We need to clarify exactly what the Supreme Court's intention is before this...before we, as a department, act. Did you hear a conversation about, we need to clarify what the Supreme Court means, exactly, or their intention is before we, as a department, act? What was the discussion where that ended up in the minutes? [LR424]

KATHY BLUM: I don't...I just don't remember the specific... [LR424]

SENATOR LATHROP: Then let me ask you, from lawyer to lawyer,... [LR424]

KATHY BLUM: Yeah. [LR424]

SENATOR LATHROP: ...isn't that absurd? You can't get a rehearing eight months later, right? [LR424]

KATHY BLUM: Correct. [LR424]

SENATOR LATHROP: You're not going to get an advisory Opinion out of the Supreme Court, right? [LR424]

KATHY BLUM: Right. [LR424]

SENATOR LATHROP: They're not going...you can't walk down to the Supreme Court and ask one or all the judges what they meant by something, right? So what clarification, if you know, were they referring to when they said, we need to clarify exactly what the Supreme Court's intention is? [LR424]

KATHY BLUM: I don't know what that is trying to capture. I just...I do recall, it was a brief discussion about the case, it wasn't a lot of detail. And I had the impression that there were going to be discussions, I assumed, with perhaps the Attorney General's

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

Office. I mean, it's just...it was just the impression I had. [LR424]

SENATOR LATHROP: Okay. [LR424]

KATHY BLUM: I don't know that that was said, specifically. But that's just how I put the conversation together. [LR424]

SENATOR LATHROP: Well, let me...yeah, I want to make sure we're not, with that general statement, passing the buck. Okay? [LR424]

KATHY BLUM: Yeah. [LR424]

SENATOR LATHROP: Do you remember anybody saying after that or even during the meeting, that we need to bring in Jon Bruning... [LR424]

KATHY BLUM: No. [LR424]

SENATOR LATHROP: ...or somebody from his office? [LR424]

KATHY BLUM: No. [LR424]

SENATOR LATHROP: Okay. So, you might have wondered perhaps but no one said, we got to have the AG's Office help us out on this one? [LR424]

KATHY BLUM: I don't remember anyone specifically saying that, no. [LR424]

SENATOR LATHROP: Okay. The conclusion is, we've been performing the calculations our current way for years. We are now aware of the situation--meaning there's a disparity between the way they're doing it and the Supreme Court's Opinion--and we will act when we are specifically told our current way is wrong and it needs to be changed.

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

Yeah, you're making a face like it's pretty hard to believe somebody would say that. Or a room with four lawyers would say we need to...we're going to keep doing what we're doing until somebody tells us specifically we're doing it wrong. [LR424]

KATHY BLUM: Yes. And I don't remember anyone saying that, specifically. You know, I don't know if this didn't quite accurately capture what was said. That might be part of it. [LR424]

SENATOR LATHROP: You don't know if it did or didn't? [LR424]

KATHY BLUM: I don't remember anyone saying those words. [LR424]

SENATOR LATHROP: Then tell us, what do you remember about the logic employed by a group of people in Corrections, including four lawyers, where they were going to ignore the holding in Castillas? [LR424]

KATHY BLUM: My impress...yeah. [LR424]

SENATOR LATHROP: What was the rationale for ignoring the court's guidance and interpretation of the statutes in that meeting? [LR424]

KATHY BLUM: I think it was whether or not it applied to us. [LR424]

SENATOR LATHROP: You're the second one to bring that up today. [LR424]

KATHY BLUM: I know. [LR424]

SENATOR LATHROP: And I'm going to tell you, this is the problem I have with that. And not to quarrel with witnesses, I know you didn't come here to quarrel with me. But when somebody says, I'm not sure it applied to us, my...I'm thinking, let's see, it is an

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

Opinion about how to interpret the parole eligibility date and the mandatory release date of someone sentenced to Corrections. [LR424]

KATHY BLUM: Um-hum. [LR424]

SENATOR LATHROP: If it didn't apply to Corrections, who else would it apply to? [LR424]

KATHY BLUM: I...no one. [LR424]

SENATOR LATHROP: It just did. I mean, when they interpret a statute and say, this is what it means, then everybody in the state has to accept that until there's a different pronouncement by the Supreme Court or the Legislature changes the law. Would you agree with that? [LR424]

KATHY BLUM: I agree. [LR424]

SENATOR LATHROP: Do you remember anybody talking about overcrowding at that meeting? [LR424]

KATHY BLUM: No. [LR424]

SENATOR LATHROP: You have no recollection of anybody saying, we're going to keep doing this because, you know, what's his name wants us to keep getting people out of here. [LR424]

KATHY BLUM: I don't believe anyone said that. I don't remember anyone saying anything like that. [LR424]

SENATOR LATHROP: You don't know that people...other people in the meeting hadn't

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

talked to the director before they came in the meeting, got their marching orders?
[LR424]

KATHY BLUM: True. [LR424]

SENATOR LATHROP: Okay. And if they did, they didn't talk about it. After they came to this conclusion and said, okay, we're not going to do what the Supreme Court said in terms of calculating these release dates, did you get an uneasy feeling as a lawyer? You remember that? [LR424]

KATHY BLUM: Yes. [LR424]

SENATOR LATHROP: Tell us how you felt after you realized that the group...I assume there wasn't a vote, right? [LR424]

KATHY BLUM: No, there wasn't a vote. [LR424]

SENATOR LATHROP: So somebody is running the show. Who's running the show during this meeting? [LR424]

KATHY BLUM: The records staff would bring up a topic. [LR424]

SENATOR LATHROP: Okay. And did Mr. Green speak at this thing and sort of say, I know there is some question about this and there's some dilemma for Corrections? We're going to keep doing what we're doing. Is that how it went down? [LR424]

KATHY BLUM: I just don't remember that. I don't remember those specific statements. I...my impression was, there would be more... [LR424]

SENATOR LATHROP: What I...okay, go ahead. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

KATHY BLUM: ...inquiry into it and more discussion on it. That's what I walked away with, not that it was settled and done. [LR424]

SENATOR LATHROP: Well, this sounds like it's settled and done. Whoever took the notes here, which apparently was maybe Nikki Peterson... [LR424]

KATHY BLUM: Yes. [LR424]

SENATOR LATHROP: Nikki Peterson, who was there, thought, we will act when we are specifically told our current way is wrong and needs to be changed. Well, I asked you if you felt troubled by that, as a lawyer. There was no vote, so you just didn't speak? [LR424]

KATHY BLUM: Correct. [LR424]

SENATOR LATHROP: And you would agree that that wasn't optional at that point, that the department should have followed the Opinion of Castillas? [LR424]

KATHY BLUM: Yes, I think they should have. [LR424]

SENATOR LATHROP: Did any of the lawyers speak in that meeting? I get that you didn't, but did anybody else? [LR424]

KATHY BLUM: I remember George talking. [LR424]

SENATOR LATHROP: Okay. And did he participate in the decision to leave things the way they were? [LR424]

KATHY BLUM: I remember an exchange between he and, I think, Kyle. And the

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

discussion was, again, whether or not we had had any more information and the gist of his response was that we did not have any further information or further guidance on the issue. [LR424]

SENATOR LATHROP: Okay. So you've been practicing law for or working over there for how long? [LR424]

KATHY BLUM: Well, since '97. [LR424]

SENATOR LATHROP: Since 1997. So you have six years of experience at the time this happens? No, more than that, 16. [LR424]

KATHY BLUM: More than that. Yeah, 16. Yeah. [LR424]

SENATOR LATHROP: I cut out a decade. [LR424]

KATHY BLUM: Yeah. [LR424]

SENATOR LATHROP: That's...see, when I look at that as a lawyer...I'm just going to tell you, when I look at that, I'm thinking somebody wrote something down that makes absolutely no sense. To say that we're looking for further guidance from the court makes no sense to me at all. It's like, we got to think of something because something else is driving the bus. Something else is driving this decision... [LR424]

KATHY BLUM: I didn't take... [LR424]

SENATOR LATHROP: ...but we can't put it down on paper. We've got to say it's something else, so we're going to say we're waiting for more guidance. And I...the place is at 155 percent of capacity and no one talks about it? [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

KATHY BLUM: No one talked about overcrowding in relation to this or... [LR424]

SENATOR LATHROP: Maybe...I mean, honestly, you think they were going to though? Who's going to walk into the meeting and say, you know what? We're in a hell of a mess with this overcrowding, leave things the way they are. They're probably going to come in and say, you know what? We're going to wait for further guidance from the Supreme Court. [LR424]

KATHY BLUM: I took it as further guidance from the AG's Office. I didn't take it as further guidance from the court. That was just my interpretation of the discussion. And I don't think anyone would have intentionally violated what the Supreme Court said in order to get inmates out of prison. I just...I don't think that would have been happening. [LR424]

SENATOR LATHROP: Well, there's four lawyers in the room... [LR424]

KATHY BLUM: Um-hum. [LR424]

SENATOR LATHROP: ...and no one said, stop, hang on a minute. I remember this from freshman year when I took constitutional law from professor whoever it was. You know what? When the Supreme Court tells us what the law is, that's what it is. What's the question here? How it became a dilemma is what I'm struggling with. And as a dilemma, how it got decided that we're going to come down on the side of doing what we're doing and ignoring an Opinion. That's the part I'm really, really struggling with. And I know you probably regret not speaking up and going, wait a minute, guys. [LR424]

KATHY BLUM: I do, yeah. I wish I'd asked more questions, yep, any question. [LR424]

SENATOR LATHROP: I see the list of people that were there. Was that the full list or was anybody else in the room that we don't see on this list, like was Bob Houston there,

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Transcriber's Office
Rough Draft

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

for example? [LR424]

KATHY BLUM: Bob Houston wasn't there. [LR424]

SENATOR LATHROP: Anybody else there that wasn't on that list? [LR424]

KATHY BLUM: This is the list. [LR424]

SENATOR LATHROP: Did you have any more involvement with this issue? Anybody come to you, talk to you, overhear anything, get e-mails, memos, anything like that? Or were you there for one meeting and that was it? [LR424]

KATHY BLUM: Not until the World-Herald story. [LR424]

SENATOR LATHROP: Okay. Well, after the World-Herald broke the story, we change everything, right? [LR424]

KATHY BLUM: Yes. [LR424]

SENATOR LATHROP: Whatever guidance we were waiting on is here, right? [LR424]

KATHY BLUM: Yes. [LR424]

SENATOR LATHROP: Yes. The World-Herald breaks the story and now we're not waiting on more guidance. We're ready to do what the court said in Castillas. And there's no more debate about it either. [LR424]

KATHY BLUM: True. [LR424]

SENATOR LATHROP: Suddenly, we know what the right thing to do is and we start

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

doing it. [LR424]

KATHY BLUM: Yes. [LR424]

SENATOR LATHROP: We also have a director involved, right? Director Kenney gets involved in this after the World-Herald story? [LR424]

KATHY BLUM: Yes. [LR424]

SENATOR LATHROP: Did you see either Director Houston or Director Kenney involved in the issue of calculating good time for people doing mandatory sentences before the World-Herald broke the story? [LR424]

KATHY BLUM: No. [LR424]

SENATOR LATHROP: Okay. That's all I have. Senator Seiler. [LR424]

SENATOR SEILER: I couldn't figure out why you'd be there based on your background. And then I flipped the page--and if you'll flip it to 177--there was a good time case and it involved 28 sex offenders. Were you there for that meeting for that purpose? [LR424]

KATHY BLUM: I don't...not specifically. No, I mean, I was... [LR424]

SENATOR SEILER: The George Shepard case? [LR424]

KATHY BLUM: No. I mean I wasn't...no. [LR424]

SENATOR SEILER: Oh, okay. [LR424]

KATHY BLUM: No, I was just invited to the meeting and I went. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SENATOR SEILER: I thought maybe you were there for that good time case. [LR424]

KATHY BLUM: No. [LR424]

SENATOR SEILER: Okay. That's all I had. [LR424]

SENATOR LATHROP: Senator Krist. [LR424]

SENATOR KRIST: Hi. Thanks for coming. The question is kind of twofold. The first one is, very bluntly, had you been before this hearing or are you now concerned about your future with the Department of Corrections, based upon your testimony or your involvement? [LR424]

KATHY BLUM: No, not based upon my testimony. [LR424]

SENATOR KRIST: Okay. [LR424]

KATHY BLUM: I was concerned about my future, you know, when all this blew up, but. [LR424]

SENATOR KRIST: Okay. And how did you resolve that, yourself or they asked you to stay on or it's a matter of making other decisions or...? [LR424]

KATHY BLUM: Well, it's been in the paper that I was disciplined. [LR424]

SENATOR KRIST: Okay. The second part of it is...and I appreciate your honesty. The second part of that is my second question. We've heard a couple of times from different testifiers that it's frowned upon or it was discouraged to get AG Opinions. You obviously were in the legal department. Was it frowned upon to get an Attorney General's Opinion

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

or...and I guess more precisely what I'd like you to talk to is, this is a big deal. And we knew, Poppert knew that this was going on back and forth, back and forth and there was an AG involved--as Senator Schumacher brought up very clearly--who gave an Opinion and then back to the department. Yet nobody in your legal department, you never had a conversation that we needed to go back to the AG and ask for direction or an Opinion? [LR424]

KATHY BLUM: No. I never was in on a conversation like that. [LR424]

SENATOR KRIST: Was that conversation going on? [LR424]

KATHY BLUM: Not that I'm aware of. [LR424]

SENATOR KRIST: Okay. Was it discouraged to get legal opinions or Opinions from the Attorney General? [LR424]

KATHY BLUM: Discouraged? I think we wanted to be discriminating about when we asked for AG Opinions. [LR424]

SENATOR KRIST: Okay. And after this all broke and we realized the complexity or the scope of this problem, did anyone talk about what did the AG really mean? I mean, we talked about what the Supreme Court really meant--which I think Senator Lathrop has talked to as being absurd--but what did the AG really mean? Shouldn't we go back and look at this again? [LR424]

KATHY BLUM: I wasn't in on any conversations about it. [LR424]

SENATOR KRIST: Okay. Thank you. [LR424]

SENATOR LATHROP: Senator Chambers. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SENATOR CHAMBERS: I'm troubled by what I'm hearing from people who know what a Supreme Court decision means. As yet, you haven't read the Castillas case, is that correct? [LR424]

KATHY BLUM: That's true. [LR424]

SENATOR CHAMBERS: You have read other Supreme Court decisions, though, and the Opinions supporting them? [LR424]

KATHY BLUM: Yes. [LR424]

SENATOR CHAMBERS: You know what a syllabus is that a court utilizes at the beginning of a decision, correct? [LR424]

KATHY BLUM: Yes. [LR424]

SENATOR CHAMBERS: And for those who may read what we're talking about but may not know, the court will lay out, in a sentence or two, each of the main points that will be considered in their Opinion that they're writing. And if there are any points of law that are to be addressed, there will be a statement of what that point of law is. For example, it's the duty of an appellate court, on a question of law, to make an independent decision without regard to what the lower court decided, and things like that. The court will always put that in and give guidance as to what the Opinion is about. Then in the body of the Opinion, it discusses what it is saying and why it is saying it and will even cite to other of its own previous decisions or decisions from other jurisdictions. Is that correct? [LR424]

KATHY BLUM: Yes. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SENATOR CHAMBERS: Well, what is the meaning of clarifying what the court's intention is when the Opinion states clearly what the court's intention is? And in a sense, you can say that the intention of the court--if you wanted in a brief statement form--is to go to the holding or the decision. The Opinion is the discussion that the court gives. The decision is how it rules or decides or holds on that case. So if a person wants to know the holding in a case or a decision, they can go to the last page and read what the court decision is. Anybody who can read and has read a case, even without law school training, can read a court Opinion and understand the arguments the court lays out and then see what its decision is. I don't see how in the world somebody can tell me and expect me to believe it, that four lawyers are in a room and this kind of conversation can go on and not one of them says anything. And their purpose is to represent that agency. They are bound by the code of professional responsibility. And I probably know that better than any person in this state, including the judges. I read it constantly. And lawyers know or should know and they're held to knowing what that code says. There are responsibilities that rest upon public lawyers that set a higher standard than a lawyer in private practice because there's a special trust reposed in those lawyers. And it's like the trust where you have the beneficiaries and the state, the public, they are the beneficiaries and a high duty is owed to them. And if a lawyer allows the interests of the beneficiary to be compromised, then the lawyer is culpable. You could have told them what the court's intention is without reading the case. And if you didn't know the holding of the case you can say, just look at the decision of the court and there you'll find the intention. There is no need for any clarification. And when the court rules and the argument or the question is going to be raised in such a way that this statement can be made, when we are specifically told our current way is wrong and it needs to be changed, that's what the Castillas court said. What you have done is wrong. And if you do it again, it's wrong again. It's wrong again and if you're responsible and ethical, you will change it now that you have been warned. And for a lawyer to sit in the presence of this kind of discussion boggles my mind. But everybody conducts their business the way they think they should. Here's what I want to ask you, and the chairman touched on it. Do you believe that when the Supreme Court hands down a decision dealing

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

specifically with a specific activity of the Department of Corrections, that that decision by the court applies to the Department of Corrections? [LR424]

KATHY BLUM: Yes. [LR424]

SENATOR CHAMBERS: How much more strongly could it be said? I don't know. Are you aware, of your own knowledge, that Mr. Green had indicated that that Castillas decision does not apply to the Department of Corrections because the Department of Corrections was not a party to the action in which that decision was handed down? Do you know that Mr. Green said that? [LR424]

KATHY BLUM: No. [LR424]

SENATOR CHAMBERS: You heard that he said it, just like I have. I was wondering if you had heard him say that yourself. [LR424]

KATHY BLUM: I didn't hear him say that myself. I don't remember that. [LR424]

SENATOR CHAMBERS: And you certainly wouldn't ever say anything like that... [LR424]

KATHY BLUM: No. [LR424]

SENATOR CHAMBERS: ...that a case doesn't apply to the Department of Corrections because the Department of Corrections was not named as a party? [LR424]

KATHY BLUM: Not if it's broad language as it is in Castillas. [LR424]

SENATOR CHAMBERS: Right. And it's dealing, obviously, with only something that only the Department of Corrections is involved in. Well, let me ask this. If Mr. Green said

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

such a thing, if that was the attitude in the department--and apparently it was because they ignored what the court said--where would they go to find out what the department is required to do? If there's a Supreme Court decision that laid it out and they reject that, where else can they go to make a determination? [LR424]

KATHY BLUM: And they being...where else could the... [LR424]

SENATOR CHAMBERS: The Department of Corrections and all those officials over there who ignored this from the director on down. [LR424]

KATHY BLUM: I don't know if I... [LR424]

SENATOR CHAMBERS: There's no place else they can go, is there? They couldn't figure it out from looking at the law. They couldn't figure it out from reading Mr. Riethmuller's memo because it didn't deal with the mandatory release date. And they couldn't figure it out. But the one definitive statement made by the entity under the constitution authorized to do such a thing, made that definitive statement and the department ignored it. Do you feel somewhat unfulfilled that a mere article by a newspaper brought a more expeditious response than an Opinion and decision by the Nebraska Supreme Court? Does that embarrass you as a lawyer connected with that entity? You work for them, they hired you, you're supposed to give them legal advice. You didn't give them proper legal advice. Were you embarrassed that a newspaper was given more consideration than anything you may have said? [LR424]

KATHY BLUM: I think embarrassed is a fair word, yeah. [LR424]

SENATOR CHAMBERS: And anybody in the public would be justified in condemning every lawyer associated with the Department of Corrections. And I want to say those things so that you all will hear them because others won't say it. But inside, you know it. You...did you read or study any history while you were taking your undergraduate work?

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

[LR424]

KATHY BLUM: No. [LR424]

SENATOR CHAMBERS: You didn't read any history? Do you know there is such a thing as history, as a subject? Are you aware that a contemporaneous memorialization of something is given more credence than something a person says ten years down the line based on memory? [LR424]

KATHY BLUM: Yes. [LR424]

SENATOR CHAMBERS: Something written at the time is given more credibility. [LR424]

KATHY BLUM: Yes. [LR424]

SENATOR CHAMBERS: And if there's no reason that can be shown that would lead a person to say that what was written is untrue, the one who wrote it had a bad motive, there's no reason to challenge its credibility. So I take what was written in the minutes as being more reliable than what you may remember or anybody else may remember or fail to remember in terms of what went on there. Minutes of meetings are often introduced in court proceedings and other places for whatever value they have. And if anybody is going to attack them, they have to come up with something other than, well, I don't believe that. So here's what I will ask you. Do you know this lady named Nikki Peterson? [LR424]

KATHY BLUM: I know her. [LR424]

SENATOR CHAMBERS: Is she credible, as far as you know? [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

KATHY BLUM: I've met her a couple times. As far as I know, yes. I have no reason to think she's not. [LR424]

SENATOR CHAMBERS: Do you think there would be any reason for her to falsify statements about what took place at that meeting? [LR424]

KATHY BLUM: No. [LR424]

SENATOR CHAMBERS: She might...she wouldn't even have any way of knowing--unless she's a fortune teller--that the World-Herald was going to embarrass the Department of Corrections and these things that they were discussing at that meeting would come back to haunt them. She couldn't have known that, so she's just writing down what people are saying. One thing that's missing, and the Chair has brought it up. And in court Opinions there's a lot of repetition. Courts will repeat in Opinions. If you go to church, they repeat the same thing every Sunday in the sermon, at least when I used to go many years ago, that's what they did. So repetition is not something that lawyers are unfamiliar with. This sentence, we are now aware of this situation from Castillas on how to do this calculating. We will act when we are specifically told our current way is wrong, which the court told them in that case, and it needs to be changed. And the Castillas case was mentioned specifically. And all of these people who were here whose names I recognize ought to know that that decision was binding. I know that George Green is a lawyer. I know Sharon Lindgren is a lawyer. And you're Ms. Blum, okay, I know you're a lawyer now because you say so. Is anybody else on this list a lawyer that you're aware of, because somebody said four lawyers were there? [LR424]

KATHY BLUM: Well, Jeff Beaty is a lawyer but he's not practicing law. [LR424]

SENATOR CHAMBERS: Is he a member of the bar association? [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

KATHY BLUM: I believe he's inactive. [LR424]

SENATOR CHAMBERS: But he does belong...he has a license, in other words, to practice. [LR424]

KATHY BLUM: He has had. [LR424]

SENATOR CHAMBERS: He's a lawyer based on having paid dues and is doing all that you need to be a lawyer as far as you know? [LR424]

KATHY BLUM: I'm not sure what his status is now. [LR424]

SENATOR CHAMBERS: For this case to have been mentioned--and by the way, I'm known to be a very mean fellow--for this case to have been mentioned, somebody discussed it. And there was more than one sentence stated. I believe there was a discussion because they talk about being aware of the situation that that case dealt with. So the lawyers, I'm saying, discussed that case and decided that despite what the court said, they're not going to recommend that any changes be made, that what they're doing is contrary to what the court said. They're aware that what they're doing is contrary to what the court said. And their advice is, don't change anything. Nobody's going to catch you anyway. Who's going to complain? Not the inmates. Who's even going to know? So then, they all sat back and said, this is what we'll do. What I would like to know, because I wasn't here when you first started speaking, is my understanding correct in that you had nothing to do with calculating anybody's time, their... [LR424]

KATHY BLUM: That's correct. [LR424]

SENATOR CHAMBERS: ...parole eligibility date or their mandatory discharge date? You did none of those calculations? [LR424]

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Transcriber's Office
Rough Draft

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

KATHY BLUM: I did not. [LR424]

SENATOR CHAMBERS: And you were at this meeting only because you're a member of the legal team at the pen? [LR424]

KATHY BLUM: Yes. [LR424]

SENATOR CHAMBERS: Okay. Did you wonder why you would be invited to such a meeting or when meetings are called you just go? [LR424]

KATHY BLUM: I thought I was there to be aware of what records was dealing with. [LR424]

SENATOR CHAMBERS: And you didn't feel any discomfort about the discussion that was had or the conclusion that was reached, that they should continue to do what they're doing, even though it's contrary to what the court said? You didn't feel any discomfort about that? [LR424]

KATHY BLUM: I had a little discomfort about that... [LR424]

SENATOR CHAMBERS: But not enough to say anything. [LR424]

KAREN BLUM: ...but I didn't speak up. [LR424]

SENATOR CHAMBERS: Did you discuss it with anybody away from the meeting? [LR424]

KATHY BLUM: After the fact, no. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SENATOR CHAMBERS: Do you wish you had? [LR424]

KATHY BLUM: Yes. [LR424]

SENATOR CHAMBERS: They say that we will regret in our older years--you don't know anything about this, you're too young--we'll regret in our older years, not so much what we did, but what we failed to do that we should have done. That's all I have. Thank you. [LR424]

SENATOR LATHROP: I think that's it. I do have a couple of things. Did you bring any documents with you in response to the subpoena? It was a subpoena duces tecum. [LR424]

KATHY BLUM: I brought some e-mails that were on my desktop. [LR424]

SENATOR LATHROP: Okay. We're going to have you... [LR424]

KATHY BLUM: I have some on the Lohman... [LR424]

SENATOR LATHROP: ...deliver those. [LR424]

KATHY BLUM: and the e-mail from Freudenberg. I just brought one set. [LR424]

SENATOR LATHROP: That's fine. And are any of these documents, while you're going through that, Ms. Blum, are any of these documents, like, handwritten notes of meetings that we've talked about today? [LR424]

KATHY BLUM: No. [LR424]

SENATOR LATHROP: You didn't keep your own record of it or a diary or anything like

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

that? [LR424]

KATHY BLUM: No. [LR424]

SENATOR LATHROP: Okay. [LR424]

KATHY BLUM: And then I have the meeting minutes, but you already have those. The October... [LR424]

SENATOR LATHROP: Is that the document that is page 177 and 178? [LR424]

KATHY BLUM: Yes. [LR424]

SENATOR LATHROP: Okay. We already have that. [LR424]

KATHY BLUM: So then that's all I would have. [LR424]

SENATOR LATHROP: Okay. Thank you. Do you intend to appeal your personnel...your discipline? [LR424]

KATHY BLUM: I don't intend to. [LR424]

SENATOR LATHROP: Okay. [LR424]

SENATOR CHAMBERS: May I ask a question? [LR424]

SENATOR LATHROP: Certainly. [LR424]

SENATOR CHAMBERS: Excuse me. Ms. Blum, were you disciplined in connection with this? [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

KATHY BLUM: Yes. [LR424]

SENATOR CHAMBERS: What was your discipline? What did they do? [LR424]

KATHY BLUM: I had one day suspension. [LR424]

SENATOR CHAMBERS: And what did they say was the reason for it, that you're low person on the totem pole, you're expendable, and the blame can be shifted to you and you will not say anything? [LR424]

KATHY BLUM: Actually...well, I should have read the Castillas case when I got it from Freudenberg. And I should have questioned the discussion about Castillas at the meeting. [LR424]

SENATOR CHAMBERS: If it's...what did you not do that you should have done? [LR424]

KATHY BLUM: I should have questioned the discussion at the October meeting. [LR424]

SENATOR CHAMBERS: And they disciplined you for not questioning that? [LR424]

KATHY BLUM: Yes. [LR424]

SENATOR CHAMBERS: Thank you. [LR424]

SENATOR LATHROP: One more question. Do you think that not...trying to...Senator Seiler is a former deputy attorney general and we've been kind of having side discussions here as the day has gone on and over lunch. And I'm wondering if the state

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

would be better served--or if you have an opinion about this--if the state would be better served if people who work in the agencies, lawyers that work in the agencies, are attached to the Attorney General's Office and not to the agency. So do you have an opinion about that? In other words, would you have felt more comfortable saying, wait a minute, Corrections guys. First of all, I don't answer to you. And I'm going to tell you, this shouldn't be going on. Does it inhibit your ability to provide legal advice and to give instruction to the agency that you're attached to because you are an employee of that same agency as opposed to being an employee of the Attorney General's Office and assigned to do the work you do? [LR424]

KATHY BLUM: Yeah, I think that's been done with some agencies. I think... [LR424]

SENATOR LATHROP: Do you think it's advisable? [LR424]

KATHY BLUM: I don't know how that works. [LR424]

SENATOR LATHROP: Okay, that's fair. [LR424]

KATHY BLUM: I don't...I just...I don't know enough about that setup. [LR424]

SENATOR LATHROP: That's fair. Do you feel like you would have spoken up if you didn't work for everybody that was in the room? In other words, if you would have been attached to the Attorney General's Office or employed by the Attorney General's Office and attached to Corrections, would you have spoken up? [LR424]

KATHY BLUM: I feel like I would have spoken up had I read the case. I think that's... [LR424]

SENATOR LATHROP: That's the issue. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

KATHY BLUM: That was my issue. [LR424]

SENATOR LATHROP: Okay. [LR424]

KATHY BLUM: I don't have any qualms about speaking up. And I think... [LR424]

SENATOR LATHROP: You just weren't informed. [LR424]

KATHY BLUM: I wasn't. [LR424]

SENATOR LATHROP: Okay. Senator Chambers has another question. [LR424]

SENATOR CHAMBERS: Just who imposed the discipline? [LR424]

KATHY BLUM: The director. [LR424]

SENATOR CHAMBERS: And does that director have a name? [LR424]

KATHY BLUM: Mike Kenney. [LR424]

SENATOR CHAMBERS: Thank you. And I'm going to wait till she leaves the seat before the next person comes up before I make a comment. [LR424]

SENATOR LATHROP: Okay. Does anybody have any further questions? I see none. Thank you for waiting today and your appearance and your testimony. [LR424]

KATHY BLUM: Thank you. [LR424]

SENATOR CHAMBERS: I have a daughter. I have innumerable nieces. I had three sisters. I have female cousins, my mother, my grandmother, who are women. And when

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

I see a coward like Mike Kenney take out after a woman, I have absolute and utter contempt for him. He is unworthy to hold that position. And if you all would have listened to me when his confirmation came before the Legislature, we wouldn't have some of this mess that we're dealing with now. But how can you expect a woman to stand up when we know how women are mistreated in this society, when the senators who make the law are afraid to vote against a confirmation, afraid to vote against it because they got burned on a previous vote. And we expect people who are totally vulnerable can be retaliated against, can be deprived of their living, will not stand up against all of these odds when standing up won't do anything other than result in bad consequences. I told you all, and I want it in the record again because somebody might read this who won't read the debate, that the Governor had appointed Mike Kenney as interim director. He could have let him remain interim director and keep his job. The Governor's term was over, he couldn't run again, and there would be a new Governor. Let that Governor have a clear field to select his director in any way he chooses. And both have said that they are not opposed to conducting a national search. But my colleagues, my supine, spineless colleagues--oh, they all have a spine, but I could make better spines out of Jell-O--confirmed that man who had been connected with Corrections during every scandal that ever arose, high enough in the hierarchy to bear responsibility and culpability. And we let them escape by saying, well, I didn't know. That's deniability which is maintained consciously just for situations like this where he can say, I didn't know. And because those who write the ethical standards for lawyers know lawyers, they have a phraseology "know or should have known." And knowledge is attributed to a lawyer when he or she should have known. And a lawyer should have known when a competent lawyer would have examined the circumstances surrounding a case and arrived at an appropriate decision. And if the lawyer failed to do that, sometimes that is known as willful blindness, where you want to be in a position where you can deny responsibility. That's why I gave the analogy of the captain. If the captain is on the ship, the captain is responsible for everything that happens. But we're going to let Kenney get away. We're going to let Wayne get away. The Governor has gotten away already. He's so arrogant, he thinks he's going to walk into the presidency of the university. Maybe I

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

shouldn't say this right now because some of these people will think I'm so sympathetic to them because of their vulnerability that they should not be held accountable. Well, they should be held accountable. I know women who shoplifted because they had hungry children, literally. And some of them had to go to jail for it. They went to jail and they were more vulnerable than these people. So that culpability is there and they knew what they were doing and there are consequences that flow from actions that we shouldn't stop with these little people who have been thrown under the bus already. The Governor made a great show and I've got the article where he said, those responsible will be held accountable--and under his breath--except me. I, who bear responsibility based on the duty placed on me by the constitution. The Department of Corrections is one of those specifically named under the constitution as a part of that executive department. And he did not do what he should do. He appointed a man who he knew was unfit for the job. And I want Kenney to know that I have no respect for him whatsoever, not as a professional, not as a man. But if he committed murder, I wouldn't want him to get the death penalty and I'd fight harder than anybody to make sure he didn't get it. But short of that, he is totally and utterly worthless. I don't see how he can look at himself in the mirror, but he obviously can because he's never cut his throat while shaving. What kind of place is this, this Legislature, this government? What kind of people are we? And while judging...oh, I said I'd make a statement and that's all. And we do have other people to testify. [LR424]

SENATOR LATHROP: Right. [LR424]

SENATOR CHAMBERS: But see, at least I won't say that while somebody else is testifying. [LR424]

SENATOR LATHROP: All right. Before you sit down, we'll have you raise your right hand. Do you swear the testimony you're about to give this Legislative Special Investigative Committee will be the truth, the whole truth, and nothing but the truth? [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SHARON LINDGREN: I do. [LR424]

SENATOR LATHROP: All right, have a seat. We're glad you're having a good time. You might be the first witness today... [LR424]

SHARON LINDGREN: I'm not having a good time but when you sit down and the chair starts to fall over, you do have to react to it. No, I would prefer not to be here. [LR424]

SENATOR LATHROP: Okay. You're here with counsel today? [LR424]

SHARON LINDGREN: I am here with counsel. [LR424]

SENATOR LATHROP: And we'll have your counsel enter an appearance. [LR424]

PAT O'BRIEN: Thank you. My name is Pat O'Brien, representing Sharon Lindgren in this matter. I do have one matter I would like to have on record that Chairman Lathrop spoke to you about in here. I have, the last couple of days, graced the Chairman... [LR424]

SENATOR CHAMBERS: Excuse me one second. Could he sit and talk in a mike or something? I can barely hear him. [LR424]

SENATOR LATHROP: Yeah, if you wouldn't mind, Mr. O'Brien, so we can have your comments picked up on the record. [LR424]

PAT O'BRIEN: Yes. For the last couple of days, I've been talking to the Chairman of the committee about our concern with respect to the attorney-client privilege that is binding on attorneys under the ethical rules that Senator Chambers referred to earlier. And that is, that an attorney is duty bound to raise the attorney-client privilege if they're asked a

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

question concerning legal advice given to a client. Who the client is in the context of a publicly employed attorney is not an easy question to answer, and we've been struggling with that. However, I've been advised that the Attorney General's Office has sent an e-mail this afternoon which waives whatever attorney-client privilege the state may have in connection with these matters. And, therefore, we will proceed to testify without raising that issue before the committee. Thank you. [LR424]

SENATOR LATHROP: Very good. Would you recite your name for us and spell your last name? [LR424]

SHARON LINDGREN: My name is Sharon Lindgren. And I'm not a quiet woman, so you'll be able to hear me. [LR424]

SENATOR LATHROP: Okay. Spell your last name for us, please. [LR424]

SHARON LINDGREN: It's L-i-n-d-g-r-e-n. [LR424]

SENATOR LATHROP: Lindgren. [LR424]

SHARON LINDGREN: Lindgren; Swedish. [LR424]

SENATOR LATHROP: Okay. And you're from Lincoln? [LR424]

SHARON LINDGREN: I'm from Lincoln. [LR424]

SENATOR LATHROP: You are retired? [LR424]

SHARON LINDGREN: I am retired. [LR424]

SENATOR LATHROP: Is that the right term? [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SHARON LINDGREN: Correct. [LR424]

SENATOR LATHROP: Okay, from the Department of Corrections. You were a lawyer there? [LR424]

SHARON LINDGREN: That is correct. [LR424]

SENATOR LATHROP: Tell us when you first were admitted to practice law. Let's go back a ways. [LR424]

SHARON LINDGREN: That's a long ways. I graduated from the University of Nebraska College of Law in December of 1975 and was admitted to practice before the Federal District Court and the Nebraska Supreme Court in January of that year...of the next year, so 1976. [LR424]

SENATOR LATHROP: Okay. When did you take a job with the Department of Corrections? [LR424]

SHARON LINDGREN: I started on January 2, 2001. [LR424]

SENATOR LATHROP: What did you do before that? [LR424]

SHARON LINDGREN: I was in private practice for 9.5 years, and I had been in the Attorney General's Office for right at 13.5 years before that. I spent a year at the Department of Revenue. I spent a short period of time doing a study on the need for an affirmative action program for the state of Nebraska. In 1976, only those agencies who had federal funding had affirmative action programs. There was a question of expanding it to all of state government. I did some statistical studies for that. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SENATOR LATHROP: What did you do in the Attorney General's Office? [LR424]

SHARON LINDGREN: I started at the Nebraska Department of Roads. I spent 4.5 years there. Then I moved downtown. I started doing a variety of things at that point. We did more. Everyone did criminal appeals, everyone did habeas corpus. I did work for the department. I did personnel. There was an ongoing labor relations case that I took over. So it was an interesting mishmash of things. [LR424]

SENATOR LATHROP: You did that for 13.5 years? You were in private practice too? [LR424]

SHARON LINDGREN: I had one year that I took a leave of absence and ran the criminal clinic for the Nebraska College of Law out of the Lancaster County Attorney's Office. My last two years, as I know Senator Chambers knows, I also did death penalty. [LR424]

SENATOR LATHROP: Since 2001 and up to this spring? [LR424]

SHARON LINDGREN: It would have been this summer. [LR424]

SENATOR LATHROP: This summer? You were employed as legal counsel at the Department of Corrections? [LR424]

SHARON LINDGREN: I was an agency legal counsel II when I started and was III when I retired. [LR424]

SENATOR LATHROP: What's the significance of the II and the III? [LR424]

SHARON LINDGREN: Pay. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SENATOR LATHROP: Okay. What were your responsibilities? [LR424]

SHARON LINDGREN: It was a variety of things. I was the person who answered all inmate Step II grievances on behalf of the director. I reviewed all of the tort claims filed against the agency. I did the majority of the decisions in inmate appeals and disciplinary proceedings. Answered questions as necessary. Oh, I was the school attorney or school board attorney. I was involved in a ongoing, Fair Labor Standards Act audit of the department. Did personnel hearings, arbitrations in employee discipline matters. Little bit of everything. [LR424]

SENATOR LATHROP: It sounds like it. Did they try to--not pigeonhole--but did you try...did they try to have you take certain legal issues and make them part of your specialty in the Department of Corrections or was it kind of whoever had time would pick up the next labor case and contract and... [LR424]

SHARON LINDGREN: We had areas that were divided up. As Kathy indicated, she did the NEOC's. Kathy didn't like doing hearings litigation so George and I would split up, for example, the employee hearings. George would assign me those that he thought that he wanted me to do and then prepare that. So part of it was that. When I came into the department, I took over Step II grievances. And so we would receive those from the director's office. I would review them, do any research that I needed, prepare a response, and then that response would go to Frank Hopkins, one of the deputy directors, to be signed. [LR424]

SENATOR LATHROP: Okay. [LR424]

SHARON LINDGREN: And as I said, I did the tort claims. I would make the recommendations to the Claims Board. [LR424]

SENATOR LATHROP: Did you bring documents with you in response to a subpoena?

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

[LR424]

SHARON LINDGREN: I believe the only document I have is the statement of charges that was issued to me. I only have one. This is my original. I don't have easy access to a copier, so if I could get a copy I would sure appreciate it. [LR424]

SENATOR LATHROP: Okay. We'll try to have the...one of the pages make a copy and return the original to you. [LR424]

SHARON LINDGREN: It's greatly appreciated. [LR424]

SENATOR LATHROP: You've been here for a good part of the day; all of the afternoon. [LR424]

SHARON LINDGREN: I was here all of the afternoon and I did watch it on my computer at home in the morning. [LR424]

SENATOR LATHROP: Okay. So you're familiar with the fact that we're here today, while our committee is not focused entirely on this subject, today we have taken witness testimony and received exhibits regarding the calculation of good time for those who have a mandatory minimum sentence. [LR424]

SHARON LINDGREN: I'm fully aware of that. [LR424]

SENATOR LATHROP: Okay. Would you tell us, in the list of duties that you gave us, were you involved in helping craft policy or set policy for the Department of Corrections? [LR424]

SHARON LINDGREN: I would, at times, be called upon to draft what we call administrative regulations. I don't know that I have ever drafted or revised the

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

administrative regulation on the good time, the recordkeeping. An example of one that I did is when we switched from having Metro College provide the education programs and hire teachers. I did a lot of the research on how do you handle teachers because they are different than the rest of our employees. And I did draft the administrative regulation for that area, one of the things I have done. I did do some drafting on the LEVELS Program part of an administrative regulation. But it would be...I was on a committee looking at the LEVELS Program and it made sense for me to go ahead and prepare the draft and then have it reviewed by the other people. I do not implement. Any of our administrative regulations have to be reviewed by, usually, the deputy directors, other people, and signed off on by the director who is in power at that time. [LR424]

SENATOR LATHROP: Okay. Were you involved in any of the litigation that included where inmates are suing the Department of Corrections over the calculation of the time they have to spend behind... [LR424]

SHARON LINDGREN: When I was in the Attorney General's Office... [LR424]

SENATOR LATHROP: Wait a minute. Wait a minute. I'm going to admonish you as I did the other witnesses. [LR424]

SHARON LINDGREN: I know. [LR424]

SENATOR LATHROP: You got to let me finish... [LR424]

SHARON LINDGREN: I will. [LR424]

SENATOR LATHROP: ...so that we get a good record, if you don't mind. And I'll let you finish your question or your answer. The question is, were you involved in any of the litigation initiated by inmates or others, regarding the time an inmate spends in the Corrections system? [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SHARON LINDGREN: During my entire career or while I was employed by the department? [LR424]

SENATOR LATHROP: Well, let's say during your entire career. [LR424]

SHARON LINDGREN: There was a change in the good time law in 1982, '83, and that's when I went downtown and replaced an assistant attorney general who had been handling some good time cases. So I did handle some of them during that period of time. [LR424]

SENATOR LATHROP: How about at the Department of Corrections? [LR424]

SHARON LINDGREN: No. [LR424]

SENATOR LATHROP: Was...were those...was that litigation sent over to the Attorney General's Office? [LR424]

SHARON LINDGREN: Any litigation, the procedure is is that if someone in Corrections gets served with a summons and a copy of the complaint, what happens is that you go to either someone in the legal division or a specified person in the institution and they prepare a letter going to the Attorney General saying, I am requesting representation. [LR424]

SENATOR LATHROP: Okay. [LR424]

SHARON LINDGREN: And after that, we just have sort of side effects. Every now and then, I'd be asked to review, for example, some answers to interrogatories or an affidavit or, you know, is this the right person to do this? But active involvement in the litigation was rare. I did...at one point when the Attorney General's Office was overworked and

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

didn't have a full staff in our area, I was assigned to be a special assistant attorney general. I did do some litigation, but that's been a number of years ago. It did not involve good time calculations. [LR424]

SENATOR LATHROP: What's your first involvement, if at all...well, there's some. So I'm going to say, what's your first involvement with the issue that brings us here today, which is the calculation of the mandatory release date or the parole eligibility date for an inmate that's doing a sentence that includes a mandatory minimum? [LR424]

SHARON LINDGREN: I don't...I do not know that I had any involvement in the calculation of the mandatory or the parole eligibility date, as we call it,... [LR424]

SENATOR LATHROP: Okay. [LR424]

SHARON LINDGREN: ...in response to the Johnson decision, Johnson v. Kenney. My first involvement in Castillas would have been when Ms. Willard called. And I believe she testified today that she had tried to reach George. She then called me in order to say, have George contact me. [LR424]

SENATOR LATHROP: Okay. [LR424]

SHARON LINDGREN: I don't have a clear memory of what was said during that, but... [LR424]

SENATOR LATHROP: I want to talk about that, but I want to make sure that I understand that you had no involvement whatsoever in the calculation or giving advice to anybody relative to determining mandatory discharge dates for people with mandatory minimums before Castillas was decided. [LR424]

SHARON LINDGREN: I did not. The... [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SENATOR LATHROP: I'm trying to find a starting point for your testimony. [LR424]

SHARON LINDGREN: Yeah, see, the type of questions we would get more often than not from records would be from the Diagnostic and Evaluation Center, and it was usually Sheriff X just dropped off this person and I don't think that they qualify to stay here, you know. They would drop them off on a misdemeanor or some type of a sentence. We would get those types of calls, but how do you sit down and actually do the calculation, I don't have any clear memory of doing that. [LR424]

SENATOR LATHROP: Okay. So first involvement is a call from... [LR424]

SHARON LINDGREN: Ms. Willard. [LR424]

SENATOR LATHROP: ...Ms. Willard. Have you worked with Ms. Willard in the past? [LR424]

SHARON LINDGREN: Yeah. She was...she graduated from law school and had been a clerk at the Attorney General's Office in 1982 when I moved down to the downtown office from Roads. At that time, she was in a cubicle. Lynne Fritz had not left on her pregnancy leave. There was one open office, and at that time Linda and I shared an office until Lynne left and I moved into Lynne's office. [LR424]

SENATOR LATHROP: So you know her well. [LR424]

SHARON LINDGREN: Yeah. [LR424]

SENATOR LATHROP: And did you work with her as an attorney in Corrections? Did you work with her on some of the litigation that the AG was handling? [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SHARON LINDGREN: She would consult if there were questions that she needed answers to. It wasn't so much on the legal part of it. As I said, it would be more affidavits. Who can I contact on this? I'm not comfortable with this person. It was not the litigation itself. [LR424]

SENATOR LATHROP: Okay. And so you take a call from her right after Castillas is decided? [LR424]

SHARON LINDGREN: I did receive the call. I don't have a clear memory of it, but I'm not going to dispute that she called me. [LR424]

SENATOR LATHROP: Do you know if you had...do you regularly read the Advance Sheets? [LR424]

SHARON LINDGREN: I usually skim through them. [LR424]

SENATOR LATHROP: What are you looking for? I mean what makes you stop and read the Opinion? [LR424]

SHARON LINDGREN: It could be a variety of things. I still get... [LR424]

SENATOR LATHROP: Well, how about Castillas? Did you stop and read that? And... [LR424]

SHARON LINDGREN: I do not believe that I did. I do not believe that it caught my attention. And if you look at the headnotes by the Nebraska Supreme Court, it does not talk about calculation of mandatory good time. I have a Westlaw version here that is expanded, but I would have looked at it on the headnotes from the Supreme Court. And they just don't say anything that I think would have caught my attention. [LR424]

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Transcriber's Office
Rough Draft

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SENATOR LATHROP: Okay. So you think by the time Linda Willard called you the day of or the day after, whenever it was, that you had not read Castillas. [LR424]

SHARON LINDGREN: I had not. [LR424]

SENATOR LATHROP: So you couldn't have a conversation about it. [LR424]

SHARON LINDGREN: No. [LR424]

SENATOR LATHROP: All right. When she called, did she get you or voice mail or did you guys communicate? [LR424]

SHARON LINDGREN: She got me. [LR424]

SENATOR LATHROP: Okay. And do you know what the purpose of her call was or can you relate that to us, how that went? [LR424]

SHARON LINDGREN: My understanding is that her purpose was she had tried to call George Green and had not reached him and wanted someone to get George to call her, which is not unusual. [LR424]

SENATOR LATHROP: Did she tell you the subject matter? [LR424]

SHARON LINDGREN: I don't remember. But if she did, it was not enough to prompt me to read the case. [LR424]

SENATOR LATHROP: Which is a little bit different, but did she say, I need to talk to George about how you guys are calculating good time or something like that? [LR424]

SHARON LINDGREN: Something to that effect. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SENATOR LATHROP: Okay. [LR424]

SHARON LINDGREN: And there's some indication in some of the records that she may have said, I wouldn't have said something like that; and I said, no, you wouldn't have. And I presume that that's referring to she wouldn't advise ignoring a Nebraska Supreme Court decision. [LR424]

SENATOR LATHROP: That's about the third or fourth e-mail of the day where she says I talked to... [LR424]

SHARON LINDGREN: And see, I didn't see any of those e-mails so I didn't have the groundwork... [LR424]

SENATOR LATHROP: Okay. [LR424]

SHARON LINDGREN: ...because none of those e-mails came to me at all so I did not know what had been going on or what had been said before so that it would prompt me and go, oh my, you know, this is what's going on. I didn't know the history of what had been happening. [LR424]

SENATOR LATHROP: Okay. [LR424]

SHARON LINDGREN: And in fact, I didn't see those e-mails until we were reviewing the public records request for the World-Herald and the Journal Star because I was involved in just going through that part of it. [LR424]

SENATOR LATHROP: Okay. [LR424]

SHARON LINDGREN: And I'd pull up an e-mail and go, oh my. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SENATOR LATHROP: So you...the first contact is just I'm going to take a message and tell George to call you? [LR424]

SHARON LINDGREN: That would be normal. If Linda really wanted to get a hold of George and did not get a hold of him, it was not unlike her to call me and say, have George call me. [LR424]

SENATOR LATHROP: Okay. Is your office physically next to his? [LR424]

SHARON LINDGREN: Next to his, yes. [LR424]

SENATOR LATHROP: Okay. And he wouldn't have been around obviously or she would have gotten through. [LR424]

SHARON LINDGREN: He could have been on the phone. I don't remember the exact sequence or what was going on, but she wanted to talk to George. And... [LR424]

SENATOR LATHROP: Did she express any sense of urgency? [LR424]

SHARON LINDGREN: I don't think she would have called me unless there was some sense of urgency. I mean, she doesn't do this just because she wants to talk to George. And I think the record indicates that George subsequently talked to her and did some follow-up work of some sort. [LR424]

SENATOR LATHROP: Are you familiar with any of that follow-up? [LR424]

SHARON LINDGREN: No. [LR424]

SENATOR LATHROP: Were you called upon to or did anybody approach you by e-mail,

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

personally, or on the phone or otherwise to talk to you about how the Supreme Court had come down with a decision that was inconsistent with the practice in the Department of Corrections when it came to calculating the mandatory discharge date for people serving time with a mandatory minimum? [LR424]

SHARON LINDGREN: No. [LR424]

SENATOR LATHROP: Never did. [LR424]

SHARON LINDGREN: If they had, I would have...I mean, I viewed this as George was going to handle it. George is my supervisor. I maybe should have had a little bit more curiosity, but I didn't have anything to indicate the extent of what was going on. And so I figured George is going to handle this. I'm no longer involved. [LR424]

SENATOR LATHROP: Okay. At some point I trust that you read the Castillas case. [LR424]

SHARON LINDGREN: I read it on the night before the publication of the World-Herald article. [LR424]

SENATOR LATHROP: Did you know things were blowing up when you read it? [LR424]

SHARON LINDGREN: Basically two employees had gone to George's office. He was occupied. They came into my office. They handed me the case and said, can you review this? And I reviewed it. [LR424]

SENATOR LATHROP: Who were the two employees? [LR424]

SHARON LINDGREN: It was Dawn-Renee Smith and Mickie Baum. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SENATOR LATHROP: Dawn-Renee Smith is the communications person we were talking about earlier? [LR424]

SHARON LINDGREN: She's the public information officer for the department or was. I don't know what her status is now. [LR424]

SENATOR LATHROP: Are you in the same general vicinity as the director? [LR424]

SHARON LINDGREN: The director...it's a double-wide building so you have a main hall and you have two wings that go out in a Y. The director is at the far end of that wing and I'm in the middle of this wing. So it's the same floor, same area. [LR424]

SENATOR LATHROP: Yeah. You're generally bumping into each other. [LR424]

SHARON LINDGREN: Yeah. [LR424]

SENATOR LATHROP: Did you pick up from the fact that Dawn-Renee was asking you to review the case; that the World-Herald was on to this problem? [LR424]

SHARON LINDGREN: She told me that the World-Herald had called her, which would be normal. I think they were in a little bit of a panic. They wanted me to review the case. I reviewed the case and then I asked them, are you doing it this way? Are you following the case? [LR424]

SENATOR LATHROP: Dawn-Renee and Baum. [LR424]

SHARON LINDGREN: Um-hum, Mickie. [LR424]

SENATOR LATHROP: Mickie Baum. What's Mickie Baum's job? [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SHARON LINDGREN: She replaced Jeannene Douglass so she was the... [LR424]

SENATOR LATHROP: Was Douglass gone already? [LR424]

SHARON LINDGREN: Yeah. [LR424]

SENATOR LATHROP: Okay. So she's over there doing the calculation and doing it the old way, by the way. [LR424]

SHARON LINDGREN: Yes. And they... [LR424]

SENATOR LATHROP: And they come in, in a panic...they come in, in a panic and they say...is Green's door closed? Is that the problem? [LR424]

SHARON LINDGREN: No. I think his door was open. He might have been on the phone. I think they just wanted some opinion quickly. [LR424]

SENATOR LATHROP: Okay. So you read it and do they have a question for you? [LR424]

SHARON LINDGREN: I asked them, are you following the case? [LR424]

SENATOR LATHROP: And their answer? [LR424]

SHARON LINDGREN: No. [LR424]

SENATOR LATHROP: Did you ask them why? [LR424]

SHARON LINDGREN: I asked them why, yes, I did. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SENATOR LATHROP: What did they tell you? What's the date of this meeting? [LR424]

SHARON LINDGREN: I don't have the exact date on it, but if you look at the World-Herald... [LR424]

SENATOR LATHROP: Was it...it was this summer though. [LR424]

SHARON LINDGREN: Yeah, it was this summer. [LR424]

SENATOR LATHROP: June of 2014. [LR424]

SHARON LINDGREN: Yeah. [LR424]

SENATOR LATHROP: Well, okay. But I have you on a list of people showing up at an October 31, 2013. [LR424]

SHARON LINDGREN: I was at the October meeting too, and I, like Kathy, had not read the case. That meeting was a little odd. Kyle invited George. George then sent an e-mail--and I know about the e-mail by reviewing the e-mails for the public records request--asking Kathy and I if we wanted to go to it. [LR424]

SENATOR LATHROP: So there's an e-mail asking you and Kathy if you want to attend this? Is this the Sentence Review Committee meeting? [LR424]

SHARON LINDGREN: Yeah, from George. I saw it when I was going through the records. [LR424]

SENATOR LATHROP: Was that included in the stuff you brought today? [LR424]

SHARON LINDGREN: No, because it would be on my state computer and I don't have

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

access to my state computer. And it should have been part of the record. I remember seeing it. [LR424]

SENATOR LATHROP: So let's go back and have you tell me how this meeting was pulled together as best you understand it... [LR424]

SHARON LINDGREN: My memory... [LR424]

SENATOR LATHROP: ...because we didn't get copies of those e-mails; or if we did, they're buried in 70,000 pages of documents dropped off... [LR424]

SHARON LINDGREN: I, I... [LR424]

SENATOR LATHROP: ...that include a bunch of stuff that's nonresponsive, but go ahead. [LR424]

SHARON LINDGREN: I will...I...to respond to that, we were trying to...in reviewing the e-mails that were coming to the committee, there was an attempt within Corrections to go through and pull out the nonresponsive ones. I was in the process of doing it and then the process changed. [LR424]

SENATOR LATHROP: Okay. I got on a tangent and you followed me. I want to go back to... [LR424]

SHARON LINDGREN: Yeah. [LR424]

SENATOR LATHROP: ...how was this meeting on October 31, 2013, pulled together? [LR424]

SHARON LINDGREN: My memory of the e-mails I saw is that Kyle sent an invitation to

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

various people, including George Green. And that George Green then sent an e-mail to Kathy and I saying, do you want to go or would you like to go? That's my memory of the documents that I saw. [LR424]

SENATOR LATHROP: Did you respond? [LR424]

SHARON LINDGREN: Obviously I went. [LR424]

SENATOR LATHROP: Well, you went but you didn't e-mail him back and go, sure. [LR424]

SHARON LINDGREN: I don't think I e-mailed it back. [LR424]

SENATOR LATHROP: Did he suggest in his e-mail inviting you and Kathy that there was a purpose for having you there? [LR424]

SHARON LINDGREN: It was not unusual for George to be invited to a meeting and to include Kathy and/or I in those attending. [LR424]

SENATOR LATHROP: Okay. So do you know what the meeting is going to be about? [LR424]

SHARON LINDGREN: I knew it was going to be on records. [LR424]

SENATOR LATHROP: Okay. And by the time you attend this meeting and there's only one, right, October 31... [LR424]

SHARON LINDGREN: There's only one. [LR424]

SENATOR LATHROP: ...2013. By the time you attend that meeting, you've not read

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

Castillas. [LR424]

SHARON LINDGREN: I had not. Nor do I... [LR424]

SENATOR LATHROP: When you did read Castillas in your office, when those two came to you in a panic in June of 2014 and they had been contacted by the World-Herald, they wanted to talk to George Green, he's tied up, and they need a lawyer to say, what's this mean... [LR424]

SHARON LINDGREN: Um-hum. [LR424]

SENATOR LATHROP: ...you read it and it was obvious that the Supreme Court was giving direction that should have been followed by the Department of Corrections. [LR424]

SHARON LINDGREN: I told them that they should have been following it. [LR424]

SENATOR LATHROP: Did you appreciate that this was the same subject matter that was taken up at the meeting you attended October 31, 2013? [LR424]

SHARON LINDGREN: I don't know that I made that connection at that time. [LR424]

SENATOR LATHROP: Okay. Do you remember that meeting? [LR424]

SHARON LINDGREN: Not in great detail. [LR424]

SENATOR LATHROP: Do you remember generally the discussion on the Castillas case and the calculation of mandatory discharge? [LR424]

SHARON LINDGREN: I really don't. I have tried. And sometimes I think, oh, I'm getting

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

a memory back; but I don't know if it's a true memory or a false memory. And I'm reluctant to start saying this is what happened. I have...I don't believe that I ever saw the minutes of the meeting so that I could have said we need to have someone follow up or anything like that. Merely posting it on the Q drive does not mean that it's going to come to my attention. [LR424]

SENATOR LATHROP: Okay. But do you remember...I mean, here's a meeting. We have four lawyers, eight people sitting around a table and they bring up a case about how to properly calculate good time on the mandatory discharge end of it. And the conclusion is, we're not going to do it the way the Supreme Court says. Right? You're a lawyer. You've been practicing law... [LR424]

SHARON LINDGREN: I know. [LR424]

SENATOR LATHROP: ...since '75? [LR424]

SHARON LINDGREN: '76. [LR424]

SENATOR LATHROP: '76. That had to make the hair on the back of your neck stand up. [LR424]

SHARON LINDGREN: If that discussion occurred, I can assure you it would make the hair on the back of my neck stand up. I'm not sure how much the case was discussed. I mean once I read the case when asked to do so, I could clearly say this is a case that we should be following. [LR424]

SENATOR LATHROP: Okay. I bet that wasn't good news for the two people that were there in a panic. [LR424]

SHARON LINDGREN: It was not. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SENATOR LATHROP: Going back to the October 31, 2013, meeting, you can't say that something happened or that it didn't happen there. You just don't have a recollection. [LR424]

SHARON LINDGREN: What's really odd is I remember a different part of the meeting which tends to lead me thinking that whatever was discussed was not discussed in great detail. There was a discussion towards the end about how records would be informed of Supreme Court decisions, Court of Appeals decisions. And it was sort of, well, they can just sort of figure out how to do it. And after that, I became more diligent in going through and reading the Advance Sheets, the new decisions when they came out. And if I saw something that seemed to apply to them, although I wasn't directed to do this, I would go ahead and copy it and send them a copy of the decision, e-mail them a copy. I don't know if they appreciated that or understood. One that I remember fairly recently is that there was an error made by the court in jail time credit. And they just went ahead and changed the amount of the jail time credit so that it would not go back to the district court and the department would not have gotten another commitment order or sentencing order. And I sent that to them and said, you know, once the mandate issues, you're going to have to check that. I'm not going to. You're going to have to make this change. I tried to do things like that. That's what's so odd is I remember that from the meeting because I took action. Also if you look at the minutes, there's one thing that Sharon will follow up on, and I did follow up on that. [LR424]

SENATOR LATHROP: Okay. But when I...we had Kathy... [LR424]

SHARON LINDGREN: Kathy Blum. [LR424]

SENATOR LATHROP: ...Blum testify, and she remembers that, you know, sort of that uneasy feeling where we're having a conversation about Castillas in the room, you're there, and she talks about feeling uncomfortable because they've just come to the

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

conclusion that they're not going to follow the direction of the Supreme Court. You don't remember? [LR424]

SHARON LINDGREN: I don't remember. It would have made me uncomfortable... [LR424]

SENATOR LATHROP: Okay. [LR424]

SHARON LINDGREN: ...because there have been a few other situations where I felt that we were not following a Supreme Court decision. And at that point, I was very vocal about this is a problem. [LR424]

SENATOR LATHROP: Okay. Did you have any more involvement? Have you given us everything, every bit of everything that... [LR424]

SHARON LINDGREN: I was at the meeting that night. [LR424]

SENATOR LATHROP: What do you mean the meeting that night? [LR424]

SHARON LINDGREN: The meeting that Kyle talked about that he credited Dawn-Renee with setting up. [LR424]

SENATOR LATHROP: Oh, in the room. So the World-Herald is now tracking this down and there's a meeting. [LR424]

SHARON LINDGREN: There was a meeting in Director Kenney's office. Dawn-Renee pulled us together, but she was doing it on behalf of the director. [LR424]

SENATOR LATHROP: Who is in attendance? [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SHARON LINDGREN: Dawn-Renee, Mickie Baum, Kyle Poppert, Director Kenney, just going around the table. I believe George was there, I can't say for certain. I was there; I can say for certain. That's who I remember. [LR424]

SENATOR LATHROP: This would have been in June or so? [LR424]

SHARON LINDGREN: Yeah. It would have been the same day that they came to me and asked me my opinion on Castillas. [LR424]

SENATOR LATHROP: Okay. Did you know what it was going to be about before you walked in the room? [LR424]

SHARON LINDGREN: Oh, yeah, because they had given the Opinion. I believe that they checked with some other people like the AG's Office, Governor's Office. And then there was a meeting that was called. I had been reviewing e-mails so I was still in the office so I got called into the meeting and gave my opinion that we should have been following Castillas. [LR424]

SENATOR LATHROP: Okay. [LR424]

SHARON LINDGREN: I can't make the decision on the response, but I did give them that opinion. [LR424]

SENATOR LATHROP: This sounds like a, oh boy, this is hitting the fan right now. Right? The World-Herald is about to track down and put a story in the paper about how we didn't follow a Supreme Court Opinion. And by the way, there's a whole bunch of criminals running around the state of Nebraska that should be in the Department of Corrections. Is that the mood? [LR424]

SHARON LINDGREN: I think it was the mood on behalf of some people, yes. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SENATOR LATHROP: Okay, probably the people who had something to do with why nothing ever changed. But that sounds like the perfect time to start pointing the finger. [LR424]

SHARON LINDGREN: I'm not pointing the finger at anybody. [LR424]

SENATOR LATHROP: I'm not asking you to. I'm asking you what happened. That sounds like the perfect meeting for somebody to go, you know what, George? I told you we should have done it the right way. [LR424]

SHARON LINDGREN: Um-hum. [LR424]

SENATOR LATHROP: Any of that blaming or any of that what the hell happened when Castillas came out and why wasn't this changed before the World-Herald gets onto the subject. [LR424]

SHARON LINDGREN: I think at that point in time it was when Dawn-Renee would have been telling the group what had been going on and what had happened up to that point. I know I commented upon Castillas, this is how to do it. This is how you should be calculating good time under this decision and that it was applicable. And I think it was...at that point, I did not feel that fingers were being pointed. I felt more that it was, okay, there is a problem. What are we going to do in response? [LR424]

SENATOR LATHROP: Okay. [LR424]

SHARON LINDGREN: And it wasn't we're going to hide it, we're going to do this. It's how do we get a list of the people? How do we get a list of the individuals that can be affected of this out of the computer? I believe there was some discussion about do we have anyone in a very short period of time who would be released under the

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

miscalculation in order to try to find who those people were and to stop it at that time. So it was more of a let's get this resolved and under control. [LR424]

SENATOR LATHROP: How long did this meeting take? [LR424]

SHARON LINDGREN: Thirty to forty minutes. [LR424]

SENATOR LATHROP: And what time of day or night was it? [LR424]

SHARON LINDGREN: It would have been towards the end of the day. [LR424]

SENATOR LATHROP: And Director Kenney was present? [LR424]

SHARON LINDGREN: Director Kenney was present. [LR424]

SENATOR LATHROP: Did this seem like news to him or was he sitting in the room like a guy that already knew that this was a problem? [LR424]

SHARON LINDGREN: It was news to him. [LR424]

SENATOR LATHROP: He had...you could tell or your impression was he had no idea. [LR424]

SHARON LINDGREN: My impression was that it was news to him. In his prior position as warden of one of the facilities, he would not have been in the loop of this type of an issue. [LR424]

SENATOR LATHROP: Was Bob Houston there? [LR424]

SHARON LINDGREN: Bob had already retired. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SENATOR LATHROP: Oh, okay. You know, when I...I've been through a lot of e-mails, not certainly as much as my staff has, but I've read a lot, an awful lot of stuff. And I have to tell you, Nikko Jenkins, this miscalculation, I look around and whoever the director is, they're never around. I mean they're never around when this stuff is actually taking place in real time. And it makes me wonder if the criticism is, these guys knew and they're not telling us they knew or they're so detached from the operations of Corrections that that should be one of our criticisms. I don't know how a guy doesn't know Nikko Jenkins is getting released out into the community. And I don't know how a guy doesn't know that the people over in legal and down in records are saying we're not going to follow a Supreme Court Opinion. Tell me, tell me how that happens. Tell me what is it about the culture, what is it about the leadership that two huge problems can take place and we look around and the director is nowhere around? And probably not just him, but the next layer of deputy directors. Nobody is there to be responsible but people about two layers, three layers down from the top. Was the place on automatic pilot? [LR424]

SHARON LINDGREN: I don't know. I can tell you that if I had fully appreciated what was going on in regard to Castillas I would have made a lot of noise. And somehow it didn't hit my radar that this was what was going on, because I'm not afraid to go to the director and I'm not afraid to go to the deputy directors. I think some people are. And I don't know that that's a valid perception on their part. [LR424]

SENATOR LATHROP: Did you get disciplined over this? All I know is what I read in the paper. [LR424]

SHARON LINDGREN: I was going to be fired. [LR424]

SENATOR LATHROP: Okay. So, so far it looks to me like you did everything exactly the...you had no more involvement than Kathy Blum. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SHARON LINDGREN: I... [LR424]

SENATOR LATHROP: So somebody must have thought you had more culpability. Tell me what they thought that was. What am I missing? [LR424]

SHARON LINDGREN: The minutes...there is a...for these minutes, there is a draft or notes taken that attribute to me saying, oh, we'll just go ahead and do whatever and we'll ignore Castillas. I would have never made that statement. And my memory now is that Nikki came to me, and this is once again, I don't know if I'm making this up at this point, Nikki came to me and said, is this accurate; and I told her, no, that is not something I said. [LR424]

SENATOR LATHROP: So there's a draft. I have the original or must be the final version, but there's a draft. [LR424]

SHARON LINDGREN: The draft is in the statement of charges that we provided you. [LR424]

SENATOR LATHROP: Okay. And in the draft it says what--that you...? [LR424]

SHARON LINDGREN: It attributes a statement to me that we would just ignore Castillas. However, if you look at the statements by Kyle and Mickie, they say George made that statement. I would not have said that. And as I said, at this time, and who knows? I'm hallucinating a lot at home, sitting around doing nothing. I have some memory that Nikki came to me and said, is this an accurate statement? I said, no, I did not say that. [LR424]

SENATOR LATHROP: So that was omitted from the... [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SHARON LINDGREN: And I believe that's why she took out the attributions in the final. And if I didn't see the final, I couldn't have. [LR424]

SENATOR LATHROP: Ms. Lindgren, are you appealing your disciplinary proceeding? [LR424]

SHARON LINDGREN: No. I retired in lieu of accepting discipline. I looked at it and (1) the appeal process can be very expensive. I am not a rich woman. I am a widow. I don't have a lot in savings. I didn't know that I could afford an attorney to represent me through the entire process. (2) I would have lost my one quarter of my sick leave... [LR424]

SENATOR LATHROP: Okay. [LR424]

SHARON LINDGREN: ...which I get upon retirement. And (3) I have a certain pride. And if they so didn't want me there and were so willing to end my career, I didn't know that I wanted to go back. [LR424]

SENATOR LATHROP: Who is the "they"? [LR424]

SHARON LINDGREN: The only person I talked to was Mike Kenney, Robin Spindler, one of the deputy directors, did the hearing. You know, if they...if you don't...if you feel this way about your attorney, I don't know that I can effectively represent you. I mean I probably could have gone back and effectively (inaudible) and made grievances, the mundane things, but there's a pride there. I'm proud of what I have done over all these years. [LR424]

SENATOR LATHROP: You seem like a person that wouldn't sit back and not speak when you know something. [LR424]

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Transcriber's Office
Rough Draft

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SHARON LINDGREN: I am not shy. [LR424]

SENATOR LATHROP: Well, then I've got an opportunity for you. We're trying to understand the culture and the relationship between all of this, if any, and overcrowding. So how many meetings were you in attendance where overcrowding was the subject or at least brought up? [LR424]

SHARON LINDGREN: Overcrowding would have been brought up when I substituted for George at what we call the deputy directors' meeting. The deputy directors tend to meet twice a week at 7:30, and at a particular period of time there was a major push to try to get the population down. So you have to get into the history a little bit. [LR424]

SENATOR LATHROP: Give...take us there because I'm very interested in your testimony. [LR424]

SHARON LINDGREN: It's my understanding, and I'm not the expert on this, it's my understanding that during the 2008 period we were running two of our institutions on federal funds or the...what do you call it? I'm not... [LR424]

SENATOR LATHROP: Obama dollars or something. [LR424]

SHARON LINDGREN: Yeah. What it was... [LR424]

SENATOR LATHROP: Stimulus. [LR424]

SHARON LINDGREN: Yeah, it was the stimulus. And so there was a budget problem to begin with. And a plan was created to close two housing units. They were going to close a housing unit at OCC and a housing unit at NSP. And in order to do that, you had to decrease population or else you had to have a lot of people sleeping on the floor. And so at that time, lists were run of people who were within three years of their release with

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

the thought that could more of these people be placed on parole. And in fact, they brought Rex Richard over from Community Corrections Center Lincoln in order to review these and try to work with the Parole Board in order to get more people on parole. At the same time, the department created an extended furlough program where, in between Community Corrections and actual parole, individuals would be placed in often a residential setting and be in the community. That was done with the Parole Board's approval. And there is a decision, an Attorney General's Office decision, saying that under the statute the director has the authority, with the Parole Board's permission, to put someone in their home. And so they started doing that in order to eliminate questions in regard to programming because often there was a backlog on the programming because, I'll be very blunt, there's insufficient funding for the programming that the department needs. At that point, there were agreements with Probation as to some of their programs and also we have a teacher out in the Parole Office, you know, various things like that, in order to try to induce Parole to decrease the number. Obviously, this was unsuccessful. What they would discuss at the deputy directors' meeting were opening positions, trying not to lay off employees because you're closing two housing units. And so they were always going through and going, well, we'll move this person over here; there's an opening over here; and we'll shift them around in order to not fire people. I wasn't at all of those discussions. Part of what I know about what was going on in regard to parole, people would talk. I wasn't directly involved in that type of analysis. And I will tell you that you should have those documents in your Nikko e-mails because he was on the list because of his closeness to release. [LR424]

SENATOR LATHROP: On the list of people to be released early? [LR424]

SHARON LINDGREN: To be considered. [LR424]

SENATOR LATHROP: Okay. [LR424]

SHARON LINDGREN: And nothing was changed. You know, his release date wasn't

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

changed. His requirements weren't changed. He was not released earlier because of this. He was not paroled obviously because of this. But at the same time, it was just a list of everyone who was within three years of their tentative release date and he would show up on. [LR424]

SENATOR LATHROP: Okay. [LR424]

SHARON LINDGREN: So I saw them in those records because I also was in on those e-mails. But that's sort of it. I never heard anything saying that the decision on how to handle Castillas was based upon decreasing population. I'm not aware of anything making that connection. [LR424]

SENATOR LATHROP: Specifically or even generally because it sounds like...well, let me just back up. [LR424]

SHARON LINDGREN: Okay. [LR424]

SENATOR LATHROP: It sounds like and you listened to Ms. Douglass testify today... [LR424]

SHARON LINDGREN: Yep. [LR424]

SENATOR LATHROP: ...and she talked about sort of a cultural sense at Corrections that we need to find a way to get people out. [LR424]

SHARON LINDGREN: They were trying to find ways to get people out. But I never had any indication that it was tied with how do we calculate good time when there's a mandatory minimum. [LR424]

SENATOR LATHROP: Let me ask you this then. You're a lawyer. You've read Castillas.

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

There is an explanation by the Supreme Court on how to determine mandatory discharge for inmates who are there on a mandatory minimum. [LR424]

SHARON LINDGREN: Um-hum. [LR424]

SENATOR LATHROP: It could not be clearer. [LR424]

SHARON LINDGREN: Oh, it's very clear. [LR424]

SENATOR LATHROP: They lay it out in two sentences. It's easy to understand and it is clearly different than the way they're doing it. True? [LR424]

SHARON LINDGREN: It is very clear. [LR424]

SENATOR LATHROP: Okay. And the explanation given for not changing it is we weren't a party to that lawsuit. Now tell me, is that a fair explanation for not following Castillas? [LR424]

SHARON LINDGREN: Okay. I'd mentioned Payan. [LR424]

SENATOR LATHROP: Mention what? [LR424]

SHARON LINDGREN: State v. Payan. It's another...it's a direct appeal decision by the Nebraska Supreme Court. One of the issues raised was whether or not lifetime supervision for a sex offender is penalty, whether it's an enhancement of the crime. And I'll get around... [LR424]

SENATOR LATHROP: I was going to have you spell the last name. [LR424]

SHARON LINDGREN: I don't... [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SENATOR LATHROP: Is it... [LR424]

PAT O'BRIEN: I think it's P-a-y-a-n (inaudible). [LR424]

SHARON LINDGREN: Um-hum. [LR424]

SENATOR LATHROP: Okay, Payan. All right. [LR424]

SHARON LINDGREN: Yeah. He was convicted as a sex offender. The district court had put him on lifetime supervision based upon a finding that it was a heinous crime, an exaggerated crime. I forget exactly the language of it. And on appeal, the Nebraska Supreme Court did hold that putting someone on lifetime supervision is punishment. And in fact, if there had been a jury trial, the courts are required to present to the jury whether the sentence should be enhanced by imposing this. Otherwise, they would have to have a hearing like they have on a habitual criminal in order to prove a prior and subsequent offense. [LR424]

SENATOR LATHROP: Okay. [LR424]

SHARON LINDGREN: The court, however, did find that this was harmless error because the crime was so heinous and said fine. But in the future, it's punishment. It is criminal punishment. The statute infers that the Department of Correctional Services can put someone on lifetime supervision, which to me has always been, even without the decision, punishment. We restrict your movement. We restrict, you know, where you can go. We restrict how you can see children, you know, all sorts of things. That is clearly punishment, had always been, and I had always argued such. After Payan came out, George and Kathy went down and talked to the Attorney General's Office about we want out of this, or at least that was my understanding. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SENATOR LATHROP: What do you mean, we want out of this? [LR424]

SHARON LINDGREN: We want to stop putting people on lifetime supervision because the department's been doing it on its own. [LR424]

SENATOR LATHROP: Just on your way out the door, they're like, guess what? [LR424]

SHARON LINDGREN: Congratulations, you're on lifetime supervision. [LR424]

SENATOR LATHROP: You're released, and we're going to supervise you for the rest of your life. [LR424]

SHARON LINDGREN: Yeah. [LR424]

SENATOR LATHROP: Okay. [LR424]

SHARON LINDGREN: And what was reported back to me from that meeting was they were told--Kathy and George were told and they both confirmed this--that, oh, it's a decision in a criminal case. It doesn't really cover what the department can or cannot do so just keep on doing it, which sounds very similar to the position that was ultimately taken in Castillas. I have complained about that to anyone who will listen to me because it is a criminal sanction. It is an enhancement and we cannot do that. [LR424]

SENATOR LATHROP: They still doing it? [LR424]

SHARON LINDGREN: I don't know the status. After, there was a habeas corpus action that was finally filed and successful in Lancaster County District Court this year; and it said basically this is punishment under Payan and you can't do it. And it was not appealed because there was no basis for our continuing to do it. At that time, things started blowing up. In fact, I was in the process of working with Kathy just to make sure

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

she had a list of everyone who we had put on and then I got suspended. So I don't know what the status of it is. But... [LR424]

SENATOR LATHROP: You offer this in response to my question about the culture at the Department of Corrections. And do you tell me this because the culture is ignore the Supreme Court? [LR424]

SHARON LINDGREN: At least it was my understanding the AG's Office advised the department to ignore the Supreme Court or to not apply the Payan case. I think it's just blatant. [LR424]

SENATOR LATHROP: Okay. Why do you believe that to be the case? How did you develop that impression? Give us the information. [LR424]

SHARON LINDGREN: Not that it's blatant in culture, but it's just a blatant violation of the inmate's rights. [LR424]

SENATOR LATHROP: No. You were talking about the Attorney General advising your colleagues. [LR424]

SHARON LINDGREN: Kathy and George were the ones who were there. [LR424]

SENATOR LATHROP: Why do you think they had been advised to ignore Payan by the Attorney General's Office. What made you think that had taken place? [LR424]

SHARON LINDGREN: Kathy and George told me. [LR424]

SENATOR LATHROP: Did they tell you which person at the...in the Attorney General's Office told you to ignore it? [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SHARON LINDGREN: I'm not certain at this time. [LR424]

SENATOR LATHROP: Well, wait a minute. [LR424]

SHARON LINDGREN: Kathy has records and George drafted a letter back in response to the meeting, and Kathy would have copies of that. [LR424]

SENATOR LATHROP: A letter back to the AG who told them to ignore Payan? [LR424]

SHARON LINDGREN: Yes. [LR424]

SENATOR LATHROP: Okay. Going on, that would be a culture of ignoring the Supreme Court or taking their Opinions as advisory instead of controlling law as they are. But how about the culture as it relates to why would our...this Ms. Douglass believe that overcrowding is a consideration when she's trying to solve the dilemma of whether to continue in the previous way of calculating the mandatory discharge versus the Castillas holding? [LR424]

SHARON LINDGREN: I don't know why she believed that. [LR424]

SENATOR LATHROP: This wasn't coming up at the deputy director meetings? [LR424]

SHARON LINDGREN: No. Overcrowding was a concern. Cutting population was a concern. It was discussed. You brought up the quarterly meetings that we all go to and they usually tempt us with ice cream or a sandwich. It was brought up at those meetings. [LR424]

SENATOR LATHROP: Overcrowding. [LR424]

SHARON LINDGREN: Yeah. But... [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SENATOR LATHROP: Did Director Houston ever attend those? [LR424]

SHARON LINDGREN: Yes. [LR424]

SENATOR LATHROP: And did he ever talk about the overcrowding situation? [LR424]

SHARON LINDGREN: I know it was discussed. I can't tell you exactly when and I can't tell you who exactly made the presentation, but it would have been a subject that would have been shared with the central office staff. [LR424]

SENATOR LATHROP: Okay. I'm about done. But I do have another question for you though, and that is when you were at...and were you familiar with Nikko Jenkins before his release? [LR424]

SHARON LINDGREN: I attended one meeting with the Ombudsman's Office in regard to Nikko Jenkins. [LR424]

SENATOR LATHROP: Is that prior to his release? [LR424]

SHARON LINDGREN: Yes. [LR424]

SENATOR LATHROP: And what was the purpose of that? [LR424]

SHARON LINDGREN: The purpose of that was the Ombudsman's Office, the representatives of the Ombudsman's Office wanted to get him out of restricted housing and hopefully get him at least to OCC if not into Community Corrections prior to his release. [LR424]

SENATOR LATHROP: And what was your role in this meeting? [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SHARON LINDGREN: I was substituting for George. [LR424]

SENATOR LATHROP: Okay. Before that meeting took place, did you know anything about Jenkins' circumstance? [LR424]

SHARON LINDGREN: I would have known some things about him because he did submit some Step II grievances which I would have responded to. [LR424]

SENATOR LATHROP: I'm going to have you move closer to the mike if you don't mind. [LR424]

SHARON LINDGREN: Okay. He did submit some Step II grievances, and I would have prepared the responses for those. And I believe that I also wrote the appeals board decision in I think two of his disciplinary appeals. [LR424]

SENATOR LATHROP: Besides your personal involvement in some of his grievances or some of his appeals, did you...did he have a reputation inside of Corrections? [LR424]

SHARON LINDGREN: I don't know. I mean I think he was an inmate that was known of. I believe one of the appeals that I handled involved the incident at the church in Omaha. When you apparently try to escape and harm an employee, people know of you. [LR424]

SENATOR LATHROP: I think that's all the questions I have. We'll start down here and work our way back this way. [LR424]

SHARON LINDGREN: Okay. [LR424]

SENATOR LATHROP: Senator Krist. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SENATOR KRIST: Yes. I just want to clarify because I had an opportunity to read for the first time the draft of the minutes that Nikki Peterson... [LR424]

SHARON LINDGREN: Nikki Peterson. [LR424]

SENATOR KRIST: ...put together. Okay. And just for the record, in her...she says in her testimony, a statement of Nikki Peterson that was submitted in, and I can attribute this, can I not, Chair? [LR424]

SENATOR LATHROP: Pardon me? [LR424]

SENATOR KRIST: I can attribute this to...we can talk about the statements that are in here other than people that were subpoenaed, correct? [LR424]

SENATOR LATHROP: Yeah, I think so. [LR424]

SENATOR KRIST: Okay. She says that she was asked to clarify...on October 16, 2013, I was asked by Kyle Poppert to coordinate the activities of NDCS Sentencing Committee. The purpose of the committee was to monitor Supreme Court Opinions and Attorney General Opinions and to be certain that the records managers were complying with the applicable statutes. Poppert organized and ran the committee. So it was Poppert's intention, at least according to Nikki Peterson, to organize a meeting to make sure that people understood that there were Supreme Court decisions and Attorney General Opinions that were not being complied with and to bring that subject matter up. Is that how you would understand that paragraph? [LR424]

SHARON LINDGREN: It would be my understanding that that's what she said. I do not or at least that's what ended up in her statement. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SENATOR KRIST: Okay. [LR424]

SHARON LINDGREN: I do not know... [LR424]

SENATOR KRIST: That's fair. Yeah, we don't know what Poppert's actual motivation was... [LR424]

SHARON LINDGREN: No. [LR424]

SENATOR KRIST: ...but that's what Nikki Peterson says she was asked to do. [LR424]

SHARON LINDGREN: Yeah. [LR424]

SENATOR KRIST: I prepare an outline for the minutes before the meeting on October 31. During the meeting, I use my laptop and type minutes into the form I created in advance. I was asked to take good minutes so that they could be included on the Q drive. She makes some other statements. But the paragraph that she puts in, in the draft she attributes different statements to different people. And I just want to review this because I think you said something different, and I want you to get an opportunity to put it on the record again. Mickie's Supreme...this is attributed to Mickie Baum, Supreme Court on MM... [LR424]

SHARON LINDGREN: Mandatory minimum... [LR424]

SENATOR KRIST: Okay, just to make sure... [LR424]

SHARON LINDGREN: ...would be my understanding. [LR424]

SENATOR KRIST: Okay. And State v. Castillas, how to apply MM when calculating PED and TRD, okay, with good time applied. The court has made an assumption of how

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

we are calculating sentences, especially this MM, but we are doing it in a different way. Attributed to George Green now, we need to clarify exactly what the SC... [LR424]

SHARON LINDGREN: Supreme Court, I bet. [LR424]

SENATOR KRIST: ...okay, intention...I just want to...I want to hear...I want to put it on the record, intention is on this before we as a department act. So she attributes that to George. And then she attributes to you the statement that says, we have been performing calculations our current way for years. We are now aware of the situation. We will act when we are specifically told and our current way is wrong and it needs to be changed. Now in your testimony you said... [LR424]

SHARON LINDGREN: I didn't say that. [LR424]

SENATOR KRIST: ...you weren't involved with...I know you said you didn't...that we shouldn't attribute that to you and she takes the attribution later out of the actual minutes. But you told us that you weren't involved in those calculations in any way. Is that what you said? [LR424]

SHARON LINDGREN: I knew...I knew that they...if I made that other statement, it would have been based on my history of how they had been calculating, you know, when I was in the AG's Office and that things hadn't changed (inaudible), at least in my opinion. [LR424]

SENATOR KRIST: Okay. And then back to Nikki Peterson's statement: I sent the final draft of my minutes to Kyle Poppert and Mickie Baum to review. Neither Poppert nor Baum requested any changes to the minutes. You said she came to you with the draft. [LR424]

SHARON LINDGREN: I believe she came to me with the draft and was trying to

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

confirm. And as I said, this is what I believe now and I'm always leery because...but it's my impression at this point that she came to me with the draft and asked if this was a correct quote and I said, no. [LR424]

SENATOR KRIST: Okay. And then she goes on to say: It was my impression one of them intended to distribute the minutes. I did not distribute the minutes to anyone else. She put it on the Q drive. So I'm going to ask you the same question I asked earlier today. There are two names on the top of that piece of paper. One of them is Governor Heineman and the other at this point is Mike Kenney. Do you...would you anticipate that either Director Kenney or the Governor or the Governor's Office would have in any way seen these minutes from the 31 October meeting? [LR424]

SHARON LINDGREN: I would not know. [LR424]

SENATOR KRIST: Okay. Thank you. [LR424]

SENATOR LATHROP: Anyone else? Senator Seiler. [LR424]

SHARON LINDGREN: Hi. [LR424]

SENATOR SEILER: I just want to clarify one thing. If you'll look at page 177,... [LR424]

SHARON LINDGREN: Okay, it's open to 177. [LR424]

SENATOR SEILER: ...right, it's the letter that he was just...Senator Krist was just referring to. [LR424]

SHARON LINDGREN: Um-hum. [LR424]

SENATOR SEILER: If you look at subject, it says: Sentence Review Committee

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

meeting minutes. But then if you come down to three, four, five lines down, it says: agenda. We've been calling these the minutes. And I think, from what you've testified to and what Senator Krist just brought up, these aren't the minutes at all. This is the agenda, because you stated your name was on the minutes to follow through on something. I don't find your name anywhere. [LR424]

SHARON LINDGREN: And I may have misstated. It might have been on the... [LR424]

SENATOR KRIST: It's on the draft, sorry. [LR424]

SHARON LINDGREN: It's on the draft. [LR424]

SENATOR SEILER: It's on the draft. Okay. But those drafts are different than what these are. This looks like an agenda. [LR424]

SENATOR LATHROP: (Inaudible) it's got concluding. [LR424]

SENATOR SEILER: I know. That's what I'm trying to get to. [LR424]

SHARON LINDGREN: I...I don't know. I hadn't seen this before, but I presume if Nikki said this is the minutes I will take this as the minutes. I can't argue one way or the other. [LR424]

SENATOR SEILER: Okay. That's...I just...it calls them minutes in one place and calls it an agenda in the other. [LR424]

SHARON LINDGREN: It is awkward. [LR424]

SENATOR SEILER: Okay. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SENATOR KRIST: And, Chair, may I follow up with one? [LR424]

SENATOR LATHROP: Yes. [LR424]

SENATOR KRIST: To your point, what seems again awkward to me in looking through this in the actual draft and then in this final is she, Nikki, took that back to Poppert and to Baum, Baum, is that right? [LR424]

SHARON LINDGREN: Um-hum. [LR424]

SENATOR KRIST: And neither one of them seemed like they were going to make distribution. But they had an opportunity, as you say you might have, to edit the actual minutes. So thank you. [LR424]

SENATOR SEILER: Thank you. I have nothing further. [LR424]

SENATOR LATHROP: Senator Chambers. Okay. [LR424]

SENATOR CHAMBERS: Just to kind of make a statement, you had indicated that at this meeting which Director Kenney attended, you got the impression that all this was news to him, that he really hadn't known prior to that meeting what was going on. [LR424]

SHARON LINDGREN: It was my impression at that meeting that Director Kenney had just been informed of the issue and was in the process of figuring out how to resolve it. [LR424]

SENATOR CHAMBERS: As far as Nikko Jenkins and Director Houston, I've talked to Director Houston myself, before...months before Nikko was to be released, and I talked to the Ombudsman. And I said, that man is going to be released in our community. I told

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

Kenney, I meant Houston this, and he confirmed that what I was saying was his recollection of our discussion. I was very disturbed about it, and I wanted him to get some mental health treatment or evaluation because he had been in solitary all that time. There is no way he should be released into our community or any community, but it would be in ours, in that condition. And they knew what he had in mind because of letters he had written, statements he had made, self-mutilation. And I was left with the impression from Houston that something was going to be done to address the situation. And I raised the issue of a civil commitment if in the time that he had left to be locked up his condition could not be handled in such a way as to make it safe for him to be released. Based on the impression that Mr. Houston left with me, those steps would be taken so I didn't follow it or pursue it beyond that. Because if you are dealing with somebody and you want to get an agreement from them and they give it, then there's no need to continue. When I found out that he was released and that he was released right out of solitary, then I saw a document where a person who is a psychiatrist under contract stated that he ought not to be released into the community straight out of solitary. So Houston knew all of this. I'm saying it because of what the Chairman pointed out. I don't believe these directors were not there. They knew but they didn't care. They were not going to be called to account. They could deny it and nobody would challenge them. Kenney had been a part of what was going on at that institution so long that I don't believe there was anything going on that he didn't know. I knew of him when Harold Clarke was still here. So I believe that he knew. He's a good actor. He's made some of my colleagues believe that he's such a sincere guy and he had a little talk with Jesus and he's converted. He's changed and all the old ways are passed away, and behold, he's walking as a new man in the newness of life, and they believe him. I don't believe anything he says. And the point I'm making is this. I don't know what you're guilty of, if "guilty" is the word to use. But when I see all of the people at the top getting away clean, from the Governor on down, I haven't seen any editorials holding them responsible and accountable, it doesn't seem that this whole thing is being handled in the way that it should. And I've been critical of us as members of the Legislature sitting in judgment when some of the circumstances we helped bring into being. And we can't

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

undo that. But we're allowing through silence the people who should be held accountable to get away with it. I'll tell you one reason I don't think the Governor wanted a special session, and I hadn't discussed it with anybody. I had said on an occasion when I wasn't in the Legislature that a certain bad situation related to the farming out of child welfare to these private entities, they went bankrupt, records disappeared, that there should have been consideration of impeachment. He knows that as evil as he considers me to be, knowing that the Legislature would not vote for a resolution of impeachment, he knows that I would have offered it and I would have debated it. There would have been national coverage because a Governor is being confronted with impeachment. And it's not beneath me to do that. And I see too much of him pontificating, and this isn't personal between me and the Governor. He is the one who said everybody who is responsible, has responsibility is going to be held accountable. And he's the captain of the ship. And nobody wants to hold him accountable for anything. I heard the reasoning you gave for resigning or retiring, whatever they call it. [LR424]

SHARON LINDGREN: Retiring. [LR424]

SENATOR CHAMBERS: And I cannot comment on how a person decides to live his or her life. But...and you're the one who would have had to be in the meat grinder. Had you not retired, then things that still can come out would have had a different impact. So the main thing I want to get across is if you can be threatened, if these other people can be disciplined, and if they did anything serious enough to be disciplined, one day is not enough for telling this guy Poppert--and I think he was more culpable than he wants to show--you...we're going to give you two weeks. You can do that standing on your head. But you don't have to do it all at one time. You can do here a little, there a little, everywhere a little, little and people will forget about it; and you may not even have to do all of it. That's not showing that it's being taken seriously, in my opinion. I think Kenney wanted to be able to deny knowing anything. The Governor doesn't have to be accountable. I refer to him as the Teflon politico and compared him to John Gotti

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Transcriber's Office
Rough Draft

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

because nothing sticks. And everybody who has the primary responsibility is getting away clean, and I don't think that's the way it ought to be. So I used you for a sounding board. I don't have any commentary on what you said because it seemed that you're being straightforward. It accords with a lot of things that were said by other people. And the one that I really want to listen to when it comes to somebody connected with the legal end of it is George Green. And I believe he's supposed to speak to us. [LR424]

SENATOR LATHROP: Next. [LR424]

SENATOR CHAMBERS: Okay. Then I don't want to prolong this, but I made my comment. [LR424]

SHARON LINDGREN: Thank you. [LR424]

SENATOR LATHROP: Anyone else? Senator Schumacher. [LR424]

SENATOR SCHUMACHER: Thank you, Senator Lathrop. Just a brief observation, we'll see how you react to it. [LR424]

SHARON LINDGREN: Okay. [LR424]

SENATOR SCHUMACHER: We've heard from people like Douglass and Poppert saying basically, look, we're not lawyers. We're just folks that are doing our job. We didn't have authority to do anything. We passed it on to the higher ups and we are waiting for God to speak. And then we hear that, well, the director and the higher up office saying, well, gee, I wish somebody told us about this. You know, we really didn't want to learn about it from the Omaha World-Herald reporters. So in that space of who could be where the ball was dropped, who are the people there? The deputy directors, how many of those are there? [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SHARON LINDGREN: There are five people designated at this time as deputy directors. [LR424]

SENATOR SCHUMACHER: Would they be in that sandwich of responsibility that should have known or should have been listening to the lower-downs or saying something to the upper-ups? [LR424]

SHARON LINDGREN: I would...I think there was testimony that you had Jeannene Douglass, you had Kyle, and Kyle reported to Larry Wayne. Larry Wayne is a deputy director. And there's usually a chain of command. We do have a quasi-military view of life, as you can imagine. I also will make a comparison, and I heard Ron Riethmuller's testimony. When I was doing litigation in the AG's Office in regard to good time, when I started it was Jim Lyons and he was doing it by hand. Literally every calculation was manual because in '82 computers were not that available. Ron learned under Jim, and Ron had an interest in knowing this, understanding the law, and applying the law that I did not feel that Mr. Poppert was expressing today. My opinion: there was an enthusiasm. You get Jim Lyons, and I don't...he was in the Bill Room for a number of years. You may remember Jim being in the Bill Room after he resigned or retired from Corrections. And he was just enthused. I mean, he liked this. He wanted to be able to explain it to people. He wanted to go in and say, this is how you do it. He could read a case and say, here, this is...what does this case say, you know? Let's interpret it. Let's apply it. And I didn't feel that came across today. [LR424]

SENATOR SCHUMACHER: So basically if we were to look at to where the ball was dropped in this, it would be somewhere in the deputy director level or the ranking folks in the legal department. [LR424]

SHARON LINDGREN: Or I think Mr. Poppert had some responsibility. I think if you're going to have that position you need to be able to understand how to do good time calculations and that includes understanding the law and that includes Supreme Court

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

decisions. [LR424]

SENATOR SCHUMACHER: Thank you. [LR424]

SENATOR LATHROP: Senator Mello. [LR424]

SENATOR MELLO: Thank you. [LR424]

SHARON LINDGREN: Hi. [LR424]

SENATOR MELLO: Hi there. Thank you, Senator Lathrop. Ms. Lindgren, I know the hour is late and I know I think a lot of us want to get to Mr. Green and his testimony. But as kind of a preface, we've heard throughout kind of both in the media in regards as it's reported as well as the actions that were taken by Director Kenney, as well as what the Governor has explained publicly, that most, if not all, of the blame lies with you and George Green in the sense that you were the two employees that were to be terminated. You decided to retire instead. [LR424]

SHARON LINDGREN: Um-hum. [LR424]

SENATOR MELLO: And obviously Mr. Green will be up to testify next. Something that I have a tough time understanding throughout all this entire issue is how someone in a position that Mr. Green is equivalent of a deputy director, and we heard today from Mr. Poppert that he spoke with Mr. Wayne, Larry Wayne, multiple times about this issue but somehow it just kind of ended with Mr. Wayne as far as Mr. Poppert could tell. Did you have any conversations with Mr. Green in regards to what did Bob Houston...what did Bob think about this? What did Mike think about this? How are we not figuring this issue out? [LR424]

SHARON LINDGREN: The only conversation I would have had would have been

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

Linda's upset; call her. And at that time, there's the option of saying, Sharon, you want to look into this? Sharon was never told to look into it because I would have. I'm good at following up. I love research. [LR424]

SENATOR MELLO: But you're saying that you and Mr. Green, who work in the same area together on similar issues... [LR424]

SHARON LINDGREN: Um-hum. [LR424]

SENATOR MELLO: ...in regards to legal issues around the Department of Corrections, that you never once sat around and had lunch and said, you know, what did...you didn't ask at all saying what did Bob Houston...what's Bob think about this whole issue? I mean, is... [LR424]

SHARON LINDGREN: I didn't. I have no memory of doing any follow-up after passing it along. And as I said, you look at the record, George was handling it. I don't know what all was going on in my schedule, and I'm not going to use I was too busy as an excuse. But volume, I was doing...a couple of years ago I did over 1,300 Step II grievance responses. That takes an awful lot of time. We're number one in the tort claims. And as I said, I did the majority of the appeals board decisions, just keeping up on those things. And so if George is handling it, unless someone comes to me and says, you know, how...George comes to me and says, Sharon, you know, let's talk about this, chances are I would just...it's being handled, which may have been...there was a question of Kathy. I should have...you know, it's like...I should have. I should have pulled the decision at the beginning, but I did what I was required to do to try to get it handled. And I should have after the October meeting pulled the decision, but as I said, it didn't strike me as the main thing so. [LR424]

SENATOR MELLO: I've just been...I've had a tough time still understanding throughout all the testimony, with the e-mails that I've been able to read and hearing the questions

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

that have been asked throughout these hearings is that somewhere along the lines this issue went to a mid-level position and stopped. And all of the, whether it was the quarterly staff meetings, whether it was the senior leadership meetings that we have minutes from senior leadership meetings, that nowhere along the lines no one ever mentioned to Bob Houston, then director, and/or Mike Kenney, now director, that this is an issue that people below us are working on and just want to give you an FYI. We just want to make sure you know what's going on within your department. This is something that we've had a lot of people, you know, keep asking questions about. And for some reason, and maybe Mr. Green will be that...can give us that answer, that everyone we've talked to so far says, well, we just don't know. We've never talked to the director about it. He's never at any point in time has ever given us comments that he knows anything about this or as far as I know; I've never spoken with him, quote unquote. And I leave that with you in the sense that I know you were not a deputy director, but you worked very closely with the deputy director, i.e., George Green who is the legal counsel. And to think that neither one...that at any point in time you never had a...you just had a run-of-the-mill, chitchat conversation about this issue and he never expressed, you know, here's what I've got to talk to Bob about this or Mike about this. And I don't know, what do you think, Sharon? I mean nowhere along the lines those conversations happened in your office. [LR424]

SHARON LINDGREN: Not on this subject. [LR424]

SENATOR MELLO: All right, thank you. [LR424]

SENATOR LATHROP: Senator Bolz. [LR424]

SENATOR BOLZ: I'm curious to hear more. You referenced having concerns about the Payan case and trying to talk to others about it. Who did you talk to and what were their responses? [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SHARON LINDGREN: I have spoken to anyone that I can think of. George is fully aware of my views on this. Kathy is fully aware of my views on this. I have not been at all shy about saying we need to do something to get this resolved because it's wrong. [LR424]

SENATOR BOLZ: And the response has been? [LR424]

SHARON LINDGREN: The AG's Office told us the case doesn't apply and we'll wait until...it's very similar to what you're hearing on Castillas. It's a criminal appeal. It doesn't deal with what you...what the department is doing and so wait until you get a decision. And we waited and we waited and we waited and we finally got the habeas corpus decision. [LR424]

SENATOR BOLZ: And is there a role for an organization like the bar association or for any federal level organizations if you have these concerns that are being unaddressed? Is there any outside of the department avenues for you if you have a concern? [LR424]

SHARON LINDGREN: Being as it was under...my understanding that the Attorney General's Office was aware of the concerns. Whistle-blower is not a fun thing to do. Go to the media, which I now have. [LR424]

SENATOR BOLZ: I can appreciate that. Thanks for your response. [LR424]

SENATOR LATHROP: I think that's it. Thank you for your patience and waiting all day long and for your testimony in coming down here today and sharing your experience. [LR424]

SHARON LINDGREN: And are you covering parking tickets? (Laughter) [LR424]

SENATOR LATHROP: Well, I did try to do something about the fees they charge when

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Transcriber's Office
Rough Draft

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

they tow you, but that didn't get out of Transportation Committee. [LR424]

SHARON LINDGREN: I'm on the south side of the Capitol so I doubt that I got towed, but... [LR424]

SENATOR CHAMBERS: (Inaudible), you mean over there where the Governor's big house is? [LR424]

SHARON LINDGREN: In-between the Capitol and where the Governor's big house is. [LR424]

SENATOR CHAMBERS: That's not a tow-away zone, is it? [LR424]

SHARON LINDGREN: No. [LR424]

SENATOR LATHROP: No. [LR424]

SENATOR CHAMBERS: You park...okay. [LR424]

SHARON LINDGREN: But a parking ticket zone. [LR424]

SENATOR CHAMBERS: Well, that guy who was with you... [LR424]

SENATOR LATHROP: We are not in the executive branch of government or we could pencil whip something. We're just legislators. [LR424]

SENATOR CHAMBERS: That guy who sat with her can pay for the ticket because he didn't do anything to earn his money this evening. (Laughter) [LR424]

PAT O'BRIEN: Senator, I have my own ticket. I'm parked at the same place. (Laughter)

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Transcriber's Office
Rough Draft

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

[LR424]

SENATOR CHAMBERS: Well, two for one. [LR424]

SENATOR LATHROP: Well, and you can see each other down at the courthouse. Mr. Green, come on up. And we will first have you raise your right hand, sir, and be sworn in. Do you swear the testimony you are about to give to this Special Investigative Committee will be the truth, the whole truth, and nothing but the truth? [LR424]

GEORGE GREEN: I do. [LR424]

SENATOR LATHROP: All right. Have a seat. I'm going to have you scoot a little bit closer to the mike. And before you speak, we'll have your lawyer enter his appearance. [LR424]

ANDREW STROTMAN: Andrew Strotman for George Green. [LR424]

SENATOR LATHROP: All right. Thank you for being here, Mr. Strotman. And I... [LR424]

DAN JENKINS: Could you please spell the last name, sir. [LR424]

ANDREW STROTMAN: S-t-r-o-t-m-a-n. [LR424]

SENATOR LATHROP: Okay. We're going to have you move a little bit closer to the mike since you're going to be the one doing the talking and we want to make sure we get a good record. Would you begin by giving us your name and spelling your last name, sir. [LR424]

GEORGE GREEN: My name is George Green, G-r-e-e-n. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SENATOR LATHROP: And you're here as a consequence of a subpoena that's been served upon you. [LR424]

GEORGE GREEN: Yes, sir. [LR424]

SENATOR LATHROP: And you were not in the courtroom last Friday when the court read its order to the various witnesses. Was that done at a later time? [LR424]

GEORGE GREEN: Yes, it was. [LR424]

SENATOR LATHROP: Okay. So you've had a chance to visit with or be admonished by Judge Stacy. [LR424]

GEORGE GREEN: I did. I was. [LR424]

SENATOR LATHROP: Okay. You were formerly employed by the Department of Corrections. [LR424]

GEORGE GREEN: That is correct. [LR424]

SENATOR LATHROP: And your position there was what? [LR424]

GEORGE GREEN: At the time of my retirement, I was the general counsel for the Nebraska Department of Corrections. [LR424]

SENATOR LATHROP: And can you tell us how long you had been at the Department of Corrections? [LR424]

GEORGE GREEN: I started working at the department in 1987. And from 1987 to 1992

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

I was an associate legal counsel for the Department of Corrections. Beginning in 1992, I was the department's general counsel. I think the technical title is agency legal counsel under the State Personnel rules, but the working title is agency or, excuse me, general counsel. [LR424]

SENATOR LATHROP: Okay. And that's a position you held until your retirement. [LR424]

GEORGE GREEN: That is correct. [LR424]

SENATOR LATHROP: And your retirement also coincided with the disciplinary proceedings, and like the... [LR424]

GEORGE GREEN: Well,... [LR424]

SENATOR LATHROP: ...previous witness, you elected to retire. [LR424]

GEORGE GREEN: ...similar to that. I did not appear at a predisciplinary hearing, and I elected to retire short of that. [LR424]

SENATOR LATHROP: Okay. You've already delivered to my legal counsel all of the documents you brought with you today. [LR424]

GEORGE GREEN: Yes. I believe Mr. Strotman has done that. [LR424]

SENATOR LATHROP: Okay. Okay, thank you. As general counsel, that's the term for your position? [LR424]

GEORGE GREEN: That's the working title, yes. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SENATOR LATHROP: Okay. So there's been three lawyers over at Corrections for how long? [LR424]

GEORGE GREEN: Oh, my goodness. There was two lawyers for quite a period of time until Sharon Lindgren joined us as the third lawyer, whatever year that was that she said. I'm sorry, I don't recall right now. [LR424]

SENATOR LATHROP: Okay. What were your duties as general counsel to Corrections? [LR424]

GEORGE GREEN: Well, my duties were to attend whatever executive staff functions our director required. My duties were to participate in, you know, policymaking and administrative regulations as requested. I oversaw attorneys that answered inmates' grievances, that handled the administrative appeals of inmate discipline, that handled claims made under the State Claims Act by inmates and others, but basically inmates. To oversee the filing or the responding to the filing of tort claims, to contracts. I spent a lot of time on labor and employment issues and employee grievances, collective bargaining. I'm sure I'm leaving something out, but that's all that occurs to me now. [LR424]

SENATOR LATHROP: All of the legal work done for the Department of Corrections other than the litigation done by the AG was done by the three of you? [LR424]

GEORGE GREEN: Yes, that's right. We were the business end of the Department of Corrections. Anything dealing with the, you know, inmate civil rights claims, habeas claims, collateral attacks on criminal convictions, you know, all of that was the Attorney General's portion of the business, if you will. The model that made sense to me was I was an appointed, excuse me, I was a personnel rules protected employee within the Department of Corrections. Was not a deputy director. I was not an at-will employee. So we handled all of that kind of business. Now if the Attorney General needed assistance

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

in a civil rights claim or in a, you know, some other kind of claim, as Sharon Lindgren indicated, we certainly helped. And we could get you what policy we had in effect in 2003, I can get that for you. Who was assigned to this housing unit on that date, I can get that for you. [LR424]

SENATOR LATHROP: So you could give the Attorney General background and help with discovery in the litigation that they were handling regarding the Department of Corrections. [LR424]

GEORGE GREEN: Yes, and moving, transporting inmates, for example, or, you know, stipulating that the court could enter an order to release inmate records, that sort of thing. [LR424]

SENATOR LATHROP: Okay. You mentioned in that list of duties policymaking. What was your role in making policy at the Department of Corrections? [LR424]

GEORGE GREEN: On occasion, I would be involved in policy discussions, not so much to rule on the, you know, legality or nonlegality of it, but to be there with a legal background and an eye when, for example, policy was being written to make sure that what we had written we had not only promulgated rules and regulations but we had internal prison regulations that made sense, that meant what was intended, that the language was tight. [LR424]

SENATOR LATHROP: Okay. [LR424]

GEORGE GREEN: That was a big part of what we did. [LR424]

SENATOR LATHROP: Okay. Were you here when Mr. Riethmuller testified? [LR424]

GEORGE GREEN: Yes, yes. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SENATOR LATHROP: This story about the...this tale about the development of the calculation of good time for those...the mandatory release with good time for those on a mandatory minimum really starts with an AG's Opinion, does it not? [LR424]

GEORGE GREEN: Going back to 1996... [LR424]

SENATOR LATHROP: 1996. [LR424]

GEORGE GREEN: ...the original, I guess the genesis of that, I guess, yes, I would agree with you. [LR424]

SENATOR LATHROP: Okay. And you were not general counsel then, but you were working at Corrections. [LR424]

GEORGE GREEN: I was employed then. Judge Laurie Smith Camp was the general counsel at that time. [LR424]

SENATOR LATHROP: Okay. And after Smith Camp wrote the AG's Opinion, shortly thereafter Riethmuller wrote the sort of the memorandum that was dated September of 1996. [LR424]

GEORGE GREEN: I don't recall the month, but it was the 1996 memorandum. [LR424]

SENATOR LATHROP: Okay. I believe his testimony--and I have to tell you it feels like it was four days ago to me--but I believe his testimony was that he sat down with you and that you worked through and developed this policy with Smith Camp's AG Opinion and he had your input or at least your approval. [LR424]

GEORGE GREEN: I sat down...I don't recall specifically any discussion of that. I do

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

recall sitting down with Ron Riethmuller and he was very knowledgeable about these matters and had worked out inmate sentences for quite some time. And as he demonstrated in his testimony, he had a lot of energy and zeal behind all of this. But I don't recall specifically approving anything. I don't recall...in fact, I did not approve anything. I did not...I don't have the authority to write a regulation. Our deputy directors can write a regulation and give it an AR number, AR1-0, whatever, you know. That did not happen. [LR424]

SENATOR LATHROP: But he had to decide what records was going to do in calculating the application of good time to somebody who was doing a mandatory minimum. Would you agree with that? [LR424]

GEORGE GREEN: In 1996, yes, I would agree with that. [LR424]

SENATOR LATHROP: And do you remember at least sitting down with him and having a conversation about that before he wrote the September 18, 1996, memo that became sort of the last word until Castillas? [LR424]

GEORGE GREEN: I do not recall that specifically. [LR424]

SENATOR LATHROP: Okay. And in the chronology of events, the memorandum that was done in 1996 became the standard for calculating good time, the parole eligibility date, and the mandatory discharge date up until Castillas, perhaps through Castillas, but it was certainly the standard for determining or the formula for determining the application of good time to mandatory minimum sentences. Would you agree with that? [LR424]

GEORGE GREEN: I was not consulted about that, but I believe that to be true. During that period of time from 1996 through Castillas, I was not consulted about mandatory minimum sentences. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SENATOR LATHROP: Well... [LR424]

GEORGE GREEN: But I believe that to be true. [LR424]

SENATOR LATHROP: You say that and...well, I'll come back to that. I want to ask you a couple other sort of general questions. As the general counsel for the Department of Corrections, did you regularly meet with the director? [LR424]

GEORGE GREEN: Yes. [LR424]

SENATOR LATHROP: Tell us how frequently. Did you have regularly scheduled meetings or was it as called upon? [LR424]

GEORGE GREEN: Well, both, under... [LR424]

SENATOR LATHROP: What were the...tell us about the regularly scheduled meetings. How often were you meeting? [LR424]

GEORGE GREEN: Director Houston would have a meeting of his executive staff every week. [LR424]

SENATOR LATHROP: Okay. Was there a name for those meetings? [LR424]

GEORGE GREEN: I called them on my calendar DCS executive staff meetings, maybe director's executive staff meetings. [LR424]

SENATOR LATHROP: Where would they be held? [LR424]

GEORGE GREEN: In the director's conference room in our office building on the

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

campus of the Lincoln Regional Center. [LR424]

SENATOR LATHROP: Was there an agenda distributed for these executive meetings in advance? [LR424]

GEORGE GREEN: Yes, usually. [LR424]

SENATOR LATHROP: And did you have these weekly for the entire period of time that Bob Houston was the director? [LR424]

GEORGE GREEN: For the most part. We did change, excuse me, we did change I believe to biweekly meetings at some point in time late in his tenure as I recall. [LR424]

SENATOR LATHROP: Okay. But you had regular contact with him. [LR424]

GEORGE GREEN: Yes. [LR424]

SENATOR LATHROP: And in addition to those, well, before I get off the meetings, the regularly scheduled ones, who was invited to those or who were the regular participants? [LR424]

GEORGE GREEN: All of the directors' direct reports. That would be the deputy director for health services, for administration, for institutions, for programs and classifications, that would be me, that would be the PIO legislative liaison person. Dawn-Renee Smith was the last one and I don't know who holds that position now. And I think that's it. [LR424]

SENATOR LATHROP: Was Cameron White one of the people that was invited to those weekly meetings? [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

GEORGE GREEN: Occasionally, not regularly. [LR424]

SENATOR LATHROP: He's a mental health guy? [LR424]

GEORGE GREEN: Yes. He's the director of our mental health. [LR424]

SENATOR LATHROP: So occasionally like a couple times a year or occasionally like every other meeting? [LR424]

GEORGE GREEN: Well, somewhere in between that. His supervisor, Dr. Randy Kohl, was always at those meetings. [LR424]

SENATOR LATHROP: How long would the meetings typically last? [LR424]

GEORGE GREEN: Two or three hours or longer. They were long meetings. [LR424]

SENATOR LATHROP: What was the structure of the meeting? [LR424]

GEORGE GREEN: Bob would have an agenda and we would go through the agenda and we would go around the table and everyone would have an opportunity to say what's going on in their world. [LR424]

SENATOR LATHROP: So in addition to the subject matters that Bob Houston wanted to take up, the people who regularly attended were also free to say let me tell you what's going on in legal. [LR424]

GEORGE GREEN: Yes. [LR424]

SENATOR LATHROP: We got a little deal over here in legal and I want to bring you up to speed, exec staff, including the director. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

GEORGE GREEN: That's right. [LR424]

SENATOR LATHROP: Okay. In addition to those meetings, what other occasions would you have to have meetings with Bob Houston? [LR424]

GEORGE GREEN: I think Bob Houston was extremely approachable. That was my experience anyway, and I saw others that would walk down there and stick their head in and, do you have a minute, can I talk to you for a second, and many times be accommodated. I would on occasion tour the facilities with Bob Houston, and many people would stop and talk to Director Houston while you're touring the facility, staff and inmates alike. [LR424]

SENATOR LATHROP: Okay. So, so far it sounds like you have weekly meetings with Bob Houston where you can bring up whatever you want to bring up as part of that meeting, whether it's on the agenda or not. And he was a guy who you could stick your head in his office and say, you know what, I know I don't have an appointment, but I got something I want to run by you. [LR424]

GEORGE GREEN: That's correct. [LR424]

SENATOR LATHROP: Never felt like you couldn't approach him. In fact, you called him approachable. [LR424]

GEORGE GREEN: I would say Bob was approachable. Bob was challenging on occasion, as we can all be. There was something that, you know, he didn't really feel that you were, you know, correct on, he would sometimes be challenging. But he was always approachable and was always courteous. [LR424]

SENATOR LATHROP: Okay. So you have been...you're still a member of the bar...

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LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

[LR424]

GEORGE GREEN: Yes. [LR424]

SENATOR LATHROP: ...or you were during the entire time you were general counsel.
[LR424]

GEORGE GREEN: Yes. [LR424]

SENATOR LATHROP: Were you getting and reading Advance Sheets from the
Supreme Court? [LR424]

GEORGE GREEN: I would get the Advance Sheets. I did not read all the criminal
appeals on the Advance Sheets. [LR424]

SENATOR LATHROP: Okay. Were you getting them in paper like some people do?
[LR424]

GEORGE GREEN: No. [LR424]

SENATOR LATHROP: Or were you getting them on the computer... [LR424]

GEORGE GREEN: Yes. [LR424]

SENATOR LATHROP: ...like every Friday morning? [LR424]

GEORGE GREEN: Yes. [LR424]

SENATOR LATHROP: They show up in your inbox and you hit the link and you can
read any Opinion from the Nebraska Supreme Court... [LR424]

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Transcriber's Office
Rough Draft

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

GEORGE GREEN: That is correct. [LR424]

SENATOR LATHROP: ...immediately. [LR424]

GEORGE GREEN: I did not read every case every week, and I would look through those as time permitted. [LR424]

SENATOR LATHROP: Okay. You told me earlier in your testimony that you...when Mr. Riethmuller--I don't know why I'm having trouble with that name, probably because there's a t-h in it and it sounds like a k--but Mr. Riethmuller, when he did his original '96, 1996 memo on the calculation, you don't think you had anything to do with it. [LR424]

GEORGE GREEN: I don't think so. [LR424]

SENATOR LATHROP: Okay. Do you remember a time when he approached you about some concern about whether that...now I need to find the page because we're going to talk about a memo. Page 15 and 16. Do you see that in front of you? Hopefully I'm doing this right. Do you see that, page 15? [LR424]

GEORGE GREEN: I do see page 15. [LR424]

SENATOR LATHROP: Okay. It's a two-page memorandum. It's dated April 23, 2007, and it is from Ron... [LR424]

GEORGE GREEN: Riethmuller, yes. [LR424]

SENATOR LATHROP: ...Riethmuller to you, general counsel. Right? [LR424]

GEORGE GREEN: Yes. [LR424]

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Transcriber's Office
Rough Draft

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SENATOR LATHROP: And it's the reference, clarification of procedure for calculating discharge dates on mandatory minimum terms. [LR424]

GEORGE GREEN: Yes. [LR424]

SENATOR LATHROP: Do you remember receiving that? [LR424]

GEORGE GREEN: I'm sure I did. [LR424]

SENATOR LATHROP: In this two-page memorandum or communication to you as general counsel, he asks in the wake of Johnson v. Kenney, did you read Johnson v. Kenney when it came out? [LR424]

GEORGE GREEN: I read Johnson v. Kenney. I don't know if I read it right when it came out or not. [LR424]

SENATOR LATHROP: Well, was it close in time? I mean, did you appreciate that it was a decision of some consequence to the Department of Corrections? [LR424]

GEORGE GREEN: I don't have any knowledge now of when I read Johnson v. Kenney and what I appreciated at the time in 2002 when that case came out. [LR424]

SENATOR LATHROP: Well, by the time...do you acknowledge that you received this memorandum? [LR424]

GEORGE GREEN: Yes. [LR424]

SENATOR LATHROP: Okay. And he asked some questions in the wake of Johnson. Do you know if you'd read Johnson by the time you got this memorandum? [LR424]

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Transcriber's Office
Rough Draft

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

GEORGE GREEN: I think by the time I talked to Mr. Riethmuller after his memo I had read Johnson v. Kenney. [LR424]

SENATOR LATHROP: Okay. So in his memo he says, does this ruling, referring to Johnson v. Kenney, change our current method of comparing the discharge date with good time to the discharge without good time; does this ruling imply the department should use the same method to calculate discharge dates that we use to calculate parole eligibility dates? He had a couple, three questions for you, two or three questions for you. [LR424]

GEORGE GREEN: Um-hum, um-hum. [LR424]

SENATOR LATHROP: Did you have occasion to provide him any kind of a response or direction? [LR424]

GEORGE GREEN: I'm sure I did. I'm sure I met with him to listen to his concerns after I got the memo and to work through whatever questions he might have. [LR424]

SENATOR LATHROP: Let me ask you something because of the way you answered that question I have to stop you for just a second and ask you this. Are you telling me you have a memory of this or are you telling me that you know how you usually conduct your business and this is what I would have done? You see the difference? [LR424]

GEORGE GREEN: I do see the difference and I appreciate that. [LR424]

SENATOR LATHROP: All right. Tell me what you remember. [LR424]

GEORGE GREEN: I don't have a specific memory of this 2007 memoranda. To me, I've seen it before, I've seen in the records request as it came out. I've seen, you know, so

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Transcriber's Office
Rough Draft

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

I'm familiar with it. I don't recall exactly what I did in 2007 when I received this. [LR424]

SENATOR LATHROP: Okay. So I want to make sure today unless I ask you how you would generally do something or how you would...what your habit was or what your general course of behavior was, I'd like you to tell me what you remember so that I can be certain that your testimony is your recollection. Okay? [LR424]

GEORGE GREEN: Thank you, Senator, I will. [LR424]

SENATOR LATHROP: Do you have any memory of having a meeting with Mr. Riethmuller after he sent this to you? [LR424]

GEORGE GREEN: No. [LR424]

SENATOR LATHROP: Okay. So you don't know if you ever answered his questions that he presented in this memo after Johnson v. Kenney? [LR424]

GEORGE GREEN: No. [LR424]

SENATOR LATHROP: And have you conducted any kind of a search yourself or otherwise to determine whether there is any written response from you or anybody else in the legal counsel's office at Corrections? [LR424]

GEORGE GREEN: I'm not aware of any written response. [LR424]

SENATOR LATHROP: Okay. So you may or may not have given him any direction. You may or may not have had a meeting with him. You don't know, but there's no written documentation and you don't have any recollection of that meeting. It's okay if you don't. I'm just trying to... [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

GEORGE GREEN: Yes. I don't. [LR424]

SENATOR LATHROP: Okay. I'm just trying to follow the chronology of events because that's sort of an opportunity you had to participate in changing the way the 1996 memo had set out the way things would be done when you were dealing with mandatory minimums. Between the Johnson v. Kenney decision by the Nebraska Supreme Court and Castillas, were you called upon to address the formula for determining the mandatory discharge calculation for inmates who were incarcerated with a mandatory minimum sentence? [LR424]

GEORGE GREEN: No, I don't think so. [LR424]

SENATOR LATHROP: Never came up. [LR424]

GEORGE GREEN: No. [LR424]

SENATOR LATHROP: No one asked you about it, no one sent you an e-mail, nothing. [LR424]

GEORGE GREEN: No one asked me about it. No. Most of those questions were dealt with at the Attorney General level not at the general counsel for Corrections level. [LR424]

SENATOR LATHROP: Well, I don't know if you were here this morning. Maybe you were, but somebody told us that...one of the witnesses said that at some point in time they were discouraged from going to the Attorney General for advice and they were supposed to come to legal counsel. [LR424]

GEORGE GREEN: My testimony is that there was regular frequent contact between the records department and the attorneys at the Attorney General Office. I did hear

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

testimony this morning about someone claimed that they were dissuaded from seeking a formal Attorney General Opinion on something. [LR424]

SENATOR LATHROP: Okay. [LR424]

GEORGE GREEN: That was my understanding of the testimony. [LR424]

SENATOR LATHROP: First of all, the frequency of the contact would be because the Attorney General is representing Corrections in litigation, and so, like you, the Attorney General worked with some of the records people. [LR424]

GEORGE GREEN: No, that the Attorney General was present during the criminal appeals with cases that might have an impact on the calculation of sentences, not where the department was a party to the case but a case that they would be aware of. [LR424]

SENATOR LATHROP: Okay. So the Attorney General was handling direct appeals, some of which involved sentencings... [LR424]

GEORGE GREEN: Yes. [LR424]

SENATOR LATHROP: ...and some cases that involved calculation of whether a guy was staying in too long or when he should get out. [LR424]

GEORGE GREEN: That's correct. [LR424]

SENATOR LATHROP: And that would give him occasion to deal with your department's records people. [LR424]

GEORGE GREEN: Yes. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SENATOR LATHROP: But when the...we were...I was asking you a question about the occasions that you had between Johnson v. Kenney and Castillas to address any issues regarding that formula and you said there were none. Is that true? [LR424]

GEORGE GREEN: That is correct. [LR424]

SENATOR LATHROP: Then the Castillas decision comes down. Correct? [LR424]

GEORGE GREEN: Correct. [LR424]

SENATOR LATHROP: How did you find out about it? [LR424]

GEORGE GREEN: As I recall, I got a copy of an e-mail from...or, no, an e-mail was addressed to me from Jeannene Douglass and copied to Linda Willard, and the e-mail stated that, you know, Linda said or, you know, I said and Linda agreed that we should just stay the course and not change whatever it is we're doing. Okay? So I get that e-mail and I know Jeannene Douglass. She's not a law-trained individual. I know she's a...not to be dismissive of her abilities, but I know that she's a mid-level or lower-level person. So I speak to Kyle Poppert. I spoke to him within a few days, certainly within a week. [LR424]

SENATOR LATHROP: Before we get to that conversation, and I'm very interested in it, on page 140 is the e-mail that you're referring to where you received a copy of the Castillas Opinion. [LR424]

GEORGE GREEN: That is correct. I recall this. [LR424]

SENATOR LATHROP: That's the e-mail where Jeannene Douglass sends an e-mail to you, Linda Willard, and Kyle Poppert, and attached to that is the Castillas Opinion.

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

[LR424]

GEORGE GREEN: Um-hum. [LR424]

SENATOR LATHROP: Okay. [LR424]

GEORGE GREEN: And she says it would serve the director's desires and so forth.
[LR424]

SENATOR LATHROP: Right. Let me ask you this. Did you read the Opinion? [LR424]

GEORGE GREEN: I did not. [LR424]

SENATOR LATHROP: Okay. It was an attachment to this e-mail. [LR424]

GEORGE GREEN: It was. [LR424]

SENATOR LATHROP: And it is evident in the e-mail itself that there is a question, at least a question, that the department has been doing it one way and the Supreme Court just decided a case and said it should be done a different way. [LR424]

GEORGE GREEN: That issue has risen its head in this e-mail, yes. [LR424]

SENATOR LATHROP: Okay. And the case they're talking about is an attachment.
[LR424]

GEORGE GREEN: That is true. [LR424]

SENATOR LATHROP: You didn't open it up and read the case? [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

GEORGE GREEN: I did not. [LR424]

SENATOR LATHROP: Okay. How come? [LR424]

GEORGE GREEN: Well, I wish I would have in retrospect, obviously, but I'm like everybody else: I've got 15 million things to do. What I wanted to do was to find out from Kyle Poppert what was going on. I thought Kyle would have a better view about what was going on. I also... [LR424]

SENATOR LATHROP: Okay. Before we get to Kyle Poppert though, in the last sentence of this it says, "she agreed with me," that is Linda Willard, "and suggested I share this with you, Mr. Green, for your input and expertise in the matter." So your records clerk who you've previously described, I think fairly, she is a records manager, but it's a ministerial position for the most part not a policy decisionmaking person, sends you the Castillas case, lets you know that we're doing it one way and the Supreme Court says that it should be done a different way and says, I want your input. [LR424]

GEORGE GREEN: She also tells me that Linda Willard apparently agrees with her that we should not follow the Supreme Court. [LR424]

SENATOR LATHROP: Well, wait a minute. Let's talk about that for a second. As the general counsel to the Department of Corrections, if anybody says to you, Mr. Green, I think we should not follow the Supreme Court Opinion, why don't you stop right there and go, you know what, I better read this thing because this looks like a heck of a mess on its way and I should take care of it earlier rather than later? [LR424]

GEORGE GREEN: I wondered whether or not she knew what the Supreme Court's position was, whether she was qualified to say whether or not we were following it. I kind of doubted that frankly because I doubted that Linda Willard would say, oh, yeah, sure, you don't have to do what the Supreme Court says, having known Linda Willard

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

for all these years that I've known her. [LR424]

SENATOR LATHROP: Well, you might have missed a couple of e-mails before this one got to you. [LR424]

GEORGE GREEN: Actually later on... [LR424]

SENATOR LATHROP: You clearly did. [LR424]

GEORGE GREEN: Later on if you look at those e-mails I was not included in those e-mails. [LR424]

SENATOR LATHROP: Well, you're included in this one and it was evident from the e-mail itself that there was an issue about whether the department that you're general counsel for was going to follow a Supreme Court Opinion or keep doing things the way they have been done, which wasn't consistent with the Opinion that was attached to this e-mail. [LR424]

GEORGE GREEN: No. This e-mail at 2:09 p.m. on Friday, February 8, told me that Jeannene Douglass said that Linda Willard was okay with whatever it is we were doing that, you know, according to Jeannene Douglass may have violated the Supreme Court decision. [LR424]

SENATOR LATHROP: Okay. [LR424]

GEORGE GREEN: I wanted to talk to Kyle Poppert to find out what was going on because I thought he would know exactly. [LR424]

SENATOR LATHROP: All right. This would certainly now be on your radar. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

GEORGE GREEN: Yes. [LR424]

SENATOR LATHROP: The antennae are up and as a lawyer I don't care if some other lawyer says it's okay to ignore the Supreme Court, you are general counsel over at Corrections and this has to be a...this is a big deal. [LR424]

GEORGE GREEN: I wanted to verify what was going on. [LR424]

SENATOR LATHROP: Okay. But you'd agree it's a big deal when you have one of your records clerks saying, I'm about to ignore the Supreme Court Opinion, what do you think, general counsel? And your answer is, let me go talk to the records administrator. [LR424]

GEORGE GREEN: I wanted to find out what the facts were before I responded. [LR424]

SENATOR LATHROP: Okay. Fair enough. So you met with or had some conversation with Kyle Poppert. [LR424]

GEORGE GREEN: I met with Kyle Poppert in person. Kyle Poppert assured me that we were following the law. [LR424]

SENATOR LATHROP: Did you go to him or did he come to you? [LR424]

GEORGE GREEN: I went to him. [LR424]

SENATOR LATHROP: Was that within two days of the Opinion or the same day? [LR424]

GEORGE GREEN: No, it was within a week though. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SENATOR LATHROP: All right. Within a week you go into Poppert's office, by the way, not trained as a lawyer, right? [LR424]

GEORGE GREEN: Actually trained by Riethmuller to apply the criminal sentences that come into our department, and that was not something that was within the legal division and not something that we had been asked to do--not Sharon, not Kathy, not me, not Laurie Smith Camp before us. [LR424]

SENATOR LATHROP: What do you mean? Who... [LR424]

GEORGE GREEN: That when someone is sentenced to prison, it's the records department that calculates the sentence that says he can come in...yeah. [LR424]

SENATOR LATHROP: Sure. Sure. You got to tell them how to do it legally though if they ask you. [LR424]

GEORGE GREEN: If they ask me, yes, I do. [LR424]

SENATOR LATHROP: Well, didn't she ask you in her e-mail? Doesn't she say, what do you think? [LR424]

GEORGE GREEN: What I wanted to find out and the reason why I talked to Kyle Poppert just based on this one e-mail... [LR424]

SENATOR LATHROP: Okay, and... [LR424]

GEORGE GREEN: ...because I was not sure what exactly was going on but I knew Kyle would tell me. And so I spoke to Kyle... [LR424]

SENATOR LATHROP: When you went to meet with Kyle Poppert within a week of the

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Transcriber's Office
Rough Draft

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

Castillas decision, had you read the Opinion yet? [LR424]

GEORGE GREEN: I did not. [LR424]

SENATOR LATHROP: So you're going to go down and talk to the non-lawyer records administrator and ask him what's going on, and when you do, he says everything is fine. [LR424]

GEORGE GREEN: He says that we're following the law the way he's been trained and that we're going to get together and he's going to do a memo. Now that's the recollection I have of that conversation. [LR424]

SENATOR LATHROP: When he said, we're following the law, did you ask him if you were following... [LR424]

SENATOR CHAMBERS: Mr. Chairman? [LR424]

SENATOR LATHROP: Yes, sir. [LR424]

SENATOR CHAMBERS: I'm a member of this committee. Is that lawyer supposed to tell him or suggest to him what his answers... [LR424]

ANDREW STROTMAN: Senator...Senator... [LR424]

SENATOR CHAMBERS: I see him look...I'm not talking to you, I'm talking to the Chair. [LR424]

SENATOR LATHROP: Okay. [LR424]

SENATOR CHAMBERS: And then he will address you. It's not my role to do that.

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

[LR424]

SENATOR LATHROP: Okay. Okay. [LR424]

ANDREW STROTMAN: I'm sorry, Senator. [LR424]

SENATOR LATHROP: Okay. [LR424]

SENATOR CHAMBERS: I watched Mr. Green when you ask him a question look.
[LR424]

SENATOR LATHROP: Sure. [LR424]

SENATOR CHAMBERS: And this man will hold this document over. [LR424]

SENATOR LATHROP: Okay. [LR424]

SENATOR CHAMBERS: Mr. Green will look at it. And that's the inquiry I have. [LR424]

SENATOR LATHROP: I appreciate your concern. And I'll ask you not to share stuff and if he needs to consult with you that's fine. [LR424]

ANDREW STROTMAN: I will. Senator, I...do you...I don't know if he knows if he can refer to the documents that he turned over to you. [LR424]

SENATOR LATHROP: I don't have a problem with him referring to a document if he...if it helps or aids in his recollection. What I don't want to do... [LR424]

ANDREW STROTMAN: That's what... [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SENATOR LATHROP: ...is be here until 12:00 tonight while he's...you tracking with me?
[LR424]

ANDREW STROTMAN: And... [LR424]

SENATOR LATHROP: If he needs to refer to it, we'll...then I don't have a problem
because this isn't a test about what you remember. We're trying to get the facts. Okay?
Fair enough. [LR424]

ANDREW STROTMAN: There is...yes. [LR424]

SENATOR LATHROP: Okay. It does look like you're coaching him when you're holding
those things up. [LR424]

ANDREW STROTMAN: Yeah, yeah. I understand. [LR424]

SENATOR LATHROP: Okay. [LR424]

ANDREW STROTMAN: There is a document right there that shows the time of the
discussion with Kyle Poppert. [LR424]

SENATOR LATHROP: Okay, okay. Got it. [LR424]

ANDREW STROTMAN: And I didn't...I know it's not in your book. [LR424]

SENATOR LATHROP: All right. Thank you both. My question...I'm going to maybe
backtrack a couple. When you went down to see Mr. Poppert to find out what was going
on you had not read the Opinion. [LR424]

GEORGE GREEN: That's correct. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SENATOR LATHROP: And when you went down to ask him what was going on, how long did that conversation take or how much time did you spend with him to get to the bottom of this? [LR424]

GEORGE GREEN: It was a short conversation, five or ten minutes. [LR424]

SENATOR LATHROP: And when you talked to him, did he tell you that there was a difference between the way that Corrections had been calculating this and the Opinion just rendered by the Nebraska Supreme Court? [LR424]

GEORGE GREEN: He did not. He told me... [LR424]

SENATOR LATHROP: In five minutes that didn't come up? [LR424]

GEORGE GREEN: He told me that there was...that we were following the law. He did not say that there was a divergence of practice between what the records division was doing and the Supreme Court had told us to do. [LR424]

SENATOR LATHROP: But the memo from...the e-mail from Jeannene Douglass to you February 8 at 2:00 should have made that evident. Right? If you want to take a second look at it again,... [LR424]

GEORGE GREEN: I have it in front of me. [LR424]

SENATOR LATHROP: ...on page 140 it tells you that there is a difference between the way they've been doing it and the Supreme Court Opinion. And there is a dilemma there, at least in her mind as a non-lawyer, clerical person. The dilemma is: Do we keep doing it the old way or do we do it the way the Supreme Court just told us to do it this morning? So I know that you're...you want to go to the next step where we're talking to

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

Poppert, but the fact of the matter is that when you got this e-mail from Ms. Douglass it should have been evident to you that there was the old way and there was the Supreme Court Opinion which precipitated the inquiry to you in the first place. [LR424]

GEORGE GREEN: Well... [LR424]

SENATOR LATHROP: And to go to Kyle Poppert, to go to Kyle Poppert and ask him if everything is okay and he says, don't worry, we're following the law, let me ask you, did you think, well, Jeannene Douglass sent me this e-mail a few days ago and it's obvious that that's not the case? [LR424]

GEORGE GREEN: What I knew at the time was that Jeannene Douglass had sent the e-mail. I didn't know that her opinion or her perception or her belief was accurate. I went and talked to Kyle Poppert. [LR424]

SENATOR LATHROP: What made you think his would be? He has no more training than Ms. Douglass. [LR424]

GEORGE GREEN: Because he is the records administrator and actually I relied on his expertise. I think... [LR424]

SENATOR LATHROP: Did you know when people were calling him for advice, he was referring them to Ms. Douglass? [LR424]

GEORGE GREEN: I did not know that. [LR424]

SENATOR LATHROP: Ms. Douglass, everything I've looked at, she's been involved in answering the inquiries from people who would call, judges that were calling. After Mr. Riethmuller left, she was the person everybody was going to. I just...you're dismissing Ms. Douglass in this explanation and relying on Mr. Poppert and I don't see why or how

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

you thought he was going to be a more credible source or at least what his opinion would be to you that would alleviate any concern a decent lawyer would have after seeing that. [LR424]

GEORGE GREEN: Well, as I said,... [LR424]

SENATOR LATHROP: Go ahead. [LR424]

GEORGE GREEN: ...he was the supervisor. He was Jeannene Douglass's supervisor. I had known him for a number of years. He was right down the hallway. I knew that if there was any daylight between a Supreme Court decision and what our actual practice was, I trusted that Kyle Poppert would let me know and then we could get together and work on it. And in fact he said that, no, we're following the law, and that he would schedule a meeting between the three of us and we could...and I really don't have...this is a time when I don't have an exact memory of what was said. But I have a note and it says that we're following...I do recall him very clearly saying we're following the law. Okay. [LR424]

SENATOR LATHROP: Okay. [LR424]

GEORGE GREEN: And then he was...and my note then says he was going to get together, we'll do a memo, there will be a meeting, so there will be some follow up. [LR424]

SENATOR LATHROP: But tell us, if he was...if he reassured you that you were following the law, what's the necessity of another meeting? [LR424]

GEORGE GREEN: To find out why Jeannene believes that we're not. I don't have an exact memory of that conversation. I just have the note of that. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SENATOR LATHROP: So whatever he told you didn't put your mind at ease enough to dismiss all of this. We're going to have another meeting or another conversation about the e-mail you received that suggests the Department of Corrections isn't going to be following a Supreme Court Opinion. [LR424]

GEORGE GREEN: That's correct. [LR424]

SENATOR LATHROP: Do you have another meeting? [LR424]

GEORGE GREEN: No, not until October. [LR424]

SENATOR LATHROP: Did you receive any other e-mails or communications on the subject before October? [LR424]

GEORGE GREEN: Not that I recall. [LR424]

SENATOR LATHROP: So it drops off the radar screen entirely for you until October 31, 2013. [LR424]

GEORGE GREEN: That's correct. [LR424]

SENATOR LATHROP: Did you ever go down Poppert again and say, you know that thing, that e-mail that I got from Jeannene Douglass, did we work through that? Did you ever have a conversation with Poppert about whether we'd reconciled the difference between the way we were doing it and the way the Supreme Court told us to do it in Castillas? [LR424]

GEORGE GREEN: I did not. I sure wish I would have, but I did not. [LR424]

SENATOR LATHROP: When did you read Castillas? [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

GEORGE GREEN: I read Castillas after the World-Herald news story broke. [LR424]

SENATOR LATHROP: That's hard to believe. After you got this e-mail from...I'm trying to figure out...let me ask you this because some people...I have this habit of leaving an e-mail in my in-box until I've taken care of it and addressed it. Do you know what you did with this when you got it from Ms. Douglass, did you delete it or did you keep it? [LR424]

GEORGE GREEN: No, I... [LR424]

SENATOR LATHROP: Or did you put it in sort of a "I need to follow up on this" list of things to do? [LR424]

GEORGE GREEN: I had folders. I'm sure I put it in a folder. I don't know right now what the folder was called on my desktop. [LR424]

SENATOR LATHROP: Was it like a to-do folder or was it a "I don't need to worry about this" folder? [LR424]

GEORGE GREEN: It was records or sentences or something. [LR424]

SENATOR LATHROP: And you never followed up with Poppert and you never followed up with Ms. Douglass. [LR424]

GEORGE GREEN: That's correct. [LR424]

SENATOR LATHROP: But you would agree that a fair reading of the e-mail from Ms. Douglass at 2:00 the day of the decision would be that she's trying to determine or sort out a dilemma and the dilemma is whether I keep doing things the old way or I follow

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

the Supreme Court Opinion. [LR424]

GEORGE GREEN: What I gathered from this is that whatever, however Jeannene was describing her actions that Linda Willard was in approval with it. And then I verified that Kyle Poppert said that there would not be a problem with it. And I filed the e-mail and I went on about my business. [LR424]

SENATOR LATHROP: So I'm just going to tell you, my observation at this point in your testimony is you're blaming Kyle Poppert and he was in here a little bit ago blaming you. He's thinking you're dealing with it and you're thinking Kyle Poppert, a records clerk, is dealing with it. [LR424]

GEORGE GREEN: Records administrator. [LR424]

SENATOR LATHROP: Records administrator, a non-lawyer. [LR424]

GEORGE GREEN: The person who's been appointed by our department to run the records department. [LR424]

SENATOR LATHROP: Okay. [LR424]

GEORGE GREEN: He assured me that we were in full compliance with all of the legal requirements. And I said, you know, are we in compliance with this? Do I need to worry? He said no. And that's what happened. [LR424]

SENATOR LATHROP: That's pretty hard...I'm having trouble with that one, I'm not going to lie. And I'm not going to get off of this e-mail from Ms. Douglass quite yet because it says right in the thing, the second sentence, while I agree with and we are currently calculating the mandatory minimum terms in the manner expressed in this decision, we do not calculate the discharge date in the manner described in this

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

decision. [LR424]

GEORGE GREEN: Kyle Poppert said we were. [LR424]

SENATOR LATHROP: Okay. You didn't feel it incumbent upon you to read the decision and get to the bottom of it or follow up. [LR424]

GEORGE GREEN: That's true. [LR424]

SENATOR LATHROP: And that was based on the assurance from Kyle Poppert who we heard earlier this evening. [LR424]

GEORGE GREEN: And Jeannene's assurance that Linda Willard was in agreement with it. [LR424]

SENATOR LATHROP: And you have no more involvement until we get to October. [LR424]

GEORGE GREEN: That's correct. [LR424]

SENATOR LATHROP: Earlier we heard testimony from Ms. Willard who forwarded the decision to Ms. Douglass that after the e-mail where it suggested that she was okay with following the old method and not the new pronouncement from the Supreme Court, that Ms. Willard, concerned about the substance of that e-mail by Douglass, called your office and ended up speaking with Lindgren, leaving a message for you to follow up and call so you could call back Linda Willard and talk about (a) the e-mail or what Jeannene Douglass had said and the Castillas Opinion. Did you get that message from Ms. Lindgren? [LR424]

GEORGE GREEN: I never got such a message from either Linda Willard or Sharon

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

Lindgren. [LR424]

SENATOR LATHROP: So did you ever talk to Linda Willard about the Castillas Opinion? [LR424]

GEORGE GREEN: Not until much, much later, until the story broke in the World-Herald. [LR424]

SENATOR LATHROP: Okay. And then of course now we're...we want to find out what's happening. [LR424]

GEORGE GREEN: That was...Sharon Lindgren was on a speaker phone with Linda Willard in Sharon's office as I recall and they called me in and the conversation was a reporter had just, you know, contacted her and I...yeah. [LR424]

SENATOR LATHROP: And that, you're telling us, is your next involvement. [LR424]

GEORGE GREEN: Yes. [LR424]

SENATOR LATHROP: Because that's in June of 2014. Does that sound right? [LR424]

GEORGE GREEN: That sounds...yes. [LR424]

SENATOR LATHROP: That's...I have to tell you that I have a memo here from the Sentencing Review Committee meeting minutes in October of 2013 and it says you were there. [LR424]

GEORGE GREEN: I forgot about October. I forgot about October. I thank you for bringing that up. Yes, I was at the meeting in October. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SENATOR LATHROP: Were you? [LR424]

GEORGE GREEN: Yes. [LR424]

SENATOR LATHROP: Had you read Castillas before you went into the meeting? You were at the meeting. [LR424]

GEORGE GREEN: I was at the meeting. [LR424]

SENATOR LATHROP: And this was called by Kyle Poppert. [LR424]

GEORGE GREEN: The meeting was called by Kyle Poppert. [LR424]

SENATOR LATHROP: Did you know what he wanted to talk about? [LR424]

GEORGE GREEN: No, I don't believe so. [LR424]

SENATOR LATHROP: Had he talked to you about what was going to be discussed at this meeting? [LR424]

GEORGE GREEN: He did not. [LR424]

SENATOR LATHROP: Have you ever been to one of these Sentence Review Committee meetings before? [LR424]

GEORGE GREEN: Nor after. [LR424]

SENATOR LATHROP: Or since. Never happened. It was just a one-time thing. [LR424]

GEORGE GREEN: As far as I know. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SENATOR LATHROP: Okay. The notes on 177 and 178 from that meeting would suggest, first, that you were there and that there were four or five things that were discussed. Do you see the minutes or the... [LR424]

GEORGE GREEN: I do. [LR424]

SENATOR LATHROP: ...summary of what took place? [LR424]

GEORGE GREEN: Yes. [LR424]

SENATOR LATHROP: In the middle of page 178, and I apologize to people that have had to listen to this over and over, it talks about State v. Castillas. And I know I asked you this. Tell me, did you have the Opinion read by the time you went into this meeting? [LR424]

GEORGE GREEN: No. [LR424]

SENATOR LATHROP: Still don't...still haven't read it. [LR424]

GEORGE GREEN: No. [LR424]

SENATOR LATHROP: And in the meeting we're going to talk about State v. Castillas, and the Nebraska Supreme Court affirmed the district court decision, and it says the Supreme Court has made an assumption about how the Department of Corrections is calculating sentences on the maximum term when there's a mandatory minimum. Issue: our current practice is different than that of the court's assumption. The use of "assumption" is maybe a poor use of a term. It's actually a holding of the court. Would you agree? The court doesn't make assumptions. They make holdings. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

GEORGE GREEN: The courts make holdings, they don't make assumptions. [LR424]

SENATOR LATHROP: Right. And so our current practice, if I can paraphrase, is different from that in the court's holding. We need to clarify exactly...this is the status, we need to clarify exactly what the Supreme Court's intention is on this before we as a department act. Do you remember this meeting? [LR424]

GEORGE GREEN: I remember that there was a meeting but at no time at this meeting or this meeting after the meeting was I told that we are not following the Supreme Court's decision in the Castillas case. And... [LR424]

SENATOR LATHROP: Issue: Our current practice is different than that of the court's holding. These are the minutes and I have to tell you I...at some point I got to be able to rely on some of the documents that we're getting in response to the subpoenas this committee is sending out, and this one would suggest that that very thing was discussed, that there was a discussion about the fact that the department was not following the Castillas decision. And somebody in the room, that had four lawyers in it and you were at the top of the food chain, said we need to find out what the Supreme Court's intention is with respect to this subject. Did you say that? [LR424]

GEORGE GREEN: No. Well, I don't recall the meeting. I can assure you that at no time was I told we were not in compliance with any Supreme Court ruling, including State v. Castillo. [LR424]

SENATOR LATHROP: Well, part of the problem is you didn't read the Opinion when Ms. Douglass sent it to you at 2:00 in the afternoon it was issued. And now eight months later you walk into a meeting still not having read it, so no one can hold you accountable for what was in it. And for the life of me this lady asked you; Ms. Douglass asked you what your opinion was when she sent you the e-mail at 2:00 on the afternoon that it was issued. And your answer today is, well, I didn't know anything. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

GEORGE GREEN: I'd followed up with... [LR424]

SENATOR LATHROP: No one told me. [LR424]

GEORGE GREEN: I followed up with her supervisor within a week to say, are we good, are we following that. He assured me unequivocally that we were. [LR424]

SENATOR LATHROP: I didn't hear that from Kyle Poppert. [LR424]

GEORGE GREEN: That is what... [LR424]

SENATOR LATHROP: I think Kyle Poppert's testimony was that he appreciated there was a difference and they had a dilemma and they needed to figure out what to do and they were waiting for you to tell them. [LR424]

GEORGE GREEN: But that's not what he told me at the time. He was quite emphatic that we were following the court's decision. I said okay. [LR424]

SENATOR LATHROP: Four lawyers in the room, four lawyers in the room and the conclusion is we're now aware of the situation, this is the minutes, we're now aware of the situation, the situation being we're doing it wrong compared to the Opinion. We will act when we're specifically told our current way is wrong and it needs to be changed. [LR424]

GEORGE GREEN: I don't think...well, I don't have a recollection of that. I can... [LR424]

SENATOR LATHROP: You might not, but it's in the minutes and you were there. So did you tell somebody, you know what, we need to get to the bottom of this; I'm back to my office right now, I'm going to read the Opinion, and we're going to reconvene? [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

GEORGE GREEN: No, I did not say that. [LR424]

SENATOR LATHROP: In fact, this is in October and you don't even read the Opinion until the next summer. [LR424]

GEORGE GREEN: That's correct. [LR424]

SENATOR LATHROP: And when you read the Castillas Opinion, it's now 15 months old and a scandal from the World-Herald. Once you read it, did you get it? [LR424]

GEORGE GREEN: Yes. [LR424]

SENATOR LATHROP: So after this became a news item, you did read Castillas and you did appreciate that you weren't following it. [LR424]

GEORGE GREEN: That's correct. [LR424]

SENATOR LATHROP: In the minutes, the...when they say the status is we need to clarify exactly what the Supreme Court's intention is on this before we as a department act, can you imagine where the department was supposed to learn more clearly the Supreme Court's intention? [LR424]

GEORGE GREEN: I don't know what that means. [LR424]

SENATOR LATHROP: I don't either. It makes me think that there was something else going on and somebody wrote this down because I can't imagine lawyers thinking that makes sense. [LR424]

GEORGE GREEN: It does not make sense to me, and as you point out, it was...several

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

lawyers were in the room. I think the lawyers outnumbered the laypersons in the room or pretty close to it, and... [LR424]

SENATOR LATHROP: And I'll bet the laypersons were looking to the lawyers... [LR424]

GEORGE GREEN: Quite possibly. [LR424]

SENATOR LATHROP: ...because it involved Opinions from the Supreme Court... [LR424]

GEORGE GREEN: Yes. [LR424]

SENATOR LATHROP: ...and interpreting them and getting some direction. [LR424]

GEORGE GREEN: Yes. [LR424]

SENATOR LATHROP: So tell me, after you had this meeting, did you ever sit down when you had a weekly meeting with Bob Houston and say, I got something to talk about; you know what, we got this little sentencing calculation deal going on over there; I just want to put it on your radar, Mr. Houston? [LR424]

GEORGE GREEN: I did not tell Bob Houston that. [LR424]

SENATOR LATHROP: Did you ever talk to Bob Houston about any of this? [LR424]

GEORGE GREEN: Not about the Castillas case. [LR424]

SENATOR LATHROP: What does that mean? [LR424]

GEORGE GREEN: Well, you asked me did I ever talk to Bob Houston about any of this,

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

and I did not talk to Bob Houston about the Castillas case regarding mandatory minimums. [LR424]

SENATOR LATHROP: Did you talk to Bob Houston about the fact that the Department of Corrections was not accurately calculating the mandatory discharge date after Castillas? [LR424]

GEORGE GREEN: No. [LR424]

SENATOR LATHROP: You can go down there and talk to him any time you want and you see him once a week in a meetings where it's sort of bring in whatever you want to talk about. [LR424]

GEORGE GREEN: Yes. [LR424]

SENATOR LATHROP: And you never talked to him about this? [LR424]

GEORGE GREEN: No. [LR424]

SENATOR LATHROP: So after the World-Herald gets onto this and it's now headed to the front page, did you sit down with Kyle Poppert? [LR424]

GEORGE GREEN: No. [LR424]

SENATOR LATHROP: Didn't sit down and go, Kyle, you know, you remember when I came into your office and you told me everything was fine? You didn't go down there and say, Kyle, did you see the paper this morning? [LR424]

GEORGE GREEN: I did not. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SENATOR LATHROP: What did you do? [LR424]

GEORGE GREEN: I talked to... [LR424]

SENATOR LATHROP: Tell us what you did, if anything, from beginning to end in response to Castillas. Did you do anything before it became an article in the World-Herald? [LR424]

GEORGE GREEN: What I did was talk to Kyle Poppert. [LR424]

SENATOR LATHROP: That was it. [LR424]

GEORGE GREEN: And I knew that whatever it was Jeannene Douglass was explaining that Linda Willard was okay with that. Kyle told me that we did not have a problem, and so I was satisfied and I took no further steps. [LR424]

SENATOR LATHROP: Okay. So...and I'm going to summarize. You get the Opinion from Ms. Douglass... [LR424]

GEORGE GREEN: Douglass. [LR424]

SENATOR LATHROP: ...and you don't read it. She tells you that there's a dilemma about whether to follow the Opinion or not, and you don't read the Opinion. You talk to Kyle Poppert, who's not a lawyer, and he tells you everything is okay. And so you don't do anything. And Ms. Willard leaves a message with Lindgren and you don't get it. And you never read the Opinion until you get to a scandal of the World-Herald, including while you're in a meeting talking about the Opinion and whether or not the Department of Corrections should change its course and follow a Nebraska Supreme Court Opinion. Do I got it right? [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

GEORGE GREEN: Your characterization of the last meeting, I don't really recall that being stated in that meeting in October. That was not my testimony. Others have said that. [LR424]

SENATOR LATHROP: You would agree that it's fair for this panel to conclude that that actually happened. You may not remember it, but it's in the minutes of the meeting. [LR424]

GEORGE GREEN: There is...the testimony is what it is. I would agree with that. [LR424]

SENATOR LATHROP: And it would be a fair conclusion of the committee that this discussion actually took place in the October 31, 2013, meeting because it's in the minutes from that very meeting. We can make that conclusion. Would that be fair? [LR424]

GEORGE GREEN: That would be fair. [LR424]

SENATOR LATHROP: And you may not remember it, but it's in the minutes. And the actions of a group that got together to talk about Castillas and whether we should change the way we calculate good time included four lawyers, and the four lawyers apparently didn't come up with a different conclusion other than we should wait and see what the intentions are of the Supreme Court before we act and we're not going to act until we're specifically told our current way is wrong and it needs to change. True? [LR424]

GEORGE GREEN: The minutes say somebody said that. [LR424]

SENATOR LATHROP: Did you leave the meeting early? [LR424]

GEORGE GREEN: Not that I'm aware of. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SENATOR LATHROP: Okay. So if somebody said it, you were there to listen to it if you weren't the guy that said it. [LR424]

GEORGE GREEN: I was there during the whole meeting as far as I know. [LR424]

SENATOR LATHROP: Okay. And you didn't stop the meeting and say, somebody go get me a copy of this Opinion and let's get to the bottom of it before we adjourn. [LR424]

GEORGE GREEN: That's correct. I don't think anybody said we're not going to follow the Castillas case during any meeting I was in. I have no recollection of that. I think I would have remembered that. [LR424]

SENATOR LATHROP: Well, you would agree that the minutes reflect that. [LR424]

GEORGE GREEN: There's two versions of these minutes. The version that we're talking about does reflect that, the one on page 177 and 178. [LR424]

SENATOR LATHROP: Okay. Did you see the minutes? Were they distributed? [LR424]

GEORGE GREEN: No, I did not look at the minutes when they were posted on the M drive. [LR424]

SENATOR LATHROP: Somebody posted them and you didn't look at them. [LR424]

GEORGE GREEN: Right. [LR424]

SENATOR LATHROP: So you had no way of going back and saying, jeez, that didn't happen. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

GEORGE GREEN: Right. [LR424]

SENATOR LATHROP: We can assume that it did because it's in the minutes and that's fair even though you may not remember it. True? [LR424]

GEORGE GREEN: I don't...I mean, it's true, I don't remember this. That's true. [LR424]

SENATOR LATHROP: Okay. Do you have a problem with Nikki Peterson's ability to keep minutes? [LR424]

GEORGE GREEN: No. [LR424]

SENATOR LATHROP: Is she an inaccurate keeper of minutes of meetings? [LR424]

GEORGE GREEN: I don't have any experience with that. [LR424]

SENATOR LATHROP: Well, I just want to make sure you're not discrediting Nikki Peterson's memorialization of these minutes; you're just saying you don't remember that happening. [LR424]

GEORGE GREEN: That's correct. [LR424]

SENATOR LATHROP: Okay. Linda Willard never followed up with you. You never got a...in other words, she calls you, you're tied up or you're on the phone. She leaves a message with Lindgren and your testimony is: I never got the message. [LR424]

GEORGE GREEN: That's correct. [LR424]

SENATOR LATHROP: So did you ever have a conversation with Willard before this blew up in front of the World-Herald? [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

GEORGE GREEN: I did not. [LR424]

SENATOR LATHROP: Okay. That's all the questions I have for you, Mr. Green. And maybe we'll start down this way and work down this way if you're all okay with that. Senator Krist. [LR424]

SENATOR KRIST: You know, there's two times when you were in your office according to Ms. Lindgren and you were not available to take a phone call from the Attorney General. So she took the message and you're telling us, just for the record again, you never got the message to call the Attorney General's Office back? [LR424]

GEORGE GREEN: About the Castillas case? [LR424]

SENATOR KRIST: About the Attorney General not agreeing with what was in the e-mail. [LR424]

GEORGE GREEN: That's correct. [LR424]

SENATOR KRIST: You never got that message. [LR424]

GEORGE GREEN: I never got that message. I never got any such message. [LR424]

SENATOR KRIST: And you're officed where in relationship to Ms. Lindgren? [LR424]

GEORGE GREEN: Right next-door. [LR424]

SENATOR KRIST: Okay. The second time that is curious for me, and the reason that I really doubt that you didn't read the Castillas case until after the World-Herald was published is, simply, sir, that you had Dawn-Renee Smith coming up with her hair on fire

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

trying to get you to give her an Opinion. You were in your office but you were busy and they went to Lindgren and Lindgren testifies that she said this is bad. I'm paraphrasing. But on those two occasions you never had a conversation with Ms. Lindgren saying, we got problems, boss? [LR424]

GEORGE GREEN: She never came to me and said, we got problems, boss, or words to that effect until after the scandal broke. [LR424]

SENATOR KRIST: You were in your office and Dawn-Renee Smith, who's the communications expert for the Corrections Department, came up to talk to you, took a side seat with your deputy, and you never heard part of this conversation and it was never relayed to you before the Omaha World-Herald actually published that you had a problem? [LR424]

GEORGE GREEN: I think it was...I don't know whether it was before the World-Herald published or before they made the inquiry. But, yes, until they raised the issue, I never had that discussion. [LR424]

SENATOR KRIST: Well, your testimony says that you didn't read it until after the World-Herald was published. [LR424]

GEORGE GREEN: Right. [LR424]

SENATOR KRIST: Now you're changing your testimony that you... [LR424]

GEORGE GREEN: No, I'm not changing my testimony. I was clarifying that I didn't look at the Castillas case until after the World-Herald raised the issue with Dawn-Renee Smith. I don't know if that was, you know, at the time it was published, if it was the day before it was published, it was the day after, but until that period of time. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SENATOR KRIST: I'm not trying to be a smart aleck about this thing but, sir, you must have been one busy guy because for 18 months you didn't find it in your agenda to read an Opinion from the Supreme Court that specifically you had been aware of, might have changed the calculations within the department that you're supposed to advise legally. Eighteen months? [LR424]

GEORGE GREEN: I did not. [LR424]

SENATOR KRIST: Wow! Hard to believe. Thank you. [LR424]

SENATOR LATHROP: Senator Mello. [LR424]

SENATOR MELLO: Thank you, Chairman Lathrop. Mr. Green, walk us through a little bit. You no doubt heard Ms. Lindgren's testimony in regards to this meeting that was called by Director Kenney kind of through Dawn-Renee Smith in regards to the aftermath of the World-Herald asking questions and investigating. Senator Krist just made mention of that meeting. Walk us through a little bit your recollection of that kind of, I'm trying to find the best word to use, kind of the damage control meeting so to speak that had to happen in regards to the World-Herald asking about the Castillas ruling. [LR424]

GEORGE GREEN: I was present at a meeting and it was at the end of the day and I was called into there if not by Dawn-Renee Smith by someone. And the story had just published or it was about ready to be published. And, you know, questions were swirling about. The Director Kenney and Dawn-Renee Smith were...had been in contact with the Governor's Policy Research Office and the public Information Officer for the Governor's Office, and they were running the show. And I don't really recall, I don't think there was too many persons present at first, and then it quickly devolved into persons running back and forth as I recall, you know, pulling inmate records, doing calculations with pen and paper, and that's what I recall about it. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SENATOR MELLO: What was the general tenor of kind of the meeting itself with...
[LR424]

GEORGE GREEN: It was kind of frantic. [LR424]

SENATOR MELLO: ...Ms. Lindgren--correct me if I'm incorrect--Ms. Lindgren, yourself, Director Kenney, Ms. Smith, and Mr. Poppert? Were those the five? [LR424]

GEORGE GREEN: I believe that there was one other records person, Mickie Baum,...
[LR424]

SENATOR MELLO: Okay. [LR424]

GEORGE GREEN: ...might have been and maybe another one but I don't recall about that. But it was very frantic. [LR424]

SENATOR MELLO: Was there any request of you made from Director Kenney or Dawn-Renee Smith? I mean, if they were... [LR424]

GEORGE GREEN: I asked them...right. [LR424]

SENATOR MELLO: If they were taking orders from the Governor's Office or the Governor's Policy Research Office, did they relay any specific request to you? [LR424]

GEORGE GREEN: They did not. I asked them what they wanted me to do, you know, what I should do, what can we do, what do you need? And I had no further follow-up with it other than being a participant in that meeting. I know that there was several marathon sessions of calculating sentences and then recalculating sentences, then, you know, mistakes in the calculations or mistakes in the recalculations. None of the lawyers

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

in the legal division were involved with any of that. [LR424]

SENATOR MELLO: Did they ask...any questions asked at the meeting of you or Ms. Lindgren of what happened here? [LR424]

GEORGE GREEN: No. [LR424]

SENATOR MELLO: You know, George, Linda, you know, George, Sharon, what happened here with this decision? Can you share something with us? No one asked any follow-up of either one of you at that meeting? [LR424]

GEORGE GREEN: No. [LR424]

SENATOR MELLO: Senator Lathrop asked some questions regarding kind of regular staff meetings, and it appears from your testimony that you had little or no understanding and/or communication about the Castillas ruling from February...the week after the ruling was sent to you by Ms. Douglass till that October 31 Halloween meeting in 2013. Any communication with Director Houston? I mean, is there any conversation you had with Director Houston in between that time period at all of I met with Kyle Poppert and he's working, he said everything is fine, just wanted to make sure, boss, you know nothing bad is happening, we're...the train is moving ahead on time, everything is going okay? Nothing along those lines with... [LR424]

GEORGE GREEN: Nothing along those lines. I recall nothing like that. [LR424]

SENATOR MELLO: Do you ever share conversations with Director Houston that you have maybe with other staff members or... [LR424]

GEORGE GREEN: Sure, sure. [LR424]

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Transcriber's Office
Rough Draft

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SENATOR MELLO: ...I asked, you know, so-and-so a follow-up and this is what they gave me? [LR424]

GEORGE GREEN: Sure. [LR424]

SENATOR MELLO: And no conversations at all with Director Houston at all about this issue ever? [LR424]

GEORGE GREEN: No. As I stated before, I had not read the decision. I had known that Linda Willard was okay with whatever it was that Jeannene Douglass was proposing in her e-mail and I verified that with Kyle Poppert and I didn't do anything else other than that. [LR424]

SENATOR MELLO: I think that's...oh, that's it for now. [LR424]

SENATOR LATHROP: You say that. Linda Willard was not okay. She suggested that Jeannene Douglass ask you. Okay. You keep saying that like somehow this has been blessed by the Attorney General's Office and it was in the e-mail she's telling...she said, Linda says I need to run it by you and get your input. She didn't bless it. She sent her over to you. I don't understand why you repeat that. Well, maybe I understand why you repeat it, but in the e-mail... [LR424]

GEORGE GREEN: The e-mail says... [LR424]

SENATOR LATHROP: ...in the e-mail she said, Linda thinks I should run it by you for your input. [LR424]

GEORGE GREEN: She also says, I said and Linda agreed, and I can't find, if you can point me in that direction. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SENATOR LATHROP: No, I know what you're talking about. But she's asking for your input in the e-mail. And you go down to Kyle Poppert who is a non-lawyer and he says, no problem, we're following the law. It's impossible for me to think that you didn't say, well, then what's the controversy, there's got to be a controversy here, I just read an e-mail a couple of days ago and it looks like there's a controversy, what is it, Kyle? For him...and by the way, that's not his version, but for him to say everything is fine, that's not a credible...it just doesn't fit in what we're hearing. [LR424]

GEORGE GREEN: He told me we're following it. And I don't know if it fits or not but it's exactly what happened. [LR424]

SENATOR LATHROP: Okay. I need to give Senator Seiler an opportunity. [LR424]

SENATOR SEILER: I have just one little issue. A couple of people testified this morning that they were kind of standing back and waiting to do anything in this case because they...Corrections was not a party. Did your law firm of the three people present ever to these laypeople that if we're not a party, the damn thing doesn't apply to us? [LR424]

GEORGE GREEN: We did not make that argument. We did not suggest that. In... [LR424]

SENATOR SEILER: Where did that come from? [LR424]

GEORGE GREEN: I'm not sure. [LR424]

SENATOR SEILER: Because the state of Nebraska was the appellee in that case, so they were a party. Last I knew, Corrections was part of the state of Nebraska. [LR424]

GEORGE GREEN: Yes. [LR424]

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Transcriber's Office
Rough Draft

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SENATOR SEILER: And the Attorney General was in there defending them. So how did this culture of, "Hey, if we're not specifically named," come about? [LR424]

GEORGE GREEN: Well, I don't know. [LR424]

SENATOR SEILER: Okay. The other question that just bothers the heck out of me is that it was testimony this morning, I think at least two people, that if the decision...a decision of the Supreme Court is not valid unless they refer it back to a district judge who then sends you a memorandum. Well, that would only apply in one particular circumstance, right? [LR424]

GEORGE GREEN: That's correct. We never gave that advice to Mr. Poppert or others. [LR424]

SENATOR SEILER: If the Supreme Court overruled the district judge, then you're going to get a remand and you're going to get a new order. But then what happens if the state wins on an affirmation? Nothing happens. So was that a culture that was in existence to your knowledge? [LR424]

GEORGE GREEN: I don't know if it was a culture. I do know that, you know, what Sharon Lindgren said about the sex offender registration statute, that that had been the advice of the Attorney General in that situation, but I wouldn't say that it was a culture within the Department of Corrections. Kathy or Sharon and I did not give anybody that advice. [LR424]

SENATOR SEILER: To your knowledge, none of your assistants did? [LR424]

GEORGE GREEN: To my knowledge, at least I did not and I don't believe they did. None of the lawyers that were present at the October 31 meeting, at that meeting understood anyone to be saying we don't have to follow the Supreme Court because of

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

some technicality or something. [LR424]

SENATOR SEILER: Oh, those aren't even technicalities. Those are myths. [LR424]

GEORGE GREEN: Well, I agree with what you're saying, but no one...I don't recall that meeting, but I had not been present in a meeting where someone articulated a basis or a suggestion or a thought process that somewhere or another the Supreme Court, you know, their decisions don't count. [LR424]

SENATOR SEILER: Thank you. I have nothing further. [LR424]

SENATOR LATHROP: Working our way down the table. [LR424]

SENATOR CHAMBERS: I'll yield and then speak after. [LR424]

SENATOR LATHROP: Okay. Okay, certainly. Senator Schumacher. [LR424]

SENATOR SCHUMACHER: Thank you, Senator Lathrop. A couple of different matters. This morning, Linda Willard indicated that after her attempt to contact you the day of the e-mails, the first e-mails, there was a conversation with you. [LR424]

GEORGE GREEN: There was not. I did not talk to her. [LR424]

SENATOR SCHUMACHER: So we have...if, in fact, she did say that and the record shows that, then we have a direct conflict of testimony here. You're saying: Didn't talk to her at all. [LR424]

GEORGE GREEN: I did not talk to Linda. [LR424]

SENATOR SCHUMACHER: And she's saying, if I can interpret my handwriting here,

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

that she discussed it with you and you discussed the fact that Douglass thought it was the director's desire to keep the population down, and then Willard said, I left it in your hands, I trusted Green would correct things. She did not follow up with Green because her desk was extremely busy at the Attorney General's Office and she was trusting you. That...no conversation like that. [LR424]

GEORGE GREEN: Linda and I did not have a conversation like that. [LR424]

SENATOR SCHUMACHER: Okay. Now along that same line, you indicated that one of the things preventing you from reading the case and doing other things is you had a million things to do too. So you have three attorneys in your office. It looks like the workload is extremely heavy. You are the chief attorney, head of the legal division. You know you're not able to have the time to read Supreme Court cases and Advance Sheets and apparently Ms. Lindgren, she's pressed on reading those things, too, and even though she means to, she has a hard time getting to them. And did you ever go to the Director of Corrections and say, you know, boss, we're up to our ears in alligators, we need extra staff here? [LR424]

GEORGE GREEN: I never asked for extra staff. [LR424]

SENATOR SCHUMACHER: Why didn't you ask for extra staff? [LR424]

GEORGE GREEN: I'm not sure. [LR424]

SENATOR SCHUMACHER: Is that part of the problem, the concern about, look, we can't ask for additional funding for staff, for additional facilities; we've got to find zero-cost ways to manage this mess? [LR424]

GEORGE GREEN: I know that under Bob Houston and under Mike Kenney there had been a push to achieve every possible efficiency to, you know, rob Peter to pay Paul, if

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Transcriber's Office
Rough Draft

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

you will. In the way the budget is prepared, the deputy directors get together and Robin Spindler, who's in charge of our administration and fiscal things, you know, puts together a proposed budget. No one had ever suggested that we get another attorney. [LR424]

SENATOR SCHUMACHER: Well, you knew you weren't suppose to suggest that, right? [LR424]

GEORGE GREEN: Well, no one ever asked me, let me put it that way, Senator. [LR424]

SENATOR SCHUMACHER: And you didn't volunteer the fact that you were up to your ears in alligators. [LR424]

GEORGE GREEN: I did not. No, I did not. [LR424]

SENATOR SCHUMACHER: And that's just because we aren't spending any more money. [LR424]

GEORGE GREEN: Well... [LR424]

SENATOR SCHUMACHER: That was the culture. [LR424]

GEORGE GREEN: The culture was to be very fiscally prudent, that's correct. [LR424]

SENATOR SCHUMACHER: And you're getting hung right now by that culture. You're the one sitting in that chair. [LR424]

GEORGE GREEN: Well, I don't feel I'm being hung. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SENATOR SCHUMACHER: Well, you're no longer on the payroll. [LR424]

GEORGE GREEN: I retired. [LR424]

SENATOR SCHUMACHER: Uh-huh. There was a couple of disturbing things that I think in Mr. Riethmuller's testimony. First, regarding that 2007 inquiry as to whether or not you might be miscalculating the release dates and whether you should be collecting them or calculating them the same as the parole dates. And he testified this morning that he talked with you and he assured...he was sure that you told him leave it alone. [LR424]

GEORGE GREEN: No, I didn't tell Ron Riethmuller to leave that alone. I think the testimony had to do with asking for an Attorney General Opinion. [LR424]

SENATOR SCHUMACHER: Okay. And then he followed up and he said that...was told by you, we do not ask for Attorney General's Opinions. [LR424]

GEORGE GREEN: Well, the executive branch can ask for an Attorney General Opinion. It's true that the Department of Corrections needs to vet that through the Policy Research Office to, you know, get permission, if you will, to ask for an AG Opinion. [LR424]

SENATOR SCHUMACHER: Did you initiate that process on anything? [LR424]

GEORGE GREEN: I did not. [LR424]

SENATOR SCHUMACHER: Okay. And so there's a hesitancy. You don't feel you're in a position to read the cases or have the time and get the job done and there's a hesitancy then to even ask for assistance from the Attorney General because you have to go through the Policy Research Office. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

GEORGE GREEN: Well, in retrospect I wish we would have asked for an AG Opinion.
[LR424]

SENATOR SCHUMACHER: When you began your testimony today, you kind of questioned the competency or at least the level of rank in the system and ability to make policy-level decisions on the part of Linda Willard, and then not too far into your testimony you're relying on this e-mail that says, oh, Linda is in agreement with the Attorney General's Office and everything is fine, I don't have to be bothered with this.
[LR424]

GEORGE GREEN: I don't recall what I said about questioning Linda Willard's ability. If I said that I guess I misspoke. I don't question Linda Willard's ability in the least. [LR424]

SENATOR SCHUMACHER: Okay. So you're the chief lawyer. You are asking two non-lawyers or relying on their opinions as to the interpretation of a Supreme Court case you've never read. [LR424]

GEORGE GREEN: That is the way that worked out. [LR424]

SENATOR SCHUMACHER: If the case would have required, if you'd have read it, it would have required that you recalculate these things and hundreds of new people would come back into the system or at the very least not be let out of the system, that would have had a real big impact on budgets and on zero-cost options and on staff and everything else, wouldn't it? [LR424]

GEORGE GREEN: Yes. [LR424]

SENATOR SCHUMACHER: Was that one of the reasons that you'd just as soon not hear the bad news from the Supreme Court? [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

GEORGE GREEN: No. [LR424]

SENATOR SCHUMACHER: No. I don't have anything further at this time. Thank you.
[LR424]

SENATOR CHAMBERS: Mr. Green, I want to start by touching on the e-mail which the Chair discussed with you at some length from Ms. Douglass. Who had been on the job longest, longer in that records office? Ms. Douglass or Mr. Poppert? [LR424]

GEORGE GREEN: Ms. Douglass. [LR424]

SENATOR CHAMBERS: Much longer, isn't that true? [LR424]

GEORGE GREEN: That's correct. [LR424]

SENATOR CHAMBERS: And you went to the one with lesser knowledge to question the knowledge and competency of somebody who had been there far longer. [LR424]

GEORGE GREEN: I went to Kyle Poppert. I didn't view him as having less knowledge than Jeannene Douglass. [LR424]

SENATOR CHAMBERS: I know you didn't but that's what I'm saying. He did have less knowledge about all of this than she did. Isn't that true? [LR424]

GEORGE GREEN: I don't know that to be true. [LR424]

SENATOR CHAMBERS: How long had he been on the job? [LR424]

GEORGE GREEN: He had not been on the job as long as she had. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SENATOR CHAMBERS: How long had he been on the job? [LR424]

GEORGE GREEN: I don't know. [LR424]

SENATOR CHAMBERS: Just like you didn't read the Opinion, you don't know that. I find your lack of knowledge and competency to be very disturbing. Mr. Green, obviously you think people on this panel are fools. Do you think I'm a fool? [LR424]

GEORGE GREEN: No, sir. [LR424]

SENATOR CHAMBERS: When the e-mail was received by you, did you receive that e-mail? [LR424]

GEORGE GREEN: From Jeannene Douglass? [LR424]

SENATOR CHAMBERS: Yes. [LR424]

GEORGE GREEN: Yes. [LR424]

SENATOR CHAMBERS: Did it mention Ms. Willard? [LR424]

GEORGE GREEN: Yes. [LR424]

SENATOR CHAMBERS: Did you contact Ms. Willard... [LR424]

GEORGE GREEN: No. [LR424]

SENATOR CHAMBERS: ...to discuss with her what was in the e-mail? [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

GEORGE GREEN: No. [LR424]

SENATOR CHAMBERS: But you went to Mr. Poppert. Is that true? [LR424]

GEORGE GREEN: That's correct. [LR424]

SENATOR CHAMBERS: Did you know anything about Ms. Willard in terms of her being a lawyer? [LR424]

GEORGE GREEN: Oh, yes. [LR424]

SENATOR CHAMBERS: Would she have been able to speak for herself relative to what Ms. Douglass had said in her e-mail? [LR424]

GEORGE GREEN: Oh, yes. [LR424]

SENATOR CHAMBERS: Now was Mr. Poppert mentioned in her e-mail? [LR424]

GEORGE GREEN: He was copied in the e-mail as I recall. [LR424]

SENATOR CHAMBERS: Did he...was he mentioned in the e-mail in the same way that Ms. Willard was mentioned? [LR424]

GEORGE GREEN: No. [LR424]

SENATOR CHAMBERS: But you went to Mr. Poppert. [LR424]

GEORGE GREEN: That's correct. [LR424]

SENATOR CHAMBERS: You went to a man who bounced from job to job to job and

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

thought this job went to him because nobody else wanted it. And you thought that this man who had been on 14 other jobs before coming there and hadn't been there very long would be able to interpret what this Supreme Court case meant. That was your decision, wasn't it, that he would be the one in the know? [LR424]

GEORGE GREEN: I decided to go to Kyle Poppert. [LR424]

SENATOR CHAMBERS: Because you thought he'd be in the know, is that correct? [LR424]

GEORGE GREEN: I thought he was the best person to talk to, yes. [LR424]

SENATOR CHAMBERS: I think if I heard correctly you indicated that you do read Supreme Court cases. [LR424]

GEORGE GREEN: Yes. [LR424]

SENATOR CHAMBERS: Not all of them, but you read them. [LR424]

GEORGE GREEN: Yes. [LR424]

SENATOR CHAMBERS: You read the Advance Sheet. [LR424]

GEORGE GREEN: Yes. [LR424]

SENATOR CHAMBERS: What case was more important than this one that you would find time to read but you couldn't find time to read this one about which and around which issues had been raised? [LR424]

GEORGE GREEN: I should have read this one. I regret not reading it. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SENATOR CHAMBERS: I want you to tell me a case you read that was more important than this. [LR424]

GEORGE GREEN: I don't recall. [LR424]

SENATOR CHAMBERS: But you've read numerous Supreme Court decisions, haven't you? [LR424]

GEORGE GREEN: Yes. [LR424]

SENATOR CHAMBERS: You're aware that since you are the lead or head attorney, it's like being the head of a law firm. You're aware of that, aren't you? [LR424]

GEORGE GREEN: In what sense do you mean? [LR424]

SENATOR CHAMBERS: Let me take it like this, let's talk about it from the standpoint of the Code of Professional Responsibility. A law firm is a firm where there's somebody who is in charge. The lawyer who is in charge of that firm has the responsibility to oversee and regulate what the lawyers under him or her are doing. Isn't that correct? [LR424]

GEORGE GREEN: Yes. [LR424]

SENATOR CHAMBERS: There's an ethical responsibility. You had and have an ethical responsibility to oversee what those lawyers under you are doing. Isn't that true? [LR424]

GEORGE GREEN: Yes. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SENATOR CHAMBERS: None of the lawyers saw fit to bring this issue to your attention. Is that what you're saying? [LR424]

GEORGE GREEN: Neither Sharon nor Kathy brought this to my attention, that is correct. [LR424]

SENATOR CHAMBERS: But you did have the issue brought to your attention in a formal setting at a meeting, didn't you? [LR424]

GEORGE GREEN: In October, yes. [LR424]

SENATOR CHAMBERS: And you...before I get to that, you should have known about what was in this case, shouldn't you? [LR424]

GEORGE GREEN: I agree that I should have read the case. [LR424]

SENATOR CHAMBERS: And you had an obligation to do that and you would be charged with knowledge of what was in that case because you ought to have known. [LR424]

GEORGE GREEN: I should have read the case. [LR424]

SENATOR CHAMBERS: And you are charged with knowledge of what you ought to have known based on the Code of Professional Responsibility. That term, "ought to have known," says, when it's applied to a lawyer, it means that a competent lawyer would inquire into the facts related to a situation and the circumstances. You should have made that inquiry, shouldn't you? [LR424]

GEORGE GREEN: I've said, yes, I should have. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SENATOR CHAMBERS: And the issue was raised by Ms. Douglass in no uncertain terms that what the department was doing was contrary to what the Supreme Court had said in an Opinion. Is that true or false? Did she raise that issue in that memo, that e-mail? [LR424]

GEORGE GREEN: In the e-mail, yes, she did. [LR424]

SENATOR CHAMBERS: But you doubted her competency because she was a non-lawyer. Isn't that true? You said you didn't know whether she knew what she was talking about. [LR424]

GEORGE GREEN: I didn't doubt her competency because she was a non-lawyer. I thought that Kyle Poppert would be a better person to give me a whole perspective on what was happening. [LR424]

SENATOR CHAMBERS: As a lawyer, what was the best source for you to go to find out what this issue was about? Wouldn't the case that she brought to your attention be the logical place for a competent lawyer who heads the firm to have gone to start his inquiry? [LR424]

GEORGE GREEN: Yes, I should have read the case. [LR424]

SENATOR CHAMBERS: So it was incompetent on your part not to do that, wasn't it? [LR424]

GEORGE GREEN: I should have read the case. [LR424]

SENATOR CHAMBERS: It was incompetent on your part not to have read that case, wasn't it? [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

GEORGE GREEN: I should have read the case. [LR424]

SENATOR CHAMBERS: If you had a lawyer working for you and an important issue like this was brought to his or her attention and that lawyer failed to read the seminal or main case on it, would you consider that incompetency on the part of that lawyer?
[LR424]

GEORGE GREEN: I should have read the case. [LR424]

SENATOR CHAMBERS: Do you know why I'm questioning you like this? I want the record to show how evasive you have been. Let me ask you something else. Have you ever testified in court before? [LR424]

GEORGE GREEN: Yes. [LR424]

SENATOR CHAMBERS: Were you placed under oath before you testified in court?
[LR424]

GEORGE GREEN: Yes. [LR424]

SENATOR CHAMBERS: An oath does not assure that a person will tell the truth, does it? [LR424]

GEORGE GREEN: No. [LR424]

SENATOR CHAMBERS: It simply means that your attention was called to the fact that you're required under the law while you're testifying to tell the truth and if you don't, there are consequences which will follow. Isn't that the purpose of an oath? [LR424]

GEORGE GREEN: Yes. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SENATOR CHAMBERS: To call your attention to the seriousness of the situation and consequences that can follow. You're under oath now, aren't you? [LR424]

GEORGE GREEN: Yes, I am. [LR424]

SENATOR CHAMBERS: I can't read your mind but, frankly, I don't believe you didn't read that case. That is very lacking in credibility, and courts have said that about testimony. It lacks all credibility. But let me see if I got some things right. You read other Supreme Court decisions. And I presume that those cases did not all relate to the Department of Corrections. Is that true? [LR424]

GEORGE GREEN: That's true. [LR424]

SENATOR CHAMBERS: But you found time to read those cases. But you did not read the Castillas case. Is that true? [LR424]

GEORGE GREEN: That's true. [LR424]

SENATOR CHAMBERS: The minutes that described what happened at that meeting where you attended and that case was discussed, you didn't read those minutes although they were available, did you? [LR424]

GEORGE GREEN: That's true. [LR424]

SENATOR CHAMBERS: And you did not attempt to contact Ms. Willard to have a conversation with her about whatever she was trying to reach you about. [LR424]

GEORGE GREEN: That is correct. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SENATOR CHAMBERS: And even though she was mentioned in an e-mail from Ms. Douglass who had not ever been shown to be incompetent in doing her work in the records department was not enough to make you contact Ms. Willard, was it? [LR424]

GEORGE GREEN: I did not contact Ms. Willard. [LR424]

SENATOR CHAMBERS: And you tell us that you did not get a message that was left about a certain call made to you. You didn't get that message, did you? [LR424]

GEORGE GREEN: I did not get the message, no. [LR424]

SENATOR CHAMBERS: So you didn't read Castillas, you didn't hear what was said at the meeting, you didn't read the minutes which would tell you what was said at the meeting, and you didn't get a message about a call, any one of which would have removed from you the ability to say, I didn't know what was happening, I didn't know, I didn't know. What were you doing all that time as head of the legal department? What issues were you spending all your time on? [LR424]

GEORGE GREEN: Well, I don't recall right now exactly what the issues were. We were doing... [LR424]

SENATOR CHAMBERS: Okay. That fits what you've said. I won't try to make you recall what you don't recall. There was a case involving former Attorney General Paul Douglas. Paul Douglas was not forthcoming with the truth, and the term applied to him was playing the lawyer, and he admitted it. And it did not mean doing the research of a lawyer but very carefully parsing your words so that what you said did not in and of themselves constitute a lie, but it was designed to conceal the truth. And the court said that is the definition of a lie. You're playing the lawyer with us, aren't you? [LR424]

GEORGE GREEN: No. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SENATOR CHAMBERS: You're being willfully blind, aren't you? [LR424]

GEORGE GREEN: No. [LR424]

SENATOR CHAMBERS: You tried to put yourself in a position so you could deny any and all knowledge of this, not in advance but after the story broke, you had to figure how you could get yourself out of a bind, didn't you? [LR424]

GEORGE GREEN: No. [LR424]

SENATOR CHAMBERS: Why did you get fired? [LR424]

GEORGE GREEN: I wasn't fired. [LR424]

SENATOR CHAMBERS: Why did you quit? [LR424]

GEORGE GREEN: I retired. [LR424]

SENATOR CHAMBERS: That's quitting, isn't it? [LR424]

GEORGE GREEN: No, I don't think so. [LR424]

SENATOR CHAMBERS: Did you...are you still working? [LR424]

GEORGE GREEN: No, I'm not. [LR424]

SENATOR CHAMBERS: Did you put yourself in a position where you no longer went to work? [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

GEORGE GREEN: Yes. [LR424]

SENATOR CHAMBERS: Did you do that voluntarily? [LR424]

GEORGE GREEN: I did. [LR424]

SENATOR CHAMBERS: You chose not to go to work anymore? [LR424]

GEORGE GREEN: I retired. [LR424]

SENATOR CHAMBERS: Did you chose not to go to work anymore? [LR424]

GEORGE GREEN: Yes. [LR424]

SENATOR CHAMBERS: You call it resigning. I call it quitting. [LR424]

GEORGE GREEN: I called it retiring. [LR424]

SENATOR CHAMBERS: I call it quitting. Now did you hear anybody testify to the effect that you said that since the state was not named as a party in a case that we've been discussing, it did not apply to the Department of Corrections? Did you tell anybody that? [LR424]

GEORGE GREEN: I did not tell anybody that. [LR424]

SENATOR CHAMBERS: And you didn't say anything similar to that. [LR424]

GEORGE GREEN: I did not. [LR424]

SENATOR CHAMBERS: How long have you been a lawyer? [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

GEORGE GREEN: I graduated in 1980. [LR424]

SENATOR CHAMBERS: How long have you been a lawyer? [LR424]

GEORGE GREEN: Since then. [LR424]

SENATOR CHAMBERS: So you were a lawyer when you graduated? [LR424]

GEORGE GREEN: Excuse me, I graduated from law school in 1980 and I was admitted to the bar in September of 1980. [LR424]

SENATOR CHAMBERS: Nineteen-when? [LR424]

GEORGE GREEN: 1980. [LR424]

SENATOR CHAMBERS: Okay. So you became a certified lawyer in 1980 when you passed the bar and paid your dues and so forth. And how long have you been lead counsel for the Department of Corrections? [LR424]

GEORGE GREEN: Since 1992. [LR424]

SENATOR CHAMBERS: Nineteen ninety-two to 2002 is ten years. And from 2002 to '14 would be 12 years. So you've been there a total of how many years? [LR424]

GEORGE GREEN: Twenty-two years. [LR424]

SENATOR CHAMBERS: When did you first become aware that the way the department was calculating the discharge date when a person had a minimum, a mandatory minimum sentence and the case dealt with that and the department was not making the

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

calculations the way the Castillas case said they should? When did you first become aware of the fact that the Supreme Court had stated that the way the department was making this calculation was wrong? When did you first become aware of that? [LR424]

GEORGE GREEN: That was either right before the World-Herald story broke or right after that. [LR424]

SENATOR CHAMBERS: So with all the discussion that was going on with people in the department about this, you had not heard anything about it, the issue. [LR424]

GEORGE GREEN: That was when I learned that the Castillas...that was when I read the Castillas decision and I determined that what we were doing was not in compliance with the Castillas decision. [LR424]

SENATOR CHAMBERS: I'm going to tell you why I don't believe a word that you've said basically. This October 31 meeting which you attended,... [LR424]

GEORGE GREEN: I did. [LR424]

SENATOR CHAMBERS: ...this is a comment: Regarding Castillas, it is noted that the department's practice is different than Castillas. That was stated at that meeting and it was discussed at that meeting and you were at that meeting and you tell us you were at the meeting but you never heard that. [LR424]

GEORGE GREEN: I don't recall that being said at the meeting. I don't have a very good recollection of the events of the meeting, but I don't recall that. [LR424]

SENATOR CHAMBERS: So you're saying you didn't hear that, correct? If you heard it you would recall it. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

GEORGE GREEN: Yes. [LR424]

SENATOR CHAMBERS: So you're telling us you didn't hear it. Isn't that correct?
[LR424]

GEORGE GREEN: Well, I think there might be a difference between that and not recalling everything that was said at the meeting. [LR424]

SENATOR CHAMBERS: Did you hear it? [LR424]

GEORGE GREEN: No. [LR424]

SENATOR CHAMBERS: Do you recall it? [LR424]

GEORGE GREEN: No. [LR424]

SENATOR CHAMBERS: What's the difference? If you heard it, would you recall it?
[LR424]

GEORGE GREEN: If I'd have heard it, I could have been in a position to ask more questions and to dial down and find out what really was going on. [LR424]

SENATOR CHAMBERS: If you had heard it...we're speculating now because you don't remember anything. If you had heard it, would you recall having heard it? [LR424]

GEORGE GREEN: Yes, I think so. [LR424]

SENATOR CHAMBERS: Why would you recall having heard something like that?
[LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

GEORGE GREEN: The statement that we're not following the Supreme Court would be remarkable. [LR424]

SENATOR CHAMBERS: So if you were at that meeting and if that in fact had been said, you would find it to have been remarkable. Would you have remarked on it at that meeting? [LR424]

GEORGE GREEN: I'm sure I would have. [LR424]

SENATOR CHAMBERS: What should I put more confidence in, what was written contemporaneous with what was said at the meeting or what you say when you didn't read a case, you can't remember anything, you didn't read the minutes when they were posted, you didn't get the message of a phone call, you did not try to contact Ms. Willard, and you did not think that Ms. Douglass knew what she was talking about, so you went to a guy who was a non-lawyer, hadn't been on the job as long, and all you can say is that he was the director of a department? Have you ever seen a situation where a person was appointed to a very important position but didn't know as much about that job as the people who were doing the work? You're aware that that happens, don't you? [LR424]

GEORGE GREEN: Yes. [LR424]

SENATOR CHAMBERS: And there were people in that department, I call it a department, in that office who knew more about the work being done there than Mr. Poppert knew. Isn't that true? [LR424]

GEORGE GREEN: I don't know that that's correct. [LR424]

SENATOR CHAMBERS: Are you able to dispute it or rebut it? [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

GEORGE GREEN: I do not agree that I...no, I don't have any reason to rebut it but I don't have any reason to adopt it either. [LR424]

SENATOR CHAMBERS: How do you know that he knew more than she did? [LR424]

GEORGE GREEN: I don't know who knew more. [LR424]

SENATOR CHAMBERS: Then the only reason you went to him was because he was head of the department. [LR424]

GEORGE GREEN: That's correct. [LR424]

SENATOR CHAMBERS: Well, if you're going to do anything, why didn't you talk to the person who sent you the e-mail? [LR424]

GEORGE GREEN: I wish I would have. But, no, excuse me. [LR424]

SENATOR CHAMBERS: No, why didn't you? [LR424]

GEORGE GREEN: I thought you meant Linda Willard. I talked to Kyle Poppert. I decided that that was a... [LR424]

SENATOR CHAMBERS: No, I'm not talk...Poppert is a masculine name. The pronoun for the masculine is "him." I said why didn't you talk to her, the her being Ms. Douglass. [LR424]

GEORGE GREEN: Jeannene Douglass. [LR424]

SENATOR CHAMBERS: Did you ever talk to her about this? [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

GEORGE GREEN: I did not. [LR424]

SENATOR CHAMBERS: Had you talked to her, she would have pointed out to you what the Castillas case said. Did she attach a copy of that case to her e-mail? [LR424]

GEORGE GREEN: It was attached. [LR424]

SENATOR CHAMBERS: And you didn't take it seriously enough to read the case. [LR424]

GEORGE GREEN: I didn't not read the case. [LR424]

SENATOR CHAMBERS: But you have read that case in the meantime. [LR424]

GEORGE GREEN: Yes. [LR424]

SENATOR CHAMBERS: How many pages does it comprise? [LR424]

GEORGE GREEN: I don't know. [LR424]

SENATOR CHAMBERS: It's not an especially thick case, is it? [LR424]

GEORGE GREEN: Twenty pages, 15 pages. [LR424]

SENATOR CHAMBERS: And you couldn't find the time to read that case even though there were occasions which would have brought it to your attention. [LR424]

GEORGE GREEN: That's correct. [LR424]

SENATOR CHAMBERS: You don't need a lawyer, you need a babysitter. You're under

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

oath, aren't you? [LR424]

GEORGE GREEN: Yes, sir. [LR424]

SENATOR CHAMBERS: And you have said all of these things and they're supposed to be the truth. I'm going to ask you what Pilate asked Jesus. What is truth? And Pilate walked out. But I'm not going to walk out. I'm going to stay and hear your answer because you swore to tell the truth. What is truth? [LR424]

GEORGE GREEN: I have told the truth. [LR424]

SENATOR CHAMBERS: What is truth? [LR424]

GEORGE GREEN: I can't answer your question other than saying that today I've told the truth. [LR424]

SENATOR CHAMBERS: Well, if you swore to tell the truth and you don't know what truth is, you don't know whether you told the truth or not, do you? [LR424]

GEORGE GREEN: I told the truth. I know the difference between a truth and a falsehood. [LR424]

SENATOR CHAMBERS: Then tell me for the record what is truth. [LR424]

GEORGE GREEN: A truth is something that actually happened that you know that happened. You could swear or aver that something is indeed a fact. You know it to be true. You know that it happened. [LR424]

SENATOR CHAMBERS: I'll accept that because you're trying to get across the idea. And you're saying now that everything you told us is factual. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

GEORGE GREEN: Yes. [LR424]

SENATOR CHAMBERS: You did not read this case until after the World-Herald article. [LR424]

GEORGE GREEN: That is correct. [LR424]

SENATOR CHAMBERS: Did you attend a meeting before the World-Herald article appeared? [LR424]

GEORGE GREEN: Well, as I've said, it was concurrent with that period of time. I don't know if it was the day after that appeared or the day before that appeared, but it was right at that period of time. [LR424]

SENATOR CHAMBERS: But you had not read the case before you went to that meeting. [LR424]

GEORGE GREEN: No. I think it was at the meeting that I understood what was going on and I went and printed out the case and read the case. [LR424]

SENATOR CHAMBERS: But you had many opportunities to find out what was going on, didn't you? [LR424]

GEORGE GREEN: Yes. [LR424]

SENATOR CHAMBERS: Every day from the time that Ms. Douglass sent you that e-mail, every one of those days gave you an opportunity to take the few minutes necessary to read enough of that case to know what it was about. Isn't that true? [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

GEORGE GREEN: Yes. [LR424]

SENATOR CHAMBERS: You deliberately chose not to read the case because you knew what was in it or you've read it and you're not telling us the truth about not having read it. [LR424]

GEORGE GREEN: That's not correct. [LR424]

SENATOR CHAMBERS: If you had said you don't read cases, I'd say you're just incompetent. I know you're incompetent. You've established that. And you also have not been candid with this committee. And I don't believe there's a court anywhere in this land would listen to what you've said and accept it as true. I don't believe a jury of sane people would listen to what you say. As long as you've been a lawyer, as long as you've been head of the legal department, as long as you have overseen the work of these lawyers under you, then you're going to come up with all this I didn't read that, I didn't see that, well, I was at the meeting but I don't know what happened. Do you drink excessively? [LR424]

GEORGE GREEN: Drink alcohol? No. [LR424]

SENATOR CHAMBERS: Uh-huh, okay. [LR424]

GEORGE GREEN: Not excessively. I drink on occasion. [LR424]

SENATOR CHAMBERS: Do you take psychoactive drugs? [LR424]

GEORGE GREEN: I do not. [LR424]

SENATOR CHAMBERS: When you were at that meeting, how do you know you were at

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

the meeting? Do you know you were at this October 31 meeting because there is something in the minutes that will say you were there? [LR424]

GEORGE GREEN: I know I was there. [LR424]

SENATOR CHAMBERS: You don't really recollect though that you were there, do you? [LR424]

GEORGE GREEN: I do recollect that I was there, and I recollect that Sharon and Kathy and I were there. [LR424]

SENATOR CHAMBERS: Were you asleep? [LR424]

GEORGE GREEN: I was not asleep. [LR424]

SENATOR CHAMBERS: Tell me one thing that was discussed at that meeting. [LR424]

GEORGE GREEN: I don't have a good recollection of what was discussed at the meeting, but I... [LR424]

SENATOR CHAMBERS: Of anything. [LR424]

GEORGE GREEN: But I know the meeting was held and I know I was there. [LR424]

SENATOR CHAMBERS: And you don't...if the Castillas case was discussed and you were not aware of its having been discussed, if the statement was made that the department's practice is different from what Castillas requires, you didn't hear that. You didn't hear anybody say that there has to be more information given and the department has to be told specifically that what they're doing is wrong and that it needs to change. You didn't hear that? [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

GEORGE GREEN: I did not hear that. [LR424]

SENATOR CHAMBERS: How big a room was this meeting held in? [LR424]

GEORGE GREEN: I don't know. [LR424]

SENATOR CHAMBERS: The size of an ordinary living room, the average living room in a house or a bigger room? [LR424]

GEORGE GREEN: I suppose. [LR424]

SENATOR CHAMBERS: Was it as big as this room? [LR424]

GEORGE GREEN: I don't really recall where the meeting was held. I don't think it was a room as big as this room. [LR424]

SENATOR CHAMBERS: Oh, now you don't know where it was held either. [LR424]

GEORGE GREEN: I don't recall which room it was held in. It was in our office building. [LR424]

SENATOR CHAMBERS: Would a person need a microphone to be heard? [LR424]

GEORGE GREEN: No, I wouldn't think so. [LR424]

SENATOR CHAMBERS: So if a person was speaking in a normal tone of voice, anybody in the room could have heard it. [LR424]

GEORGE GREEN: I would think so. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SENATOR CHAMBERS: But you heard nothing that was said. [LR424]

GEORGE GREEN: I don't recall what was said at the meeting with great...with any specificity. I know a meeting was held. I was not told at the meeting or prior to the meeting or after the meeting that we were not following any Supreme Court precedent and I was not...I don't...I was not present in a discussion with lawyers or others who said that we're not going to follow the Supreme Court case or cases. [LR424]

SENATOR CHAMBERS: If you were sitting where I am and I were sitting where you are and I gave the very same testimony that you gave, would you believe me? [LR424]

GEORGE GREEN: I don't know how I can answer that question. [LR424]

SENATOR CHAMBERS: Well, yes or no? [LR424]

GEORGE GREEN: Yes, I would. [LR424]

SENATOR CHAMBERS: (Laugh) Did you determine that you should bring a lawyer or did the lawyer advise you it would be in your best interest to have a lawyer with you? [LR424]

GEORGE GREEN: I determined that it would be in my best interest to be represented by counsel. [LR424]

SENATOR CHAMBERS: At this hearing? [LR424]

GEORGE GREEN: Yes. [LR424]

SENATOR CHAMBERS: And since you're going to tell the truth, the whole truth, and

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

nothing but the truth, what would you need a lawyer for? I don't want to...I'm not asking what a lawyer may have said to you. What...I'm asking for your opinion. What would you need a lawyer for? [LR424]

GEORGE GREEN: Advice and representation. [LR424]

SENATOR CHAMBERS: Well, the...has he advised you of anything while you're sitting there? [LR424]

GEORGE GREEN: He has not. [LR424]

SENATOR CHAMBERS: So you didn't need him, did you? [LR424]

GEORGE GREEN: I felt that I needed him. I think that I need him. [LR424]

SENATOR CHAMBERS: For what? [LR424]

GEORGE GREEN: Representation. [LR424]

SENATOR CHAMBERS: Would it be your feeling that if a certain question were asked and you wondered whether you should answer it, you'd want to be able to consult with your lawyer and find out whether you were required under the terms of the subpoena to answer the question? Is that the kind of representation you had in mind? Or you don't know why you... [LR424]

GEORGE GREEN: I know that I wanted representation at the meeting...excuse me, at the hearing. [LR424]

SENATOR CHAMBERS: You...you wanted... [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

GEORGE GREEN: It's an important, solemn occasion. I wanted to be fully apprised on my... [LR424]

SENATOR CHAMBERS: Apprised in the premises. You wanted somebody to hold your hand and... [LR424]

GEORGE GREEN: ...on my fully... [LR424]

SENATOR CHAMBERS: ...and reassure you that you're not alone, correct? [LR424]

GEORGE GREEN: I wanted somebody to advise me of what my responsibilities are, what my rights are. It's a solemn, important occasion and I thought that and I do think that persons that have a right to be represented by counsel can exercise that right and there's nothing wrong with that. [LR424]

SENATOR CHAMBERS: Why did you decide to, as you call it, retire suddenly? When did you make that decision? [LR424]

GEORGE GREEN: I decided to retire because it was apparent to me that my clients at the Department of Corrections were no longer satisfied with my services. [LR424]

SENATOR CHAMBERS: When... [LR424]

GEORGE GREEN: I felt... [LR424]

SENATOR CHAMBERS: Go ahead. [LR424]

GEORGE GREEN: I felt that I didn't do anything wrong. I felt that, you know, there was arguments about violating... [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SENATOR CHAMBERS: Well, let's start all over again. Let's start all over. [LR424]

GEORGE GREEN: Well, let me finish, let me finish, if I may. [LR424]

SENATOR CHAMBERS: No, no. I want you to answer the question that I'm interested in having an answer for. When did you make the decision to retire? [LR424]

GEORGE GREEN: I decided to retire before the meeting... [LR424]

SENATOR CHAMBERS: Was it... [LR424]

GEORGE GREEN: ...on the statement of charges. In the days immediately prior to that I decided to retire. [LR424]

SENATOR CHAMBERS: Statement of charges? [LR424]

GEORGE GREEN: Yes. [LR424]

SENATOR CHAMBERS: Who made a statement of charges? [LR424]

GEORGE GREEN: Director Kenney. [LR424]

SENATOR CHAMBERS: And he made them against you? [LR424]

GEORGE GREEN: Yes. [LR424]

SENATOR CHAMBERS: And you decided to retire before those charges were delivered or the day that they were delivered? [LR424]

GEORGE GREEN: The day...I decided to retire before the hearing was held on those

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

charges. [LR424]

SENATOR CHAMBERS: But you had gotten the charges. [LR424]

GEORGE GREEN: Several days before that. [LR424]

SENATOR CHAMBERS: And you decided to retire before the hearing. [LR424]

GEORGE GREEN: The hearing itself, yes, that's right. [LR424]

SENATOR CHAMBERS: Would be...and you said you didn't do anything wrong.
[LR424]

GEORGE GREEN: I don't think so. [LR424]

SENATOR CHAMBERS: There are people who are aware that charges were drawn up
against you. Wouldn't a hearing have been an opportunity to clear your name? [LR424]

GEORGE GREEN: Well, I decided that rather than go through that... [LR424]

SENATOR CHAMBERS: Tell the truth there as you told the truth here? [LR424]

GEORGE GREEN: I decided rather than to go through that, that I would simply retire.
[LR424]

SENATOR CHAMBERS: Go through what, clearing... [LR424]

GEORGE GREEN: A hearing on the statement of charges. [LR424]

SENATOR CHAMBERS: Shakespeare said: Who steals my purse steals trash; who

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

steals my good name makes me poor indeed. Your name is in the mud now. [LR424]

GEORGE GREEN: Um-hum. [LR424]

SENATOR CHAMBERS: You had the opportunity to clear your name and you chose not to do it? [LR424]

GEORGE GREEN: I suspected that, regardless of what transpired at that hearing, that my name would be in the mud anyway and that it would be quite a long, involved process to clear myself; so, therefore, rather than, you know, carrying on that battle, I decided to retire my position. [LR424]

SENATOR CHAMBERS: But if the truth was on your side, wouldn't truth prevail? [LR424]

GEORGE GREEN: Maybe. [LR424]

SENATOR CHAMBERS: Wouldn't truth prevail? [LR424]

GEORGE GREEN: Maybe. [LR424]

SENATOR CHAMBERS: Would you have been able to present facts to rebut any charges that were made against you? [LR424]

GEORGE GREEN: I think there were good arguments about that. [LR424]

SENATOR CHAMBERS: What was one of the charges that was made, because they were already filed? [LR424]

GEORGE GREEN: I don't...I don't... [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SENATOR CHAMBERS: You don't have to say it in exactly those words. [LR424]

GEORGE GREEN: I don't... [LR424]

SENATOR CHAMBERS: What did they accuse you of? [LR424]

GEORGE GREEN: I don't recall exactly what they are, what they were. [LR424]

SENATOR CHAMBERS: Oh, so you don't recall what happened at the meeting? You didn't read the case. You don't recall the charges but they were serious enough to make you decide to resign, retire, but you don't recall what those charges were. [LR424]

GEORGE GREEN: I don't specifically recall what the charges were. [LR424]

SENATOR CHAMBERS: Can you see how lacking in credibility your testimony would appear to somebody who is listening and is not a fool? [LR424]

GEORGE GREEN: I don't think there's any fools here, but I don't think that my testimony lacks credibility either. [LR424]

SENATOR CHAMBERS: There's at least one. [LR424]

GEORGE GREEN: It varies from the testimony of some other witnesses, but I don't think that I said anything that's not true. [LR424]

SENATOR CHAMBERS: I think I have enough questions to keep us here until midnight, because that's what I do on the floor of the Legislature on occasion, but I'm not going to do it. What is the worst possible thing that could happen to you at this point based on what happened in that scandal at the Department of Corrections other than the loss of

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

your good name, the fact that it's in the mud right now? People think you don't tell the truth, they think you're guilty of the charges, that you cut and ran because you didn't want to be formally convicted. What could be worse than that? [LR424]

GEORGE GREEN: Well, I don't think that the...I think the...I don't agree with the assumptions in your question. I don't think that that's what everyone thinks. [LR424]

SENATOR CHAMBERS: If I didn't commit a crime and I'm charged with it, should I plead guilty so that I don't have to go through a trial? [LR424]

GEORGE GREEN: Well,... [LR424]

SENATOR CHAMBERS: You think I should...if I'm innocent that I should assert my right to a fair trial? [LR424]

GEORGE GREEN: If I was accused of a crime I might feel differently about it. [LR424]

SENATOR CHAMBERS: If I was accused of an offense that would besmirch my name, ruin my reputation, and indicate to the public that I violated the public trust to such an extent that I am afraid to even go to a hearing and clear my name...now people, as I've said several times, conduct their business the way they think they should. I have dared the Legislature on occasion to censure me, take any action against me they want to. I want the opportunity to deal with them face to face, and I want them to bring their best case so that I can put them to flight--but then that's the kind of man that I am. But you're obviously not that kind of person. Your reputation doesn't mean that much to you, does it? [LR424]

GEORGE GREEN: I represented the Department of Corrections for a long time. I did not want to get into a position where I was antagonistic to all those interests and individuals and relationships that I'd developed. I think I felt the same way Sharon

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

Lindgren did about it. [LR424]

SENATOR CHAMBERS: Don't bring her into it. We're talking about you. Don't hide behind a woman's skirts like the Governor did. This is me and you. [LR424]

GEORGE GREEN: I felt the same way she did. [LR424]

SENATOR CHAMBERS: Did you discuss this with Sharon Lindgren? [LR424]

GEORGE GREEN: About retiring? [LR424]

SENATOR CHAMBERS: Yes. [LR424]

GEORGE GREEN: Prior to the time I retired? [LR424]

SENATOR CHAMBERS: Yes. [LR424]

GEORGE GREEN: No. [LR424]

SENATOR CHAMBERS: Then how can you say yours is just like hers? [LR424]

GEORGE GREEN: I didn't. I said I felt the same way that she felt when she was explaining to you this evening. [LR424]

SENATOR CHAMBERS: But you didn't discuss it with her, did you? [LR424]

GEORGE GREEN: Not before I retired. [LR424]

SENATOR CHAMBERS: So you're making an assumption, correct? [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

GEORGE GREEN: I'm assuming that what she explained to you is accurate. [LR424]

SENATOR CHAMBERS: You're speculating about how she felt though, aren't you?
[LR424]

GEORGE GREEN: No, that's what she said. [LR424]

SENATOR CHAMBERS: And you didn't remember a thing at this meeting. I'm going to
give you another chance. You don't really have a personal recollection of having
attended this meeting, do you? [LR424]

GEORGE GREEN: What meeting is that? [LR424]

SENATOR CHAMBERS: The October 31 meeting. You don't really recall... [LR424]

GEORGE GREEN: I know I was there. But I don't... [LR424]

SENATOR CHAMBERS: But you don't recall being there, do you? [LR424]

GEORGE GREEN: I recall being there. I don't recall what was said. [LR424]

SENATOR CHAMBERS: Do you recall how long the meeting lasted? [LR424]

GEORGE GREEN: No. [LR424]

SENATOR CHAMBERS: Was it in the afternoon, the evening, or what time of day?
[LR424]

GEORGE GREEN: It was during the business day. [LR424]

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LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SENATOR CHAMBERS: Was it a cold day? [LR424]

GEORGE GREEN: I don't have any recollection of that. [LR424]

SENATOR CHAMBERS: You don't remember anything about the meeting except that you were there. You're a lawyer. Have you ever been in court when cases were being litigated? [LR424]

GEORGE GREEN: I have. [LR424]

SENATOR CHAMBERS: And have you observed people testifying? [LR424]

GEORGE GREEN: I have. [LR424]

SENATOR CHAMBERS: Have you observed people whose testimony to you seemed to lack all credibility? [LR424]

GEORGE GREEN: I have. [LR424]

SENATOR CHAMBERS: That's yours here this evening, and you ought to get a copy of the transcript of what you said under oath and you ought to show it to the best friend you've got, whoever you have, who will tell you the truth. And you even ought to talk to your lawyer after you leave here because I don't believe you told the truth at all. I think you came here with the intention of falsifying the record. I think you came here to try to do before this committee what you were afraid to try to do at that hearing where you could have cleaned up your name. And you were afraid and you didn't go, and that to me says a lot about a lack of character. But I don't have to base my low regard for you on the basis of that. I have had experience with you now. I've listened to you. I can't read your mind, but I know a lot about reading human beings, reading body language, and seeing a pattern develop when a person doesn't know anything about anything that

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

relates to the biggest issue to confront the Department of Corrections in recent memory. And the easy way out is to say, I don't remember, I didn't read the case, I didn't read the minutes, I don't know who was there, I don't know who said this, I'm not even aware that there was a problem with the way that the department has been calculating good time, I didn't know anything. But you want people to think of you as a competent lawyer, is that true or false? [LR424]

GEORGE GREEN: I would like to be thought of as competent. [LR424]

SENATOR CHAMBERS: Do you think the way you've behaved would justify people in seeing you as being competent? [LR424]

GEORGE GREEN: I wish I'd have read the case when it was sent to me. [LR424]

SENATOR CHAMBERS: So that's the dodge now rather than say, I refuse to answer on the grounds that I might tend to incriminate myself. Now it's I wish I had read the case. And you read so many other cases that what you're saying now sounds totally incredible. And I deliberately wanted to take that time with you because there are other issues related to how you've conducted your affairs as the lawyer for the department, but I won't bring them up because that's not the subject of this hearing. And I think you know the lack of regard that I have for you as a lawyer and as an employee of this state. This that you've done by way of your performance just confirms it all not just for me but for everybody who heard you. There are people on this committee who are so courteous, who bend over backwards so far not to be offensive, who even said, that one's hard for me to accept. What they were saying: If you were on the street I'd call you a liar. But, see, they don't do that. But I think you picked it up that nobody on this panel believes the account that you gave and you know that what you said was not true. And if you don't know it was not true, I know it was not true. And for somebody to utter as many falsehoods as you did and not realize he's not telling the truth needs to see a counselor. And if you think what I said defames you, sue me and I will not invoke the

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

immunity I have because I was talking during a legislative hearing. If you sue me, I will put you on the stand and your lawyer cannot protect you from answering the questions that I ask. And I'm willing to run the risk of having you take my house, my name, my sacred honor, so sue me. That's all I have, Mr. Chairman. [LR424]

SENATOR LATHROP: Very good. Senator Mello. [LR424]

SENATOR MELLO: Thank you, Chairman Lathrop. Real quick, Mr. Green, you mentioned earlier just as a quick recap that you met with Kyle Poppert roughly a week after the Castillas ruling came out on Friday, February 8. Sometime within a week's period you met with him and you said that your conversation with him was, Kyle, everything is okay, right, we're following the law. He says, we're following the law, everything is good. And you thought the conversation was done, correct? [LR424]

GEORGE GREEN: We were going to have a follow up but, yes, I thought that, subject to the follow up, yes,... [LR424]

SENATOR MELLO: You were going to have a follow up. [LR424]

GEORGE GREEN: Yes. [LR424]

SENATOR MELLO: If you look at page 164 in your e-mails there, what was your follow up supposed to be about? Was it about this e-mail here, page 164, that Kyle Poppert requests information from Jeannene Douglass and Ginger Shurter to give him an analysis of and a response to be able to share with you for your meeting with Kyle Poppert? [LR424]

GEORGE GREEN: I think that that's what this relates to. [LR424]

SENATOR MELLO: Was Kyle Poppert in any under...was he under, I guess, a point of

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

view that he was going to have to give you some kind of documentation or some kind of clarification to make sure that what he was telling you he was right, that he wasn't diverting from what he told you at his previous meeting? [LR424]

GEORGE GREEN: You'd have to ask him that but, yes, I mean, the...we left it that he was going to get back in touch with me, we were going to schedule something, that we were not just going to leave this, you know, float, that there would be a...tied up. [LR424]

SENATOR MELLO: If you could turn to page 168 then, it look likes Jeannene Douglass provided that information from her perspective to Kyle Poppert and to yourself in regards to that follow up for your meeting with Kyle Poppert. Do you recollect this e-mail? [LR424]

GEORGE GREEN: Yes. [LR424]

SENATOR MELLO: You do recollect this e-mail. [LR424]

GEORGE GREEN: Yes, I've seen this e-mail before. [LR424]

SENATOR MELLO: Was there a follow up that you had with Jeannene Douglass about this e-mail? [LR424]

GEORGE GREEN: There was not. [LR424]

SENATOR MELLO: Was there a follow up with Kyle Poppert that you had regarding this e-mail? [LR424]

GEORGE GREEN: No. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SENATOR MELLO: So Kyle Poppert provided essentially through Jeannene Douglass the information that he said he was going to give you regarding the records administration division's perspective on the Castillas case. [LR424]

GEORGE GREEN: My understanding after talking to Kyle was that we were following the law and that he was going to get together and schedule a meeting so we could sit down and discuss this, and that's what I recall. [LR424]

SENATOR MELLO: And he never scheduled the meeting post March 11 when this e-mail was sent from his employee Jeannene Douglass to himself and to you providing her perspective regarding the Castillas case. [LR424]

GEORGE GREEN: That's correct. [LR424]

SENATOR MELLO: Last question: Who is Larry Wayne? [LR424]

GEORGE GREEN: Larry Wayne is the deputy director for programs and classification for the Department of Corrections. [LR424]

SENATOR MELLO: Who answers to Larry Wayne? [LR424]

GEORGE GREEN: Well, Parole Administration answers to Larry Wayne. He oversees people that do inmate classification. He oversees education. He oversees records. [LR424]

SENATOR MELLO: So records, so Kyle Poppert reports directly to Larry Wayne. [LR424]

GEORGE GREEN: To Larry Wayne, yes, and there's some other area that I'm not coming up with. [LR424]

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

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SENATOR MELLO: So instead, and just recollecting what everyone else asked you, instead of going to Jeannene Douglass who sent you the original e-mail, you went to Kyle Poppert to get his feedback. Anywhere in that conversation did you say, I'm going to talk with your supervisor Larry Wayne to make sure he's caught up in the loop in regards to this conversation since he is a deputy director, he rises to, in theory, the same level you do as a senior executive, and I just want to make sure that I keep him in the loop that I'm talking to his employees that answer directly to him regarding a Supreme Court ruling that may impact our classification of our inmates? [LR424]

GEORGE GREEN: Well, actually, I'm not on the...I'm not a deputy director and I'm not on that level. [LR424]

SENATOR MELLO: Senior executive meeting, though. [LR424]

GEORGE GREEN: I am a senior executive. I report directly to our director, who Larry Wayne reports to. But, no, I didn't talk to Larry Wayne about this. [LR424]

SENATOR MELLO: No conversation or communication with Larry Wayne in the entire 18-month period in regards to the Castillas case at all? [LR424]

GEORGE GREEN: No. [LR424]

SENATOR MELLO: All right. Thank you. [LR424]

SENATOR LATHROP: Anyone else? I think that's it. Thank you, gentlemen. That is the end of our testimony today and the end of our hearing tonight. So thank you, whoever watched, sat through it. [LR424]