



STATE OF VERMONT
SENATE CHAMBER
115 STATE STREET
MONTPELIER, VT
05633-5201

September 3, 2008

Robert Hofmann, Commissioner
Department of Corrections
103 S. Main St., 6 South
Waterbury VT 05671-1001

Dear Commissioner Hofmann:

My purpose in writing is to request further information in order better to understand decisions that were made in the Michael Jacques case. The Senate Judiciary Committee is very sensitive about not interfering with the prosecution of this case. The information we are seeking simply follows up on discussions we have already had with you and other Department employees.

First, the Committee has questions about factual matters that arose during the testimony of Mr. Kearney. As the last probation officer in this case, his actions are important to our understanding of what happened. There are several inconsistencies in his testimony about which we would like some clarity.

Mr. Kearney testified that the decision about whether or not to recommend that the Court terminate Mr. Jacques' probation was not his individually, but a "group" decision, and that the matter was brought to the local treatment team, which decided against supporting termination of probation. We were provided an August 23, 2004 communication to the Court, signed by Mr. Kearney and his supervisor, Mr. Rideout, requesting that probation be terminated. Mr. Kearney testified that this document was a draft and was not sent, yet the transcript of the court hearing contains remarks by the judge that refer to the Department's request, including the following exchange: "Q [Court]. Now, you, on behalf of the Department, have filed a request to discharge him from probation? A [Mr. Kearney]. I have." Mr. Kearney then states why he supports the discharge. Mr. Kearney testified that the Department did not request the discharge but that it originated with the offender's attorney.

With respect to the 1992 Jacques case, we seek your cooperation in answering the following questions.

1. Could you please clarify for the Committee who was on the treatment team that met in 2003-2004 to discuss Mr. Jacques' possible discharge from probation and verify that its decision was not to support his discharge? We are also interested in whether the treatment team's decision is viewed by the Department as advisory or if it has any authority to make a decision that Mr.

Kearney should have followed. What was the team's understanding of what Mr. Kearney was going to do?

2. Mr. Kearney testified that he has completed several trainings regarding management of sex offenders. Does the training offered by the Department include a discussion of the length of time sex offenders should be supervised? My understanding is that it has included advocacy for very lengthy periods of supervision.

3. In 1997, Mr. Jacques' probation officer, Paul McNaughton, asked Judge Suntag to increase Jacques' probation conditions. In his request, McNaughton provided a long list of Jacques' false statements, leaving no doubt that Jacques was a chronic deceiver and misrepresenter of facts. By 2004, Jacques' new probation officer, Mr. Kearney, was describing him as a model case who could now be trusted. What happened that changed the Department's view of Jacques during this time? Did McNaughton's opinion of Jacques change, and if so, why? Did anyone at the Department other than McNaughton and Kearney have an opportunity to provide input about Jacques' supposed transformation between 1997 and 2004? If so, how did they account for Jacques' change from a habitual liar and chronic sex offender to a model prisoner?

4. Mr. Kearney's statement regarding the August 23rd document does not appear to be factual, given the court transcript. What does Mr. Rideout state regarding this question? How can his testimony be reconciled with the court transcript? What is the Department's view of this question?

5. Mr. Kearney testified that he did not think it was important to report to the court the 2005 conviction of Mr. Jacques in New Hampshire for violation of the sex offender registry in that state. What is the Department's view of this failure to report?

6. During the October 18, 2004 probation hearing, Mr. Kearney indicates, as evidenced by the following exchange, that he felt compelled by DOC policy to petition for Mr. Jacques' release from probation.

Court: Now, at the time that his supervision began, did the Department have some kind of either administrative guidelines or internal criteria for how long you would supervise an offender if the Court had not set a time certain for supervision?

Kearney: At that time, there were unwritten rules that during the time Mr. Jacques was under supervision were then set to writing and those were called program completion standards which set forth for us as probation officers when we should seek discharge of cases.

Court: Okay. And what were the, at least at that time, what were the unwritten rules about how long you would supervise someone?

Kearney: The unwritten rules at that time were basically to serve—to be under supervision for the minimum sentence.

Court: Okay. Now, have those unwritten rules become more formalized now?

Kearney: They have become more formalized and less stringent.

The Court continues to inquire of Mr. Kearney regarding the Department's calculations, resulting in Mr. Kearney testifying that "we could assume that nine years from the date of his [Jacques'] sentence that we would make a petition to the Court, *would be mandated through policy to make*

a petition to the Court for his discharge.” The Court notes that as of the hearing date, Mr. Jacques had exceeded the period for supervision recommended by Department guidelines.

Would you please provide the committee with copies of the policies in place at that time, as well as the policies currently in place with respect to when the Department should seek the discharge of sex offenders from probation?

7. When Mr. Jacques violated the terms of his probation in 1997 by not living where he was required to live, but with another relative who had a small child, why didn't the Department request an additional condition of probation that Mr. Jacques not reside with children?

Several additional questions have arisen in the context of discussing incarceration and supervision of sex offenders in general to which we would like a response from the Department:

1. In response to Ms. Suzen Wood's testimony to the Committee on August 28, 2008, why does DOC recommend the parole of a sex offender who has been designated by DOC as a high-risk to reoffend? Although 28 V.S.A. § 501 says that an offender is “eligible” for parole, the statute certainly does not require the Department to recommend it, especially if the offender is not likely to meet the requirements of 28 V.S.A.

§ 502a(b)(2) that there is “a reasonable probability that the inmate can be released without detriment to the community or to the inmate.”

2. How many offenders have been designated by the Department as high-risk in accordance with 13 V.S.A. § 5411b? What were the sentences for each offender so designated, and what is their current status? Please provide information as to when each of these offenders was released from incarceration into community supervision, and the basis for the release.

3. Please describe the community supervision and treatment plans for sex offenders designated as high-risk in accordance with 13 V.S.A. § 5411b.

4. How many sex offenders does Vermont DOC currently have in custody who have been transferred from other jurisdictions. From which jurisdiction was each offender transferred, and what was the basis for the transfer?

5. Why has the Department not provided information regarding treatment status on 115 sex offenders to VCIC?

6. Do you know what the Sunshine Project is? Do you have any information regarding the Sunshine Project?

We appreciate the Department's effort to provide the Committee with as much information as possible. We have no wish to conduct a “witch-hunt,” yet we are all accountable to the public for conducting a thorough review and acting on the information we find. Certainly we expect factual testimony, as I am confident you do.

In order for the Committee to be able to respond at our meeting on September 11th, I would appreciate your response by September 9th. Please feel free to contact me if you have any questions about this request.

Sincerely,

Richard Sears, Chair
Senate Committee on Judiciary