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Executive Director

Peter A. Ozanne

PUBLIC DEFENSE SERVICES COMMISSION

Thursday, April 13, 2006 Meeting*

11:00 a.m. to 4:00 p.m.**

Hood River County Courthouse
Courtroom 301
309 State Street
Hood River, Oregon

AGENDA

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|--|---------------------------------|
| 1. Action Item: Approval of the Minutes of PDSC's February 9, 2006 Meeting (<i>Attachment 1</i>) | Barnes Ellis |
| 2. OPDS's Monthly Report (<i>Attachment 2</i>) | OPDS's Management Team |
| 3. Introduction of OPDS's Preliminary Report on Service Delivery in Judicial District No. 7 (<i>Attachment 3</i>)** | Peter Ozanne |
| 4. Discussion and Comments regarding Service Delivery in Judicial District No. 7 | Barnes Ellis |
| <ul style="list-style-type: none"> • Judicial Perspectives • Prosecutors' Perspectives • Contractors' Perspectives • Justice System Perspectives | |
| 5. Continuing Review of PDSC's Contracting Process (<i>Attachment 4</i>) | Peter Ozanne Kathryn Aylward |

Notes

**PDSC's next meeting is scheduled for May 11, 2006 in Salem, Oregon.*

***Box lunches will be served at 12:30 p.m. on April 13 in the Hood River County Courthouse for Commission members, staff and others in attendance who have placed their orders in advance with OPDS.*

****** Attachment 3, "OPDS's Report to the Public Defense Services Commission on Service Delivery in Judicial District No. 7," will be mailed separately to the Commission and those on the Commission's mailing list.***

Attachment 1

PUBLIC DEFENSE SERVICES COMMISSION

OFFICIAL MEETING MINUTES

February 9, 2006
Office of Public Defense Services
1320 Capitol Street N.E.
Salem, Oregon

MEMBERS PRESENT: Barnes Ellis
Shaun McCrea
Jim Brown
John Potter
Michael Greenfield
Paul J. De Muniz

STAFF PRESENT: Peter Ozanne
Peter Gartlan
Rebecca Duncan
Kathryn Aylward
Ingrid Swenson
Laura Anson

[Tape 1, Side A] The meeting was called to order at 9:03 a.m.

Agenda Item No. 1 Approval of January 12, 2006 Minutes

006-032 Following corrections to the Unofficial Transcript of the January 12, 2006 meeting, the Meeting Minutes were approved.

MOTION: Shaun McCrea moved to adopt the minutes; J. Potter seconded the motion; hearing no objection the motion carried. **VOTE 4-0.**

Agenda Item No. 2 OPDS's Monthly Report

037-261 Peter Gartlan reported on the status of the appellate case backlog at the Legal Services Division and a new project at the Division to improve secretarial and office practices and procedures. Peter Ozanne announced the formation of (1) a Consortium Advisory Group to advise OPDS and PDSC on implementation of the Commission's recommendations to consortia regarding best practices in consortium management and to share management experience and expertise among consortia managers and (2) a Diversity Task Force to advise OPDS and the Commission on programs and strategies to increase diversity and cultural competence within the public defense community.

Agenda Item No. 3 Review and Approval of a Service Delivery Plan for Yamhill County

270-507 Following Peter Ozanne's presentation of OPDS's final report to the Commission and PDSC's Service Delivery Plan for Yamhill County, the Commission approved the report and the plan.

Shaun McCrea moved to approve OPDS's report and adopt the Yamhill Service Delivery Plan; John Potter seconded the motion; hearing no objection the motion carried: **VOTE 5-0.**

- Agenda Item No. 4 Review and Approval of Changes in OPDS’s Personnel Policies**
- 530- [Tape 1, B] -226 Following Kathryn Aylward’s presentation of OPDS’s proposal for a new compensation plan, the Commission approved the plan, including a change in the agency’s compensation policy regarding the “salary eligibility date.”
- John Potter moved to approve the proposed OPDS Personnel Policies; Shaun McCrea seconded the motion; hearing no objection the motion carried: **VOTE 5-0.**
- Agenda Item No. 5 Review Selected Aspects of PDSC’s Contracting Process**
- 241- [Tape 2, A] -582 Following the Commission’s discussion of issues and concerns regarding its contracting process, including OPDS’s Request for Proposals (RFP) procedures, the bid process, PDSC’s confidentiality policy regarding bids and responses to RFPs, “wind-down” procedures when contracts expire or are terminated and payment practices for caseload “overages,” the Commission’s members agreed to continue their discussions of these and other issues regarding the public defense contracting process at subsequent Commission meetings and at its annual Retreat.
- Agenda Item No. 7 Review and Approval of a Proposed Contract for Misdemeanor Early Disposition Program in Multnomah County**
- 583- [Tape 2, B] -162 Following Kathryn Aylward’s review of the three responses to OPDS’s RFP for an Early Disposition Program in Multnomah County and an explanation of OPDS’s recommendation that the contract be awarded to L & L, the Commission approved that proposed contract.
- Mike Greenfield moved to approve the proposed contract; Jim Brown moved to second the motion; Shaun McCrea opposed the motion. **VOTE 4-1.**
- Agenda Item No. 6 Review Revisions to OPDS’s Confidentiality Policy**
- 170-348 For the Commission’s review and approval at a subsequent meeting, Ingrid Swenson presented and explained OPDS’s proposed revisions to its confidentiality policy with regard to the administration of applications for non-routine expenses.
- Agenda Item No. 8 Consideration of OCDLA’s Proposals to Review PDSC’s Attorney Qualification Standards**
- 350- [Tape 3, A] -126 Ingrid Swenson introduced Dan Cross and Paul Levy, who presented the recommendations of a task force of the Oregon Criminal Defense Lawyers Association regarding PDSC’s qualification standards for public defense attorneys. Following those presentations and discussions with the Commission, PDSC approved one of the recommendations of the OCDLA task force to create a separate procedure for “public defense organizations” to satisfy the qualification standards, if those organizations provide adequate training and supervision programs for their attorneys. This procedure is subject to PDSC’s reconsideration in one year.
- John Potter moved to approve this change in PDSC’s attorney qualification standards, subject to reconsideration in one year; Jim Brown seconded the motion with the Commission’s discussion as legislative history; the motion carried. **VOTE 4-0.**
- 130- [Tape 3, B] -148 Following further presentations by Mr. Cross and Mr. Levy and discussions with the Commission, PDSC deferred review and approval of the remaining recommendations of the OCDLA task force until June 2006.
- [The remainder of PDSC’s meeting was devoted to an Executive Session for an annual performance review of the Commission’s Executive Director.]

Attachment 2

Oregon Judicial Department: Indigent Defense Eligibility and Fee Determinations



Secretary of State Audit Report

Summary

PURPOSE

This audit report focuses on the Oregon Judicial Department's role in administering the state's indigent defense program. Our audit objectives were to determine:

- Whether people who received court-appointed counsel met financial eligibility requirements;
- Whether verification specialists recommended application and contribution fees consistent with department guidelines;
- The extent to which judges' decisions regarding appointing counsel and assessing application and contribution fees differed from verification specialists' recommendations and the general reasons for these differences; and
- Judges' recoupment practices for defendants who receive court-appointed counsel.

In order to answer these audit objectives, we reviewed a sample of 203 adult felony and misdemeanor cases in which defendants received court-appointed counsel during October through December 2004.

BACKGROUND

The Oregon Judicial Department (department) is responsible for determining whether applicants for court-appointed counsel meet financial eligibility requirements. Department staff called verification specialists does this by reviewing information applicants provide about their income, assets, and expenses. Verification specialists also determine whether those found eligible for court-appointed counsel are able to pay an application fee and contribute an amount toward the cost of their defense. Judges have the final say as to eligibility, application fees, and contribution amounts. Judges are also responsible for considering, at the end of a case, whether a defendant's financial circumstances have changed such that an additional amount can be recouped to further offset defense costs.

RESULTS IN BRIEF

Eligibility

Applicants who received court-appointed counsel did not always meet financial eligibility requirements. Based on our analysis, defendants were ineligible for these services in about 10 percent of the cases we reviewed. In 5.5 percent of cases, defendants' available resources exceeded eligibility guidelines. In most of these cases, verification specialists incorrectly determined defendants' household income, liquid assets and/or allowable expenses when screening them for eligibility. Our review of wage data showed that in an additional 4.5 percent of cases, defendants earned more than they declared when applying for court-appointed counsel. We estimate that the total net cost to the state of providing indigent defense to ineligible defendants ranged from about \$307,000 to \$608,000 during the last quarter of 2004. Assuming this was an average quarter, and if no changes were made to the program, annual net costs would range from \$1.2 million to \$2.4 million in a year, depending on the department's collection results.

Application and Contribution

We also found that verification specialists did not consistently follow department guidelines when recommending application and contribution fees. They deviated from the application fee guidelines in about 7 percent of the cases we reviewed. In half of these cases, verification specialists recommended that defendants without sufficient resources pay the \$20 application fee. In the other half, they failed to recommend that defendants with ample resources pay the fee.

Verification specialists deviated from contribution guidelines in about 9 percent of the cases we reviewed. In 2 percent of cases, they recommended amounts exceeding the defendant's ability to pay, while in about 7 percent they should have recommended greater amounts.

We estimate the net effect of not following the guidelines was about \$214,000 in contribution amounts that could have been recommended during the last quarter of 2004.

By using wage data, we identified an additional 1 percent of cases in which defendants could have paid the application fee and an additional 1.5 percent in which they could have contributed to defense costs. These additional cases represent about \$69,000 in application fees and contribution amounts defendants could have paid during the last quarter of 2004.

Our estimate of the combined annual total of forgone contribution amounts and application fees is about \$885,000.

Judges and Verification Specialists' Recommendations

Judges' decisions regarding appointing counsel and assessing application and contribution fees rarely differed from verification specialists' recommendations. Specifically, judges' decisions differed from verification specialists' recommendations in about 1 percent of our sample cases.

Recoupment

We also found that most judges imposed recoupment. Specifically, we surveyed 16 judges from various judicial districts in Oregon and found that 14 of them consistently imposed recoupment.

RECOMMENDATIONS

We recommend the department take the following actions:

- Ensure that verification specialists understand and follow guidelines in the areas of determining defendants' income, assets, allowable expenses and household size. Periodic training and monitoring compliance with guidelines should help in this regard.
- Consider increasing the use of the eligibility worksheet. Also, consider automating the screening process. For example, verification specialists could interview defendants and complete the Affidavit of Eligibility electronically. They could then print a copy and provide it to defendants for review and signature, as we noticed verification specialists do in Lane County for out-of-custody defendants. The affidavit could be linked to the eligibility worksheet so that information is automatically entered into the worksheet and processed to determine a defendant's eligibility and ability to pay the application fee and a contribution amount. This has the potential to improve the accuracy of recommendations and reduce processing time.
- Determine whether it would be cost effective to verify income for additional defendants using the most recent wage data available. If so, and these data indicate a defendant may be ineligible, use additional sources of information to confirm income. This has the potential to improve the accuracy of verification specialists' recommendations regarding eligibility, application fees, and contribution amounts.

AGENCY'S RESPONSE

The Oregon Judicial Department generally agrees with the recommendations. The department's complete response begins on page 7.

Background

According to the United States Constitution, the Oregon Constitution, and Oregon statutes, indigent defendants are entitled to adequate legal representation in a court of law at state expense. In Oregon, a person is financially eligible for court-appointed counsel if he or she is "... unable to retain adequate counsel without substantial hardship in providing basic economic necessities to the person or the person's dependant family..." (ORS 151.485)

Two state agencies administer Oregon's indigent defense program: the Office of Public Defense Services (OPDS) and the Oregon Judicial Department (department). OPDS oversees the contracts that provide legal

representation to indigent defendants and processes requests for payments of non-contract fees and expenses. In addition, OPDS staff attorneys represent indigent defendants in the majority of appellate court cases. The department is responsible for administering the Eligibility Verification Program, the Application and Contribution Program (ACP), and recoupment of attorney fees.

Established in 1989, the Eligibility Verification Program was meant to ensure that ineligible people did not receive counsel at state expense. Today, the program consists of verification specialists who review information applicants provide about income, assets, debts, expenses and dependants on a document called the Affidavit of

Eligibility. This process is known as "screening." In addition, verification specialists use their professional judgment to select some defendants for whom they further evaluate eligibility for court-appointed counsel. In order to accomplish this, they check the accuracy of the information defendants provide on the Affidavit of Eligibility by accessing various sources of information, such as bank statements, county property records, income information, casino and lottery winnings, etc. This process is known as "verification." According to data in our audit sample, verification specialists verified about 3 percent of all cases in which defendant received court-appointed counsel during the last quarter of 2004.

Using information collected through screening and verification, verification specialists make recommendations to judges regarding applicants' eligibility for court-appointed counsel.

Verification specialists are also responsible for implementing the Application and Contribution Program. This program was established as early as 1997 in some Oregon counties, but was not implemented statewide until the 2003-2005 biennium. Under the program, verification specialists determine if applicants eligible for court-appointed counsel have the ability to pay a \$20 application fee and contribute some amount toward defense costs. Funds generated through the program, along with some general-fund money, support the Eligibility Verification Program. According to the department, funds collected through the program reached \$1.8 million during the 2003-05 biennium.

In order to assist with eligibility determinations, the OPDS formulated guidelines and created forms, which are contained in a verification manual. The guidelines address how to determine a person's income, liquid assets, household size, and allowable expenses. In determining eligibility, verification specialists are to subtract allowable expenses from household income and liquid assets, and compare the result to the cost of hiring private defense as listed on a privately hired attorney fee schedule. If available resources exceed the cost of private defense, they are to recommend against appointing counsel. However, if available resources are less than the cost of private defense, the verification specialist should recommend appointing counsel and should determine if the defendant can pay a \$20 application fee and some contribution amount. The department also developed an eligibility worksheet, which guides

verification specialists through the calculations involved in determining eligibility, application fees and contribution amounts.

Recoupment of attorney fees complements the ACP by allowing judges to examine court costs and a defendant's most recent financial circumstances at the end of the case. If court costs exceed contribution amounts previously imposed, and the defendant has the financial ability, judges may order a defendant to pay an additional amount toward defense costs. The funds collected through recoupment become part of the Criminal Fines and Assessment Account and are distributed to public safety programs.

Audit Results

Some Defendants Did Not Meet Financial Eligibility Requirements

In about 10 percent of cases we reviewed, defendants who received court-appointed counsel did not meet financial eligibility requirements. Specifically, these defendants' available resources exceeded department guidelines. We estimate the state incurred net costs ranging from about \$307,000, to nearly \$608,000 to defend these people during the last quarter of 2004. This range reflects about \$300,000 of contribution and recoupment amounts imposed for these ineligible defendants.¹ The true net cost incurred by the state depends on the portion of this amount the department actually collects. According to department officials, the collection rate is lower than 100 percent. If this was an average quarter, and if no changes

¹ The recoupment amounts used in our calculations were current as of 10/31/2005. At that time, several cases had not been decided. If judges impose recoupment in those cases, the net cost of providing indigent defense will be lower.

were made to the program, net costs would range from \$1.2 million to \$2.4 million in a year, depending on collection results.

Using department guidelines, we screened defendants in our sample to determine whether they were eligible for court-appointed counsel, based on information they provided on their Affidavits of Eligibility. In 5.5 percent of cases we reviewed, defendants did not meet eligibility requirements because their available resources were sufficient to hire private defense. Most eligibility errors we found occurred when verification specialists calculated available assets and allowable expenses. For example, in one case, a defendant declared a net monthly income of \$3,800 and total expenses of \$4,225. The verification specialist used the declared expense amount and recommended the defendant receive court-appointed counsel. However, according to the guidelines, the verification specialist should have used a set expense amount corresponding to the defendant's household size and added certain additional allowable expenses, such as medical, childcare, child support, and court-ordered fees and fines. Had the verification specialist followed guidelines, the allowable expense amount would have been \$1,871 and the available resources would have been more than enough to cover the \$850 specified in the privately hired attorney fee schedule for the charge in this case.

Not filling out the eligibility worksheet, which is meant to assist verification specialists with calculations, may have been another cause of inaccurate eligibility determinations. In 57 percent of the cases in which defendants were ineligible for court-appointed counsel, we could not find a completed eligibility worksheet. Verification specialists cited lack of time as a factor in not filling out the worksheets.

We identified the remaining 4.5 percent of cases in which defendants did not meet eligibility requirements by verifying the income listed on the Affidavits of Eligibility. To do so, we used actual wage data for the last quarter of 2004, the quarter in which defendants applied for court-appointed counsel. We found that in all of these cases, wages were more than sufficient to cover the defendant's allowable monthly expenses and the cost of private defense. Verification specialists have access to these wage data, but not for the most recent quarter. Therefore, we also looked at wage data they could have accessed at the time of application for court-appointed counsel. In general, this comparison revealed that eligibility determinations made using data available to verification specialists did not differ from those based on data current at the time defendants applied for court-appointed counsel.

While our verification work allowed us to identify these additional ineligible clients, department officials noted that the department does not have adequate resources to verify as many cases as we did and therefore may not be able to identify as many ineligible defendants.

Application and Contribution Fee Recommendations Not Always Appropriate

We found that verification specialists' application fee recommendations were not appropriate in about 7 percent of cases we reviewed. For half of these cases, verification specialists failed to charge the fee to defendants who, according to guidelines, showed sufficient resources to pay it. For the other half, they recommended that defendants without sufficient resources pay the fee.

Consequently, the net effect of these deviations from guidelines was zero.

We also found verification specialists did not follow contribution amount guidelines in about 9 percent of the cases we reviewed. A little less than a quarter of these involved contribution recommendations exceeding a defendant's ability to pay. In the remaining cases, verification specialists should have recommended a greater contribution amount. All told, had verification specialists followed the guidelines in these cases, they could have recommended about \$214,000 of additional estimated contribution amounts during the last quarter in 2004. If this was an average quarter, and if no changes were made to the program, the effect of not following guidelines would be \$855,000 of contribution amounts not recommended per year.

Building on the eligibility verification work we performed, we found an additional 1 percent of cases in which defendants could have paid the \$20 application fee and an additional 1.5 percent of cases in which they could have paid an average \$184 contribution amount. Projected to the audit population, we estimate that in the last quarter of 2004, defendants could have paid about \$69,000 in additional application fees and contribution amounts. Assuming this was a typical quarter, we estimate that verification specialists could have recommended an additional \$275,000 per year if they verified income for all the defendants they screened. However, as noted above, department officials told us the department does not have the resources to identify through verification as many additional application and contribution amounts as we did.

Our estimate of the combined annual total of forgone contribution amounts and application fees is about \$885,000.² However, as noted above, the department does not collect 100 percent of amounts assessed.

The most frequent deviation from guidelines occurred when determining an applicant's available assets and household size. For example, some verification specialists used net income declared by defendants without confirming it by calculating it based on hourly wages and weekly work schedule. Other verification specialists approximated monthly income by multiplying weekly wages by four weeks. However, this method underestimates a defendant's net pay, as 52 weeks in a year divided by 12 months equals 4.33 weeks per month. In other situations, verification specialists did not include public assistance or financial help from family and friends in the asset calculation. Determining household size was an additional problem. For example, some verification specialists counted a roommate as a dependant, which increased a defendant's expenses, or forgot to include children in the calculation, which lowered expenses.

We noted other potential reasons why verification specialists made incorrect application fee and contribution amount recommendations. As with eligibility determinations, not completing the eligibility worksheet could have been a cause. In 86 percent of cases with inaccurate application fee recommendations, and in 53 percent of cases with inaccurate contribution amount recommendations, verification

² This figure excludes the estimated cost of contribution errors, projected to our audit population, for three defendants that we found to be ineligible through our verification work.

specialists did not fill out eligibility worksheets. In addition, we found that in some counties verification specialists operated under informal local policies, such as charging the application fee in all cases unless defendants were homeless or showed significant economic hardship. In another county, verification specialists exercised their own judgment to determine if defendants could pay the application fee and contribute to defense costs, rather than relying on the calculations set forth in the guidelines.

We recommend the department take the following actions:

- Ensure that verification specialists understand and follow guidelines in the areas of determining defendants' income, assets, allowable expenses and household size. Periodic training and monitoring compliance with guidelines should help in this regard.
- Consider increasing the use of the eligibility worksheet. Also consider automating the screening process. For example, verification specialists could interview defendants and complete the Affidavit of Eligibility electronically. They could then print a copy and provide it to defendants for review and signature, as we noticed verification specialists do in Lane County for out-of-custody defendants. The affidavit could be linked to the eligibility worksheet so that information is automatically entered into the worksheet and processed to determine a defendant's eligibility and ability to pay the application fee and a contribution amount. This has the potential to improve the accuracy of recommendations and reduce processing time.
- Determine whether it would be cost effective to verify income for additional defendants using

the most recent wage data available. If so, and these data indicate a defendant may be ineligible, use additional sources of information to confirm income. This has the potential to improve the accuracy of verification specialists' recommendations regarding eligibility, application fees, and contribution amounts.

Judges Follow Verification Specialist Recommendations

Judges' decisions regarding appointing counsel and assessing application fees and contribution amounts differed from verification specialists' recommendations in only 1 percent of our sample cases. Based on our survey of 16 judges, we identified several general reasons judges might disagree with a verification specialist. For example, some judges may not follow the recommendation if a defendant reveals new information in court that was not included on the affidavit of eligibility. Other judges said they tend to appoint counsel if defendants are marginally ineligible and face serious charges that carry long-term prison sentences. Several judges mentioned that appointing counsel could save money by speeding the judicial process. For example, if a marginally ineligible defendant who is unfamiliar with the judicial process refuses to hire a private attorney and opts instead to represent himself, the court may spend significantly more time on the case than if he received court-appointed counsel. Finally, some judges were concerned about denying counsel based on assets a defendant might share with a victim in the same case. For example, if a defendant commits an act against a family member with whom he or she shares assets, and these assets marginally exceed eligibility guidelines, not appointing counsel could result in

the victim paying for part of the defendant's court costs.

Judges Recoup Attorney Fees

Our work indicates that most judges impose recoupment. Specifically, we found 14 of the 16 judges we surveyed consistently imposed recoupment. Judges noted that the likelihood of imposing recoupment and the amount ordered depended on the total attorney fees for the case and amounts previously imposed, such as the contribution amount. Judges also consider such factors as a defendant's ability to pay, the seriousness of the charge and potential for lengthy incarceration, restitution and other court fines and fees, and the defendant's mental condition.

Two of the judges we surveyed did not consistently impose recoupment. One was under the impression that the department preferred judges only collect fees through the ACP because it is more cost effective to do so. The other judge said it was difficult to recoup attorney fees because he worked with attorneys from several neighboring counties whose compensation varied. In addition, he thought recoupment was not a priority for the department. Therefore, he opted to impose larger contribution amounts to compensate for not ordering recoupment.

Agency Accomplishments

In response to legislative direction, the department took actions designed to improve the ACP and verification programs. These included scheduling two training sessions and providing opportunities for peers to exchange best practices. Department staff also started revising the verification manual and translated forms into Spanish. Finally, the department sent periodic memos updating

verification specialists and supervisors on program changes and progress, such as the implementation of the ACP for juvenile defendants.

Agency's Response:

The department generally agrees with the audit recommendations. The department's complete response begins on page 7.

Objectives, Scope and Methodology

Our audit objectives were to determine the following:

- Whether people who received court-appointed counsel met financial eligibility requirements;
- Whether verification specialists recommended application and contribution fees consistent with department guidelines;
- The extent to which judges' decisions regarding appointing or denying counsel and assessing application and contribution fees differed from verification specialists' recommendations and the general reasons for these differences; and
- Judges' recoupment practices for defendants who receive court-appointed counsel.

In order to determine if people who received court-appointed counsel met financial eligibility requirements and if verification specialists recommended application and contribution fees consistent with department guidelines, we selected a random sample of 203 cases. We chose these from the population of 23,495 adult felony and misdemeanor cases in which defendants received court-appointed counsel between October 1 and December 31, 2004. The department provided us with information about these cases from its Oregon Judicial Information Network database. Our data

reliability testing showed these data were sufficiently reliable to select a representative audit sample.

We reviewed the following court documents for the cases in our sample:

- Affidavits of Eligibility,
- Eligibility Worksheets,
- Orders to Appoint or Deny Counsel and Order Fees,
- Judgments, and
- Verification documents.

We collected relevant information from these documents and screened defendant applications following department guidelines. Thus, we independently determined each defendant's financial eligibility for court-appointed counsel and calculated the appropriate application fee and contribution amounts. We also obtained wage data from the Oregon Employment Department, which we used to verify eligibility and application fee and contribution amount recommendations. We also obtained information about the cost of defending ineligible defendants from the Office of Public Defense Services.

Using our sample error rates, average error amounts, and case cost information, we projected the sample findings to the audit population using a 95 percent confidence level. This allowed us to estimate the cost to the state of representing ineligible defendants and not recommending appropriate application and contribution amounts. Using the 95 percent confidence level, we developed the dollar effect ranges and means listed below. These figures correspond to the fourth quarter of 2004.

- Eligibility range: \$179,457 to \$435,248; estimated mean: \$307,353.

- Application-fee range: \$2,452 to \$6,807; estimated mean: \$4,630.
- Contribution amount range: \$123,933 to \$309,470; estimated mean: \$216,701.³

Using the eligibility range as an example, we are 95 percent confident that the actual value of eligibility errors in the audit population is between \$179,457 and \$435,248. The means, which we used in the results section above, represent our point estimate of the actual value of the errors.

In order to determine the extent to which judges do not follow verification specialists' recommendations, we used the sample of 203 cases and compared the verification specialists' recommendations to judges' orders appointing counsel and imposing application and contribution amounts. We also surveyed 16 judges in 15 counties to determine general reasons why judges disagree with verification specialists' recommendations, as well as their recoupment practices. We chose these counties to be geographically representative of the state as a whole and to cover varying volumes of indigent defense caseloads.

We conducted our audit in accordance with generally accepted government auditing standards.

³ This range excludes the estimated cost of contribution errors, projected to our audit population, for three defendants that we found to be ineligible through our verification work.

Oregon Judicial Department Response to the Secretary of State Audit of the Application and Contribution Program February 22, 2006

The Oregon Judicial Department (OJD) appreciates the opportunity to respond to the Secretary of State's (SOS) audit of the Application and Contribution Program (ACP). The department also appreciates the manner in which the SOS staff conducted the audit and worked together with OJD staff to keep disruption for the trial courts to a minimum.

The department offered SOS staff some technical change suggestions as well as some overall clarifications upon receipt of the draft report. We appreciate that the audit team addressed some of our concerns prior to finalizing and disseminating the final report. The department appreciates the recommendations made by SOS staff and will engage in planning in a timely manner to implement those that are possible.

Audit Environment

In a budget note, the 2003 Legislative Assembly directed OJD to implement ACP statewide. At that same time, the department was recovering from an unprecedented crisis resulting from the budget reductions and staff reductions and layoffs the previous biennium. Verification positions in the trial courts were hit hard during the budget crisis. New staff needed to be hired and trained.

On July 1, 2003, Indigent Defense Services Division (IDSD) staff and functions transferred to the Public Defense Services Commission (PDSC). At that time, the Court Programs and Services Division of the Office of the State Court Administrator was designated to take over statewide coordination of the ACP and verification programs. Upon receipt of the legislative directive to implement the program statewide, the department reviewed and clarified policies and procedures that had been developed by IDSD when they piloted this program. CPSD provided statewide and regional training and local technical assistance as new courts implemented the ACP program. It is important to note that these activities took place prior to the implementation of the SOS audit.

The department reported in an October 25, 2004, memorandum to the State Emergency Board that 32 of the 36 counties had begun implementation of ACP. The remaining four counties were expected to implement the program by March 2005. The SOS audit team drew a sample of cases in which defendants received court-appointed counsel during the last quarter of 2004. Some counties were very new to ACP and others had not yet started the program. Although we were concerned with the timing of the audit due to the recent transition of ACP from pilot programs to a statewide program, the department welcomed the opportunity for the statewide audit to assess the current status of the ACP and recommend improvements to be made.

Audit Limitations

Given the level at which the department is sourced to implement the ACP and verification programs, court staff verified only 6 of the 203 cases in the sample pulled and verified by SOS. Therefore, the amounts the auditors conclude could have been imposed would not likely have occurred with our current level of staffing. Policies adopted by PDSC instruct that verifiers are not intended to audit every case. Current anecdotal information suggests they are able to verify approximately 3 percent of the cases. Within that level, only those cases in which the verifiers have time and an indication that additional information will assist them in making a recommendation should be verified. The audit did not include a cost benefit analysis to determine whether staffing the department at a level to verify all cases would avoid the types of issues found in the report. The legislature would be placed in the position of deciding whether a significant investment to fully fund the program is worth the potential additional contributions that could be assessed.

Currently, the verification and ACP programs are staffed by a total of 29.63 FTE statewide. These staff are responsible for screening applications for court-appointed counsel, interviewing defendants, determining if defendants have the resources to pay the \$20 application fee and a contribution amount, processing paperwork to make recommendations to the court, and verifying income. 16.51 FTE are paid from the amounts generated through the ACP program, and 13.12 FTE are paid with General Fund dollars. In 2005, there were 104,214 new felony and misdemeanor cases filed in Oregon circuit courts; additionally, there were approximately 25,000 probation violation filings. A conservative estimate is that 85 percent of these cases (approximately 109,832 cases) have defendants who apply for court-appointed counsel.

The department estimates that it takes, on average, a verifier 20 minutes per case for screening applications for court-appointed counsel, interviewing defendants, determining if defendants have the resources to pay the \$20 application fee and a contribution amount, and processing paperwork to make recommendations to the court. Depending on the resources used to verify an applicant's financial information, it is estimated that verifiers spend, on average, 30 minutes per case to verify three sources. (The verification policies suggest that three sources be checked if a verifier identifies a need to gather clarifying information on an applicant's available resources.) The department estimates that approximately 36 new verification FTE would be needed to fully verify all applications for court-appointed counsel.

The department estimates the annual additional cost for only staff to be approximately \$1.9 million annually or \$3.8 million a biennium. There would also be a significant increase in verification expenses. For example, the department pays, on average, \$3.50 for every credit report generated in the verification process, at least \$100,000 a year (\$200,000 a biennium) would be needed for increased credit bureau checks.

Audit Conclusions

The broad-based conclusion that the auditors reach that OJD could have collected all additional funds contained in the projections is of concern. While these amounts could have been imposed in some cases, there is no basis, based on the normal collection rate and timing for criminal cases, that these amounts, even if assessed, could be collected in each quarter or biennium.

It also should be noted that the Application Fee and Contribution Amount are assessed at the beginning of the case as a Limited or Supplemental Judgment. Money collected prior to the conclusion of the case goes into the subaccount in the Public Defense Services Account (See ORS 151.225(3)). If the defendant does not pay the ACP fees prior to the conclusion of the case, the court has the option to convert the unpaid ACP amounts to recoupment. ORS 137.295 deals with crediting moneys received at the conclusion of a case. Money ordered at the end of a case (recoupment) goes into the Criminal Fine and Assessment Account (CFAA).

When a defendant makes a payment on monetary obligations, amounts paid are distributed per ORS 137.295. Compensatory fines are satisfied first, then any payments received are split 50-50 between restitution and state obligations. ACP and recoupment amounts would not be paid until compensatory fines are satisfied.

As to the recommendations, the department agrees that continued training and monitoring of the verifiers' work will assist in determining if appropriate recommendations are being made. The Office of the State Court Administrator provides central program oversight and support to the trial courts but does not directly supervise any trial court verification staff. Therefore, CPSD will work with presiding judges and trial court administrators to develop a plan for training and monitoring.

The department agrees that automating the verification worksheet will streamline the process. The department has received and reviewed a copy of the electronic worksheet being used in several counties. CPSD staff are in the process of correcting several formulas contained in the electronic worksheet and will distribute it to several additional courts for testing. Although some verifiers do not have access to a laptop or computer when interviewing and reviewing applications, the department will explore whether this can be done with current resources. The department is interested in determining if it would be cost effective to verify all reported income for additional defendants.

Conclusion

The Judicial Department appreciates the scope of work done by the Secretary of State's office in conducting this audit. The Office of the State Court Administrator will work closely with the presiding judges and trial court administrators to ensure compliance with ACP policies. The department will also implement recommendations of the auditors as outlined above.



**Secretary of State
Audits Division**

255 Capitol St. NE, Suite 500
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**Auditing to Protect the
Public Interest and Improve
Oregon Government**

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*The courtesies and cooperation extended by the officials
and staff of the Oregon Judicial Department were
commendable and much appreciated.*

*This report, a public record, is intended to promote the best
possible management of public resources. Copies may be obtained
from our website on the internet at:*

<http://www.sos.state.or.us/audits/audithp.htm>

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State audit finds waste in public-defense system

Courts | Unpaid fees and clients who receive, but don't qualify for, free lawyers are costing the state millions

By **EDWARD WALSH**
THE OREGONIAN

SALEM — A state agency that finances court-appointed lawyers for indigent criminal defendants spends up to \$2.4 million a year representing people who are not financially eligible for the state assistance, Secretary of State Bill Bradbury's office said in an audit released Wednesday.

The Office of Public Defense Services, a part of the judicial branch of state government, also is failing to collect about

\$885,000 a year in application fees and contributions from defendants who could afford to make the payments, the auditors estimated.

The audit of a random sample of 203 criminal cases during the last quarter of 2004 found that about 10 percent of defendants did not meet financial eligibility standards for court-appointed counsel. Some of the defendants had the income to pay a lawyer. Others had assets they could tap to contribute to their defense.

The audit said the miscalculations by verification specialists in the agency cost the state between about \$307,000 and almost \$608,000 in defense expenses during the quarter. If no changes were made to the program, the cost would be between

Please see **COURTS**, Page C3

The audit also noted that the agency does not collect the full amount of fees and contributions it seeks from defendants who qualify for a court-appointed counsel.

In a response that is part of the audit, the Oregon Judicial Department did not dispute the findings on the number of ineligible defendants who were provided court-appointed counsel.

On the issue of the application fee and contributions, the department said that the agency's staff can only fully verify about 3 percent of the cases it handles and it questioned whether expanding the staff so that it could verify all of the cases would be worth the cost.

The department said it would cost about \$1.9 million a year to hire enough new verification specialists to check the financial status of every defendant who applies for court-appointed counsel. The department handled about 109,000 defendants in 2005.

"The public policy question is, do you want to make that investment, or do you want to fund it as a deterrent, knowing that some cases will slip through?" said Deputy State Court Administrator Nancy Miller. "It's a little like the IRS. If the IRS were to audit every person's return, you would find a lot more unpaid taxes. It's not set up like that."

According to Kathryn Aylward, director of the contract and business services division of the public defense services office, the state will spend \$166.5 million during the 2005-07 biennium to pay for court-appointed lawyers for the indigent.

Courts: Anyone given court lawyer is to pay \$20 fee

Continued from Page C1

\$1.2 million and \$2.4 million a year, the audit said.

Under the public defense services program, even defendants who are eligible for a court-appointed attorney are required to pay a \$20 application fee and make some contribution to the cost of their defense if they can afford to do so. The auditors said that in about 9 percent of the cases they studied, the verification specialists did not follow their own guidelines. That resulted in an estimated loss of \$885,000 a year in application fees and contributions that should be collected.

In addition to criminal cases, she said the office pays for lawyers in a large number of abuse and neglect cases involving indigent parents and children.

The audit said judges did not follow the recommendations of verification specialists in only 1 percent of the studied cases. It said some judges said they tend to appoint counsel for defendants who are marginally ineligible but face serious charges that carry long-term prison sentences. It said other judges said appointing counsel could save money in the long run by speeding up the judicial process.

Edward Walsh: 503-294-4153;
edwardwalsh@news.oregonian.com

Peter A Ozanne/OPDS

04/03/2006 02:19 PM

Dear Mr. Walsh:

I have not seen the correction in *The Oregonian* that we discussed last week concerning your March 30, 2006 article and its erroneous references to the Office of Public Defender Services as the subject of a recent Secretary of State audit. If such a correction has been published, would you please provide me with a copy? If not, please advise me when that correction will be published.

Thank you.

Peter Ozanne
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& Office of Public Defense Services
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"Dee Lane"
<deelane@news.oregonian.com>

04/03/2006 06:36 PM

Mr. Ozanne,

The correction on the story you inquired about was published on Saturday, April 1. Text of the correction was:

Verification specialists who determine the financial eligibility of criminal defendants work for the Oregon Judicial Department, which was the subject of a state audit. A story in Thursday's Metro section incorrectly identified the state agency that was involved in the determination and that was the subject of the audit.

The correction also appears on top of the story in our online library so that anyone who looks it up in the future will get the correct information.

I apologize for the error and thank you for bringing it to our attention. You may also hear from Ed Walsh, the reporter on the story. He is out of town on assignment now, and I wanted to make sure that we didn't leave you wondering. If you have any further questions, please give me a call.

Dee Lane
Politics editor
The Oregonian
503-221-8528
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deelane@news.oregonian.com

Peter A Ozanne/OPDS

04/04/2006 01:03 PM

Ms. Lane,

Thank you for your prompt reply to my message yesterday to Ed Walsh.

Unfortunately, *The Oregonian's* correction set forth in your reply fails to expressly correct the erroneous references in Mr. Walsh's March 30 article to the Office of Public Defense Services (OPDS) as a subject of the Secretary of State's audit and as the agency that determines financial eligibility for court-appointed lawyers or that collects fees, contributions and recoupments of legal expenses from criminal defendants. Therefore, that correction does nothing to correct the central message of Mr. Walsh's article that OPDS is responsible for "waste in public-defense system," as the headline to his article proclaims, or to mitigate the damage that your newspaper's careless reporting has caused to OPDS's reputation for management competence and fiscal responsibility.

OPDS is a small state agency that assumed responsibility for managing the delivery of public defense services throughout Oregon in July 2003 and, as Mr. Walsh's article correctly states, for administering a budget of over \$166 million to fund those services. With our small staff of dedicated men and women who are committed to ensuring the delivery of cost-efficient services and to holding themselves accountable as stewards of taxpayers' dollars, OPDS is establishing a reputation for excellence in public management within state government and the Oregon legislature and throughout Oregon's criminal justice and public safety systems. Mr. Walsh's erroneous reporting, which reflects his failure to even read the Secretary of State's audit report (since page 2 of that report clearly sets forth the role and responsibilities of OPDS) before reporting on it, represents a major setback in our agency's efforts to accomplish our mission and may have caused irreparable injury to our standing with the citizens and public officials upon whom we depend for support.

Therefore, I request that *The Oregonian* prepare and publish another correction to its March 30 article by Mr. Walsh without further delay. In order to mitigate the injury caused by that article, the correction should expressly include the fact that OPDS was incorrectly identified as the subject of a state audit and that OPDS is not the agency responsible for verifying financial eligibility for court-appointed lawyers or for the collection of fees, contributions and recoupments from criminal defendants.

Peter Ozanne

Attachment 3

PRELIMINARY DRAFT

(April 7, 2006)

OPDS's Report to the Public Defense Services Commission on Service Delivery in Judicial District No. 7 (Hood River, Wasco, Gilliam, Sherman & Wheeler Counties)

Introduction

Since developing its first Strategic Plan in December 2003, the Public Defense Services Commission (PDSC) has focused on strategies to accomplish its mission to deliver quality, cost-efficient public defense services in Oregon. Recognizing that increasing the quality of legal services also increases their cost-efficiency by reducing risks of error and the delay and expense associated with remedying errors, the Commission has developed strategies designed to improve the quality of public defense services and the systems across the state for delivering those services.

Foremost among those strategies is PDSC's service delivery planning process, which is designed to evaluate and improve the operation of local public defense delivery systems. During 2004, 2005 and 2006, the Commission completed investigations of the local public defense systems in Benton, Lane, Lincoln, Linn, Multnomah, Marion, Klamath and Yamhill Counties. It also developed Service Delivery Plans in each of those counties to improve the operation of their public defense systems and the quality of the legal services provided by those systems.

This preliminary report presents the results of OPDS's preliminary investigation of conditions in Hood River and Wasco Counties, in particular, and in Gilliam, Sherman and Wheeler Counties to a lesser extent. It also represents the first step in PDSC's service delivery planning process.

PDSC's Service Delivery Planning Process

There are four steps to PDSC's service delivery planning process. First, the Commission has identified seven Service Delivery Regions in the state for the purposes of reviewing local public defense delivery systems and the services they provide, and addressing significant issues of quality and cost-efficiency in those systems and services.

Second, starting with preliminary investigations by OPDS and a report such as this, the Commission reviews the condition and operation of local public defense delivery systems and services in each region by holding public meetings in that region to provide opportunities for interested parties to present their perspectives and concerns to the Commission.

Third, after considering OPDS's preliminary draft report and public comments during the Commission's meetings in a county or region, PDSC develops a Service Delivery Plan, which is set forth at the conclusion of the final version of this report. That plan may

confirm the quality and cost-efficiency of the public defense delivery system and services in that region or propose changes to improve the delivery of the region's public defense services. In either event, the Commission's Service Delivery Plans (a) take into account the local conditions, practices and resources unique to the region, (b) outline the structure and objectives of the region's delivery system and the roles and responsibilities of public defense contractors in the region, and (c) when appropriate, propose revisions in the terms and conditions of the region's public defense contracts.

Finally, under the direction of PDSC, the contractors subject to the Commission's Service Delivery Plans implement the strategies or changes proposed in the plans. Periodically, those contractors report back to PDSC on their progress in implementing the Commission's plans and on the establishment of other best practices in public defense management.

Any Service Delivery Plan that PDSC develops will not be the last word on a local service delivery system, or on the quality and cost-efficiency of the county's public defense services. The limitations of PDSC's budget, the existing personnel, level of resources and unique conditions in each county, the current contractual relationships between PDSC and its contractors, and the wisdom of not trying to do everything at once, place constraints on the Commission's initial planning process in any region. PDSC's service delivery planning process is an ongoing one, calling for the Commission to return to each region of the state over time in order to develop new service delivery plans or revise old ones. The Commission may also return to some counties in the state on an expedited basis in order to address pressing problems in those counties.

Background and Context to the Service Delivery Planning Process

The 2001 legislation establishing PDSC was based upon an approach to public defense management, widely supported by the state's judges and public defense attorneys, which separates Oregon's public defense function from the state's judicial function. Considered by most commentators and authorities across the country as a "best practice," this approach avoids the inherent conflict in roles when judges serve as neutral arbiters of legal disputes and also select and evaluate the advocates in those disputes. As a result, while judges remain responsible for appointing attorneys to represent eligible clients, the Commission is now responsible for the provision of competent public defense attorneys.

PDSC is committed to undertaking strategies and initiatives to ensure the competency of those attorneys. In the Commission's view, however, ensuring the minimum competency of public defense attorneys is not enough. As stated in its mission statement, PDSC is also dedicated to ensuring the delivery of quality public defense services in the most cost-efficient manner possible. The Commission has undertaken a range of strategies to accomplish this mission.

A range of strategies to promote quality and cost-efficiency. Service delivery planning is one of the most important strategies PDSC has undertaken to promote quality and cost-efficiency in the delivery of public defense services. However, it is not the only one.

In December 2003, the Commission directed OPDS to form a Contractor Advisory Group, made up of experienced public defense contractors from across the state. That group advises OPDS on the development of standards and methods to ensure the quality and cost-efficiency of the services and operations of public defense contractors, including the establishment of a peer review process and technical assistance projects for contractors and new standards to qualify individual attorneys across the state to provide public defense services.

OPDS has also formed a Quality Assurance Task Force of contractors to develop an evaluation or assessment process for all public defense contractors. Beginning with the largest contractors in the state, this process is aimed at improving the internal operations and management practices of those offices and the quality of the legal services they provide. In 2004, site teams of volunteer public defense managers and lawyers have visited the largest contractors in Deschutes, Clackamas and Washington Counties and prepared reports assessing the quality of their operations and services and recommending changes and improvements. In 2005, the site teams visited contractors in Columbia, Jackson, Klamath, Multnomah and Umatilla Counties and, in 2006, teams have visited the juvenile contractors in Multnomah County and the principal contractor in Linn County. During the remainder of this year, the Quality Assurance Task Force plans to send site visit teams to Lane, Washington, Lincoln and Columbia Counties.

Numerous Oregon State Bar task forces on public defense have highlighted the unacceptable variations in the quality of public defense services in juvenile cases across the state. Therefore, PDSC has undertaken a statewide initiative to improve juvenile law practice in collaboration with the state courts, including a new Juvenile Law Training Academy for public defense lawyers. In 2006, the Commission plans to devote two of its meetings to investigating the condition of juvenile law practice across the state and to develop a statewide Service Delivery Plan for juvenile law representation.

In accordance with its Strategic Plan for 2003-05, PDSC has developed a systematic process to address complaints over the behavior and performance of public defense contractors and individual attorneys. The Commission is also concerned about the “graying” of the public defense bar in Oregon and a potential shortage of new attorneys to replace retiring attorneys in the years ahead. More and more lawyers are spending their entire careers in public defense law practice and many are now approaching retirement. In most areas of the state, no formal process or strategy is in place to ensure that new attorneys will be available to replace retiring attorneys. As a result, PDSC is exploring ways to attract and train younger lawyers in public defense practice across the state.

“Structure” versus “performance” in the delivery of public defense services. Distinguishing between structure and performance in the delivery of public defense services is important in determining the appropriate roles for PDSC and OPDS in the Commission’s service delivery planning process. That process is aimed primarily at reviewing and improving the “structure” for delivering public defense services in Oregon by selecting the most effective kinds and combinations of organizations to provide those services. Experienced public defense managers and practitioners, as well as research into “best practices,” recognize that careful attention to the structure of service delivery systems contributes significantly to

the ultimate quality and effectiveness of public defense services.¹ A public agency like PDSC, whose volunteer members are chosen for their variety and depth of experience and judgment, is best able to address systemic, overarching policy issues such as the appropriate structure for public defense delivery systems in Oregon.

Most of PDSC's other strategies to promote quality and cost-efficiency in the delivery of public defense services described above focus on the "performance" of public defense contractors and attorneys in the course of delivering their services. Performance issues will also arise from time-to-time in the course of the Commission's service delivery planning process. These issues usually involve individual lawyers and contractors and present specific operational and management problems that need to be addressed on an ongoing basis, as opposed to the broad policy issues that can be more effectively addressed through the Commission's deliberative processes. OPDS, with advice and assistance from its Contractor Advisory Group and others, is usually in the best position to address performance issues.

In light of the distinction between structure and performance in the delivery of public defense services and the relative capacities of PDSC and OPDS to address these issues, this report will generally recommend that, in the course of this service delivery planning process, PDSC should reserve to itself the responsibility of addressing structural issues with policy implications and assign to OPDS the tasks of addressing performance issues with operational implications.

Organizations currently operating within the structure of Oregon's public defense delivery systems. The choice of organizations to deliver public defense services most effectively has been the subject of a decades-old debate between the advocates for "public" defenders and the advocates for "private" defenders. PDSC has repeatedly declared its lack of interest in joining this debate. Instead, the Commission intends to concentrate on a search for the most effective kinds and combinations of organizations in each region of the state from among those types of organizations that have already been established and tested over decades in Oregon.

The Commission also has no interest in developing a one-size-fits-all model or template for organizing the delivery of public defense services in the state. The Commission recognizes that the local organizations currently delivering services in Oregon's counties have emerged out of a unique set of local conditions, resources, policies and practices, and that a viable balance has frequently been achieved among the available options for delivering public defense services.

On the other hand, PDSC is responsible for the wise expenditure of taxpayer dollars available for public defense services in Oregon. Accordingly, the Commission believes that it must engage in meaningful planning, rather than simply issuing requests for

¹ Debates over the relative effectiveness of the structure of public defender offices versus the structure of private appointment processes have persisted in this country for decades. See, e.g., Spangenberg and Beeman, "Indigent Defense Systems in the United States," 58 Law and Contemporary Problems 31-49 (1995).

proposals (RFPs) and responding to those proposals. As the largest purchaser and administrator of legal services in the state, the Commission is committed to ensuring that both PDSC and the state's taxpayers are getting quality legal services at a fair price. Therefore, the Commission does not see its role as simply continuing to invest public funds in whatever local public defense delivery system happens to exist in a region but, instead, to seek the most cost-efficient means to provide services in each region of the state.

PDSC intends, first, to review the service delivery system in each county and develop service delivery plans with local conditions, resources and practices in mind. Second, in conducting reviews and developing plans that might change a local delivery system, the Commission is prepared to recognize the efficacy of the local organizations that have previously emerged to deliver public defense services in a county and leave that county's organizational structure unchanged. Third, PDSC understands that the quality and cost-efficiency of public defense services depends primarily on the skills and commitment of the attorneys and staff who deliver those services, no matter what the size and shape of their organizations. The organizations that currently deliver public defense services in Oregon include: (a) not-for-profit public defender offices, (b) consortia of individual lawyers or law firms, (c) law firms that are not part of a consortium, (d) individual attorneys under contract, (e) individual attorneys on court-appointment lists and (f) some combination of the above. Finally, in the event PDSC concludes that a change in the structure of a county's or region's delivery system is called for, it will weigh the advantages and disadvantages and the strengths and weaknesses of each of the foregoing organizations in the course of considering any changes.

The following discussion outlines the prominent features of each type of public defense organization in Oregon, along with some of their relative advantages and disadvantages. This discussion is by no means exhaustive. It is intended to highlight the kinds of considerations the Commission is likely to make in reviewing the structure of any local service delivery system.

Over the past two decades, Oregon has increasingly delivered public defense services through a state-funded and state-administered contracting system. As a result, most of the state's public defense attorneys and the offices in which they work operate under contracts with PDSC and have organized themselves in the following ways:

1. Not-for-profit public defender offices. Not-for-profit public defender offices operate in eleven counties of the state and provide approximately 35 percent of the state's public defense services. These offices share many of the attributes one normally thinks of as a government-run "public defender office," most notably, an employment relationship between the attorneys and the office.² Attorneys in the not-for-profit public defender offices are full-time specialists in public defense law, who are restricted to practicing in this specialty to the exclusion of any other type of law practice. Although these offices are not government agencies staffed by public employees, they are organized as non-profit corporations overseen by boards of

² Spangenberg and Beeman, *supra* note 2, at 36.

directors with representatives of the community and managed by administrators who serve at the pleasure of their boards.

While some of Oregon's public defender offices operate in the most populous counties of the state, others are located in less populated regions. In either case, PDSC expects the administrator or executive director of these offices to manage their operations and personnel in a professional manner, administer specialized internal training and supervision programs for attorneys and staff, and ensure the delivery of effective legal representation, including representation in specialized justice programs such as Drug Courts and Early Disposition Programs. As a result of the Commission's expectations, as well as the fact that they usually handle the largest caseloads in their counties, public defender offices tend to have more office "infrastructure" than other public defense organizations, including paralegals, investigators, automated office systems and formal personnel, recruitment and management processes.

Because of the professional management structure and staff in most public defender offices, PDSC looks to the administrators of these offices, in particular, to advise and assist the Commission and OPDS. Boards of directors of public defender offices, with management responsibilities and fiduciary duties required by Oregon law, also offer PDSC an effective means to (a) communicate with local communities, (b) enhance the Commission's policy development and administrative processes through the expertise on the boards and (c) ensure the professional quality and cost-efficiency of the services provided by their offices.

Due to the frequency of cases in which public defender offices have conflicts of interest due primarily to cases involving multiple defendants or former clients, no county can operate with a public defender office alone.³ As a result, PDSC expects public defender offices to share their management and law practice expertise and appropriate internal resources, like training and office management systems, with other contractors in their counties.

2. Consortia. A "consortium" refers to a group of attorneys or law firms formed for the purposes of submitting a proposal to OPDS in response to PDSC's RFP and collectively handling a public defense caseload specified by PDSC. The size of consortia in the state varies from a few lawyers or law firms to 50 or more members. The organizational structure of consortia also varies. Some are relatively unstructured groups of professional peers who seek the advantages of back-up and coverage of cases associated with a group practice, without the disadvantages of interdependencies and conflicts of interest associated with membership in a law firm. Others, usually larger consortia, are more structured organizations with (a) objective entrance requirements for members, (b) a formal administrator who manages the business operations of the consortium and oversees the performance of its lawyers and legal programs, (c) internal training and quality assurance programs, and (d) plans for "succession" in the event that some of the consortium's

³ Id.

lawyers retire or change law practices, such as probationary membership and apprenticeship programs for new attorneys.

Consortia offer the advantage of access to experienced attorneys, who prefer the independence and flexibility associated with practicing law in a consortium and who still wish to continue practicing law under contract with PDSC. Many of these attorneys received their training and gained their experience in public defender or district attorney offices and larger law firms, but in which they no longer wish to practice law.

In addition to the access to experienced public defense lawyers they offer, consortia offer several administrative advantages to PDSC. If the consortium is reasonably well-organized and managed, PDSC has fewer contractors or attorneys to deal with and, therefore, OPDS can more efficiently administer the many tasks associated with negotiating and administering contracts. Furthermore, because a consortium is not considered a law firm for the purpose of determining conflicts of interest under the State Bar's "firm unit" rule, conflict cases can be cost-efficiently distributed internally among consortium members by the consortium's administrator. Otherwise, OPDS is required to conduct a search for individual attorneys to handle such cases and, frequently, to pay both the original attorney with the conflict and the subsequent attorney for duplicative work on the same case. Finally, if a consortium has a board of directors, particularly with members who possess the same degree of independence and expertise as directors of not-for-profit public defenders, then PDSC can benefit from the same opportunities to communicate with local communities and gain access to additional management expertise.

Some consortia are made up of law firms, as well as individual attorneys. Participation of law firms in a consortium may make it more difficult for the consortium's administrator to manage and OPDS to monitor the assignment and handling of individual cases and the performance of lawyers in the consortium. These potential difficulties stem from the fact that internal assignments of a law firm's portion of the consortium's workload among attorneys in a law firm may not be evident to the consortium's administrator and OPDS or within their ability to track and influence.

Finally, to the extent that a consortium lacks an internal management structure or programs to monitor and support the performance of its attorneys, PDSC must depend upon other methods to ensure the quality and cost-efficiency of the legal services the consortium delivers. These methods would include (i) external training programs, (ii) professional standards, (iii) support and disciplinary programs of the State Bar and (iv) a special qualification process to receive court appointments.

3. Law firms. Law firms also handle public defense caseloads across the state directly under contract with PDSC. In contrast to public defender offices and consortia, PDSC may be foreclosed from influencing the internal structure and organization of a law firm, since firms are usually well-established, ongoing operations at the time they submit their proposals in response to RFPs. Furthermore, law firms generally

lack features of accountability like a board of directors or the more arms-length relationships that exist among independent consortium members. Thus, PDSC may have to rely on its assessment of the skills and experience of individual law firm members to ensure the delivery of quality, cost-efficient legal services, along with the external methods of training, standards and certification outlined above.

The foregoing observations are not meant to suggest that law firms cannot provide quality, cost-efficient public defense services under contract with PDSC. Those observations simply suggest that PDSC may have less influence on the organization and structure of this type of contractor and, therefore, on the quality and cost-efficiency of its services in comparison with public defender offices or well-organized consortia.

Finally, due to the Oregon State Bar's "firm unit" rule, when one attorney in a law firm has a conflict of interest, all of the attorneys in that firm have a conflict. Thus, unlike consortia, law firms offer no administrative efficiencies to OPDS in handling conflicts of interest.

4. Individual attorneys under contract. Individual attorneys provide a variety of public defense services under contract with PDSC, including in specialty areas of practice like the defense in aggravated murder cases and in geographic areas of the state with a limited supply of qualified attorneys. In light of PDSC's ability to select and evaluate individual attorneys and the one-on-one relationship and direct lines of communications inherent in such an arrangement, the Commission can ensure meaningful administrative oversight, training and quality control through contracts with individual attorneys. Those advantages obviously diminish as the number of attorneys under contract with PDSC and the associated administrative burdens on OPDS increase.

This type of contractor offers an important though limited capacity to handle certain kinds of public defense caseloads or deliver services in particular areas of the state. It offers none of the administrative advantages of economies of scale, centralized administration or ability to handle conflicts of interest associated with other types of organizations.

5. Individual attorneys on court-appointment lists. Individual court-appointed attorneys offer PDSC perhaps the greatest administrative flexibility to cover cases on an emergency basis, or as "overflow" from other types of providers. This organizational structure does not involve a contractual relationship between the attorneys and PDSC. Therefore, the only meaningful assurance of quality and cost-efficiency, albeit a potentially significant one, is a rigorous, carefully administered qualification process for court appointments to verify attorneys' eligibility for such appointments, including requirements for relevant training and experience.

OPDS's Preliminary Investigation in Judicial District No. 7

The primary objectives of OPDS's investigations of local public defense delivery systems throughout the state are to (1) provide PDSC with an assessment of the strengths and weaknesses of those systems for the purpose of assisting the Commission in its determination of the need to change a system's structure or operation and (2) identify the kinds of changes that may be needed and the challenges the Commission might confront in implementing those changes. PDSC's assessment of the strengths and weaknesses of a local public defense delivery system begins with its review of an OPDS report like this.

PDSC's investigations of local delivery systems in counties or judicial districts across the state serve two other important functions. First, they provide useful information to public officials and other stakeholders in a local justice system about the condition and effectiveness of that system. The Commission has discovered that "holding a mirror up" to local justice systems for all the community to see can, without any further action by the Commission, create momentum for local reassessments and improvements. Second, the history, past practices and rumors in local justice systems can distort perceptions of current realities. PDSC's investigations of public defense delivery systems can correct some of these local misperceptions.

On April 13, 2006 from 11:00 a.m. to 4:00 p.m., PDSC will hold a public meeting in the Hood River County Courthouse in Hood River, Oregon. The purpose of that meeting is to (a) consider the results of OPDS's investigation in the county as reported in a preliminary draft of this report, (b) receive testimony and comments from judges, the Commission's local contractors, prosecutors and other justice officials and interested citizens regarding the quality of the public defense system and services in the Judicial District and (c) identify and analyze the issues that should be addressed in the Commission's Service Delivery Plan for Judicial District No. 7.

The preliminary draft of this report is intended to provide a framework to guide the Commission's discussions about the condition of the public defense system and services in the Judicial District, and the range of policy options available to the Commission — from concluding that no changes are needed in the county to significantly restructuring the county's delivery system. This preliminary draft may also provide guidance to PDSC's invited guests at its April 13th meeting in Hood River, as well as the Commission's contractors, public officials, justice professionals and other citizens who might be interested in this planning process, about the kind of information and comments that would assist the Commission in improving public defense in Judicial District No. 7.

In the final analysis, the level of engagement and the quality of the input from all of the stakeholders in the Judicial District's justice system will probably be the single most important factor contributing to the quality of the final version of this report and PDSC's Service Delivery Plan for counties in the District. Accordingly, OPDS welcomes written comments from any interested public official or private citizen for inclusion in the final version of this report. OPDS must receive those comments by sending them no later than May 1, 2006 to:

Peter Ozanne
Executive Director
Public Defense Services Commission
1320 Capital Street N.E., Suite 200
Salem, Oregon 97303

or to:

Peter.A.Ozanne@opds.state.or.us.

A Demographic Snapshot of the Counties in Judicial District No. 7⁴

Hood River County

With a population of 20,500 residents, Hood River County is located at the center of the Columbia River Gorge National Scenic Area, extending from Mt. Hood north to the Columbia River. Agriculture, lumber and recreation are the County's primary sources of revenue and industry. With fertile valley soils of exceptional quality, Hood River County leads the world in Anjou pear production. More than 14,000 acres of commercial pear, apple, cherry and peach cover the county, with acreage of wine grape vineyards growing at a rapid pace.

Hood River County also has two ports and two boat basins which service commercial traffic, as well as recreational boating. Due to its wealth of natural and recreational resources, the county attracts many tourists during the summer months, which swells its permanent population of 20,500 significantly.

The recorded history of Hood River County began with the arrival of Nathaniel Coe and his family in 1854, who were the first white settlers to file a land claim in the area where the City of Hood River is now located. By 1880, there were seventeen families living in the valley. Hood River was originally part of Wasco County until 1908, when a separate county was established. George Prather published the first newspaper in the county in 1889 and the Columbia River Highway was completed in 1922.

The 1980's and 1990's saw tremendous growth in Hood River County, largely due to Columbia Gorge winds and the sport of windsurfing, in particular during tourist seasons. Many windsurfers consider Hood River to be the "Windsurfing Capitol of the World." And the September 2005 issue of Skiing magazine named the City of Hood River one of the "Top Ten Ski Towns in America."

The influx of new residents may explain the higher education level of Hood River County compared to other less populous, rural counties in the state. Just over 15 percent of its

⁴ The following information was taken from the official websites of the counties in Judicial District No. 7 and from data compiled by Southern Oregon University's Southern Oregon Regional Services Institute, which is contained in the Institute's Oregon: A Statistical Overview (May 2002) and Oregon: A Demographic Profile (May 2003).

adult population holds a Bachelor's Degree and 7.8 percent with a graduate degree (compared to statewide averages of 16.4 percent and 8.7 percent respectively).⁵ The county has an average proportion of its adult population employed in management and professional positions at 32.5 percent (compared to the state's average of 33.1 percent). Only 70.4 percent of its residents over the age of 25 graduated from high school or its equivalent, however, compared to the statewide average of 78.6 percent.

In 2000, Hood River County had the ninth highest unemployment rate among Oregon's 36 counties at 7.8 percent, compared to the state's average rate of 4.9 percent. Its per capita annual income was \$17,877 compared to a statewide average of \$20,940, although 20 Oregon counties had lower per capita incomes. The county also had the 13th highest rate of residents living in poverty at 14.2 percent, compared to an 11.6 percent average in Oregon and 12.4 percent in the United States. The teen pregnancy rate in the county is below average at 14.5 per 1,000 residents, compared with the statewide average is 16.7, and its high school dropout rate is Oregon 14th lowest during the past decade.

The diversity of Hood River County's population is the third highest in the state. Its non-white and Hispanic residents make up 29.3 percent of the county's population, compared to 16.5 percent for Oregon as a whole.

With juveniles (aged 18 years old or younger) making up 28 percent of its total population, the county's "at risk" population (which tends to commit more criminal and juvenile offenses) is the fourth highest in the state. Nevertheless, Hood River County ranked 29th in "index crimes" in 2000 among Oregon's 36 counties with a rate of 27.6 index crimes per 1,000 residents (compared to a statewide rate of 49.2) and 24th in juvenile arrests at 52 per 1,000 residents compared to Oregon's average rate of 53.⁶

In 2005, the public defense caseload in Hood River County totaled 1,219 out of 170,987 cases in the state. That amounted to 0.71 percent of Oregon's public defense caseload in 2005.

Wasco County

Thousands of years before anyone conceived of Wasco County, Native Americans carved petroglyphs on rocks overlooking the Columbia River in this area. Later, Native American tribes, including the Wasco, Paiute, and Warm Springs, gathered for centuries near Celilo Falls to trade and fish. Wasco County's Native American heritage is most apparent today with the Confederated Tribes of the Warm Springs Reservation in the southern county

Wasco County was created by proclamation of the Oregon Territorial Legislature and approval by Congress on Jan. 11, 1854. It was the largest county in U.S. history. The

⁵ The respective numbers in Yamhill County, for example, are 13.4 and 7.2 percent. In Klamath County, they are 10.6 and 5.4 percent.

⁶ For the purposes of this statistic, "index crimes" are those crimes reported by the Oregon State Police as part of its Oregon Uniform Crime Reports, and include murder, rape and other sex offenses, robbery, aggravated assault, burglary, theft, including auto theft, and arson. Oregon: A Statistical Overview at p. 122.

county comprised 130,000 square miles and was named for the Wasco tribe of the Chinook occupying some of the area, though most of the area was apparently controlled by the Shoshone. The county stretched from the Cascades to the Rocky Mountains including parts of what are now Idaho, Montana, and Wyoming. The northern border was Washington Territory and the southern border was California. The county seat was The Dalles, which was the only white settlement east of the Cascades with approximately 35 permanent residents, which gained fame as the end of the Oregon Trail.

Now the trading hub of north-central Oregon, The Dalles remains the county seat, but the county now covers 2,387 square miles. While still a comparatively large county geographically, its population is small and virtually the same as Hood River County at 22,500.

Wasco County's economy is based primarily on agriculture (orchards, wheat farming, livestock ranching), lumber, manufacturing, electric power, transportation, and tourism. Aluminum production was previously a major support of the local economy, but electrical price fluctuations and a slump in global aluminum prices has forced the closing of a number of local aluminum foundries.

Wasco County also claims windsurfing as one of its foremost recreational attractions, with a popular windsurfing launch site at Celilo Park, nine miles east of The Dalles.

In Wasco County, 10.5 percent of its adult population holds a Bachelor's Degree and 5.2 percent holds a graduate degree (compared to statewide averages of 16.4 percent and 8.7 percent respectively). Twenty-seven percent of the county's residents are employed in management and professional positions, compared to the state's average of 33.1 percent. Seventy-six percent of its residents over the age of 25 graduated from high school or its equivalent, which is just below the statewide average of 78.6 percent.

Wasco County ranked 16th in unemployment among Oregon's 36 counties in 2000 with a rate of 6.5 percent compared to an average rate of 4.9 percent. Per capita annual income in the county was \$17,195, about \$700 below Hood River County. Wasco County had a lower rate of residents living in poverty than Hood River County, but its teen pregnancy rate is the seventh highest in the state at 18 per 1,000 residents and its high school dropout rate is the eighth highest at 7.5 percent of the county's high school graduates.

The diversity of Wasco County's population is about average, with a non-white and Hispanic population of 16.1 percent compared to a 16.5 percent average for the state.

Juveniles (aged 18 years old or younger) make up 25.4 percent of Wasco County's population in comparison to a 24.7 percent average for the state. Nevertheless, Wasco County ranked 12th in "index crimes" in 2000 among Oregon's 36 counties with a rate of 39.5 index crimes per 1,000 residents (compared to a statewide rate of 49.2) and second in juvenile arrests at 89.9 per 1,000 residents.

In 2005, the public defense caseload in Wasco County was 1,649. That amounted to 0.98 percent of the state's public defense caseload in 2005.

Gilliam, Sherman and Wheeler Counties

Gilliam County was established in 1885 from a portion of Wasco County and was named after Col. Cornelius Gilliam, a veteran of the Cayuse Indian War. The first county seat was at Alkali, now Arlington. At the general election of 1890, voters chose to move the county seat to Condon, known to early settlers as "Summit Springs."

Gilliam County is in the heart of the Columbia Plateau wheat area. The economy is based mainly on agriculture, with an average farm size of about 4,200 acres. Wheat, barley and beef cattle are the principal crops. The largest individual employers in the county are two subsidiaries of Waste Management Inc., Chemical Waste Management of the Northwest and Oregon Waste Systems, Inc., two regional state-of-the-art waste disposal landfills. The estimated population in 2004 was 1,817. This was a decrease of 5.12% from the 2000 census.

Sherman County lies between the John Day River on the east, the Deschutes River on the west and the Columbia River on the north. Much of the boundary on the south is defined by the canyons of Buck Hollow, a tributary of the Deschutes.

The county's first white settler was William Graham, who settled at the mouth of the Deschutes River in 1858. Innkeepers and operators of ferries, toll bridges and stage stations followed, and then stockmen with their herds of horses, cattle and sheep. Homesteaders arrived in the 1880s by steamboat, stagecoach and wagon, settling on nearly every quarter section, plowing grass and fencing fields.

As the area's population grew, so did sentiment for independence from Wasco County. In 1889, legislation created a new county to be called Fulton after a pioneer family. The county's name finally became Sherman after Civil War General William Tecumseh Sherman.

The county seat of Sherman County is Moro. The county's economy is still based on wheat, barley and cattle and, increasingly, tourism. Its current population is approximately 1,800, which also represents a decrease from the 2000 census population of 1,934.

Wheeler County was established in 1899 from parts of Grant, Gilliam, and Crook Counties and was named after Henry Wheeler, who operated the first stage line through the county. The county seat is Fossil. The town's name was derived from the first postmaster's discovery of fossil remains on his land in 1876, which still serves as the basis for what the county claims is an international reputation.

In addition to fossils as a tourist attraction, portions of two national forests lie within Wheeler County's boundaries. Forest lands cover nearly one third of the county. The county reports its principal industries as agriculture, livestock, and lumber.

Wheeler County's 2000 population was 1,547, representing a 10.82 percent increase from 1990, but a substantial decrease from a peak population of 3,313 in 1950.

With a combined population of approximately 5,000, Gilliam, Sherman and Wheeler Counties enjoy relatively low crime rates. Gilliam and Wheeler Counties were tied for the second lowest index crime rates in Oregon in 2000 (13.6 per 1,000 after Wallowa County's 6.2). Sherman County had the 12th lowest rate of 30.5 per 1,000 (compared to a state average of 49.2). Wheeler, Sherman and Gilliam Counties also had some of the lowest juvenile arrest rates in Oregon with rankings of first, fifth and seventh, respectively. As a result of such low crime and arrest rates, the three counties' public defense caseload in 2005 was 206, or 0.15 percent of the state's total caseload for that year.⁷

OPDS's Preliminary Findings in Hood River and Wasco Counties

On March 20 to March 23, 2006, John Potter and Peter Ozanne visited Hood River and Wasco Counties on behalf of the Commission and OPDS to gather preliminary information for PDSC's April 13th meeting in the Judicial District. They interviewed all four Circuit Court Judges and the Trial Court Administrator in the District, both counties' District Attorneys and Sheriffs, representatives of both counties' community corrections and juvenile departments and local offices of the Department of Human Services, the police chief of The Dalles, two CASAs and all three public defense contractors in the District.⁸

As a result of the foregoing interviews, OPDS found a general consensus among justice officials and professionals about the quality of the public defense delivery systems in Hood River and Wasco County. With the exception of the reservations described below, and while noting obvious differences between the two counties, they expressed a high level of satisfaction with the quality of public defense services. Although their assessments of the competence and performance of PDSC's individual contractors and public defense attorneys varied, they were generally complimentary of PDSC's contractors, as well as most of the private attorneys on the counties' court-appointment lists. The main concerns expressed during OPDS's interviews related to the limited supply of attorneys in Hood River and Wasco County and the problems in the quality of justice that would result if lawyers who currently take court-appointments leave the area or stop taking appointments. Several observers expressed their belief that a few attorneys on the counties' court-appointment lists either lack the experience or ability to handle public defense cases or do not have adequate staff or access to training and collegial support to operate an effective law practice.

PDSC contracts with three organizations to deliver public defense services in Judicial District No. 7. With four shareholders, three associates and over 20 years of experience as a public defense provider, Morris, Olson, Smith & Starns, P.C. (Morris Olson) is the largest contractor in the District, providing services in all five of its counties.⁹ The firm's

⁷ In 2005, the total public defense caseload for the five counties in Judicial District No 7 was 3,128 cases, which represented 1.83 percent of the state's caseload for last year.

⁸ OPDS is currently conducting additional telephone interviews with representatives of the courts and local adult and juvenile justice agencies in Hood River and Wasco Counties, as well as in Gilliam, Sherman and Wheeler Counties. The results of these interviews will be included in the final draft of this report, which will be submitted to PDSC prior to its review and approval of a Service Delivery Plan for Judicial District No. 7.

⁹ Morris Olson's current contract with PDSC for the delivery of services through December 2007 is for 2,437 cases per year at an annual amount of \$879,468.

responses to a questionnaire developed by OPDS's contractor site visit teams, which provides additional information about the firm's governance and quality assurance practices, is attached in Appendix A.

Aaron and Associates has been, until recently, the solo practice of Brian Aaron, who has practiced in the District for approximately 15 years.¹⁰ Mr. Aaron provides services in Hood River County under contract with PDSC,¹¹ and handles court-appointments in other counties in the District.

The Wasco/Sherman Indigent Defense Corporation (WSIDC), as the name implies, provides defense services in Hood River and Sherman Counties. WSIDC currently has two associates in the law firm of VanValkenburgh & Associates. One associate, who also serves as the consortium administrator has approximately five years of experience and the other associate has less than two years of experience.¹²

As of the date of this report, neither Aaron and Associates nor WSIDC has responded to OPDS's request to complete relevant portions of the questionnaire contained in Appendix A.

Morris Olson is consistently regarded as a well-established law firm of first-rate, knowledgeable public defense professionals who are zealous advocates, but generally easy to deal with as well. As the primary contractor in the Judicial District, Morris Olson appears to fill the role as the "go to" organization for cooperation in addressing systemic issues in a county, with its senior attorneys assuming active roles in policymaking groups and local projects to improve the administration of justice.

There is a widespread perception in both Hood River and Wasco Counties, however, that the turnover rate of Morris Olson's lawyers is high. The apparent result is the arrival of new lawyers in the District who lack the necessary training and experience to handle cases effectively for some period of time. Opinions vary about the apparent level of training and supervision that new lawyers receive at Morris Olson.

Jack Morris has frequently reported the difficulties his firm faces in retaining younger lawyers once they have been trained, including skyrocketing housing prices in the area (now in Wasco County as well as Hood River County) and greater professional opportunities for young lawyers in the Willamette Valley.¹³ Mr. Morris indicated during OPDS's March visit that, more recently, lawyer turnover at his firm has decreased and the

¹⁰ Mr. Aaron hired a new associate a day or two before OPDS visited his office in March.

¹¹ Aaron and Associates' current contract through December 2007 is for 228 cases per year at an annual rate of \$74,784.

¹² WSIDC currently has a contract for 204 cases per year at \$62,628.

¹³ As the questionnaire in Appendix A indicates, OPDS's contractor site visit teams have increasingly taken an interest in the issue of attorney retention and its relationship to the distribution of contract funds and other revenues by PDSC's contractors as salaries for their attorneys. This information has historically not been accessible to OPDS or its predecessor agency on the ground that its contractors are independent. In response to this questionnaire, Morris Olson indicates that the salary scale is "approximately \$50 to \$100 less per month compared to that of Metropolitan Public Defender." Appendix A, Morris Olson's "Response to Questionnaire for Public Defense Firms," p. 8.

firm's membership has stabilized. The firm's responses to the site visit teams' questionnaire in Appendix A describe its effort to train and supervise its lawyers in some detail.

The only potential problem regarding Morris Olson's performance that came to OPDS's attention during its March visit was a personal disagreement or conflict between the senior lawyer in the firm and a juvenile court counselor in Hood River County, which has apparently manifested itself in the courtroom. Mr. Morris first brought the matter to OPDS's attention, indicating that the disagreement stemmed from differences in the philosophy and treatment of juveniles, particularly with regard to their commitment to juvenile facilities or incarceration in prison. During an interview with OPDS, the director of the county's juvenile department noted the disagreement and expressed her willingness to resolve the matter in any reasonable manner, fearing that the attitude of Morris Olson's clients toward her department or the counselor in question would affect the course of their rehabilitation. OPDS concludes that Mr. Morris's perspective as an advocate for his juvenile clients is a valid one that should not be questioned by OPDS or the Commission. On the other hand, the concerns of the county's juvenile department director, if true, would be understandable. To the extent that this matter does in fact pose problems in the administration of juvenile justice in Hood River County, OPDS is confident that the Presiding Judge or the Juvenile Court Judge will resolve the matter.

The work of Aaron and Associates generally received positive reviews, though relations between Mr. Aaron and the Hood River County District Attorney appear somewhat strained. During his meeting with OPDS, Mr. Aaron's primary concern was the amount of compensation he receives under his contract with PDSC and whether he can afford to continue his public defense practice, despite his commitment to the work. In the absence of additional information about his firm's internal operations in response to the questionnaire in Appendix A, it remains to be seen how much training and supervision Mr. Aaron's new associate will receive.

Most of the justice officials and professionals interviewed by OPDS in March offered favorable comments about the services provided by WSIDC. While admittedly not aggressive advocates, the majority of observers felt they had good relations with their clients and served the interests of those clients. A number of those observers questioned the level of training and supervision available at WSIDC and noted that the least experienced attorney frequently lacked the technical knowledge to advance his clients interests in juvenile court.¹⁴ A few questioned the interest or commitment of WSIDC's attorneys to public defense work. To his credit, in the face of the announced intention by the Juvenile Court Judge in Wasco County to appoint another attorney on the court-appointment list to represent children in juvenile dependency cases, WSIDC's administrator expressed his view that this attorney did an excellent job in representing children and encouraged OPDS to enter into a contract with her at WSIDC's expense.

¹⁴ OPDS was unable to detect any knowledge or interest by Mr. VanValkenburgh in the public defense work performed in his office.

The District Attorneys in Hood River and Wasco Counties expressed general satisfaction with their counties' public defense systems and their offices' working relationships with the counties' defense attorneys.¹⁵ While they emphasized that their office's settlement offers do not vary depending on the identity of the attorney for a defendant or juvenile client, they did report variations among public defense attorneys with respect to their willingness to accept settlement offers or proceed to trial, and in their level of experience and competence. Variations in the experience and competence of defense attorneys appear to be most pronounced between contract attorneys and attorneys on court-appointment lists. Both prosecutors also reported that, among PDSC contractors, Morris Olson generally had lawyers with the greatest skills and abilities as advocates in their counties.

Hood River County's District Attorney emphasized that he has good working relationships with the senior lawyers and management at Morris Olson and a higher level of trust and confidence in them than other public defense attorneys and organizations. He did say, however, that he has encountered some resistance from them to changes in policies and administrative practices that he considered improvements in the local justice system, such as video arraignments and early disposition programs. He also expressed concern over conflicts between the senior lawyer at Morris Olson and a juvenile court counselor and his or anyone else's apparent inability to resolve the matter.

Wasco County's District Attorney expressed particular concern about the lack of "back up" in the public defense bar. He also emphasized the need for training and mentoring programs for the county's defense attorneys and wondered whether anyone in the state offered such programs.

The law enforcement officials, probation and parole officers and juvenile court counselors with whom OPDS spoke in March noted the professionalism of the public defense attorneys in Hood River and Wasco County, particularly the attorneys at Morris Olson. Several interviewees volunteered that the approach to advocacy of most defense attorneys in the District rarely became "personal" by attacking a professional witness's character, and that their agencies' procedures and practices improved as a result of the fair but vigorous advocacy of public defense attorneys.

Preliminary Findings in Gilliam, Sherman and Wheeler Counties

OPDS is aware of the Commission's commitment to providing quality, cost-efficient public defense services in every county of the state, no matter what the county's population or public defense caseload is. OPDS shares that commitment.

However, due to limitations on the time and staff available to OPDS to conduct investigations, the fact that the judges who sit in Hood River and Wasco County also preside over cases in Gilliam, Sherman and Wheeler Counties and because PDSC's contractors in Hood River and Wasco Counties also handle court-appointed cases in those counties, OPDS has relied on the information it collected during its interviews in Hood River and Wasco Counties on March 20 to March 23 for preliminary findings regarding the

¹⁵ Both District Attorneys handle a full caseload and have two deputies.

quality of public defense services in Gilliam, Sherman and Wheeler Counties.

OPDS finds, in general, that levels of satisfaction with the quality of public defense services and the performance of lawyers in these counties are comparable to the levels of satisfaction that OPDS found in Hood River and Wasco Counties. Furthermore, concerns about the inadequate supply of competent public defense attorneys in these counties may be even greater.

To help verify these findings, OPDS has invited the District Attorneys in Gilliam, Sherman and Wheeler Counties to attend the Commission's April 13th meeting in Judicial District No. 7 or, alternatively, to submit their comments about the quality of public defense services and lawyers in their counties before that meeting. As of the date of this report, Gilliam County's District Attorney has confirmed that he will attend the meeting.

Preliminary Recommendations for a Service Delivery Plan for Judicial District No. 7

OPDS concludes that the public defense delivery system and PDSC's contractors in Judicial District No. 7 are operating effectively and cost-efficiently in light of the available resources. As in many areas of the state, problems in the level of attorney training and supervision appear to exist in the District. Depending on the information PDSC gathers at its April 13th meeting in Hood River County, those problems may justify specific recommendations or directions by PDSC in the final version of this report and the Commission's Service Delivery Plan for Judicial District No. 7. At this point, however, OPDS recommends that the Commission consider the following strategies for the District's public defense system in the future.

1. *This service delivery planning process provides PDSC with the opportunity to reconsider the wisdom and feasibility of strategies to increase the supply of public defense attorneys in less populous regions of the state like Judicial District No. 7, including the strategies proposed in its Strategic Plan for 2003-05.*

During its 2003 Retreat, PDSC identified the following policies and practices to encourage public defense attorneys to practice in areas of the state experiencing a shortage of public defense services, which were included in the Commission's Strategic Plan for 2003-05:

- 1) Identify and actively recruit defense attorneys in the offices of current contractors, who have approximately three to five years of experience and are interested in establishing law practices in underserved areas of the state;
- 2) As a primary incentive, offer these attorneys four-year contracts with guaranteed caseloads, supplemented by appellate and PCR cases if necessary;

- 3) Advocate for the forgiveness of student loans and housing allowances as additional incentives;
- 4) Recruit interested law students and, in cooperation with larger contractors' offices, provide apprenticeship training upon graduation, in exchange for a commitment to practice in underserved areas;
- 5) Offer technical and administrative support for new offices in these areas; and
- 6) Assign FTE from OPDS to fill gaps in services and to provide technical support in underserved areas of the state.

2. *This service delivery planning process also provides PDSC with an opportunity to consider the wisdom and feasibility of planning for the future of public defense delivery systems in jurisdictions like Judicial District No. 7, where the primary contractor is a privately held, for profit law firm that may not possess the organizational characteristics necessary to implement and perpetuate the Commission's mission and best practices.*

OPDS is not suggesting the need for any immediate changes in the organization or structure of the public defense delivery system or the primary public defense contractor in Judicial District No. 7. As the foregoing report indicates, Morris Olson is a group of first-rate public defense lawyers committed to effective advocacy and public defense that has provided quality, cost-effective legal services throughout the District for 20 years. Any improvements that might result from short-term changes in this organization, in OPDS's view, would be far outweighed by the disruption and potential loss of morale of this key service provider.

Furthermore, OPDS is aware that at least some members of the Commission are troubled by any potential intrusion into what they view as the management and administrative prerogatives of independent professional contractors. Thus, OPDS does not anticipate the possibility of significant changes in the structure of the public defense delivery system or the Commission's primary contractor in Judicial District No. 7 for perhaps a decade or more.

Nevertheless, OPDS suggests that a planning process like this one provides an opportunity to discuss the future directions of a local public defense system, as well as similarly situated systems across the state. OPDS believes such a discussion is appropriate for at least four reasons.

First, OPDS is skeptical that any private, for-profit law firm can serve as a primary vehicle for implementing and perpetuating the kinds of "best practices" in public defense management that PDSC has begun to identify over the past three years and has increasingly sought to implement. Those best practices include (a) the establishment of boards of director to bring greater management and financial expertise to contractors' operations, (b) county-wide or regional training and mentoring programs and active participation in policy making by primary contractors, (c) periodic evaluations of

attorneys and staff, (d) periodic evaluations of management that are made available to the Commission and (e) fair, rational and transparent compensation systems. While it is certainly conceivable that a private law firm might adopt and promote these practices, the resistance that OPDS has observed from such organizations is understandable and perhaps reasonable, in light of the traditional organization, purposes and culture of for-profit law firms.

Second, for those on the Commission who have reservations about intruding into the prerogatives of independent contractors, PDSC may have greater justification and authority to influence the organization and direction of entities like Morris Olson, where 95 to 99 percent of their revenue is derived from a public defense contract with the Commission.

Third, without changing any of the attorneys who deliver public defense services in a county or the compensation they are paid (other than to hopefully raise it) reorganizing a primary contractor into a not-for-profit corporation, which either operates a full-time law office or a consortium, may increase the likelihood that the Commission's best practices in public defense management will be implemented and promoted. Obviously, a board of directors is necessary for a not-for-profit corporation. The culture and expectations fostered by a not-for-profit organization may be more conducive to the provision of system-wide training and mentoring programs and participation in policy making groups. In addition, a not-for-profit may be less likely than a private law firm to (i) refuse membership in its organization for the kinds of personal reasons that may understandably influence a for-profit entity, (ii) reject outside influence over its management and internal operations by a board of directors or advisory group, (iii) perpetuate inequitable compensation systems and (iv) disband when its principals leave or retire.

Finally, such a discussion by the Commission will have important policy implications for the state public defense system, from providing guidance to similarly situated contractors and local delivery systems that are interested in the future, to testing the scope and feasibility of some of the best practices that the Commission has begun to promote in the absence of additional organizational or structural changes in the state's delivery systems.¹⁶

¹⁶ For example, can the Commission expect to improve management practices or increase accountability significantly by recommending to private law firms that they form "advisory groups" in lieu of boards of directors or subject their firm's management to periodic formal evaluations?

Appendix A

QUESTIONNAIRE FOR PUBLIC DEFENDER OFFICES AND PUBLIC DEFENSE FIRMS

Please respond as completely as possible to the following questions. Questions in some categories may overlap with questions in other categories. Some questions may not be relevant to your office. Please feel free to refer to previous answers when appropriate. Please provide any written materials that are responsive to the questions set forth below. If the requested information is contained in a document being provided with the responses, no additional response is necessary. Finally, please provide the Office of Public Defense Services with any comments or recommendations you might wish to make regarding this questionnaire or any other part of the Public Defense Services Commission's planning process.

Appeal:

How and when are clients advised of their appellate rights in criminal and juvenile cases?

Availability

1. Under what circumstances are your office's attorneys made available to members of the public seeking information about criminal and juvenile matters?
2. When is an attorney in your office first available to an indigent person suspected of a law violation?
3. Is an attorney present for the initial court appearance in criminal and juvenile cases? If not, why not?
4. Does your office have a policy requiring contact with in-custody and out-of-custody clients within a specified period of time? What is the policy? Does your office monitor compliance with this policy? How? Is the policy generally followed?

Board of Directors

1. Does your office have a board of directors?
2. Who serves on your board of directors?
3. How are board members selected and how long do they serve?
4. How often does the board meet?
5. What are the functions of the board?
6. Does the board have written policies and procedures?

Case Management

1. What is your case file protocol?

2. What is your case assignment process?
3. How do you determine whether cases are being distributed fairly among attorneys?
4. What policy or procedure do you have for case relief when needed?
5. What is your procedure for identifying and handling conflicts?
6. Do you maintain records of conflicts for each attorney?

Community Education

1. How is your office involved with the local community (local government, local criminal and juvenile justice systems, and local legal community)?
2. Does your office provide trainers to the local community? If so how and on what topics?
3. If not described in response to items 1 and 2, how does your office participate in efforts to improve the local public safety system?

Competence

1. What standards do you use for the hiring, monitoring, and management of the professional competence of your staff?
2. How do you review the casework of your staff? How is that review shared with the staff?
3. Do you have a complaint process for use by staff, clients, others? How is it used?
4. Do you have a procedure in place to obtain regular feed-back from public defense clients regarding the representation they received from your office? Please describe.
7. Have any post-conviction relief petitions been granted against attorneys in your office? What were the circumstances?
8. Have any attorneys in your office been disciplined by the Oregon State Bar for violation of the Rules of Professional Conduct or the former Disciplinary Rules? What were the circumstances?

Cultural Competence

What steps have you taken to provide culturally competent representation to clients of diverse backgrounds?

Personnel

1. Do you have written policies and procedures for handling personnel matters? If not, do you have a system you use? Please describe.
2. Do you have written job descriptions? If not, please outline the functions of each category of employee.

3. Do you have written policies regarding supervision of your staff? If not, describe your system of supervision.
4. What is your staff evaluation process?
5. How do you address issues of underperformance?
6. How do you acknowledge and reward excellence?
7. Do your salary scales compare to other local attorney offices?
8. Do you have a plan in place to permit new attorneys to join your office?
9. How do you monitor the general quality of the working environment in your office? Are there regular staff meetings? Is there a process for obtaining feed-back from staff regarding the working environment?

Training

1. How do you orient new staff to your office?
2. How do you insure that attorneys are familiar with and abide by the Oregon Rules of Professional Conduct?
3. What ongoing professional development training is offered to staff by your office?
4. What assistance or support do you provide to staff in order to encourage participation in professional development training outside the office?

Zeal

What steps have you taken to inspire and support your staff in providing zealous representation to public defense clients?

Conclusions:

1. In what areas do you believe your office excels?
2. Are there any areas in which improvement is needed? What are they? How do you intend to address them?

Morris, Olson, Smith & Starns, P.C.
Response to Questionnaire for Public Defense Firms
March 2006

APPEAL

1. How and when are clients advised of their appellate rights in criminal and juvenile cases?

Clients are advised of their appellate rights immediately upon the case being finalized. Additionally appellate rights are often discussed with clients well in advance of their case being finished, particularly when there may be a legitimate appellate issue in the case such as the denial of a motion to suppress.

AVAILABILITY

1. Under what circumstances are your office's attorneys made available to members of the public seeking information about criminal and juvenile matters?

We occasionally get calls from the public (sometimes when they are looking for an attorney and sometimes when they just want information) and we often play the role of a general information source. We take these calls and try to answer questions about the justice system generally to the best of our ability without giving specific legal advice since no attorney client relationship exists at that point. There are also times when we take calls from the press concerning matters involving the justice system and in particular indigent defense.

There are occasionally other opportunities to provide information to the public as well. For example there are occasions when one of the judges will entertain a class from a school or a group of individuals visiting the courthouse. On those occasions we have often been asked to talk about the role of defense counsel.

2. When is an attorney in your office first available to an indigent person suspected of a law violation?

From time to time we remind other players in the system, notably the courts and corrections, that we are available to take calls from people prior to being charged particularly when they are being interrogated and wish to have the benefit of counsel. Not surprisingly, the law enforcement folks don't pass that information out very freely and therefore we only rarely get those types of calls. Other than that we make ourselves available as soon as we are contacted. Many former clients call us immediately after being arrested or cited. In cases where it appears likely that the person will be receiving appointed counsel we handle the case generally as if we had already been appointed.

3. Is an attorney present for the initial court appearance in criminal and juvenile cases? If not, why not?

We are available and present at first appearances for virtually every case. We always have an attorney present for the regular in-custody docket. This applies to initial appearances in Hood River and Wasco County and to the three eastern counties, since those are usually done by video with a judge either in Hood River or Wasco County. First appearances on juvenile cases are not always regularly scheduled, however, when we are made aware that a case is coming up we attend those personally as well.

4. Does your office have a policy regarding requiring contact of in-custody and out of custody clients within a specified period of time? What is the policy? Does your office monitor compliance with this policy? How? Is the policy generally followed?

Our policy with respect to in-custody clients is consistent with what we believe is, and should be, statewide policy. We try very hard to see all of our in-custody clients within 24 hours of appointment and in those cases where that proves to be impossible we nonetheless make at least telephone contact and then follow it up with personal contact. Attorneys are made aware that this is the office policy and that it is expected to be followed. Compliance with the policy does prove to be problematic at times because the jail is a 42 mile round trip from the Hood River office and our schedules make getting there difficult. However, even with that problem we are in compliance with the policy probably 95% of the time at least. Out of custody clients are told to call immediately to schedule an office appointment.

BOARD OF DIRECTORS

1. Does your office have a board of directors?

We are a private law firm and as such do not have an actual board of directors. Having said that, the firm consists of four named shareholders and three associates. Most decisions are made after discussion amongst the shareholders and on occasion the associates as well. Matters involving policy decisions are made only after shareholders come to some consensus, and specific matters such as hiring etc. are also made on a group basis.

CASE MANAGEMENT

1. What is your case file protocol?

Files are preassembled and include a face sheet for contact and charge information as well as separate sheets for background information (including family relations, immigration status and length of time in the United States), employment information, educational background, drug and alcohol issues and prior criminal history. We also obtain a copy of the booking sheet with the client's photo from the Northern Oregon Regional Correction Facility web site for the file. In many instances potential conflicts are caught at this point. With respect to in-custody clients, at

the time of the first appearance the attorney (or in some cases one of the legal assistants) fills out at a minimum, the information needed to contact the client and information regarding the charge. We usually attempt to gather any information that may be relevant to a release decision by speaking with the person in-custody during the actual appearance and we present that information as soon as possible. Although the size of the courtrooms and equipment being used make simultaneous contact with the client nearly impossible, we have insisted on having an opportunity to speak with our clients during appearances by phone and have done so since the implementation of video system. Although not a perfect situation, this has actually worked out quite well.

Unlike many jurisdictions around the state it is common for us to make a release pitch at that initial appearance and we are often successful in having clients released at that time. The charging instrument is received and placed in the file. In Hood River county approximately 80 or 90% of the time we receive discovery consisting of police reports, etc. at that time as well.

After the initial court appearance, whether it is in or out of custody, the file is then returned to the office where staff updates it with any other information that is available, checks for conflicts and opens the file. The files on in-custody clients are expected to be returned to the attorney the same day and files on out of custody clients are expected to be returned to the attorney within 24 hours.

2. What is your case assignment process?

The case assignment process differs between the two counties somewhat, however, it is still geared toward the goal of having the attorney who will actually be assigned the case present at the initial appearance. In Hood River because other appearances are mixed in with initial appearances for new clients, we typically have two of the three attorneys present. The 11:00 in-custody calendar is a routine part of our day. Typically the misdemeanor cases and minor felony cases are given to the most junior attorney with other cases going to the other two. While there is no set assignment schedule the system works quite well and constant monitoring of individual case loads results in an equitable distribution.

In Wasco County the four attorneys each have an individual pick up week. The attorney whose week it is, takes responsibility for being at initial appearances or if he/she is tied up, for instance in trial, for making arrangements for one of the other attorneys to cover for the 1:00 docket. Often times more than one attorney is actually present and again we endeavor to have the attorney who is actually going to be assigned the case present at that time. It is a relatively rare occasion when only one attorney is present. In some cases, however, the case may be passed to a different attorney in the office. For instance, when one of our junior attorneys is picking up cases and a serious felony comes in that case is given to one of the more senior attorneys and the reverse is true as well.

3. How do you determine whether cases are being distributed fairly among attorneys?

4. What policy or procedure do you have for case relief when needed?

In both counties the senior attorney is responsible for monitoring the caseloads to make sure that there is an equitable distribution. If for some reason the usual assignment process results in someone's case load being out of proportion arrangements are made to alleviate that situation. For instance, in Wasco County the individual attorney may skip an assignment week or perhaps have it delayed. In Hood River County, simply being aware of each other's case loads and making allowances for the same achieves an equitable distribution. In both counties the case list is monitored as well.

5. What is your procedure for identifying and handling conflicts?

In the Hood River office we ordinarily get discovery at the initial appearance upon the attorney's return from court the staff goes through the police reports and checks all names against our database. This results in most conflicts being discovered the same day we pick the case up and we immediately notify the court if we have a conflict that prevents us from representing the individual. Often times the person is assigned new counsel the same day. Because of the brief period of time that we have these cases we forgo taking credit.

In The Dalles office although discovery is not available immediately, victim's and co-defendant's names are ran for conflicts even before we appear in court. When discovery becomes available it is immediately checked for conflicts in the same fashion. Again, when a conflict is discovered that prevents us from representing the individual, we notify the court immediately and the defendant is usually assigned new counsel quickly.

6. Do you maintain records of conflicts for each attorney?

The meaning of this question is unclear, however, we will assume that it is asking whether some record of the number of conflicts that each attorney has is kept. The answer is generally no, however, we don't believe there is a need to keep a record of the number of conflicts for each attorney since the conflict decision is usually done on a group basis. As stated before, the staff initially brings the conflict to the attorney's attention and in each county the case attorney is required to run the potential conflict past the senior attorney for his input as to whether it is an actual conflict or not. (Requests for extraordinary expenses are also reviewed by the senior attorney). Only in the most clear cases is that step skipped, for instance when we represent a co-defendant. Even those cases are fairly rare since we usually are aware at court whether we have a co-defendant or not and we simply advise the court not to assign us the new case from the beginning.

COMMUNITY EDUCATION

1. How is your office involved with the local community? (Local government, local criminal and juvenile justice systems, and local legal community)?

2. Does your office provide trainers to the local community? If so, how and on what topics?

Our office is almost always represented by someone with respect to any justice system meetings that may take place. We always attend CRB hearings and we have a presence on the LIPSIC committee in Hood River. We also almost always have a presence at any meetings that are designed to deal with specific components of the system. For instance, we attend meetings about domestic violence and local treatment options, meetings regarding improvements in the juvenile justice system and any meetings the court may have to deal with procedural issues.

While we have not specifically provided trainers to the local community we have made it known in both counties that we are available to serve as a resource to the other attorneys in town in terms of sharing our expertise and we are often asked for advice as well as materials such as forms and plea petitions. We also act as a resource for other attorneys when they have clients that are eligible for the Drug Court programs that we have in each county. We have made it known that we are available and willing to help other attorneys who may not be familiar with that process and procedure. Additionally, the courts generally do a good job in including us in ongoing planning and decision making for the courts and we are very appreciative of that fact. For instance, in Hood River county when the video appearance room was being planned we were advised of the same and asked for our input.

Finally, because of our continuing involvement with OCDLA and association with PDSC, as well as other bodies, the firm often plays the role of an informal liaison between those decision making bodies and the local court community.

COMPETENCE

1. What standards do you use for the hiring, monitoring, and management of the professional competence of your staff?

2. How do you review the casework of your staff? How is that review shared with the staff?

Of the seven attorneys in the office, five have been with the firm for five years or more. With respect to the hiring and monitoring of newer attorneys we start by attempting to hire new attorneys that have demonstrated interest in criminal defense. We have found over the years that while an opening in the firm may attract a number of applicants, many of those applicants are applying simply because they need a job and have been unsuccessful in finding one. While these applicants may profess an interest in criminal defense we have found that interest may be exaggerated or in some cases totally absent. Therefore we look for professional and work histories that actually demonstrate an interest in what we do. Our most recent hire, Conor Sullivan, for example, worked in the Lane County Public Defender's office as both a certified law student and a clerk. While over the last few years we have found that it is more and more difficult to find applicants with a demonstrated interest in criminal law, we feel that nevertheless it is essential to attempt to locate those individuals and to give them a strong preference in our hiring process.

New attorneys are monitored primarily by the senior attorney in each office. We attempt to

educate the attorneys with respect to office systems and procedures so that they immediately begin performing their task in the way we want them to. Court appearances are observed and we make it a point to try to have one of the other attorneys present and available as a resource to the new attorney whenever possible. After the new attorney has been with us for a short time we typically will talk to the judges to get their feedback and occasionally will talk to court staff as well so that we can get their perspective on how the new attorney is doing. At about the 90 day mark we have in the past sat down with the new attorney and gone through his/her case load, file by file, to see if he/she is keeping files in an appropriate manner, whether appropriate investigation and funding requests are being made, and whether the attorney is catching the issues that are present.

We share whatever information that is gathered with the new attorney and while we do have a formal evaluation process in place we have found that sharing that information informally and in a constructive manner is usually superior.

- 3. Do you have a complaint process for use by staff, clients, others? How is it used?**
- 4. Do you have a procedure in place to obtain regular feed-back from public defense clients regarding the representation they received from your office? Please describe.**
- 5. Have any post-conviction relief petitions been granted against attorneys in your office? What were the circumstances?**
- 6. Have any attorneys in your office been disciplined by the Oregon State Bar for violation of the Rules of Professional Conduct or former Disciplinary Rules? What were the circumstances?**

Office staff and attorneys are directed to speak with the lead attorney in each office if they are having some kind of issue. If the problem can't be resolved at that level then it is referred to the senior shareholder to address.

We do not have a procedure in place for obtaining feed-back from clients, however, we of course do get feed-back indirectly and directly by the unsolicited comments of clients regarding the service we have provided to them and perhaps more frequently comments from clients about what they have heard about our firm from others. Usually these comments are positive and we believe our reputation in the local lay community is in fact a good one.

To the best of our knowledge there have been no successful post-conviction relief petitions granted against any of the attorneys in our office, nor has there been any discipline of attorneys by the Oregon State Bar.

CULTURAL COMPETENCE

- 1. What steps have you taken to provide culturally competent representation to clients of diverse backgrounds?**

Although we deal with Native American clients, by far the largest minority group we deal with is the Hispanic community. We estimate that in Wasco county approximately 5 to 10% of our clients are Hispanic and in Hood River county, at times, close to 1/3 of our clients are Hispanic. In each office we have a bilingual staff person who is not only fluent in Spanish, but who is integrated into the local Hispanic community and is known to that community.

In addition to the formal training sometimes provided by organizations such as OCDLA, we look to these two individuals not only for their expertise in interpreting but for answers to our questions that may come up regarding Hispanic culture and the community. We believe that with respect to the Hispanic community, at least, we are extremely culturally sensitive and perhaps possess a better understanding of the culture and community than many of the other players in the justice system. The decision to be sensitive to the needs and differences of our minority clients is a conscious one.

It deserves mentioning here that because of the number of non-English speaking clients we have, the firm has close to the equivalent of a one FTE position that is spent providing interpreting services. We have never received additional compensation for providing the service even though we have literally saved the state tens of thousands of dollars. We have in fact provided interpreting services for so long that at this point it is simply taken for granted that we will do so and it is rare that we receive any acknowledgment that we perform above and beyond what can fairly be expected of us.

PERSONNEL

1. Do you have written policies and procedures for handling personnel matters? If not, do you have a system you use? Please describe.

We have a policy manual which is quite comprehensive and which every employee gets a copy of when they join the firm (attorneys additionally are given copies of code of professional responsibility, information regarding conflicts and information regarding immigration issues). The office policy manual contains among other things our statement of purpose, our non-discrimination policy, sections on general office procedures, vacations and leave of absence, discipline, evaluations and criteria for successful performance. (A copy of our office policy manual is available upon request).

2. Do you have written job descriptions? If not, please outline the functions of each category of employee.

3. Do you have written policies regarding supervision of your staff? If not, describe your system of supervision.

4. What is your staff evaluation process?

We do not have written job descriptions in the strict sense, however, the chapter on evaluations in the policy manual contains criteria for employees generally and for the different job descriptions specifically and lays out the responsibilities of the different job descriptions.

We do have an evaluation and supervision policy which consist of regular or at least annual evaluations of the individual. However, like many small offices, evaluations are not done as consistently as they should be and employees who are not problematic may go for some period of time without a formal evaluation although their work is constantly being evaluated informally. Additionally, part of our pay structure consists of annual pay raises when fiscally possible and this step standing alone is an indication to the employee that their performance is at least satisfactory.

5. How do you address issues of under performance?

6. How do you acknowledge and reward excellence?

Staff or attorneys who are not performing adequately are approached initially by the lead attorney in the office, and if problems continue, the senior shareholder after consultation with the other shareholders. Depending on the nature of the problem the method of dealing with the issue may range from an informal meeting to a formal evaluation. Placing the individual on probation with the expectation that performance will improve is an option. Encouraging the individual to seek employment elsewhere with the hope that an orderly transition out of the office can be made is another.

7. Do your salary scales compare to other local attorney offices?

We do not have any similar offices with which to compare ourselves locally. The other firms in the area are civil firms typically consisting 3 to 5 attorneys and the other attorneys who practice criminal law are typically sole practitioners or perhaps associated with a firm that does primarily civil work.

In order to have a salary scale that is appropriate we have in the past obtained copies of the salary scale for the Metropolitan Public Defenders office in Portland. The salary scale for our attorneys averages approximately \$50 to \$100 less per month compared to that of the Metropolitan Public Defender. Attorneys are also encouraged to supplement their salaries with the little bit of retained work that is available and this can at times be quite helpful. It is not uncommon for an attorney to be able to do a few retained cases with a relatively negligible time commitment, but yet be able to supplement his/her salary by perhaps 10 or 15%. This is due, of course, to the fact that retained cases are done at the market rate rather than the deeply discounted rate that work is done for the state under the contract.

It should be mentioned that it is office policy that clients are all treated alike whether they are appointed or retained, and that we take pride in this fact. There have, in fact, been occasions in

the past when appointed clients have indicated that they wanted to retain us because of their beliefs that we would perform better if being paid by the client rather than the state. In those cases the clients were told in no uncertain terms that we work the same for any client regardless of who is footing the bill, and that in cases where people obviously qualify for court appointed counsel we are not interested in doing work on a retained basis. In those relatively few cases where we have not been able to change a client's belief that he/she will get better service on a retained basis, we have given the client the choice of either staying with us on an appointed basis or going elsewhere to retain someone. We will not take a case on a retained basis because the client thinks he or she will get better service by paying us.

8. Do you have a plan in place to permit new attorneys to join your office?

With seven attorney positions and hopefully eight in the near future, we typically have one position that becomes available every two or three years. With the level and the depth of experience we have now those positions are entry level positions and we have in the past had some associates that received a good start here and then gone elsewhere in the state to become an asset to indigent defense.

9. How do you monitor the general quality of the working environment in your office? Are there regular staff meetings? Is there a process for obtaining feed-back from staff regarding the working environment?

Our firm has a joint office meeting of attorneys every Wednesday morning in order to keep the two offices integrated and to provide an opportunity for the exchange of ideas and concerns. We work with staff on a team concept model in which the staff are considered an important part of the office rather than just clerical workers as is the case in some firms. Both John Olson and Jack Morris received their initial legal experience at the Metropolitan Public Defender in Portland where the idea of an integrated team consisting of attorneys, trial assistants and investigators was, and is, alive and well. Staff are encouraged and expected to be very flexible in their job duties and to be able to make the transition back and forth between clerical duties and what would typically be considered trial assistant duties, such as contact with clients, searching for alternatives and providing in-court assistance to the attorneys.

We have staff meetings occasionally and although not as often as everyone would like, we also have social gatherings for office members and their families. In the summer time in particular we have office barbeques which bring the entire office together.

TRAINING

1. How do you orient new staff to your office?

2. How do you insure that attorneys are familiar with and abide by the Oregon Rules of Professional Conduct?

Typically attorneys walk into a caseload that is relatively small and are advised of the procedures

that we use in the office for everything from putting a file together to conducting a client interview to appearing in court. Attorneys and staff are encouraged to ask questions constantly and it is the occasional attorney or staff person who doesn't ask questions that sets off a red flag for the rest of us and consequently gets more attention.

Attorneys are provided with a copy of the Oregon Rules of Professional Conduct as part of the package of materials they get when they join the office. Attorneys are educated about the importance of abiding by the rules and in conducting themselves in an ethical manner generally. Attorneys are, in fact, advised that because the nature of our work we must hold ourselves to a higher standard of ethical responsibility than our colleagues on the prosecution side because of the fact that we are subject to more intense scrutiny and suspicion.

3. What ongoing professional development training is offered to staff by your office?

4. What assistance or support do you provide to staff in order to encourage participation in professional development training outside the office?

This is an area that I believe our firm excels in. We recognize that because we are not in a major metropolitan area educational opportunities for attorneys can be limited. Because of this and because our firm has always been closely associated with the Oregon Criminal Defense Lawyers Association (the senior shareholder is a former president) we encourage and expect attorneys to go to OCDLA training conferences on a regular basis. Typically in the past we have encouraged attorneys to attend the Spring conference, the annual conference in June, the late summer conference and the winter conference at the Benson. One of these is usually a juvenile conference.

The firm typically reimburses attorneys for their tuition and occasionally provides some allowance for housing as well in order to ensure that all attorneys can afford to go, particularly the newer attorneys. There is an expectation that attorneys when they go to conferences will, of course, attend classes, however, attorneys are also encouraged to introduce themselves to the other attorneys and socialize so that we stay integrated with the criminal defense bar of Oregon as a whole. We probably attend more conferences on a per capita basis than any other firm in the state.

In the past we have also encouraged the non-attorney staff to attend the annual management conference when that program includes a significant amount of education aimed specifically toward firm staff.

ZEAL

1. What steps have you taken to inspire and support your staff in providing zealous representation to public defense clients?

Perhaps our most significant success is in the area of creating a culture in the office of zealous

representation. (We fly the Jolly Rodger whenever we win a trial or motion). While this is intangible it is nonetheless very real. Our attorneys are appropriately aggressive and understand that part of our role is to ensure the integrity and fairness of the system as a whole and that our responsibility, attention and concern is not, and should not be, limited solely to the individual clients.

CONCLUSIONS

1. In what area do you believe your office excels?

As stated our office excels in creating the same or superior atmosphere or culture of zealous advocacy, often found in larger organizations. We encourage and reward aggressive advocacy and attempt to constantly recognize the necessity of it by encouraging each other in the office. We also stay tied into the larger defense bar primarily through channels made available by the Oregon Criminal Defense Lawyers Association. Each attorney is a member of OCDLA and as such has available to him or her all of the resources of the organization including the information shared on the internet site and list serve. (The Pond).

We have had the good fortune of having a firm that for 15 years now has operated aggressively and effectively and yet has had almost a complete absence of problems requiring the attention of any indigent defense administration in Salem. We do our work well, although as is the case with everyone else doing indigent defense, we are chronically underfunded.

Indigent defense has traditionally been subsidized by idealism and principle. Individuals who grew up in the 60's or 70's understood the need for professional criminal defense and understood that there is a need for checks and balances against the power of the government. As the individuals of that era become fewer, and student loan debt of new attorneys becomes higher making job choices based on idealism impossible, lack of adequate funding from the state becomes even more critical. There must be new and creative ways found to make individual firms or entities more attractive to new attorneys and better able to fulfill our duties. We believe that by combining the atmosphere, training and zealousness of a classic public defender's office with the increased flexibility and potential for a small level of additional income of a private firm, that we have achieved this goal in a unique fashion.

2. Are there any areas in which improvement is needed? What are they? How do you intend to address them?

There is always room for improvement no matter how well an office performs. Ours is no different. We would like to see an increase in the level of social service type assistance that we are able to provide to clients and we specifically would like to see an increase in our ability to handle juvenile, particularly dependency cases effectively. (We already provide some representation that could be considered atypical, for instance attending school suspension and expulsion hearings.)

We would like to have one trial assistant in each office whose primary responsibility is working dependency cases and acting as a liaison with DHS, CASA and the respective CRB boards. We will continue to work towards that goal and hopefully be able to provide the increased level of attention those cases deserve.

There are of course a limitless number of other ways that we can continue to improve and we will continue to look for them. We do, however, firmly believe that we provide a high level of indigent defense, and that we are not only an asset to the indigent defense system, but that we can and should, serve as a model to other indigent defense providers who are similarly situated.

Respectfully submitted,

Jack Morris

Attachment 4

From: Peter.A.Ozanne@opds.state.or.us [mailto:Peter.A.Ozanne@opds.state.or.us]

Sent: Thursday, February 02, 2006 3:58 PM

To: robertfsuchy@verizon.net; sktlegalasst@qwest.net; WmDavidFalls@msn.com; marving@garlandlaw.com; hashizumepc@charter.net; amorrison@eoni.com; kip@rickerandroberson.com; cangie@computerconnect.net; wpbettis@eoni.com; AttyCondron@aol.com; chamilton@swopds.org; bert@sopd.net; mistrial@rosecitylaw.com; ron@onyoursidelaw.com; richardwolf@att.net; ntgltcremerlaw@rosenet.net; rlcowan@portland.quik.com; vogt4me@comcast.net; ralph.and.susan.smith@gmail.com; rgm@teleport.com; mark@raderlaw.com; greg haz@lanepds.org; alopez@squireslopez.com; pfahy@proaxis.com; jpotter@ocdla.org; jamesvarner@verizon.net; ngrefenson@aol.com; kristy.barrett@lasoregon.org; attygb@aol.com; ppetterson@ntglt.org; gsslaw@teleport.com; jmorris@gorge.net; mahony@fmtc.com; pattybarker@comcast.net; jhenning@mpdlaw.com; mashmadison@hotmail.com; valyen@teleport.com; masario@centurytel.net; MM2attys@aol.com; mark@raderlaw.com; yomarko@earthlink.net; grumpy@teleport.com; sussmarc@qwest.net; mpfriedma@yahoo.com; goodgord@centurytel.net; jklaws1@crestviewcable.com; waliserengle@ccountry.net; karen@reidlawfirm.com; jodymeeker@yahoo.com; greco@pioneer.net; lci@bendcable.com; rkliwer@rsklegal.com; ajax500@aol.com; MM2attys@aol.com; bruce@liebowitzandassoc.com; rlgarbutt@fireserve.net; kbar@bakervalley.net; kenhadley@aol.com; kmcorrell@qwest.net; bergi@bakervalley.net; k.o.berger@comcast.net; kv@karpstein-verhulst.com; JanetM@jrplaw.org; rwcondon@quik.com; haplaw@terragon.com; jarneson@arnesongroup.com; generalb@charter.net; ipd@uci.net; mcpdx@aol.com; Robert Harris; gerald@proaxis.com; ggokey@redmond-lawyers.com; jrieker@gte.net; smc@callatg.com; pritchard@empnet.com; dhachlaw@ucinet.com; dekalb@wvi.com; carlsonlaw@fmtc.com; dcronin2000@hotmail.com; currypdc@wave.net; tc@empnet.com; clm_bob@yahoo.com; shekay9@hotmail.com; attyporras@mail.com; brach@pacifier.com; grayareas@earthlink.net; cebesqjustice@cs.com; Tbird861@msn.com; lpalmer@mblaw.net; bmdcraig@uci.net; attygb@aol.com; jnash@ladyjustice.net; nyssalaw@fmtc.com; apositislaw@comcast.net; brendona@bendcable.com; arboleda@gorge.net

Cc: PDSC@opds.state.or.us; PDSCcc@opds.state.or.us

Subject: Suggestions for Improving the Public Defense Contracting Process

February 2, 2006

On behalf of the Public Defense Services Commission and our office, I am writing to ask for your help. We are most interested in improving the fairness and efficiency of our contracting system, particularly our office's request for proposals and our contract negotiation processes. Therefore, we are requesting your input and suggestions about how we might improve those processes.

While we welcome any comments you may have, the following problems and perceptions have already been brought to our attention:

- Obviously, the Oregon Legislature has not yet provided the Commission with sufficient funds to compensate our contractors and court-appointed attorneys adequately, either in comparison to the private market for comparable legal services or the compensation of most prosecutors in the state. Although the Commission was able to secure a maintenance level budget for the 2005-07 biennium, including some additional funds to increase the rates of lower-paid contractors, the Commission is not paying most contractors as much as we would like;

- We have heard comments from a number of contractors that the Commission and our office have taken a “take it or leave it position” during the most recent round of contract negotiations. I believe there are two reasons for this perception. First, our office was carrying out the Commission’s direction to equalize contract rates as much as possible and as soon as possible, leaving us with virtually no discretion to increase the compensation of most contractors. Second, as the Commission’s contracting system has become more transparent and predictable and its contract rates become more uniform, the negotiation process has less significance in determining levels of contractor compensation, and our office’s discretion to address contractors’ claims for individual or special treatment is disappearing.
- By issuing its requests for proposals earlier and establishing a contract award date of November 1st, our office can reduce the uncertainty for contractors and allow more time for contractors to prepare and plan for any changes that would take effect January 1st.

In order to forward your comments to the Commission before its April 2006 meeting, please forward them to me at Peter.A.Ozanne@opds.state.or.us no later than Friday, March 24, 2006. On behalf of the Commission, thank you in advance for your help.

Peter

"Robert Harris"
<rharris@harrislawsite.com>

02/02/2006 04:43 PM

Peter, thank you for offering this opportunity for input.

Here are some issues:

Drug Courts. Washington county started drug court but provides no money for the defense attorney (and they want two there. And BTW My firm provides one at no charge). Because most of the candidates for drug court already have appointed attorneys, there is no real opportunity for further appointments, so the state ID doesn't pay for the attorneys presence either. The County would like the state ID to pay, and the state would like the county to pay. The system can save money for the state and the county, but defense counsel presence is vital for success. Everyone else there gets paid, then judge the DA the deputies, everyone except the defense attorney, who are already underpaid. There should be a uniform way to pay for defense counsel at drug courts, or mental health courts (which may start to arise also)

Early disposition: these programs suck the easy cases out of the ID caseloads, leaving the provider with more difficult cases. The state has to recognize that the per case rates must go up if this occurs because we will be spending more time per case on those that are appointed to us. So these early dispo programs will not save as much money as the beancounters believe.

Parity between jurisdictions: We need to have statewide parity in rates and case types and categories. I've practiced in many counties and believe me there is very little difference in the different counties. If the current rate differentials truly were a product of county differences, Washington county, known as one of the most difficult to practice in, would be at the top of the rate scale, not the bottom. Parity must be established in the next budget cycle. Continuing an unfair allocation so that those who've gotten more before get it a little while longer is not fair, it is simply more unfairness.

Public Defenders preferred status. Parity must apply between public defenders and private attorneys. In fact in if anything private attorneys should be paid more since we have to pay PLF dues and taxes that non profits are exempt from. I've heard all the arguments about why PD's get paid more, and none of them are logical or compelling. They are simply excuses for continuing the current political advantage the PD offices have obtained over the years. In fact, I've found that having a PD office in Washington county can be detrimental to the private bar. Whenever the PJ or the DA wants to talk about a change in policy, the only defense attorney they notify is the PD Director. Thats great for the PD director, but because of funding differences by the state a PD non-profit PD office functions differently than a private attorney office, and the PD Director may not know, or care, about how the policies effect the private bar members. IN addition, for some reason the PJ or the DA beleives that since the local PD director was informed of the policy discussins and ahcnage sthat somehow everyone in the defense bar knows about it. How? By Osmosis?

Consider having a statewide PD trial office for just major felony cases (Everything above B Fel) and single countywide consortiums of private attorneys which would handle lesser felonies and misdemeanors and conflicts on the major cases. The consortium should be made up of small private offices of a minimum two to three attorneys working together (so coverage isn't an issue) as well as perhaps one or two law firms where new attorneys are trained. A lawyer interested in criminal law could go to work for the law firm or perhaps as an associate of one of the smaller groups of lawyers. As associate attorneys gained experience, they would either open their own offices (once a consortium caseload became available) or go to the State PD Trial office. Attonreys in private practice in the small offices could likewise apply for PD positions if they chose. This would avoid some of the risk of the per capita rates to private attorneys (by avoiding the types of cases that can swamp an

atotnrey in private practice), establish a system for training newer lawyers, and keep a cap on the overall cost by avoiding the hourly rate case assignments.

Consider shifting some of the cost of ID to the Counties. It is the County DA who makes the decisions on charging, drug courts, early disposition and sentencing recommendations, including probation. If the DA had to explain to the county commissioners why the State was billing them so much more than another sister county, there may be some real policy discussions going on here about the true cost of incarceration and charging.

Consider allowing the courts to impose court appointed attorney fees on clients based on whether the client pleads out or has a trial. I understand that the State ID offices have been reluctant to do that for two reasons. Both of which are weak. First reason is always..but you get paid the same for a case whether it goes to trial or not, so by statue we can't charge the defendant more. Not really true. The state asks me to submit a bid based on a per capita price, but I charge based on how many cases I see going to trial versus pleading out or FTA'ing. The fact that the state asks for a certain form of bid doesn't mean we get paid the same per case. I get paid for a caseload, not per case. The second reason is that it would chill the defendants right to a trial. This is no more true for indigent clients than it is for retained clients. We always charge a retained client more if they want a trial. And yes, I'm sure that some times the client takes that into consideration when deciding what to do. But theres no consitutional requirement that indigent get treated BETTER than retained clients. So establish a formula. Say that if 5% of the cases go to trial. Every plea client gets charged 10% lower than the per capita rate and for every trial the client pays three times the per capita rate. HOWEVER, the courts would have to agree not to make it a condition of probation that the client must pay more than the contract rate. So there would be a contractual and civilly enforceable obligation to pay the entire amount, but you couldn't go to jail if you didn't. That would treat the ID clients just like the retained clients.

OK I think thats my rant for the day. If you got this far, thanks for listening, it did me good.

Rob Harris

Robert Suchy
<robertfsuchy@verizon.net>

02/02/2006 07:03 PM

Peter, I guess I'd like to go on record with positive comments for the contracting process and really see no room for improvements given the environment and constraints OPDS must work under. I commend the job PDSC/OPDS are doing to posture indigent defense as worthy of increased compensation by the legislature. It has been a most pleasant experience dealing with OPDS/PDSC and commend you again for the job you are doing.

Bob Suchy
YCD Executive Director

"Bruce Liebowitz"
<bruce@liebowitzandassoc.com>

02/06/2006 10:59 AM

Dear Peter,

Here's my response to your February 2, 2006 e-mail. You admit that PDSC has "virtually no discretion to increase the compensation of most contractors" and "the negotiation process has less significance in determining levels of contractor compensation." Why do we engage in the charade of calling this a negotiation process?

Take it or leave it is not a perception; it is a fact. I agree that having RFPs awarded earlier will allow those deciding to get out of indigent defense a more orderly time frame. If PDSC is serious about securing fair funding, it will only happen if contracts are let before the legislative budgeting process. It is naive to think you will secure anything above maintenance level funding without forcing the issue. We have been hearing "hang on" for six years now.

That is the mantra at each years management conference, At your first management conference you talked about rewarding professionalism. You are well aware it takes resources to do that. I am well aware that indigent defense is one of the legislatures' lowest priorities. I don't envy your position. You have tried to do the most with the least.

I simply think that expending energy on a fundamentally flawed process simply fosters the illusion of change and results in inevitable disappointment. I have yet to hear a persuasive rationale as to why it will be different next time.

Sincerely, Bruce Liebowitz

"Angel Lopez"
<alopez@SquiresLopez.com>

03/08/2006 03:44 PM

Peter, I pulled up the copy of the referenced letter and realized only a tiny bit of it was on point. The talking points I would emphasize are as follows:

1. I think a clear view of what is needed for funding should be in place prior to the legislative session. Otherwise we are continually looking at last year's numbers for case unit values and getting nowhere. Accordingly, contract bids should go out way early so that contractors can give the legislature an idea of what it is we need to do the work required of us

2. We need to find a way to let the funding source know that the work we do is much more than a lawyer in court living out of his briefcase. There is an ever more complex set of requirements we need to address through the changes in law, our administrative requirements and the non lawyer personnel we need to operate a lawfirm that meets the needs of our clients.

3. I think the legislature needs to know that we are more than just another set of bargain basement contractors. We are professionals, officers of the court, whose active presence adds to the administration of justice. We work not simply to "win cases" but to solve real problems for real people. We make the poor and undereducated equal to anybody else in the courtroom and as such help them with issues that transcend the justice system: Mental health assistance, Substance abuse assistance, employment assistance, family unification and other means of assistance; not only helping our clients cycle out of the criminal justice system but significantly adding to the safety and livability of our communities. Incarceration is a temporary fix. Working with the courts, the D.A. and parole and probation to find lasting solutions is far more productive and cost-efficient.

4. In order to effect the above we need to realize that the premium is to have the best defense bar and support staff we can afford not merely the cheapest we can get.

5. Finally we need to get the legislature to see that we are equally important to the Bench and the Prosecution in solving the problem of Criminality in our Society, Or at the very least, keeping the Criminal Justice System afloat.

Thanks for considering these comments, Angel

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February 16, 2006

Peter Ozanne
Executive Director
Public Defense Services Commission
c/o Office of Public Defense Services
1320 Capital Street NE., Ste 200
Salem, OR 97303

Re: Input and suggestions on contracting
Response to your email of 2-2-06

Dear Peter:

Take it or leave it negotiating: That is exactly my impression. Kathryn Aylward especially had an arrogant "how dare you negotiate" attitude. The PDSC has already destroyed all the good will that the State Court Administrator built up over the years. We seriously considered leaving juvenile cases on the table and I don't believe that you could cover all of those cases.

Request for Proposals: Why did you waste my time preparing a detailed request for proposal and justification if it was irrelevant. Why not just send us you "take it or leave it" offer with a letter telling us that you would not be negotiating. It would have saved me a lot of time.

Uniform contract rates: This is a major mistake. It won't work. You can't handle indigent defense in small rural counties as efficiently and as cheaply as in Portland, Salem or Eugene and you often don't have anyone else to handle those cases.

Consider the situation in Jefferson County. The Madras Consortium has been contracting with the state since 1987. When we were formed, we were the only three private practice firms in the county. We are getting older. Only one of our attorneys has been practicing law for less than twenty-four (24) years. A few years ago Crabtree & Rahmsdorf of Bend decided that they were losing money by handling cases in Jefferson County and stopped taking them. Two other Bend firms have tried to contract in Jefferson County and neither lasted more than a single two year contract. A contractor from Crook county expanded into Jefferson County; but they only have two attorneys with offices in this county and their attorneys often appear by telephone. One office is a single attorney and no staff office doing nothing but indigent defense. The other is a single attorney and part time staff office that

includes some private retained work. In other parts of the state, the older attorneys stop taking appointments and younger attorneys replace them. There are no attorneys in Jefferson County that don't belong to one of the two contractors.

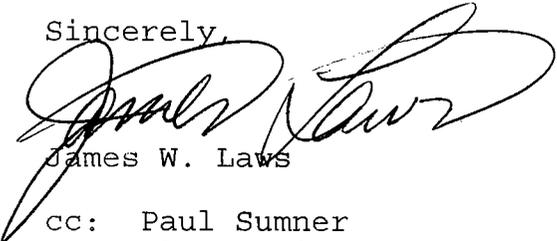
Jefferson County has a large minority population which creates additional problems. Over 50% of the students in Jefferson County 509J School District are minorities. Indian children have ICWA issues and the involvement of their tribes. While the tribes rarely take the case, they add substantially to the time and issues. The parental rights on Indian children are never terminated; consequently, the cases can last for years. Mexican kids bring both language and immigration issues. If even one party needs an interpreter, the process slows significantly. Hearings take much longer. In many cases the parents are illegal. If the parent is in jail, immigration will place a hold and subsequently deport them. There are many additional issues because of immigration status. For instance some programs are not available for a child that is legally in this country but is not a citizen.

Jefferson County is a poor county with few resources for juveniles. Most of our foster home placements are outside of Madras. Common placements include Crooked River Ranch (20 miles), Deschutes County (50 miles) and La Pine (90 miles). I even had a case where the children were in Portland for several years before the case was transferred. Virtually all programs that are available for children are located outside of Jefferson County. It is common for kids to be placed in Burns, Portland or Corvallis. In delinquency cases, there is no local detention facility. Usually kids are held in The Dalles (2 hours each way) and occasionally in Bend (1 hour each way).

The situation in Jefferson County will get worse when the new state prison opens in 2007.

The present rates in Jefferson County do not allow for firms to expend. It will be worse if you move to uniform rates.

Sincerely,



James W. Laws

cc: Paul Sumner
Glenn, Sites & Reeder

Greg Hazarabedian
<greghaz@lanepds.org>

03/24/2006 01:52 PM

Peter,

Thanks for this opportunity to provide input, as we believe this is an area definitely requiring improvement.

With regard to the areas you address below, let me first say that the legislative funding issue could have been handled better. You announced that you had been successful at the legislature last session. I know I'm not alone in believing this meant that since you did well, your office would be giving us long overdue COLAS. That didn't happen.

Frankly, it is difficult for me to comprehend how victory in funding could be publicly proclaimed when no COLAS were contemplated for many of your contractors.

It is not mere perception that your office took a "take it or leave it" approach, it is fact. The position taken by your office was clearly and, I might add, bluntly stated. If this is the way business must be conducted, please don't require proposals explaining why our local situations require individual treatment. It is rather frustrating to expend considerable hours crunching numbers and preparing a proposal only to be told that it was a futile endeavor.

Now, on to other matters. Submitting our proposals prior to the legislative process makes more sense if the ultimate goal is to achieve more adequate funding. It affords a more accurate accounting of service provider requirements. Your goal of increasing the quality of indigent defense in Oregon is certainly laudable, but is threatened by the lack of a rational budgeting process that takes into account local differences and the need for COLAS.

You have said that we now have a more "business like" style of operation. While that's not bad, your office won't consider funding capital expenditures for us. A true "business like" model would recognize that quality service to our clients will only be provided by contractors who stay technologically proficient with updated equipment. That costs money.

Finally, let me once again say that paying by the case rather than by the work unit is never going to be equitable statewide. The national literature in both the defense and prosecution communities points to work unit compensation as being the most rational system.

These suggestions are offered with the intent of helping us provide quality representation for all Oregonians accused of a crime, a goal I know we share. Thank you for your consideration of these matters.

Respectfully,

Greg

Gregory J. Hazarabedian
Executive Director
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