

Members

Barnes H. Ellis, Chair
Shaun S. McCrea, Vice-Chair
Michael Greenfield
Henry H. Lazenby, Jr.
John R. Potter
Janet C. Stevens
Honorable Elizabeth Welch



Ex-Officio Member

Chief Justice Paul J. De Muniz

Executive Director

Ingrid Swenson

PUBLIC DEFENSE SERVICES COMMISSION

Friday, October 12, 2007
12:30 p.m. to 4 p.m.

Riverview Room
Hood River Inn
Hood River, Oregon

AGENDA

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| 1. Introduction of New Commissioner,
Hon. Elizabeth Welch | Barnes Ellis |
| 2. Action Item: Approval of the Minutes
of PDSC's August 9-10, 2007
Meeting
(Attachment 1) | Barnes Ellis |
| 3. Action Item: Review and Possible
Approval of Proposed Service Delivery
Plan for Washington County
(Attachment 2) | Barnes Ellis |
| 4. Review and Discussion of Coos/Curry
Testimony and OPDS Draft Report
(Attachment 3) | Barnes Ellis
Ingrid Swenson |
| 5. Update on Service Delivery in
Marion County | Tom Sermak
Steve Gorham
Olcott Thompson |
| 6. Public Testimony Regarding Service
Delivery in Judicial District No. 7
and PDSC Complaint Process
(Attachment 4) | Robert Larry |
| 7. OPDS's Monthly Report (New Employees,
Progress of Contracting Process,
Statewide Survey, Post-Conviction Relief
Performance Standards Workgroup,
Proposed Ethics Opinion on Public Defense
Workloads, Update on Loan Repayment
Programs) | OPDS's Management
Team |

Please note: Lunch will be provided at the beginning of the meeting for Commission members.

Next meeting: Please note that the Commission's next meeting will be at the Umatilla County Courthouse in Pendleton on Wednesday, November 7 from 9:00 a.m. to 1:00 p.m.

Attachment 1

PUBLIC DEFENSE SERVICES COMMISSION

MEETING MINUTES

Thursday August 9-10, 2007 Meeting

Myrtlewood Room
Coos Bay Public Library
525 Anderson Ave.
Coos Bay, Oregon

MEMBERS PRESENT: Barnes Ellis
Shaun McCrea
John Potter
Janet Stevens

STAFF PRESENT: Ingrid Swenson
Kathryn Aylward
Paul Levy
Peter Gartlan
Rebecca Duncan
Billy Strehlow

Chair Barnes Ellis called the meeting to order at 9:09 a.m.

Agenda Item No. 2 Presentations on Public Defense Delivery in Coos and Curry Counties

Following Ingrid Swenson's summary of OPDS's report to the Commission on the public defense system in Judicial District No. 15, the Commission heard from the following guests and presenters: Presiding Judge Richard Barron; Circuit Court Judge Michael Gillespie; Circuit Court Judge Paula Bechtold; Chief Deputy District Attorney Paul Frasier; DHS representative Nancy Lee Stewart; Nick Nylander, a member of the Board of Southwestern Oregon Public Defender Services, Inc. (SWOPDS); Carole Hamilton, the Administrator of SWOPDS; Matt Muenchrath and Megan Jacquot of the Coos Indigent Defense Consortium; and John Spicer, the Administrator of the Curry County Consortium.

[A summary of comments from the foregoing guests and presenters is set forth in OPDS's Draft Report to the Public Defense Services Commission on Service Delivery in Judicial District No. 15, dated October 12, 2007, which is submitted with these minutes for the Commission's review at its October 12, 2007 meeting.]

Agenda Item No. 4

Approval of increase in Attorney Hourly Rate

Kathryn Aylward discussed OPDS's recommendation that the Commission approve increases in the hourly rate for attorneys and investigators. In response to questions from the chair she identified the providers who would be affected by the increase and the source, in the PDSC budget, of the funds which would be used for this purpose. It was noted that, although there had been discussion in the Legislature about the cost of increasing the hourly rate in the amounts included in the proposal, the Commission retained discretion to use these funds as it deemed appropriate. Under these circumstances Commission members decided to defer further consideration of the proposal until members had had the opportunity to consider the budget as a whole at its retreat on August 10, 2007.

After recessing on August 9, 2007 the Commission reconvened on August 10, 2007 and approved the requested increase in the hourly rate for attorneys, effective August 10, 2007.

MOTION: Shaun McCrea moved to approve; Janet Stevens seconded the motion; hearing no objection, the motion carried. **VOTE: 4-0.**

The Commission also voted to increase the hourly rate for investigators and mitigators to \$28 an hour in non-capital cases and \$39 an hour in capital cases on authorizations approved on or after August 10, 2007 with the opportunity to seek increases on existing authorizations.

MOTION: Shaun McCrea moved to approve; John Potter seconded the motion; hearing no objection, the motion carried: **VOTE: 4-0.**

Agenda Item No. 5

Approval of OPDS Compensation Plan

Kathryn Aylward outlined proposed changes to the OPDS employee compensation plan. She explained that PDSC is required to set salary levels commensurate with other state agencies and that the Department of Administrative Services had negotiated for the Executive Branch a series of cost of living adjustments and some other changes. OPDS's proposal is similar to the plan announced by the Judicial Department for its employees. The funds required to implement these changes will be appropriated by the Legislature at the request of the Budget and Management Division and approval of this plan will not affect the amount of funds available for allocation to public defense providers outside of OPDS.

MOTION: J. Stevens moved to approve the OPDS Compensation Plan; John Potter seconded the motion; hearing no objection the motion carried; **VOTE 4-0.**

Agenda Item No. 1

Approval of the Minutes of PDSC's June 14, 2007 Meeting

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

Agenda Item No. 5

OPDS Monthly Report

Peter Gartlan reported that the Legal Services Division had reorganized its staff in anticipation of adding eight new positions in the criminal appellate section. Two attorneys were promoted to the two new chief deputy positions; two

Deputy II attorneys became senior deputies. One attorney will be in charge of outreach to the trial bar, updating the website and coordinating CLE activities. He noted that the office was currently interviewing for Deputy I and II positions.

MOTION: Janet Stevens moved to adjourn; Shaun McCrea seconded the motion; hearing no objection, the motion carried. **VOTE: 4-0.**

PUBLIC DEFENSE SERVICES COMMISSION

UNOFFICIAL EDITED TRANSCRIPT

Thursday August 9, 2007 Meeting
9 a.m. to 1 p.m.

Myrtlewood Room
Coos Bay Public Library
525 Anderson Ave.
Coos Bay, Oregon

MEMBERS PRESENT: Barnes Ellis
Shaun McCrea
John Potter
Janet Stevens

STAFF PRESENT: Ingrid Swenson
Kathryn Aylward
Paul Levy
Peter Gartlan
Rebecca Duncan
Billy Strehlow

TAPE 1, SIDE A

[The meeting was called to order at 9:09 a.m.]

001 Chair Ellis We don't have a quorum yet although I understand a quorum is on the way. We'll defer the minutes. Let's go right to the public defense delivery system in Coos and Curry Counties. Ingrid, if you want to introduce the subject and then we can hear some testimony.

Agenda Item No. 2 Presentations on Public Defense Delivery in Coos and Curry Counties

005 I. Swenson I can do a brief introduction Mr. Chair. John Potter and Billy Strehlow, who is here this morning, and I spent several days in Coos and Curry Counties a couple of weeks ago doing some investigation to prepare for your visit here. There is an attachment in your materials, it is attachment 2, which is the draft report and we are talking here about Judicial District 15. There are two counties and three courthouses and basically three providers in those counties - two in Coos and one in Curry County and then there are some hourly rate attorneys who fill in. As the report indicates, Coos and Curry Counties have suffered pretty dramatically from the decline in federal funding available to timber counties.

Looking at Coos County first, the DA's office here lost two positions. They expect to file more cases as violations. They expect that they won't be as active in juvenile cases as they have been in the past. There has also been a significant loss of sheriff's personnel, particularly in the patrol unit, so that means that there will probably be fewer criminal arrests. There will probably be fewer cases in which they are involved with children in dependency situations. They won't be available to assist there. We found, talking to folks here, that the cases in Coos County move very rapidly both in the criminal court and in the juvenile court.

The juvenile department here has lost staff too. They lost about a third of their folks and the effect of that has essentially been that there is less supervision for youth who commit less serious offenses and it is more likely that serious offenders will ultimately end up in the training school because the local options are quickly exhausted. As I said, we have two Coos providers. One is the Public Defender's Office. Carole Hamilton is here this morning. She is the administrator of that office. There are currently six attorneys there. As the report indicates they probably need seven. We expect that Nick Nylander will also be talking with you this morning. He is a member of the board for that office. As you will see from my report, the public defender's office does a very good job of monitoring the performance of their attorneys in a number of ways.

There is the Coos County Indigent Defense Consortium and Sharon Mitchell is the administrator of that five-attorney consortium. She couldn't be with us this morning, but Megan Jacquot, who is a member of the consortium, is present and will talk a little bit about that. There are some quality issues that are referred to in the report. We received reports, for example, from the sheriff's department. They gave us an interesting perspective on quality from their point of view, essentially feeling that the lawyers are doing a good job under a good deal of pressure. They singled out one particular attorney as going the extra mile for his clients whenever he can. In dependency cases we understand that parent clients have some complaints, and that is not unusual, even if lawyers are doing very good work, but it is something that we need to take note of. We were told that some of the attorneys do excellent work, but it was reported that they are simply overworked and that they don't have time to do as much as they should be doing on some of these cases. In delinquency cases the comment we received was that representation seems to be improving in Coos County.

The issues I suggested you might want to look at in Coos County include whether or not we need additional attorneys here even though the caseload is apparently flat at this point and is expected to decline. Nevertheless, there may be a need for an additional attorney. There are recruiting problems in this community that have been described in the report. It is possible that the attorneys here could benefit from some resource attorneys in specific areas of law, Indian Child Welfare Act cases for example. It is difficult to develop that kind of expertise when you have very few of those cases. It would be helpful to the attorneys to be able to contact an attorney who is knowledgeable on that issue. There is a similar need for help with other issues such as sophisticated sentencing questions. And then there was a comment that the attorneys could benefit from additional training in the law of evidence. There is a desire for increased compensation among the attorneys here and very likely a need for that.

Curry County issues are very similar, as you can imagine. Their circumstances aren't identical but they are very similar. We have two new circuit court judges in Curry County, both of whom were former public defense providers, Judge Margolis and Judge Beaman. The DA in Curry County has also lost staff. There is basically one elected DA and one deputy DA and one staff member to manage their county's work. The sheriff's office there lost staff as did the juvenile department. The Curry County Consortium includes three members currently. The report talks about two but I am advised that they have actually added a third attorney as part of their consortium. I don't know if that is a long-term development or just a filling of the immediate need. The number of attorneys required is basically related to the conflicts issue. It is not sufficient to have two firms in even a small county because there are cases, particularly dependency cases, in which you need a third attorney to represent all of the parties in the case. The consortium appears to have done a good job of adjusting to the loss of one of its members and trying to fill in the gaps in services here. I think Jim Arneson, the chair of our Quality Assurance Task Force, would be very pleased with their practice of surveying the clients in terms of their performance. That is something that John Spicer has instituted at his consortium. The issues that you might want to look at here are very similar to those in Coos County. There is a need for more attorneys. I think Mr. Spicer and perhaps Mr. Gardner, are both thinking of adding associates in their firms and then if Mr. Inokuchi, the third participant in the consortium, is permanent that may solve the problem of the third

attorney, but I am not sure what that situation is. Again, we may be dealing with a caseload that is not growing and in fact may start to decline, but the supply of attorneys is nevertheless necessary and they could also use resource attorneys to deal with some of the more complex issues that arise. Those are just some thoughts that you may be considering as you hear from witnesses today. I know Judge Gillespie is here and maybe we could start with him.

- 111 Chair Ellis Okay. Let me just comment broadly that we started this process three years ago of going to different areas of the state and trying to meet with system participants in those different areas with the view to our getting a good understanding how the criminal justice system is working in the particular region and with the view of giving you a chance to kind of let us know what issues you see in the defense provision in your area. We are not here to impose a single way of doing things, but we do think one of the advantages of the legislature having created the Commission is that we can share with you some things that seem to be working elsewhere, and hopefully we can learn from you some things that seem to be working here. For us to do our job, which is to be good stewards of the state funding for defense, we feel a really strong need to know what is happening on the ground in the different communities. I think this is the eighth or so time that we have met in different parts of the state to try to get that interaction, so that is why we are here. Do you want to be the first presenter?
- 133 J. Gillespie I guess I have been nominated. Actually, I am pleased in one respect. For the record my name is Mike Gillespie. I hold the position of circuit court judge. I am also the president of the Coos County Bar Association and on behalf of the bar association I want to thank you for your appearance here today, Chair Ellis and members of the board. Let me tell you that anytime anybody comes to Coos County we are appreciative.
- 140 Chair Ellis And we didn't come to play golf.
- 141 J. Gillespie I hope you will while you are here.
- 141 Chair Ellis I've done that.
- 141 J. Gillespie I hope that you take advantage of the opportunity to see the beautiful scenery and tell your friends and relatives that Coos County is actually a place to come to because I think that it is. Let me also point out that my presidency in the bar association is recognition of nothing more than my admission date to the bar, so it is not like a popularity contest or that I have any official capacity in that regard. It is allocated to the next person in line based upon your date of arrival in Coos County. It is like a term of servitude as opposed to recognition of anything else. My goal in that capacity is to do nothing to create problems. I do want to mention a couple of things before I begin. I want to thank Ms. Swenson and Mr. Potter for taking the opportunity to spend time in my office. I appreciated the conversation. I wanted to thank this gentleman. We met in the bathroom which is kind of a bad thing to say, but in any event, in my office I will tell you that if we have a problem that we need the PDSC to get involved in we call Billy. Billy is our analyst and that is all I know. I have an assistant who deals with him. I have talked to him on maybe one or two occasions.
- 156 Chair Ellis And now you know where to find him.
- 156 J. Gillespie I do want to point out that he has been very helpful. I want to say that on his behalf and I say that because in the organization that I function in I am not the bureaucratic guy. I don't deal with the bureaucracy; I don't like the bureaucracy; that is not my role. I do want to mention that despite my distaste for certain things that I have to do, he has been extremely supportive and helpful and I think that is important to acknowledge. Second of all, let me say that in my capacity here as a presenter, I don't know if Judge Barron has arrived yet, and he has not. I don't represent the bench. The presiding judge will be here. We have actually had a conversation about the things we are intending to say. I have not said a couple of comments about the draft report that I have concerns about that he will address, so I don't speak for the

bench I speak for myself. I have a couple of observations that I want to make and they are fairly limited because of our agreement and our kind of delegation of responsibilities and our roles. I am very supportive of the provision of public defense services as they exist in Coos County at this time. I will also say for the record that Carole Hamilton does a great job. Her organization is well run. It is as well run as it has been at any time that I have been in Coos County. My experience in Coos County is that I have been a member of the bar since 1978. I came to Coos County in 1979. I spent some time with the District Attorney's Office - approximately 18 months to the day. I left at that time and went into private practice and was in private practice and did some indigent defense criminal work, but got out of it as quickly as I could. I did some criminal defense work and got out of that. I was elected to a district judge position in 1992 and took office in 1993. I have been a district or circuit court judge since that time. I think this is my fifteenth year. So that is my background. I would tell you that in addition to Carole's organization which is being well run we currently have a group of people in the consortium who do a good job. I am not here to criticize anybody, including the board, and I want to emphasize that. If I say anything that sounds like criticism it is not intended to be so. In regards to the provision of public defense services in Coos County, it is adequate at this time, but it is always sort of at critical mass. I don't know anything about public defense services any place else. I know a little bit about Curry County because I am elected and work down there. I don't know about Douglas County, Lane County, Washington County. I don't know a thing, so I have no basis to compare. But I can tell you what I mean by critical mass is that if Carole loses one person, we have a problem. That problem is somewhat difficult to solve for a variety of reasons. If the consortium loses one person, we have a problem. The problem is perhaps, in my opinion, that there is nobody standing in line wanting to take that position. It isn't like you have a great pool of resources to draw from. So in Coos County, although the provision of these services is adequate at this time, in my opinion, it is a difficult problem given an illness, an injury, or a change that nobody has any control over.

201 Chair Ellis Are young lawyers coming into the area?

201 J. Gillespie No they are not.

203 Chair Ellis Whether on the private side or ...

204 J. Gillespie They just basically are not. It is not a place that people are coming to to practice law and I think that is unfortunate for the people who don't realize that you have a life style and make an adequate living. But it is not a place that people are really desiring to come to live and work. The thing that I want to talk about and the sole purpose of my being here today is I want to express some concern about the degree of financial support that Carole's office receives. I couldn't tell you what her budget is. I couldn't tell you how much she pays anybody specifically but the draft report that I received confirms my understanding that the people who come to work for Carole Hamilton work for significantly less than they would if they took entry level positions, certainly in the public sector - the district attorney's office is the competing factor - and certainly in the private sector to the extent that positions become available, and they are available from time to time. I shouldn't say people never come and I don't mean to imply that. People do come, but it is a rare occasion when we get a new lawyer, particularly a new lawyer who doesn't have some ties to the community. For instance, Andy Combs came back to Coos County. He started in Myrtle Point and is now working at the Whitty law offices in Coos Bay. He was born and raised in Myrtle Point. We get some of that. Adam Gould has established an office in Coos Bay with his father and he was raised here, but in terms of people looking to come to Coos County it just isn't happening. The concern I have, if my limited knowledge is accurate, is that I don't think that the provision of public defense services through Carole's office should be funded like you buy a Chevrolet. The reason I make that analogy is because if I want to buy a car I decide what I want, I test drive it somewhere, I decide on the equipment I want, and then I call various places or deal with various people to get the best price I can, because it is just a Chevrolet. They are all made on the same assembly line. If I can buy it locally I might pay a

little extra to buy it from a local dealer, but I am going to buy it based upon price, because it is all the same. It is just a hunk of metal. But the provision of public defense services is not like that. What I am concerned about in terms of Carole's operation, is that really that operation represents is a significant support system that the other public defense providers in Coos County don't have to maintain or operate. Carole has an overhead, she has an office, she has a database and they support the functions of that office that allows people to be well-trained, that allows them to be supported, that allows people to operate in a system which is much as described in here like a law firm. But like a law firm those costs are fairly high. If you compare that to the funding of the contract for defense services, which I have no criticism of and I certainly don't think they are overpaid, those people have a greater degree of flexibility in regards to how they can allocate the money that they receive under their contract. They can put a lot more of it in their pocket, is my point. We have contractors here who work in Coos County. I am not criticizing the work they do or how they allocate their money, but they are basically able to operate with minimum overhead, if any. They may not have staff. If they have staff they may not be full-time. They certainly don't have to operate the support system that Ms. Hamilton does to provide those services. What that creates in two respects is 1) as I have indicated the ability for the lawyers to pay themselves more, but 2) a kind of a vacuum effect and that vacuum effect is that as soon as one of those positions opens up, the first person that may want to look at that is a person working in Carole's office where several people who are now contractors have come from. That has an impact and I think there needs to be some examination.

259 Chair Ellis

So, let me just pause. It sounds a little like Carole's group, she or her group incurs the cost of training, and people get experience there and then they will migrate to private practice.

263 J. Gillespie

Yes. No, they will migrate either to private practice or from Coos County. Let me make sure that everybody understands that in Coos County, neither in the SWOPDS' operation, Southwest Oregon Public Defender Services, nor in the Coos County District Attorney's Office, is it a career position. There are people in Carole's organization who are career criminal defense lawyers and who have stayed a long time in Coos County, but they are the exception and not the rule. We are very appreciative of the service they provide because they do a great job. The point of my comment is, and I guess I should have stated this maybe to make it clear, there is this constant vacuum of people coming to Coos County to get trained to go somewhere else. That is not all that unusual. People come here and they may not want to stay for a myriad of reasons, but it is pretty clear that there are career positions that we are talking about. My point I guess in regards to what can happen in recognition of the various factors in the SWOPDS operation, which I am really here to talk about, is that at some point we have to look at least to isolate potentially one factor that can increase the attractiveness of coming to work in that position and perhaps increase the attractiveness of staying in that position for a longer period of time. My personal opinion is that that is a recognition of the need to fund those entry level positions at a level commensurate with what other public service entry level positions in the county are funded at. The only benchmark that you have and I think Paul Frasier, Chief Deputy District Attorney, will tell you, if asked, his entry level positions are not adequately funded to draft people here from other locations, or to convince people to come to Coos County as opposed to some other county. I am not suggesting that those people are even well paid, but unless there is a commensurate pay level, and Carole's operation is funded to support that pay level, we are never going to be able to compete. If we are driving the cost of the provision of public defense services on a per case, per dollar basis, and I am mindful of your obligation to adequately manage the public defending, I respect your work in doing so, and it is a difficult job, but I am encouraging you to look at other factors in the funding of the operations in at least the 15th Judicial District in Coos County to recognize that there are other factors here that affect the provision of public defense services than the lowest cost. That is, if we don't adequately fund people to get them here and to keep them here for a while, we will never keep them here, never. We will never keep the majority of lawyers who come to Coos County in these positions in Coos County. That is an unrealistic goal, but if we can fund those positions to attract them initially, at least for a while,

and to keep them here a longer period, it will enhance the provision of public defense services in Coos County overall. I personally don't think that we are talking about a great deal of money in terms of the analysis of Carole's budget. From what this says it is \$300 a month per person for the entry level positions at least in comparison. Beyond that, I really don't have anything else to say. I will be happy to answer any questions that you might have of me, but I think that it is important to recognize, and I'm sure you do, but I think it is important for the record to reflect that there are other factors that control lawyers coming to Coos County. I don't think we will ever – I don't think you can ever do anything, in the big picture of things, to really make Coos County an attractive place for people to want to come as lawyers. I can't. But we can do some minor things that would certainly help. In terms of the provision that you described, Chair Ellis, this is the initial attraction, the training. There is no better organization that I have seen that does that for these people than Carole's operation in Coos County. They do a great job, so I think we need to support that because that is where the pressure is, the churning of those entry level positions.

324 Chair Ellis One area in which I am interested in your observation is whether the PD's office here has a lot of conflict cases they are not able to take, whether their size relative to the caseload makes it difficult given the unit rule on conflicts. Do you have any comment there?

329 J. Gillespie My only ability – for lack of a better description of my work, I am kind of the record keeper in our organization so I track lots of things. Interestingly enough I don't track conflicts, but I am responsible to assign, and my assistant is responsible to assign, substitute lawyers for all the conflict motions, so I see pretty much all of them. In that situation I will tell you that I don't have any ability to gauge that in relation to any other county, but it is not an overwhelming number. I do not see that as an overwhelming number. I think the Public Defender's Office in Coos County has in place an adequate system for recognizing what really is a conflict and what isn't. They do a pretty good of addressing that. We get a number of those motions, but it certainly is not overwhelming. We do not assign out a significant number of cases here that shock me or that cause me concern. In addition I think, and you are always just going to be.... Billy, and I apologize, but Billy will tell you

346 Chair Ellis That is the only name we know.

347 J. Gillespie I apologize and I don't mean to be disrespectful, but we really don't call him a lot for either out-of-county appointments or substitutions where we can't find someone within the system in Coos County. If my assistant calls Billy once a month I would be surprised. He can tell you probably, but it is not an overwhelming situation.

354 Chair Ellis But I think I am hearing you say, and this is a virtue of the smaller county, the conflicts are identified, they are identified early, and you don't end up with the lawyer getting invested in the case and then the conflict appears and then you have

358 J. Gillespie No. By my observation the system that the Public Defender's Office in Coos County runs does a really good job of identifying them early. For instance, it might be an appointment on information, indictment, first appearance, and a conflict is identified. It might be – I will tell you the way that it works exactly. What happens is there is a young woman and she would be angry because I can't remember her name, but she works for Ms. Hamilton, she comes and she picks up the files everyday at arraignment. She checks the names, and if she finds it before the end of the business day, she just comes and tells us and we appoint another lawyer. If in fact it goes beyond the business day then the Public Defender's Office is required to file a motion. Those motions are then filed. They begin immediately after arraignments looking at files. That is one of her first responsibilities in addition to, I assume, generating the discovery request which provides that information. Probably the bulk of those are found within a week. There can be the occasional late witness identification. There can be the occasional late co-defendant identification, but they have a really good system in place to

identify those early conflicts. I misunderstood your earlier question. I thought you were asking about the numbers of those.

- 379 Chair Ellis I'm asking both. Numbers and how long it takes to identify. Related to that, do you get many cases here of incompatibility substitutions where the client says I just can't accept this lawyer anymore and I want to change?
- 384 J. Gillespie It is difficult for me to say in comparison to what. In my overall experience at the current time, with the current personalities that we have, we have never had that problem with Southwest Oregon Public Defense Services' lawyers, as we have had with the consortium members, but to a certain extent that has been personality driven. If I as a judge identify that I believe, and I have in the past identified that I believe that it is caused by the lawyer, the lawyer and myself or the lawyer and presiding judge are going to have a conversation. I will be real honest with you, I have taken lawyers who are part of the consortium and I have told them in my opinion they ought to quit, those very words, because I don't generally mince about things. The reason I have said those kinds of things is that I have felt in that context that they cannot deal with the personalities.
- 398 Chair Ellis Quit the one case or altogether?
- 399 J. Gillespie No quit indigent defense work because they can't deal with it. They need to go do something else and to a certain extent that may be for shock effect. We have had lawyers who are no longer part of the consortium who really have had a hard time, but that is more individual personality driven. I don't believe that is a systematic problem at any level. In relation to the current provision of services by Carole Hamilton's operation very few of those arise, although it is inherent in the indigent defense system. With the current consortium providers there is a very low number of those.
- 409 Chair Ellis Do you have an Early Disposition Program here?
- 409 J. Gillespie Only in relation to what is described in your draft report as a drug court. We run a modified drug court program that is also functioning as an early disposition program and it relates to charges of possession of a controlled substance with specific criteria that I have provided Ms. Swenson. If you would like to see it in writing I am confident she would share with you how our drug court operates. I won't take your time to describe it, but only on that limited basis. I think one of the issues, and you should ask the presiding judge this – has he arrived yet? That is the only Early Disposition Program. I think I would suggest that our docket is moving along sufficiently so that, in my opinion at least, I don't think an implemented early disposition system would accelerate things or involve case dispositions that would be significantly quicker than they are occurring under the current docket system. He can address that, which is really more his role.
- 425 Chair Ellis I was interested, it appears that on occasion lawyers from Eugene and Roseburg are coming in to assist and that surprised me a little because that is two plus hours away. First of all, is the data right?
- 431 J. Gillespie In my experience, yes. Those are the only two places that we can get them from.
- 433 Chair Ellis Is that driven because there aren't private lawyers here that could pick up that occasional conflict?
- 435 J. Gillespie That will pick up, that are willing to pick up, absolutely, 100 percent correct. Let me tell you, and he can comment on his experience in dealing with those people, that we have two people who we have dealt with historically. One is Mark Hendershott and I think he is actually in Sutherlin. The other is Elizabeth Baker. Am I correct?

- 440 B. Strehlow I think that is correct.
- 441 J. Gillespie Those two people have been extremely willing and cooperative in terms of taking these cases because we have nobody else. We actually don't see them very often at all. If I see Mark Hendershott five or six times a year on cases I would be surprised. In any event, they have been extremely cooperative with me, extremely cooperative with my staff, they are great resources for us and we are extremely thankful for each of them because they are willing to come, which is a difficulty. They are very responsive and easy to deal with for the courts. They take care of their responsibilities and they deal with the cases very adequately. I would compliment both of those people as contractors to your organization publicly, because I am very appreciate of the support.
- 453 Chair Ellis A lot of us who don't live here see Coos/Curry like it was one syllable, but I am sure when you get here both geography and other factors come into play. How fluid is the movement between Coos and Curry? How cooperative is the relationship between Coos and Curry or should we really think of them as separate?
- 459 J. Gillespie I don't think you can think of them as separate in the context of this discussion in one sense, and that is because we are a combined judicial district, but in another sense they actually operate with not significantly different protocols, but with protocols that have sort of different names. They actually function slightly differently. When I go down there, and I'm not the brightest bulb in the box by any stretch of the imagination, but I go down there and work on an irregular basis because I am elected in Curry County. I don't have any trouble because our system is almost identical to theirs. I may use a different phrase from time to time but they are very similarly coordinated. But their provision of indigent defense services is significantly different through the operation that John Spicer represents here today which are strictly contractors. Also in my experience in Curry County they are doing a good job of being responsive to me when I am there, although I couldn't speak to that authoritatively because I am not there that often. I probably go down there once a month on average in a year. In answer to your question, I don't think you can separate the two in the context of the discussion simply because of the combined judicial district. I'll tell you, and the presiding judge will speak to this, but just in my opinion we are a very cohesive unit.
- 481 Chair Ellis "We" meaning?
- 481 J. Gillespie Judges. The six judges in the district, two of whom are permanently assigned in Gold Beach and four of whom are currently assigned in Coos County but who switch. We are very – I think we work together and of course Ms. Beaman has just come on, but I have every confidence that she will follow the tradition that we work together very closely. We communicate often; we operate with a degree of understanding that we have to have commonality of practice, because it is too close. When I am in Curry County I see a lot of Coos County lawyers. We have Curry County lawyers, not as frequently, who come to Coos County. It is a very cohesive group in that respect.
- 494 Chair Ellis The reason I ask this is we do have examples elsewhere in the state of a PD provider operating in more than one county. We have that in the Hood River/Wasco area; we have it in Multnomah/Washington County area and since you do have a single judicial district covering the two counties, should we be thinking in terms of defense provision that would be cross county and not the way it seems to be fairly vulcanized.
- 504 J. Gillespie I have no opinion about that and you should ask Ms. Hamilton her opinion of that. I would observe, and my memory in the past is that, Southwest Oregon Public Defense Services did contract and provide those indigent defense services, at least at some level, in Curry County. I don't recall when it started, when it ended, or why, and if I did it would just be rumor. I wouldn't be prepared to address that and I have no real opinion about that. I don't think I would be a good person to assess that.

514 Chair Ellis We'll get some input from others.

515 J. Gillespie Ms. Hamilton can address that specifically.

515 J. Potter Taking off on your comments about getting people to stay here. It is an issue that we find in other counties as well, getting lawyers to stay. You obviously stayed. Had you not been elected in 1992 to the district court, would you have stayed?

520 J. Gillespie Yes, but I live in the same house I moved to in 1979. I don't think that I am a good example.

524 J. Potter It reinforces your theory that those who were born and raised here either come back or wish to stay here. Those are the people that are staying.

525 J. Gillespie Let me emphasize that I wasn't born and raised here. I was born and raised in Eugene but I came here for a job and that was the only reason in 1979 that I came here. I stayed and I don't want to suggest that I am different. There are other people who have come and stayed. Paul Frazier has come and stayed in the district attorney's office which is kind of unusual. Ms. Hamilton has come and stayed. She actually left for an interim period and came back and said she was actually happy to be back. Rick Barron came from Portland. He stayed here for whatever reason. I am a fan of Coos County. I am not saying that we have to bribe people, but we have to at least compete on an equitable basis. There are going to be reasons that people are going to stay. There are going to be reasons that people are going to go. A woman just left the district attorney's office to go to Deschutes County where she is going to make monumentally more money and work significantly less.

543 J. Stevens And spend it all on housing.

544 J. Gillespie That is a choice she wants to make that I wouldn't make, but by the same token I respect her choice in doing so because she is a young woman, she is a single person and I think there are great opportunities other places and I think there are opportunities here. Everybody is different and I don't think we can ever, and that is why I am suggesting here, I don't think you can drive the factor that keeps people here, but I think you can affect the factor that brings people here.

552 Chair Ellis Any other questions?

553 J. Gillespie I apologize for taking so much of your time.

553 Chair Ellis Don't apologize. We appreciate it.

556 J. Barron Good morning.

556 Chair Ellis Welcome Judge.

556 J. Barron I was going to talk about the docketing system as it was mentioned in the report, but I wanted to mention the Early Disposition Program, and frankly - the report alludes to it - we have been accused for years of having early disposition of all cases. Our Early Disposition Program started back in the 1980's and it has continued. I might comment on one other point you raised, we have had lawyers come over here to take cases from Grants Pass and Portland, especially in the juvenile field. We have had people come down from Portland because we can't get anybody locally to take a termination of parental rights case. Medford has had, not recently, but we have had lawyers from Medford come over because of the number of conflicts. As the consortium group gets smaller that is going to have to increase because of the number of people who repeat through the system and then have family members who come into the system. The conflicts are going to rise and we will need to get more, and we

have had people leave the consortium. We have one person who is here now who left and then went back into it and my feeling is will probably leave again and maybe there are one or two others that, as their private practices develop, will leave the consortium. There really right now is no one who will necessarily jump up and take that caseload. The consortium chooses who comes in to work with them and now that they are down to five, I believe, and I won't say they haven't opened it up, but they just feel that there is, for whatever reason, they are just not going to add anybody to it. I get worried about that. In Curry County they even have more of a problem. One person quit their consortium and another person went on the bench, so we have Mr. Spicer who has done it for years and Mr. Gardner coming back who used to do some of the work and we have some of the people coming down from here. It is going to get harder and harder to provide this. I think I mentioned one other time; I really do not want to go back to the days where I call somebody and say "You are appointed." They didn't appreciate that and it wasn't the most pleasant thing to do to order somebody to take a case and then potentially have a battle to force them to work for \$40 an hour. I do think there needs to be some system for getting people down here. I talked to somebody in the public defender's office recently and he and his wife moved down here recently and they look like they actually might stay down here. I came down here for the same reason that Judge Gillespie did and that was for a job in 1971. I really didn't think I was going to stay and went from the DA's office to private practice and then to the bench. That is the reason that I stayed, and it is a great community and a great place to live. It is a great place to have kids and raise kids and do all of those things. People do stay. I just wanted to talk briefly about the criminal case process. My understanding is that you have all had a chance to look at the preliminary report. I will just maybe give you a brief history because I don't want to take up all your time here. When I came down here in 1971 I was told, practically immediately, that this county did their cases quickly. I don't know if there is anybody old enough in the room to remember Al King. Frankly, his disposition program was he set twenty trials for Monday and if sixteen settled and you were number seventeen you had better be prepared to go to trial on Monday. That was the way he set cases. The docketing system we have now is really pretty easy compared to that.

631 Chair Ellis

The rocket docket.

631 J. Barron

I always like to remind people of him. When I came in that is what I was told: 1) the cases go to trial when they are set; and 2) don't ask for a postponement. So, when I tried cases basically I prepared myself for trial and I rarely - of course this just could be me remembering the good old days - asked for a postponement of a case. Also when I first got on the bench in 1980 I traveled around to different counties - traveling was more fun then when I was younger - and looked at how cases were processed. When Curry County got its first circuit judge in 1978, one of the requirements was that the judge serve in another county one week a month for a while. I shared that responsibility and I would go to the county every once in awhile and I would have a case and they would ask that it be set over and I would go back two months later and they would come in and ask that it be set over. I didn't think that was the way to run a system. Our system when I first came down was every criminal case that came in on the day it was arraigned was set for trial, so you had two appearances - arraignment and trial or eventually they would plead. Then we got up to the point when there were actually circuit and district judges, and they set up to twelve cases a day for two of us, three days a week, because Monday and Fridays were non-jury matters and the cases always went away. They went away late, but they went away and that also didn't seem to be the most productive way of running a system - setting every case for trial, when you knew over 90 percent of the cases were going to settle. It seemed to me we needed a way to weed those cases out and get that done, so the system that we have probably came into existence in the late '80's. We had input, and I think people forget because a lot of them are gone, we had input from the DA's office and the public defender's office and I forget exactly when that came into existence, but we talked to both sides about a system that would stop us from setting all of these trials. There was a discussion and we decided to try this system, I am not going to say that it was the most popular system in the world to start with, but certainly people have gotten used to it. I can tell

you one thing is that I know that we probably train most of the lawyers in Deschutes County because a lot of people have left here and gone to Deschutes County and other counties. I know a lot of people have come back and said you know we weren't always happy with that system but at least we got the cases disposed of. I don't know if that is a ringing endorsement or I take that as a compliment, but at least it is the system they look back on to say we were able to get our cases resolved. We have a system that says you get arraignment; you get a plea date five weeks after you come in and enter a plea or set trial. If you are in custody it is three weeks because of the sixty-day rule. People waive the sixty-day rule and we extend the plea date. We had the same five week rule for misdemeanors until the attorneys came and said you know we don't have enough time because of the volume. We extended that to seven weeks and that solved the problem. The system has come into effect and it has worked for years. It has disposed of cases quickly. The report indicates that we have a high rate of jury trials and frankly we do, but I do want to point out that over ninety percent of the cases are not tried, so we are not talking about a huge percentage of cases here. I do want to point out in the same time period that the report mentions, 2006, that the average age of cases going to trial is half of what the average age is statewide.

712 Chair Ellis

That is impressive.

712 J. Barron

You can look at the 2006 statistics and it just not quite half, but it is about half the time to get a case to trial statewide. They may be trying fewer cases but they are taking longer to get them to trial. We are getting them to trial and disposed of. There are a lot of things, and the report - I don't know if it meant to do that - but there appears to be an implication that the docketing system results in more trials. I think that if that is an implication - it could just be in the same paragraph - that that is somewhat simplistic because there are a lot of things that drive trial rates and I will leave some stats that we had the clerk's office collect for us and then Judge Gillespie - his printed copy is better than mine because when I printed it out all the columns got shifted. I want to mention this, we started collecting these 13 years ago and I believe he has given you the 2006 case disposition report. If you look at this, these stats relate to the trials that are set, actually set for trial. It lists the number of trials and it shows trials and resets. One of the things that it mentioned and I have dealt with this same thing for years, postponements are rarely granted. I think I have had that discussion with every Chief Justice that I served under. The last time with Chief Justice Carson when the Criminal Advisory Commission said, I think the word was "never" granted a postponement and never allowed a plea negotiated after the pleading. I think I heard "never" from somebody when they asked me to comment on that. We set up these stats and the stats show over the years there is an average of about nine percent, I think it is eleven percent resets, and negotiated pleas over the years have been nineteen percent after pleading, so we do allow those things and I think if you look at any case management theories, the theories are that you shouldn't have a postponement rate of more than fifteen percent. I think I have read somewhere ten percent, so we are in the ballpark. The problem with postponing cases... I mean I do postpone cases. People who continually say this don't know the number that I grant. The granted ones aren't things that people remember, but there are resets in cases and there are negotiations after the plea date. The main reason we had a system here was to prevent resetting all the trials. We used to set twelve and when we instituted this system we got down to the point, for two circuit judges, we got down to the point where we were setting five a day, so from twelve to five. We accomplished the purpose that we wanted to. We disposed of most of the cases that are easily disposed of and we set fewer trial dates and so there wasn't the scramble of "Okay, are you going to try the case or are we going to settle?" We actually accomplished a pretty good goal and now that we have three judges we are still not setting the number that we used to set. The docketing system has worked. Obviously, people think sometimes when we don't allow a late plea that that isn't taken into account. I think we try to take into account the litigants. I do think that all of us should remember that a court system is a public system, that there is an interest in it other than the parties'. The public has a right and an interest in how the court system works. I think one of the things that you always hear is that the courts are always delayed.

800 Chair Ellis In some other counties we have had testimony that some of the defense providers were delinquent. In other words they wouldn't come to hearings on time. They were the cause of set overs. Are you getting anything like that?

808 J. Barron No. In our county people are where they are supposed to be and when they are not there are problems. We have had contempt hearings and fines, very few. And when people are, not the first time, but repeat whiffers, if I can use that term, there are fines.

816 Chair Ellis A well know baseball and golf phrase.

817 J. Barron Well, a repeat whiffer has suffered some financial consequences.

819 Chair Ellis I asked a question earlier that I would be interested in your thoughts on. This is a single judicial district but there are two counties. I think you are elected on a two county basis. I saw comments in the reports from one of the other judges relating to service in Curry County, that he would like to see a PD but he thinks that the county is probably too small to support one. I also noticed that at least one of the lawyers, and I think it is Mr. Inokuchi does defense work in both counties. As I listen to this, SWOPDS seems to be a very effective organization.

840 J. Barron Right.

841 Chair Ellis What would your reaction be to encouraging SWOPDS to begin to function in both counties and not just in one?

842 J. Barron Well, again, and I think Judge Gillespie said that he wasn't sure, I would certainly like to have them give it another shot. Carole is an effective administrator and I have appreciated the fact that she has come forward.

849 Chair Ellis Those are a precious commodity.

850 J. Barron Correct, and she has been a great help in dealing with her office and the courts and we appreciate that. I would hope that she would try and recruit and run that system again. It is somebody living down there. I know there are difficulties that we have. We are managing two judges, a judge in North Bend, and three judges here, so that becomes a little harder and if the person down there doesn't feel they are getting the support, that is they don't have other people coming around, then you begin to feel isolated like you are the only one there. It is difficult and it may be better to leave it to the bar down there if the bar can take the cases. I would like to see the system they have down there as well. We are trying right now, with the two new judges; we are trying to get all of the procedures the same for both counties and that would be of some assistance. There is going to be some effort to do that. Change is always hard but we are trying to work on forms and those things first. I would just encourage her to try the system again. It was tried and it didn't work and one of the main reasons is they had a hard time keeping people down there. Again, the problem is going to be attracting people to come down there and live in Curry County. Curry County is fairly isolated.

883 Chair Ellis As I listened to Judge Gillespie the place where good training is happening is SWOPDS. The place that has good management is there. Given the fact that it is a single judicial district it just seemed to me that it kind of cried out that maybe this is something that would do very well.

895 J. Barron I think it would. They have tried it and after a while it ended. They asked to end it if I recall. It is something that I would like to try again.

901 Chair Ellis When was it tried? How long ago?

- 901 C. Hamilton Curry went to a consortium basis in January, 2002.
- 903 J. Barron That is when it ended?
- 903 C. Hamilton Yes. That is when it ended.
- 904 J. Barron It went for about four years?
- 906 C. Hamilton I started here in '96 and we had the Curry County office then. I don't know – I tried to find out when it was initiated but I could not figure it out yesterday.
- 909 J. Stevens Can I ask, being from the dry side of the state I don't know, how far is it from Gold Beach to Coos Bay?
- 911 J. Barron About 80 miles.
- 912 J. Stevens So, getting somebody feeling attached is a real issue?
- 914 J. Barron It is about an hour and a half drive no matter how you drive to get to Gold Beach. I have driven it different ways. It is not a pleasant drive, sometimes, to go up 101 at night in the winter or go down it even in the daylight in winter sometimes, because sometimes there is not a road. They could try it again but the training that would have to go on there would require somebody from Coos County to be down there, which would be an expense and someone saying "I am going to stay down there and add that." This, again, is a great place to live. Curry County has the most beautiful coastline in the world. They have great rivers and it is a great place to be. Convincing people to stay there, like here or in Burns or any other place, becomes a little harder to do. I hope that she would try again. They come in with their lawyers and they work with them on a regular basis.
- 946 Chair Ellis We have seen elsewhere in the state situations like that where a single PD functions in more than one court system. The two I am thinking of have been successful.
- 954 J. Barron By the way, I might add that I wanted to say one thing on postponements. There has been an agreement with the judges that I see all of those. I have seen and handled all those for years, except when I am gone. The reason for that is consistency. People aren't surprised about what happens with the motion for postponement when they file it, whether they are denied or allowed. There isn't a surprise here because the system has been the same for twenty some years.
- 974 Chair Ellis What do you think will be the impact of the funding cutback in other parts of the criminal justice system that we are reading about? What we will be the impact on the defense side?
[end of tape]

TAPE 1; SIDE B

- 005 J. Barron The cutback on jail space may also effect how the state files their cases. It may have an effect on what cases are negotiated. It may actually have an effect on raising the trial levels and the number of trials going knowing that there is not the same sort of possible consequence that there use to be here. I think it is going to be two-edged. They may be getting to a caseload that is appropriate for them. They have had heavy caseloads at times. Sometimes it has dropped back. It has fluctuated down here to where they have had to get extra cases and they have also had times where they just quit working the last month and a half to two months and not taken any cases because they were way over their caseload. I am not too sure. If the DA's office is able to maintain the number of people they have, then we may have filing of more misdemeanors, although they have already indicated that anything Class B and below is going to be treated basically as a violation. Some of the Class A misdemeanors also may be

treated as violations and that obviously affects the caseload funding. I hate to have things necessarily driven by caseload, because it may mean “Okay, now these people are actually able to do a better job because they have fewer cases, rather than take money away from them.”

- 023 Chair Ellis Don't misread where I was going.
- 023 J. Barron No. I know you are not doing that. I don't have anything more other than I did tell Ms. Swenson that I was going to talk about the docketing system because that seemed to be somewhat of a concern here. There is a part in here that says “Occasionally, there are not enough judges or courtrooms for the number of trials set.” “Occasionally,” I think, overstates it. Judge Gillespie, sent an e-mail to me and we were talking about this. He indicated he can remember two. Although again, this may be selective memory on my part, over the twenty-seven years I have been on the bench, if it is more than I can count on two hands, I would be surprised. Case managers also say that one of the most important things you have - there are two important things - don't run excessive numbers of postponements and have firm trial dates. We have had both of those in our system. I have had four courtrooms going and had a Curry judge come up and had a jury trial in the Commissioner's courtroom to make sure we get cases tried. All of us, I think one time or another but not often, have tried one jury case, gotten it done and started another jury case the same day to make sure they get done. Every one of our trials is usually one day or less, jury trial or otherwise. The attorneys are moving them through the system and we are moving them through the system.
- 044 Chair Ellis If you see a defense lawyer who is performing at a quality level that you are not satisfied with, do you know where to go to pursue that problem?
- 046 J. Barron I have talked to Ms. Hamilton about it. At times I have discussions, as Judge Gillespie has, with attorneys about what they are doing and whether they should continue doing this because of conflicts that they appear to have with their clients or client complaints or their general attitude and how they treat people. We have had those discussions, but I have certainly worked with Ms. Hamilton before on attorneys. If it is a consortium member then we have to deal with them separately because they are all separate individuals and we have talked with consortium members about what they should be doing.
- 054 Chair Ellis Judge Gillespie indicated that he thought he had good communications with Mr. Strehlow. I happen to know his name.
- 056 J. Barron That's Billy.
- 056 Chair Ellis Do you feel comfortable that you can communicate in the same way?
- 057 J. Barron The most contact I have usually had with him is on death penalty cases over the years and those cases we have usually had an attorney quickly. We have usually appointed local counsel to go over to the jail and say “Hey, don't say anything to the police”, so we have got that. They have always been very quick on that. I think the longest they have ever taken was maybe a couple days, because we had a specific juvenile case with a specific issue and that took awhile trying to find somebody who had that exact experience to come down and handle it. They are otherwise very responsive to us.
- 066 Chair Ellis One of the things that we have tried to encourage in all the different regions is good communication between the different components of the criminal justice system - prosecution, defense, victims, court, corrections, etc. How do you feel that is happening here? Is that working well and how is the defense community participating in those system-wide discussions?

- 071 J. Barron I think well. There is a natural rivalry between the DA's and the public defender's office and sometimes there are personality rivalries beyond what they should be, but there are those rivalries. I think generally the system works fairly well. At times, we have had our discussions with the DA's office about different practices that they have that we would like to see changed and sometimes they change and sometimes they don't, but its easy to communicate about those. We don't fully understand all of their processes in their office, and we are not running their office so we might see something that we don't like that they feel they have to do. I think the system works fairly well. Over the years it has changed from when I started in the DA's office and police agencies didn't seem to worry about overtime or the pay. You could call a police officer and say "I want this done" and they would go out and do it. You have different labor contracts, overtime pay, and limited budgets by those agencies, so sometimes I think it is not the same as it used to be as far as getting things done. They have regular police meetings that the DA's attend, but I think the communication with the court and getting things done when we initiate programs has been good on both parts.
- 090 Chair Ellis Do you feel that the defense community, first of all, is at the table on these issues, and secondly, working in a constructive, helpful, system-cooperative way?
- 093 J. Barron Carole's office has been cooperative in the mental health court, the drug court program, the Domestic Violence Deferred Sentencing Program. By the way the drug court and the domestic violence program are early disposition programs. They have seven days to make a choice or they lose out and they don't get the program. They have been cooperative in that as has the consortium. We had a family drug treatment program a while ago and that got cut because of the state cuts when the courts went to four days. We have another program coming on board that we are going to be talking to the attorneys in about August, that I am sure they will be enthusiastic about because it is going to help children. It is going to help children from zero to three or zero to five, to get those families back together. Carole has been working with that as have consortium members. We tried to get, for instance, people coming in on the day that people came in initially on juvenile cases to have an attorney there immediately. Carole's office agreed to do that and has continued to do that. The consortium at first agreed and then felt that they didn't want to participate in it anymore because it required them to come over and sometimes there wasn't an appointment and didn't feel they could be out of their office or wanted to be out of the office that long. The public defender handles about 75 percent of the caseload here. They have been extremely cooperative in working with the courts, and I think, as far as the relationship with the DA's office is concerned I am not hearing any great problems about that.
- 115 Chair Ellis One other area I wanted to ask you about is juvenile versus adult. A lot of the communities tend to specialize in the juvenile dependency/delinquency separate from those that are doing defense of adult accused. How is that handled here, and are you satisfied with how the juvenile side is being staffed?
- 121 J. Barron I am satisfied with how the juvenile side is being staffed by the Public Defender's Office now. I am satisfied with how the DA's office - the DA's office has had somebody there for years. In the consortium the staffing is fine. Over the years juvenile was the poor stepchild of the system for a long time and nobody wanted to do juvenile work. In fact it was something that judges generally didn't want to do. But it has become, probably to me, the most complicated area, dependency cases especially, in the law. The Public Defender's office and I would say most of the consortium members have learned how to do that and come into court prepared and willing to handle the cases. They still handle a wide variety of cases. I think we are still too small to say that this part of the PD's office or this part of the consortium will only do juvenile and the rest will do criminal. I'm not too sure anybody would specifically want to do that. They might. I think they handle the caseloads fine. I have done the juvenile work for twenty-six of the twenty-seven years that I have been on the bench. I have seen that grow to where it is a serious caseload that they have and they take it seriously.

- 140 Chair Ellis Any other questions?
- 141 J. Potter Just one quick question, Judge. The statistics that you have here, and maybe this is a question I should ask the DA's office but maybe you know the answer. You have a dismissal rate of thirty-five percent over the thirteen years. Do you happen to know if those cases are dismissed entirely out of the system, or are they being re-filed at some point?
- 145 J. Barron I do know that we have a percentage that are re-filed. Some of them are dismissed out of the system. Some are dismissed because it will come up to the trial and somebody will feel that they want something else, so they will dismiss it and re-file it. Some, a few, are dismissed because there has been a request to postpone a trial and the request, I don't feel, is warranted or it is untimely and I have denied that. By the way, I might point out that everybody in this county knows that if they request a postponement within fourteen days of getting notice of the trial it is automatically granted. They have to contact their witnesses and everything. Beyond that, they have to have a good cause for doing it. Some of them are dismissed and re-filed because of that. Some of them are dismissed because the DA's office decided they want something else or they need to get some other thing that they can get together. Some of them are dismissed just because the evidence isn't there or witnesses have left and they stay dismissed. By the way, about pleas, since you mentioned that on these stats, there was a discussion about once the plea date passed you either had to plead guilty to the charges, they were dismissed or they went to trial. There is about eleven percent that pleads straight up. There is a percentage of those cases in which, I would say drunk driving cases, somebody enters a not guilty plea and pleads the day of trial. There are some of those in here.
- 168 Chair Ellis Thank you very much.
- 169 J. Barron Thank you.
- 170 P. Frasier For the record I'm Paul Frasier and I am the Chief Deputy District Attorney here in Coos County. I have been here since 1990.
- 177 Chair Ellis You want to explain yourself why you stayed?
- 178 P. Frasier Sure. I came here from Josephine County. What happened was a deputy DA that worked here, Mr. Campbell, was stolen away by Josephine County for more money and Mr. Burgett, who was the DA, reciprocated and stole me away from Josephine County by offering me more money. I came here for the job and primarily because I was going to get paid more than what I was getting in Josephine County. Since I have been the chief deputy I have been paid pretty much, well it has been below average for a chief deputy throughout the state, but it hasn't been enough to say that I'm getting out of here. My wife and I have raised six children here and we have set some roots down and we like it here. We do have the problem in our office of being able to attract and keep people. I am one of the rarities. In fact, I was discussing this the other day with my boss and in the 17 years that I have been here every deputy DA that we have had, that we have hired, that we have felt would have been worth keeping, we have lost.
- 192 Chair Ellis And your pay scale is higher than the PD pay scale.
- 194 P. Frasier It is a bit higher. I think the draft report has it at \$3,400 a month. I think our starting pay is about \$3,575. Our starting pay is not competitive. Right now a deputy DA in Coos County will be starting out about \$42,000 to \$43,000 a year. To start in Clackamas County is \$57,000. I just saw an advertisement for that. It is over \$50,000 a year to start in Astoria. Deschutes County is paying \$63,000 to start. We just lose deputy DA's. We get them going, get them trained, and in two or three years they are gone. We have lost them to Clackamas County, Lincoln County, Linn County, and Lane County.

- 205 Chair Ellis Did the ones you lose stay in prosecution but just go to other counties?
- 205 P. Frasier The majority have. I have only seen one or two that have gone into private practice. The majority have gone on to other district attorney offices or we have actually had one end up at the U.S. Attorney's Office and a couple at the Department of Justice. Generally, the ones that are worth keeping that have left have stayed in prosecution. We have had trouble attracting people. I don't know if I can speak for Carole but I will just say this, I have noticed in the last couple of years the quality of the applicants has not been exactly stellar. We got lucky here the last time we were hiring and I think our office right now is pretty good, but there have been times when we have only had one or two applicants for a position and you look at them and you go "What do you do?"
- 218 Chair Ellis How many are in the DA's office here?
- 219 P. Frasier Right now there is the elected DA, there is myself, we have Mr. White and Brent Foster, and she is leaving to go Deschutes County the end of next week. I do have authorization to fill that position but we haven't had any applicants as of yet. Steve Hoddle, Rich Tovey and then our juvenile prosecutor, Karen McClintock, so there is a total of seven. When Mr. Burgett leaves at the end of the year, when he retires, and assuming I am appointed in his place, there will be another reduction in the office so we will be down to six.
- 229 Chair Ellis And the SWOPDS is about equal number?
- 230 C. Hamilton We have six right now and I only do half a caseload, so that is five and a half.
- 231 P. Frasier Then you have the consortium lawyers on top of that and we do get some privately retained attorneys.
- 233 Chair Ellis I asked Judge Barron a question and I wanted to ask you too. That is the degree of cooperation, good communication, involvement by defense in system issues. What is your observation there?
- 237 P. Frasier I think with system issues we do talk quite a bit. I think there is a lot of communication there. Obviously, we are not going to agree on everything but I think there is communication there. At least from my perspective when I have been involved in the conversations if there is a way to work out a problem in a situation, we are certainly willing and able to accommodate that. I think Carole's office is especially that way too.
- 242 Chair Ellis Is there a formal structure for criminal justice participants to meet and talk about system issues or is it ad hoc?
- 245 P. Frasier Well, I know we have the Public Safety Council and I'm not sure, frankly, how much my boss has participated in it. That was something that was kind of laid on his desk and I don't know how much he actually participates in that himself. Assuming I get the position I plan on participating in that. My experience has been, in the few times I have gone, that it is a good situation.
- 252 Chair Ellis Other questions?
- 253 J. Potter We have heard twice now reference to one of your employees going to Deschutes County. Do you know what the pay disparity is? What she went from and to?
- 255 P. Frasier She hasn't told me what she went to. She hasn't told me those numbers but I would be very surprised if she is not going to be earning \$15,000 to \$20,000 a year more.

- 259 J. Potter You said \$3,575 a month was the starting for your office right now?
- 260 P. Frasier Yes. That is one of the things that again, assuming I get the position, that I want to address with the Commissioners. The problem we have, and I think you asked what the caseload was like. Right now I'm not sure where the caseload is going to go. We have made some reductions. The second attorney that is going to be laid off, that is not going to occur until December or actually January 1, so we will be looking at that issue then. We are going to have one attorney that leaves next week and I won't have anybody to fill that slot. Our juvenile prosecutor is going through a difficult pregnancy and she has been out for the majority if not all of her pregnancy. I don't expect her back before the end of the year, so we are going to have.... At least in the short-term I am going to be down two, maybe three attorneys for a period of time until we can figure out what we are doing. That is going to have an effect. How much, I don't know. I did want to say that I was looking at the numbers on the public safety agencies and it had down there "The sheriff's office initiated approximately half of the criminal cases in the county."
- 277 J. Potter What page are you on?
- 277 P. Frasier This is on page thirteen. I did the numbers when we were hit with the budget crisis earlier this year. It is actually a quarter of our cases that come from the sheriff's office. There are two other police agencies that we deal with that are not listed there. There is the Oregon State Police and the Powers Police Department. As far as the docket goes I'll just throw this out. I like the docket system we have here in Coos County. I came from Josephine County and while I was there you were lucky if you got a trial set within a year on an out-of-custody defendant. Here I do the office trial calendar every week and when I did last week's the latest trial we have set out is in November of this year. So cases move and I like that because in Josephine County you get a trial set, send out all these subpoenas, we get them served and then the case settles and you have wasted all those resources. Here we go through a period of negotiation and if it is going settle, it settles or is set for trial, and then that is when we send out subpoenas. I think it saves us resources in our office.
- 296 Chair Ellis I am going to ask you a question that is probably hard for you to answer, and whatever answer you give, the people in the room will discount because of your position, but let me ask it anyway. Do you think the cases that don't settle by plea, are the right ones? In other words, at the plea negotiation level do the defense lawyers settle the ones and try the ones that should be tried, or do you have a sense that that is not so?
- 303 P. Frasier I think, from my perspective, I think the cases that are going to trial are cases that probably should go to trial. The cases that I would call "miss a lot" from my perspective - those are the ones that are settling. The ones where the evidence is perhaps a little on the shady side if you will, or light, those are the ones that are going to trial. That is one of the issues that I want to deal with assuming that I get the position of district attorney is I think sometimes from my perspective, there are cases where we should be taking a harder line, and are the cases which I think are "miss a lot." We are perhaps too lenient in our plea negotiations and then on cases that do go to trial where the evidence is perhaps weaker, for whatever reason, we seem to be a little more unreasonable. I think that is from our office more than it is from the public defender's office. I think the cases that go to trial are probably the ones where they have made the correct assessment and should go to trial. Now there are cases, and every defense attorney is going to run into this, where the client isn't going to accept anything that is offered. We do have a couple of those and that is the client's decision not the public defender's decision.
- 323 Chair Ellis There was some speculation as to what the funding cuts will do and one thought that I thought I heard was that many cases that have been prosecuted will now be treated as violations.
- 328 P. Frasier That is right.

- 328 Chair Ellis I thought I sensed that some of those that will be prosecuted will be at a lesser offense level than they might have been. Will that drive up trials? Do you think it will actually have an increase in the cost of defense impact?
- 332 P. Frasier I hope it doesn't because the reason we are doing that is because I don't think I am going to have the personnel to do as much. I am hoping those will go down. If our trial rates go up we are going to have to adjust the type of cases we are filing as crimes even further because we are certainly not going to have the personnel to do all those trials.
- 338 Chair Ellis Any other questions? Your witness.
- 339 S. McCrea I don't actually have any questions. I do have three observations. The first is it sounds like you have your work cut out for you with what you have described and what I read in the Oregonian article; but second, it seems like you are the person to do this; and third, we have been on the opposite side of the table in a number of trials over the years and you have always been willing to talk and we didn't always agree but you were reasonable in handling things.
- 345 P. Frasier Thank you, Shaun I appreciate that. Write the Governor a letter, will you?
- 346 S. McCrea Tell me when.
- 348 Chair Ellis Thanks a lot. Why don't we take about a 10 minute recess and we'll come back about 10:50.
- (Recess)
- 367 Chair Ellis (Called the meeting back to order.) Good morning.
- 370 N. Stewart I am Nancy Lee Stewart and I am the child welfare manager for Coos and Curry Counties. Like others before me I certainly want to thank those of you who came to both counties to meet with staff and to bring this discussion to light. Thank you. I just want to share a few comments and then if there are any questions you have I would be happy to answer. I just feel that we, as expressed before, have good working relationships with the attorneys in both counties. They participate regularly at our citizen review boards, at family meetings and even child and family teams for mental health clients. I was at one board meeting recently where I think we had four attorneys in the room for a child and family meeting. We do appreciate the attorneys making that time. All of the attorneys certainly seem very busy. Not knowing specifically about their workload, they certainly seem to be working very hard to keep up. Any help or support we would certainly appreciate because the better support they have the more they can work for the clients and families, obviously. The other comment I would just like to make is about the kind of changing nature of our juvenile dependency cases. I have worked for child welfare just a few months short of twenty years and over time, as you are probably aware, the complexity continues to increase. We have a lot of rapidly changing policies, procedures, forms, all of which take time and effort. Discovery has gone from something minimal to a full-time job in our office for a support person. Sometimes attorneys will be getting literally volumes and stacks. There is just so much to do. One of the other pieces that we do have in place that has been very helpful is that Ed Jones, the trial court administrator for many years, convened an interagency court team meeting in Coos County where we have OYA, we have the juvenile department, we have child welfare, CASA, attorneys, court staff, all come together around processes or changes that will affect other players. Those meetings have been very helpful in keeping everybody informed and aware of needed changes or rules or other protocols. Also, when Tim Travis comes and does the legislative road show, Coos County has about, I would say probably, the largest percentage of turnout. We have very good support not only from the attorneys and the court staff. Judge Barron almost always attends. I think he has attended all of them. The police show up, all kinds of people, and we have a very large cross section of those and I think that that all helps

the community. The other thing I would just say about our clients is that in rural counties, a lot of times the attorneys are also dealing with the same set of circumstances that my staff is dealing with. Clients may not have a phone or have a cell phone that doesn't work where they live because it is too rural. They might not have transportation and we have large distances within both counties. You can drive for an hour and still be in the county with rural winding roads or whatever. I think those are factors that affect the work that the staff deal with on a regular basis.

- 430 J. Potter Nancy, is there bus service within these two counties?
- 430 N. Stewart There is a very limited bus loop that takes most of the day to kind of make a circuit in Coos and Curry. In Curry it is like three days a week. You might have to leave quite early to get someplace by 11:00 or something. So, it is very limited and there is no other public transportation.
- 437 Chair Ellis Any other questions?
- 437 S. McCrea You laid it out very well. Thank you.
- 444 Chair Ellis Good morning.
- 444 C. Hamilton Good morning. I am Carole Hamilton and I am the Director of the Southwest Public Defenders.
- 445 N. Nylander I'm Nick Nylander and am in private practice here and am on the Board of Directors in SWOPDS and have been for twenty-some years, thirty years maybe, through all the administrations anyway.
- 449 J. Potter And that is the correct pronunciation "SWOPDS."
- 449 N. Nylander "SWOPDS".
- 451 Chair Ellis I have been struggling all morning.
- 451 N. Nylander Geographically, we have two courtrooms. One is over in Coquille and the other is the Coos County Annex over in North Bend. I was born in the Coos County Annex in 1947. I went away to school and came back and went into private practice in 1972 and have been here ever since. I kind of exemplify the type of people who like to stay because I like to hunt, fish, clam, crab, that type of thing, and that is the type of people who tend to stay, although we certainly have people with lots of different interests. A couple of things on the funding - everybody wants money but this office does need more money both for entry level jobs and to keep people here. It has been our goal through the years. Number one is to bring us up to speed with the DA's office, to level the playing field. And we have been historically behind them since this all started. Second, we would like to get commensurate with other public defender offices. That is a little like comparing apples to oranges I realize and more difficult, but our initial goal is to at least have a budget comparable to the district attorney's office.
- 473 Chair Ellis What is the data on the entry level now?
- 474 C. Hamilton Entry level is \$3,087.
- 475 Chair Ellis Versus the DA?
- 475 C. Hamilton \$3,575.

- 476 N. Nylander As indicated there have been DAs going from Coos to Deschutes but they were entering at like \$60,000 or \$65,000 a year on the transfer. Mr. Frasier's estimate that they are making \$15,000 a year more is accurate. It does cost more to live there and we can compare all that. The other – the money thing would obviously also help people stay here and it would certainly improve the quality of indigent defense. The more experienced lawyers you get the better the job they do of representing people. The other thing that has been mentioned here, and where I see having people who have been here awhile can help, is that in this county historically - and like I said I have been here since '72 practicing law - there has always been a great relationship between the defense bar and the prosecution. There has never been this.... There have been personalities at times, but by and large everyone gets along. I think the same is true in the civil plaintiff and defense bars. This bar has always had a good relationship and the longer people stay, the longer you have a relationship with the prosecution, the more you are trusted or whatever. We participate more effectively if we have people with more longevity. You see it not only in individual representation but I think you see it in just policies and procedures and that type of thing.
- 505 Chair Ellis I think I was told there are seven FTEs?
- 506 C. Hamilton Six. Six attorneys.
- 507 Chair Ellis And of those give me a sense how long, what the experience level is.
- 507 C. Hamilton Ron Cox has been there twenty-seven years. I have been there almost eleven. Alan Goldman has been there seven years. Stacey Lowe has been there two and a half, Joel Curelo one and a half, and James von Hippel one year.
- 512 Chair Ellis So about four that are in the two or three year range and two with more experience?
- 514 C. Hamilton I'd say three and three. Seven, eleven and twenty-seven for the more practiced and then two and a half, one a half and one for the lesser experienced.
- 517 Chair Ellis I wanted to ask, I know there is a footnote in the report that having SWOPDS operate in both counties ended in 2001.
- 521 C. Hamilton Actually, it would have been December, 2001 because January 2002 was our first contract without Curry.
- 525 Chair Ellis You can tell from my questions, a lot of what I read in the reports indicates that it does seem like a pretty good concept. Here you have got Curry County, with a lower population, not that many lawyers, having trouble in some ways providing the service. You have a judge from Curry County saying he would love to see a PD there but it is too small to support a PD on its own. I know there is a travel issue but a lot seems to me to indicate that the economies of scale that would happen if you had an office in Gold Beach, but handled the training the way you do and the management and communications and all of that. What happened in '01 and what is your reaction in trying to revisit that.
- 540 N. Nylander Basically what happened was we were approached to assume Curry County. There was some skepticism on the board about whether we should venture out and do that but we decided to try it. I think overall what happened was, one, it is hard to recruit people down there lawyer-wise, so money was an issue just in getting lawyers down there in the first place. Also what we found was that to mentor them, teach them, that type of thing, was expensive for us economically and certainly time-wise. As previously indicated, it is an hour and half down. You can't just drop in.
- 553 Chair Ellis It is clearly not a place you could commute very well.

- 553 N. Nylander No.
- 554 Chair Ellis You are going to have to have someone resident.
- 559 N. Nylander The lawyers who worked down there lived down there. Everyone got along but I think there was a feeling that they were kind of isolated and maybe didn't get as much mentoring or involvement in policies and procedures. We would invite them up to our meetings and stuff like that but it was always kind of incumbent upon them to come up here. We try to go down there but we found we were getting stretched pretty thin trying to supervise them and involve ourselves down ...
- 563 Chair Ellis Was it your office's decision to stop it?
- 564 N. Nylander It was our office's decision to stop it and there were a couple of other collateral issues, but they were real issues. Number one, Curry County when they started their consortium and I am not being critical, there were some lawyers down there that wanted that work. They put together a bid or whatever, a proposal that we just felt we couldn't match. I'm not saying they low balled us because that is not fair to them, but clearly there were some lawyers down there that wanted to work, and if you look at it on a cost per case basis, could go beneath us. The other thing that occurred down there, and it was unfortunate but it was a reality, we were getting caught up in this. Back during that time there developed a big rift between some members of the bar and some members of the bench. I think if you go back, statistically, I get down to Curry County quite a bit being from Coos County, and I don't have the statistics but if you look at the number of affidavits filed and stuff down there, there was a consistent pattern that some lawyers just weren't going to practice in front of some of the judges.
- 585 Chair Ellis The judges are in both counties.
- 586 N. Nylander Well, there were two judges that sat down there all the time. Great guys, good judges; I'm not saying this critically, but they obviously got sideways. The bar and the bench had some issues that, in my humble opinion, got beyond professional. I'm not saying it was unprofessional, but it got to be personal. We felt we were getting caught up in that and it was just very unpleasant and we didn't like it and we were having trouble economically anyway, so we just said to heck with it. They can just have it.
- 596 Chair Ellis Has that resolved itself?
- 597 N. Nylander Well, there is a brand new bench. There are good guys and good judges down there. It isn't a personal thing and I don't have to practice down there all the time so I am not in a position to comment, but with Judge Margolis and Judge Beaman, obviously there has been a changing of the guard and at least my exposure, and it isn't very much because they haven't been on the bench a year, but I think everyone seems to get along down there better than they did.
- 605 Chair Ellis If, when we hear from people in Curry County, we do hear some interest in returning to a model where your office would function in both counties, would you be open to that today?
- 609 N. Nylander We would be skeptical. I would skeptical I should say.
- 611 Chair Ellis And your reasoning is what?
- 613 N. Nylander Just logistically that is hard to do. We would have to be in a position where we could put senior lawyers that live down there, I guess. It was difficult for us to mentor and supervise from here down there.
- 619 Carole Hamilton I do remember part of it. At that time Judge Beaman was a SWOPDS employee and she was the stable person in the office because she wanted to live there. Her family was there; she

didn't want to leave. We had a second person down there and the other person would always come and go. I remember in October of 1999, Mary Ann Murk left and went up to Astoria. Sharon Mitchell, who was in our office then, and I traded off going down there and that lasted months before they hired somebody. It was in the spring of 2000 that they finally hired a second person to go down there. That was very difficult because like Mr. Nylander said, you can't just drive down there and back, you have to stay there. I remember driving down there at 5:00 in the morning and going to court and being there three nights in a hotel with my dogs and then coming back. It was very difficult to do that. For one or two weeks it would seem like a vacation but for three or four months it didn't. That was difficult and it happened a lot.

- 638 J. Potter So it sounds like is it fair to say that if we wanted to do something like that, it would almost be like, you might as well just create a separate PD's office because there is really no connection to this county or it is very difficult to make a connection. If you wanted to establish a PD it might be better to just say you are going to establish a PD, its own entity, not connected.
- 644 Chair Ellis I see a lot of trouble there because it isn't large enough to support a PD and you couldn't have, you can never a PD as the only provider in a community because you are going to have the conflict issues. A single lawyer or even a two lawyer PD doesn't get you there because you can't really have the training and the supervision and the other things that we all like to see. It has seemed to me, listening to it, that if it were possible to structure it in a way that met some of the issues that you described, having an office there that is part of your PD does sound to me like a pretty positive way of addressing the problem.
- 662 N. Nylander If you can deal with the logistics I agree with you and I'm not saying you couldn't. It could work.
- 664 Chair Ellis I was struck that Mr. Inokuchi is practicing in both districts and you yourself. I assume you are on the civil side?
- 666 N. Nylander I do criminal defense down there. I don't get down there often but ...
- 667 Chair Ellis It is not that unusual to have some movement.
- 670 C. Hamilton He drives down there and back the same day so he does a lot of driving. In fact, he also goes to Douglas County sometimes.
- 672 Chair Ellis What is the history that lead to Coos/Curry being a single judicial district?
- 676 N. Nylander I think it was just caseload really. Like you said economy of scale and back even when I came here, I think this is right but don't hold me to it, but statistically I think they have fewer cases then any county in the state. Sam Hall was on the bench and then Fred Starkweather took over. There was just a very minimal caseload and they just felt
- 685 Chair Ellis So all the judges are elected on a two county basis but they tend to have Curry County and Coos County venues.
- 689 N. Nylander Right.
- 690 J. Potter Mr. Chair, I think we may also want to talk to Tom Crabtree because they had a contract at one time that had Bend and had Madras and they let go of Madras, for it sounds like some of same reasons that are being discussed here.
- 695 Chair Ellis But we have other examples. MPD at one time had three counties that it was in and now it is two. They are both much larger offices that we are talking about.

699 C. Hamilton They are closer. Hillsboro is closer to Portland than Gold Beach is to Coos County.

702 N. Nylander What would be nice is that if a lawyer that was experienced with SWOPDS in Coos County would want to make the move down there so you would have a senior lawyer down there. That way the new hire would have someone they could deal with on a day-to-day basis. When this came about no one wanted to go down from Coos County, so initially we had two brand new people. That is where the difficulty arose because it stretched our director pretty thin getting down there to assist them. They did a good job. It was just difficult.

714 C. Hamilton If that happened, then I think the person would have to be paid enough to be able to stay there instead of this constantly looking for another job that pays a decent salary.

717 S. McCrea Nick, you think it would take two people in Curry County?

718 N. Nylander I do.

718 S. McCrea So a senior person and a ...

718 N. Nylander There are two DAs and I think that they should match.

721 Chair Ellis Tell me a little bit about your board and structure. Who is on the board and how is that working?

725 N. Nylander Myself, Jacques DePlois and Jerry Lesan. I think we work pretty effectively. We have always tried to have a pretty open door policy. For a while, as a group, I think we kind of micro-managed.

731 Chair Ellis Carole probably thinks you still do.

732 C. Hamilton I go to them a lot. When I first started it was right before the budget crisis at the end of 2002. I started in the middle of October, 2002, so I went to them a lot.

736 Chair Ellis So you caught the Titanic?

736 C. Hamilton That is what it felt like. They were great.

739 Chair Ellis How often do you meet?

740 N. Nylander We try to get together once every couple of months. We did do a monthly lunch, we were doing it once a month, but we haven't done that as frequently. Part of it is, as the judges have alluded, I think SWOPDS has been operating efficiently and things have been going really pretty smoothly other than the economic crisis. But interoffice type of things and the quality of defense people are getting and that type of thing has been very smooth. John Meynink did a good job. Ron Cox did a good job.

751 Chair Ellis Are all three of you lawyers? I should know that.

753 N. Nylander Yes.

753 Chair Ellis I served about - how long was it, Jim - 30 years as a member of a board comparable to that at MPD, so I am very aware of that role. It sounds like you are really doing well.

759 N. Nylander Well, we all get along.

759 S. McCrea That is something.

- 780 N. Nylander If anything we should probably as group be a little bit more involved sometimes, but it is kind of an “If it ain’t broke don’t fix it” kind of thing. The biggest crisis was the budget when substantial cuts were being made and we ran out of dough and that was not a good thing at all. Since then things have been fine.
- 770 Chair Ellis Let me turn the tables here. Do you have any suggestions how we could do our job better from your point of view, and that is addressed to both of you. Do you feel communication with our staff is effective? Do you feel like those people from Salem are trying to tell us how to run things and you don’t like it?
- 778 C. Hamilton I know from my prospective with Peter Ozanne and now Ingrid Swenson I think things have really gotten great. I really like how Peter changed things and initiated the site evaluations. I thought that was a very good move.
- 782 Chair Ellis You have been on several of those?
- 783 C. Hamilton I think three of them and I think that helps with uniformity around the state, but also I would hear new things and try to come back and do them.
- 786 Chair Ellis It is the cross-pollination.
- 787 C. Hamilton Exactly. They were talking about first appearances at juvenile dependency hearings, and Judge Barron mentioned that a little bit this morning, and I heard about that at a site evaluation and thought what a good idea that was. When it was first brought to the meeting I was very enthused and said well let’s try that and we are still doing it. I think that the site evaluation process is very good and I’m glad that Ingrid has continued with that. Everyone has always been very responsive. I call Billy and talk to him. Requests for non-routine expenses are handled very quickly. Within 24 to 48 hours you usually get a response nowadays. I have no complaint with that and think everyone is receptive.
- 800 Chair Ellis Don’t miss this opportunity. This is your chance if you have something you want to say.
- 803 C. Hamilton I want to go back and talk a little bit about the attorneys coming and going. Stacey Lowe started two and a half years ago and Joel Curelo started about a year ago. They are the kind of attorneys we really want to keep. They are fairly young, in their early thirties. They moved here just for the job.
- 810 Chair Ellis They moved here because you had an opening?
- 811 C. Hamilton They were entry level. They had never worked as attorneys before. They came here and both have purchased houses in the community. Stacey has one child and a significant other and she supports all of them.
- 815 Chair Ellis How much debt do they carry from their law school?
- 817 C. Hamilton A lot and that is part of it. She was telling me that she is on deferment still on her loan payments because she can’t afford providing for her family, her mortgage, cost of living and the school loans. She is very, very happy with what she does, but she feels like she is being forced to look elsewhere because she can’t afford those things to live. When she first came here she found out that the DAs make almost \$500 more a month. It is a rude awakening to people. Joel is the same way. His wife works at Coos County Mental Health in a really good job. They like the community and bought a house. They are expecting their first child. I have heard that he has expressed interest in the consortium and that is really hard on us because these are the type of people you want to get here and you want to keep. They are great in the community. They both volunteer. Stacey is working with Families to Families on finding low cost or no cost housing for families. Joel is working on helping build a

homeless teen shelter in the community. They are doing that as a result of their involvement with SWOPDS. That is the kind of person that we would like to see move to Coos County. I would like to be able to keep them. Either one of them, if they tried to go outside this community, they have good experience and I am sure they would get good references. I am sure they could move very easily if they chose. I was hoping that you could hear that. Also, I think Stacey mentioned that there is a bar grant for loan assistance but that is only if you make under \$45,000. She makes a little bit over so it doesn't help her. That is really very frustrating. Something that hasn't been mentioned and I think some public defender offices are different; here we do all kinds of cases. We do the criminal at all stages. We do the juvenile delinquencies, the dependencies. We do mental commitment hearings. We do post conviction relief hearings, habeas corpus hearings, and the model court that people talked about. Last year I worked on a committee to develop a mental health court which currently has seven clients. It is a way for people with mental health issues not to have a conviction. If they end up going to Coos County Mental Health they get the medication they need, help with housing and things like that. Judge Barron talked about the zero to three courts, where people with mental health issues who have a child under three in the foster care system, and Joel Curelo has asked to help with that. He wants to be on that implementation team. These are some of the things that we do. We do all kinds of cases. In Ingrid's reports it mentions that I was on the Contractor Advisory Group and also the local Public Safety Coordinating Council and different site evaluation teams. Something that is interesting, and I think it may be different here, the report talks about the Coos County caseload being flat. When I was looking at our numbers, in 1996 when I started there were eight attorneys just for Coos County. In 2002, we reduced that number to seven and now in February one of our experienced attorneys left and I have not replaced him. I haven't replaced him because of the lack of timber funds and the decrease in the attorneys for the district attorney's office. I would like to replace that person but at this point I am waiting to see.

- 900 Chair Ellis Why does the lack of timber funds impact you?
- 901 C. Hamilton Because of the lack of timber funds the county wasn't getting as much money. Therefore, they laid off people throughout the county including the DAs. They have lost one and the expectation is that Mr. Frasier will become the new DA and then they won't replace his position which is the chief deputy district attorney, so they will be down two attorneys at that time. That impacts us because they file fewer cases, different kinds of cases, so we don't get the number of cases we got a year ago.
- 915 J. Potter It affects the sheriff's office and the jails.
- 916 J. Stevens Your sheriff's office is funded through the county general fund?
- 917 C. Hamilton Yes. Our jail capacity was cut in half because of this. For the first time ever they have changed how they sentence people. Six months ago they might get thirty days for a PCS. Now they would get ten or eight.
- 925 Chair Ellis Let me ask you this question. I think I understand SWOPDS handles about seventy percent of the appointed cases?
- 925 C. Hamilton Probably.
- 926 Chair Ellis Do you feel from a conflict point of view you are kind of maxed out?
- 930 C. Hamilton Yes. I do not think we are ever going to increase. In fact, looking through our contract numbers we have contracted for steadily lower numbers for the last three contract periods and less money. In 2002-03, we had a lot more numbers contracted for than now. In 2004 it went down and in 2006 it went down again. What is interesting is that the money we get paid for a

case type, I compared the matrix this morning, and it is exactly the same for the 2006-07 contracts as it was for the 2002-03 contracts. That is my concern that there hasn't been any raise in that in all these years.

- 950 Chair Ellis That is a little different issue than I am asking but you think you have about 70 percent of the cases and you couldn't really go higher than that because you would run into conflicts.
- 957 C. Hamilton Yes and I review each case we get for conflicts. I know someone is not saying I don't want this client because he might be a pain so I know there is actually a conflict with each case.
- 962 Chair Ellis Do you feel your conflict identification is working really well. In some counties we have seen a situation that is very expensive, frankly, and it is one cost control issue that we can help on where they don't identify conflicts for quite awhile. The first lawyer gets invested, spends a lot of time and then the conflict surfaces. Then we end up having to pay twice because somebody has to go back and regroup and replicate. Are you having that experience?
- 977 C. Hamilton Not often. I think it does happen. [end of tape]

TAPE 2; SIDE A

- 001 C. Hamilton ... represent those people, they give to me and I try to review it within 24 hours. What has happened sometimes is that we will get a case, let's say a domestic assault case, the alleged victim is someone we check, and we have never had that person before. We are going along and the case maybe gets set for trial then the alleged victim gets in trouble, gets arrested and we get appointed. There is no way of knowing that there is a conflict. Every once in awhile that will happen.
- 007 Chair Ellis Although there would be in that situation I would think.
- 008 C. Hamilton No, because let's say the alleged victim gets stopped for a DUII with no witnesses. I would see it. I would not necessarily know that person is the alleged victim of another crime.
- 010 Chair Ellis Oh. I thought if you get access to discovery pretty early I would have thought victims would get into your conflict system?
- 011 C. Hamilton This has happened a few times and about a year ago we started putting in alleged victims' names into our database so we can run those things now. Even with that, every time we get a case we have to run and see if there is an alleged victim somewhere. It is rare but it does happen.
- 016 Chair Ellis Other questions? Anything else you want to share with us?
- 018 C. Hamilton A couple of other things that haven't been mentioned really, I think Coos County is also unique for our lack of options in health care. I think that we get a cap of five hundred dollars per month from the state per employee. That is very difficult. The only way we have been able to stay under that cap is to get increasingly poor health care. Ten years ago we had no deductible and ten dollar office visits. In 2006 we had a three thousand dollar deductible and twenty dollar office visits. This year we were lucky in June that we found an insurance provider that had a brand new plan. We are back down to a thousand dollar deductible. That just shows that we don't have a Kaiser. We don't have anything that can provide low cost health insurance. That is a concern and the other thing is, and you probably know, that we are eighteen miles from the court. The attorneys have to drive thirty-six miles round trip several days a week. We do pay for mileage but we only pay thirty cents for that. That is quite a bit lower than the state. Those are things that I would like to correct if we had the funding to do that.

- 033 Chair Ellis Thank you both.
- 033 N. Nylander There is one thing that was addressed since I spoke - this area does need SWOPDS. There isn't an alternative. That came up when they did try to cut our funding. At one point we were negotiating back and forth and they said "Well, we'll just give it to the private bar." But that is really not an option.
- 038 Chair Ellis They were bluffing.
- 038 N. Nylander There were more lawyers here when I moved here in '72 than there are now. You aren't going to find very many areas like that.
- 041 S. McCrea Thank you.
- 043 Chair Ellis Good morning.
- 043 M. Muenchrath Sherry Mitchell is our administrator and she has strategically made herself unavailable on some kind of trip out of the area. I did get the memo and it said you were showing up. My name is Matt Muenchrath. Good morning Mr. Ellis, Ms. McCrea, Ms. Stevens and Mr. Potter and you, Mr. Strehlow, Billy. My name is Matt Muenchrath. I am a member of the consortium. I have been for most of the seven years I have been practicing here. A real quick background on myself: I graduated from Willamette in 1997 and passed the bar and was commissioned into the US Navy, JAG Corp. That was where I got my defense and prosecution training. I came here in 2001 after I came off active duty and picked up a consortium chair. I was lucky enough to hit right at the time when someone else was leaving. It has been great experience. I left the consortium for approximately two years. I affiliated myself with a law firm in North Bend. I left there and came back to my practice in Coquille and I'm right behind the courthouse.
- 056 Chair Ellis You don't have that thirty mile drive.
- 057 M. Muenchrath I'm about fifty yards from the judge's desk, which can be good or bad depending on whether they need somebody right away. This is Megan Jacquot and she is also a consortium member.
- 059 M. Jacquot I am one of those odd people that came here on purpose.
- 060 Chair Ellis I don't know why everybody is so defensive.
- 061 M. Jacquot I graduated from Tulane. I was actually choosing among three different jobs. One was in a private firm doing personal injury, one was legal aid and one was here at SWOPDS. They offered me the job the day that I interviewed for it. They were hurting for lawyers. We decided that we wanted to live here. My husband is a professional engineer and he actually works in the American Bridge plant up in Reedsport. There are not a lot of places on the coast where you can have a job for a lawyer and an engineer, so we chose to come here. I worked at SWOPDS for five years. I went all the way up through their steps and salary range, but we have a large family with five children and I was not able to stay there, financially. I am lucky enough to have a husband who has insurance coverage through his job and so we were able to take the plunge and go out on my own. I took the consortium chair that was open when Bill Dials left and I have been doing that ever since. I have a significant private practice in addition to the consortium. I keep doing it because I love the work even though it is not really very cost effective. I could make a lot more money doing other things that I don't like as much, but I do it because I love it.
- 076 Chair Ellis Is your private practice criminal defense or other?

- 077 M. Jacquot I do retained criminal stuff. I do some domestic stuff which I really don't like. I do appeals which Billy just told me are probably going to dry up here because of OPDS hiring juvenile appellate attorneys now, but I have been doing some of those. I do a lot of adoptions which fit in nicely as long as I don't have a conflict from the underlying juvenile dependency case, a bunch of different things.
- 081 M. Muenchrath I do have a private practice. I came here because I grew up here. My parents have been here since 1971. My brother came back and I came back. I love it here. I love Coos County and I love the people here. It is a neat place to be and I think it is a well kept secret. It is a wonderful place. I do understand how people who would come as a single professional would find that there just aren't a lot of people their age that are single who maybe like the same things. I think there are some younger lawyers that are coming in. One thing that I would say is that a lot of the lawyers that were the lawyers when I was in high school are still the lawyers that are here. This is a wonderful place to be, it really is, but is very odd being in the consortium and having a criminal defense appointment who is somebody you went to high school with. That is a little weird and having your high school teachers on the jury. That is really interesting and I didn't kick them off.
- 094 Chair Ellis I was going to say how do you handle the preemptories on that one.
- 095 M. Muenchrath No, it makes for good feedback later. "Your diction was terrible. Let's talk about that." You are welcome to ask me questions about coming back to the area and being a younger attorney, relatively younger attorney, and what brought me here and what didn't. One of things that I think is important and that you should know is that I think there are some attorneys in this county who are young, who would do well getting some court-appointed cases because a) they really want the trial work and, b) I think they would be good lawyers and advocates for these indigent clients. The concern is the funding. It just can't compete with, for instance Adam Goldberg with his father's firm. Gee, he has to choose between making a hundred and some odd dollars an hour taking a civil case or he can get forty an hour working in indigent criminal cases.
- 106 Chair Ellis Both of you use the expression that it was fortunate that a consortium chair opened, so the implication of that is that it is coveted; it is a good thing; it is an opportunity.
- 109 M. Jacquot There are people in the public defender's office that are waiting for one to open, just because of that opportunity to make more money.
- 112 J. Stevens Are there people outside the public defender's office waiting for that to happen as well?
- 112 M. Jacquot No. Before we got Matt back, when we lost our last person - Mr. Scannell quit - we were looking. We talked to the two other young lawyers in the county that were in the private bar and neither one of them could justify it financially to come and work with us. We were fortunate that he was ready to sort of make that change and leave the big firm that he was with.
- 117 Chair Ellis There are three in the consortium now?
- 117 M. Jacquot Five.
- 118 M. Muenchrath I think I can explain why it is a good thing. First of all I really like the trial work. I like the fact that you get - you talk to people who are trial lawyers, civil trial lawyers, and they don't see the inside of a courtroom more than a couple of times a year.
- 121 Chair Ellis The difference between trial lawyers and litigators.

- 122 M. Muenchrath Right and what is nice is that you get into – if you are part of the consortium you will see the inside of the courtroom often and you do have trials and it keeps you sharp. I enjoy the work and the trials, but it is also nice to have that base. I know that I am going to make X amount of dollars for the base of my practice. One thing that is difficult is on Mondays, for example, we may end up having nine cases in the afternoon, juvenile dependency cases, and that is something I would like to address just from the consortium side. My Mondays are pretty much shot. Monday morning I will have 8:30s and depending on what the docket is like my 8:30s may turn into 10:30s. It depends on how many people are in custody and how many people are getting arraigned and whether or not there is a large restraining order caseload that morning and whether any of them are contested hearings. Mondays you might as well just block that out and be ready to be in court. The juvenile dependency hearings really take a lot of time. You are in the courtroom from probably 3:00 up until sometimes 6:00 or 6:30 in the evening.
- 136 Chair Ellis That is before the CRB?
- 137 M. Muenchrath That doesn't even include those. They are independent.
- 138 M. Jacquot All of our actual contested juvenile stuff is on Thursdays. Mondays is just get them in there, have a review. The supplemental hearings for the initial dependency cases are Monday. We have criminal stuff Monday mornings, family court Monday afternoon at 1:30, dependency reviews at 3:00 and we tend to have, I would say, five is an average number of reviews.
- 143 Chair Ellis Who decides who gets the open chair in the consortium?
- 143 M. Muenchrath The members.
- 144 Chair Ellis So, those who are there decide?
- 145 M. Jacquot We talk to Judge Barron about it as well.
- 146 Chair Ellis I saw a reference in the report.
- 147 M. Muenchrath They certainly have to be qualified. I know you have to meet all of the public defense requirements, at least I remember there being requirements that you had to have so many trials and you had to have done so many different types of cases.
- 149 Chair Ellis Did the others come from backgrounds like yours? You were in SWOPDS and you were in the JAG?
- 151 M. Jacquot Mr. Coggins was in the DA's office. He has been in the consortium for roughly 15 years. Then we have Mr. Inokuchi who came from the public defender's office in 2002 and Ms. Mitchell shortly thereafter - both public defenders. Matt came to us from the military and I was also from the public defenders.
- 156 Chair Ellis So the model is they all come with at least seven or eight years experience somewhere.
- 157 M. Jacquot He was the only one who wasn't Measure 11 qualified but we got him qualified pretty quickly.
- 158 M. Muenchrath I think I was. I had done some trials but I think I had to look in on one.
- 158 Chair Ellis Around the state different consortia handle it differently but your consortium is on a unit contract basis?
- 161 M. Jacquot Yes.

- 161 Chair Ellis Is that working for you?
- 161 M. Muenchrath I think the one concern on that is that with juvenile dependency cases, and there has been quite a rise in the type of things you are doing with the juvenile dependency cases, a lot of times you will get assigned a juvenile dependency case and then there will be a Citizen's Review Board. There might be a family decision meeting, there might be another type of meeting and we get paid for court appearances and the Citizen Review Board, but that an sometimes be just the tip of the iceberg for things that you should go to if you have time. But a lot of times you don't get to go to those because you may have scheduled court on the day that they schedule the other types of meetings. Those are between the caseworker and the individual.
- 170 Chair Ellis We hear in a lot of counties that are working on a unit contract that it used to work better because there were some cases that were treated as units but they would be pretty easy to resolve. Those seem to be drying up. Are you having that?
- 178 M. Jacquot I think you are right about that. A lot of things that Carole said are true. We have our additional costs here but we also have, with the things that we do, primarily we do the juvenile dependencies because we know that our consortium is going to get at least one of those out of every case. We are going to get one parent.
- 181 Chair Ellis Conflicts are going to be there.
- 181 M. Jacquot We also get the children. I don't think the public defender's office ever has the children. We didn't used to get appointed to children until about two years ago with the Juvenile Court Improvement Project. They said every other county is doing this. "Judge Barron you really should appoint attorneys for children." So, we started getting those and we like that work. Again, those are the types of things that don't fit well within this unit structure because most of the work for kids is done outside of the court hearings and CRB. It is the mental health coordination, it is talking with the teachers, it is all those things that can take 11 or 12 hours a month that you don't get paid for that you feel like you have to do. That is one of the areas that we would be looking at - changing the structure or increasing the compensation for the things that we already are paid for because that is what is taking a lot of time and what is making it difficult.
- 193 Chair Ellis What is your observation on the question I asked Carole whether the mix with SWOPDS having about 70 percent of the cases and the consortium the balance is working? Is that about right or do you think SWOPDS has far too much or what is your view?
- 198 M. Jacquot Well, we don't get anything other than what they have as conflicts. I don't see any trend toward decreasing the number of co-defendant cases that they file. Every year we get a couple where it is a big batch of juveniles and they are all out wrecking golf carts together or something like that where the consortium numbers will spike a little bit and the public defender's office will go down because they get one and we get the other six.
- 205 Chair Ellis Is the balance about where it ought to be in your view?
- 206 M. Muenchrath I think our numbers are definitely about what Carole said. I don't know how that would either decrease or really significantly increase over time. That just sounds like about right.
- 209 Chair Ellis Is there sharing between SWOPDS and yourselves on research and briefings and things of that kind when you have common interests.
- 211 M. Jacquot Absolutely, because we are pretty inbred. A lot of us started out there. When we get a batch of cases that are all similar we will share each other's motions and help each other get those

filed. We also do CLEs together like brown bag CLEs when we have a speaker. I think there is a lot of good cooperation there.

- 216 Chair Ellis One other relationship I wanted to ask you about is with our FTE appellate lawyers. How does that work from your point of view, the transition between the conclusion of the trial and the start of an appeal? Do you feel that is handled reasonably well and do you ever hear from the appellate lawyers? Is there feedback that they have after they have been reading the records on cases you have handled?
- 225 M. Jacquot As far as how the transition is handled I think in the criminal arena it works really well because they have their website and we just fill out the form and they take it from there and there has never been any problems. It is harder with juveniles because I think I am the only one locally that does the juvenile appeals, and I obviously can't do both parents in the dependency. We have to either try and call around and find our own, which is what they prefer, or throw our hands up and say "Billy, find us somebody to do this." It sounds like that is going to resolve itself. As far as whether we hear from the appellate attorneys when they are briefing and stuff, I have had them call initially to see if we really think there are issues to appeal. I have called them and asked for advice on how I best can put the issue in front of the court so that you have a shot at it. They are always really helpful when you call, but I haven't had them ...
- 235 Chair Ellis One of the things that we have wanted to do with the Commission structure is to combine both the contract and the appellate side and to take advantage of that and make communication better.
- 239 M. Jacquot I would say that everyone I have talked to up there and has been really friendly and helpful and good about sending materials, but we have to ask them. They don't call us and say "Hey, you could do this better next time" or anything like that.
- 240 Chair Ellis Do they you give you access to their best briefing on recurring issues?
- 242 M. Jacquot That is usually with new issues. If there is a new issue that is evolving or something they will send it down and say "Here is what how we think you should be attacking this."
- 245 Chair Ellis Do they do it?
- 245 M. Jacquot Usually, we rely on OCDLA for the recurring stuff. They publish a trial memo and the search and seizure memo. I think we utilize those things well. We have those publications that we share.
- 248 M. Muenchrath My experience with the appellate attorneys has been limited. When I did have an appeal I forwarded the materials off, they got back to me and asked me about certain issues and that was about the extent of it. I don't have a lot of communication with them.
- 253 Chair Ellis That is because you win all your cases.
- 253 M. Muenchrath Thank you. It is one of those things where I have had limited experience. But the one time I did have an appellate attorney contact me wanting to discuss things it was fine. Certainly it can be improved. It would be nice to have a contact person or something like that, someone who you can just pick up the phone and ask things of, but I have had limited experience with that.
- 259 Chair Ellis Do any of your people do PCR?
- 260 M. Jacquot We get asked sometimes. I did at the public defender's office but I haven't had one since I have been with the consortium.

- 261 Chair Ellis How is that handled?
- 262 M. Jacquot Billy calls.
- 264 Chair Ellis I asked Carole a question and I want to give you equal opportunity. Anything you can suggest to make us do our job better, or OPDS do its job, better?
- 267 M. Muenchrath One of the things that it sounds like you guys are struggling with, or that the whole community is struggling is with, is getting public defenders down in Curry County. It would seem to me that there has to be somebody around that loves the type of environment that Curry County offers. I have not seen a lot of recruitment to have attorneys go down. In other words, I have never seen a really organized effort to say "Hey, we want a consortium attorney to go down there and do this or we need somebody to go down there and start doing this" and I don't think it has ever been formally proposed to us, as the consortium, to say "Hey, we want you guys to provide some coverage down there."
- 277 Chair Ellis Do you have any relationship with the consortium that is there?
- 277 M. Muenchrath No. We know them and we know who they are.
- 279 M. Jacquot Rick is doing both and I think I am their second conflict attorney. I have two Curry cases right now. We all kind of get a little bit inbred. Jesse Coggins does multiple Douglas County cases. Rick and I each have one in Josephine County. I am happy to go down there when there is a case that needs somebody to cover. At the public defender's office I had the opportunity to practice down there sort of like Carole and Sherry did for weeks at a time and I liked that. It is tough to have somebody go down there to live permanently, especially somebody with a spouse who is also going to need to find a job.
- 289 M. Muenchrath Sometimes when you are in the community you hear about all these things, but if you are not in the defense community or you are new you may not hear that as much. "Hey we need some people down there." You are asking for me to say maybe what the solution is. Get some of the younger attorneys here to know about it and know what the value is and what kind of money they can make down there, so they know it is an option. I think there are some folks who would be willing to go down there. It just needs to be better publicized.
- 298 Chair Ellis Any other questions?
- 298 S. McCrea I have a question and it is more like a suggestion. The question is this; I realize you are a consortium so you are in different offices, right? But my question is do you know what your monthly overhead is and I am just suggesting that you might want to take a look at that. I certainly understand and I am very sympathetic to what you are saying in terms of the amount of time the juvenile work takes and what you are getting paid for. I realize that you are on a unit basis, not hourly like Lane County. That might be something you want to look at to be able to talk to us about. What is it costing you to run an office? The national study that was done recently on the federal level indicated that the average cost of overhead is \$64 an hour, which, as I have said at these meetings before, is one reason why I had pulled my associate off of doing public defense because I couldn't afford to pay the state \$24 an hour. That is just something you might want to take a look at as well.
- 313 M. Muenchrath It is a great suggestion.
- 313 S. McCrea Well, I am the private defense bar person on this Commission.
- 315 Chair Ellis Thank you both. It was very helpful.

- 316 M. Muenchrath Thank you.
- 316 Chair Ellis I have been told that Angel has a tight schedule. What we are doing now is sort of splicing in a portion of the Commission's retreat agenda. We will get back to the Coos/Curry agenda here in a little bit.
- 321 A. Lopez Yeah and I have a long way to go. At 6:00 I have to be in Bend for an Oregon State Bar meeting.
- 322 J. Stevens It will take you five hours.
- 323 A. Lopez Five hours? Then I'll get there.
- 324 Chair Ellis You don't get to eat under these circumstances but otherwise you'll be alright.
- 325 A. Lopez Thank you for taking me out of order. For those of you who don't know me, my name is Angel Lopez. I have been in practice for about twenty-four years now. I was at one time the President of the Oregon State Bar. I am a member of the Portland Defense Consortium. We are a group of twenty lawyers who have been practicing indigent defense. I think our first full contract coincided with BRAC, so I ...
- 332 Chair Ellis Good timing.
- 332 A. Lopez Being charitable to the Commission, I think that is why our wages have been somewhat depressed since we got our first contract. I know that we had to scale down what our original expectations were, with the expectation that someday we would be where we need to be. I am here because I believe this is that someday. We have some really, really fine members in our consortium. For instance, one of our members who just quit, Judge Walker, Ken Walker, he was a very active consortium member.
- 340 Chair Ellis I wouldn't use the expression he "quit." He became a judge.
- 340 A. Lopez He couldn't do both at the same time. We would have fired him if he didn't quit. We have Russell Barnett and Andy Kolmetz who are associates of ours and they are also on the board of OCDLA and we are proud to have that type of representation that type of respect reflected within our relatively small consortium. I am here today to recommend what we do with the additional money. First of all I want to thank the Commission for the stellar effort that occurred last legislative session to get that. I know the Commission, although you did a lot of work on it, you could not have done it alone and I know that a lot of the thanks also goes to OCDLA for their output in terms of legislative advocacy. For Ingrid in particular who invited people like myself, Judge De Muniz, Brandon Mayfield, Jack Morris, to give testimony before the Ways & Means. Helping them to understand the significant and critical function of indigent defense and why we need to be compensated commensurate with our responsibility and our role in this very critical portion of our government. We have prevailed and we have some extra money now and the question is what to do with it. My recommendation candidly is to use it to adjust compensation upwards to people who deserve it to varying degrees. I am advocating in particular for my group. We are a group of twenty members. I am not the most experienced in terms of age and years in our group. I am pretty close to that but we represent legal talent, years in the trenches. We represent a lot of respect from the bench. I find that with our group more and more judges are looking to us for direction on those complicated cases that we are seeing more and more of. The legislature keeps making laws more and more complicated.
- 373 Chair Ellis Angel, is your thought that given the history of when your group started, which I have a memory of, that you just came in at a disadvantageous level and we are talking about an ad

hoc issue relating to PDC? Or are you speaking for a broader spectrum of the defense community?

- 378 A. Lopez I am speaking for PDC in particular but the defense community in general. I have listened to the testimony this morning and what is going on in this county is the same thing that is going on in Multnomah County and it is frankly this, the people who are prosecuting the cases are basically servicing the same justice system, doing a function that is equally important, I believe, as the function that we do. There is not parity in pay and there should be. We have the same families; we have the same houses. The difference in a consortium situation is we have overhead, in any public defense system we have overhead, that keeps rising. We have health costs that keep rising and we can't go to the County Commission and ask for an adjustment because we miscalculated what was going to happen with health care or PLF or bar dues. We simply can't do that.
- 394 Chair Ellis We are faced obviously with the good news that there are more resources now than there were the last biennium or certainly the biennium before that, but obviously there aren't enough resources to do what we would all like to do. I am asking you to testify to the hard question, Are you advocating kind of an all boats rise, are you advocating that PDC rise more than anyone else, are you advocating that consortia rise more than PDs or what is your ...?
- 404 A. Lopez Well, my answer to that question is that we have a two-tiered process with regard to our particular group. First of all, we need to rise to parity with other public defenders in our community in terms of salary levels. Then all of us need to rise to get us closer to the DAs. We are not even up to what the PDs are because of the funding issues. What I came to ask for in particular with regard to PDC is to think about a fifteen percent funding bump for us. I know that seems like a lot but there are other factors happening that you are going to find out about sooner or later. One of the factors is that the baby boom is over, the baby boom echo is over, and I think that the age group, the age bracket of individuals who find themselves in the criminal justice system has shrunk. I think there is a proportionate shrinkage of cases being filed. In Multnomah County for instance we have seen, in our group, a reduction from a six percent surplus in January of caseload, where we had served six percent over what we were being paid for, to a negative one percent this month. So between January and today, in eight months, the caseload has shrunk a full seven percent and we are projecting that the caseload is going to be down six to seven percent by the end of the year, which is going to put us in a situation of owing the state money or we are going to have to fire employees. That is what we are going to be meeting about on Monday.
- 428 Chair Ellis Employees or consortium members?
- 428 A. Lopez We are talking about lawyers. We have associate lawyers as well. Every board member is a law office owner and we have associates working for us as our employees underneath us. That is where the cuts will come from.
- 433 Chair Ellis From a public interest point of view it is good news that cases are down.
- 434 A. Lopez Yes.
- 435 Chair Ellis What we are struggling with is how to properly downsize the defense system in the most equitable way.
- 438 A. Lopez Yes and no. What the bar did through the House of Delegates last year was twofold. First of all there was a recommendation that this body work to increase compensation for lawyers and secondly, there was a recommendation that the caseloads of the lawyers fall to standards that have been recommended by the ABA. For the past ten to twelve years or so the only way that we have been able to give ourselves raises is to increase our caseload.

- 445 Chair Ellis Right and we are not happy with that system either.
- 445 A. Lopez We could do one or two things. We could keep the basic staff system we have and shrink the caseload now, or we can cut back staff and continue working with a larger caseload for more money. I would prefer that we go to a more rational caseload delivery system so that we can put the effort into the cases that we need to to maintain our sanity and our reputations.
- 452 Chair Ellis And the quality for the client.
- 453 A. Lopez That is why I'm saying our reputations and quality go hand in hand. If, for instance, we sustained a seven percent caseload deficit at the end of the year and we were able to get a fifteen percent bump over where we are right now, the reality would be is that it would be fifteen minus seven. It would just be an eight percent increase. We would see some increase. The cost adjustment for cases would reflect a more just and equitable attorney-to-caseload ratio. I think all of our aspirations and our goals could be better met. I think it is time to start thinking a little differently about what we can do with this opportunity. That is basically what I had to say about the pay increase issue. The other thing that I wanted to talk about was an idea that we had as part of our Diversity Committee and then part of the other committee that I am part of that assists with recommendations to this Commission through your executive director. One of the recommendations we have has to do with diversity. By diversity I mean younger lawyers, lawyers who speak different languages that are prevalent in the court and lawyers that reflect the nationalities or the racial and ethnic identities of the individuals who are in the court, or lawyers, who because of their own personal life experiences, have some understanding of those differences. What we recommended, and I am recommending today formally, is that your Commission look at a set aside program. The set aside program I am talking about would be \$350,000 that you would set aside per year. This \$350,000 would go for \$5,000 stipends for young lawyers, and by "young lawyers" - and you could set the parameters - but I would recommend lawyers who are out of law school from one to five years, entry level lawyers. The \$5,000 a year stipends would go to them for a loan repayment program. At a \$5,000 level we could subsidize up to seventy similarly situated lawyers every year. I think that would answer one of the issues that I was hearing about in Coos County; it would answer their concern about one of the barriers that they see toward getting these new lawyers to work.
- 495 Chair Ellis This would be a subsidy for the years they were in the defense system?
- 497 A. Lopez Every month that they worked for a consortium member they would get a little more than \$400 a month as a loan repayment bond. Obviously, once they would leave that would go away. That would be the incentive for them to first come, and then stay.
- 502 J. Potter Would this only apply to consortia member lawyers or lawyers of PD offices as well?
- 504 A. Lopez Any lawyer that is working as a public defender. What we wanted to do is we did not want to edge out consortia member lawyers because we have the same drives and needs as MPD and MDI. It would apply to anybody who has employees that are doing contracting business with this Commission for public defense services.
- 510 Chair Ellis You started with the word "diversity" and is this, as you envision it, a program that would be aimed at specifically minority lawyers or just young lawyers?
- 513 A. Lopez Our definition of diversity has to with race, ethnicity, gender, gender orientation and age, and by age we mean the younger lawyers, those we are having difficulty attracting to our profession.
- 518 Chair Ellis You didn't envision some process by which only those with one of the first four categories would be involved. You think as it for all younger lawyers that commit to defense work?

521 A. Lopez Yes. That is our definition of diversity.

525 Chair Ellis Okay. Anything else you wanted to share?

526 A. Lopez No. I appreciate you taking me out of order.

526 J. Potter The fifteen percent raise that you would be asking for would that you put you at the parity level with the PDs that you are trying to achieve?

529 A. Lopez It would, yes.

529 J. Stevens When you talk about parity are you talking about statewide parity with a specific office or are you talking in Curry County one amount, in Deschutes County another, and in Multnomah a third.

535 A. Lopez No, we are talking about us as we stack up against the Metropolitan Public Defender's Office and the Multnomah Defenders Office, the other two public defense delivery systems in Multnomah County.

537 J. Stevens But then would you suggest that the Commission look at a way to match Curry to Curry, Deschutes to Deschutes or a statewide one size fits all?

539 A. Lopez You made a really cognizant statement earlier, if you are working here and you are earning \$40,000 a year or you are working in Bend and you are earning \$50,000 are you really earning anymore? I think we need to look at the regional economic forces and figure out what is going to work where.

546 J. Stevens Okay.

546 Chair Ellis I want to know what the calculation of this fifteen percent is and let me tell you what my concern is. Are you looking at the compensation levels of individual attorneys at PD offices, or are you looking at the spread between the units at the contract level?

554 A. Lopez When I am talking about fifteen percent, Mr. Chair, I am talking about fifteen percent for our particular group over where we are now.

556 Chair Ellis Are you talking unit or take home pay?

557 A. Lopez I am talking take home pay but obviously units as well, because when we are looking at the fifteen percent we are looking at health care issues and overhead issues as well.

560 Chair Ellis You know historically we have felt that, certainly with the strong PD offices, we look to them to do a lot of things that you are probably not going to be doing as much of, so they do have a training program. I doubt that the consortium is structured to do that. They do have a pretty significant input into systems issues which I doubt the consortium is structured to have. What I am trying to get a handle on is are we comparing what, say, an associate lawyer and a consortium member take home relative to a young PD lawyer, or are we talking your unit value being where theirs is, which includes a lot of overhead and other contributions?

577 A. Lopez I think what we are trying to compare here is two lawyers in court, one from the public defender's office and one from the consortium and the consortium lawyer having ten years more experience and earning less.

581 Chair Ellis Right.

582 A. Lopez This is the parity I am talking about. Salary to salary.

583 Chair Ellis That is where your fifteen percent is computed?

583 A. Lopez Yes.

584 Chair Ellis Thanks a lot and have a great drive over to Bend.

585 A. Lopez I'm looking forward to it.

586 I. Swenson John Spicer has been very patient and I am hoping we can ask Judge Bechtold to speak after John?

591 J. Bechtold I don't mind sitting here longer.

594 Chair Ellis One of you can come forward.

595 J. Spicer I am John Spicer. I am from the original consortium in Curry County. First of all you had a couple questions I would like to answer. "How come we have one judicial district?" When I first came here I think we had like ten thousand people and had a district court judge and then eventually we ended up with two judges and now there are about twenty thousand people. There have been moves to separate it but it is kind of a political issue and hasn't gone very far in the legislature. We are like our own judicial district merely by the fact that we are isolated eighty miles from the other courthouse. The judges coordinate very well but as far as the attorneys traveling back and forth between courthouses it is difficult.

612 Chair Ellis Although there is some of that.

613 J. Spicer Very, very little of it. Nick Nylander does it and Rick Inokuchi does it and that is about it. I am not saying they are the only ones but they are the only ones that do it on a regular basis. One of the problems we really have down there is recruiting. Curry County is a little more unique. We are more isolated. It is hard to find a husband and a wife where they both enjoy the isolation down there. That goes for both the district attorney's office and public defenders. We have a lack of work for the spouses. When the timber industry collapsed it made it difficult for both parties to find a job. The main problem that this generates is the fact that housing in Curry County - in Gold Beach a typical house goes for \$350,000.

631 Chair Ellis You could almost get something in Deschutes County for that.

632 J. Spicer A decent house is around \$450,000 so when you find a couple that does want to live there and they start looking at house prices they realize they are not going to be able to afford a house.

635 Chair Ellis What is driving that?

637 J. Spicer There just isn't enough ground to develop.

639 J. Stevens Californians.

639 Chair Ellis Then you have retired people coming up from the south.

640 J. Spicer Retired people and people earning three and four million dollars moving in and buying large tracts and paying just about anything they want for stuff. It is driving property out of sight. That makes it really hard for us to recruit. The consortium right now consists basically of myself, and I have thirty-five years of experience, and Jim Gardner who has thirty years of experience. We are trying to recruit a third consortium member. We are trying to recruit somebody who has a lot of experience. The problem we have right now is that with the

funding cutback in the sheriff's department, we have gone from eleven deputies and two investigators down to five patrol people. We have no idea what our workload is going to be like. We don't know if these guys are going to be doing patrol.

- 660 Chair Ellis What percentage of your practice is public defense work?
- 661 J. Spicer Right now about a hundred and ten percent because of the loss of the other members.
- 663 Chair Ellis And Jim is the same?
- 664 J. Spicer We had one member drop out and then Cindy went on the bench and so I was working ten or eleven hours just trying to catch up. That hopefully is going to end within this month and we may be going to a deficit workload. We don't know what we are getting.
- 670 Chair Ellis But you have a private practice?
- 671 J. Spicer My normal workload is about 80 percent public defense and twenty percent private. I have two secretaries and we can do a lot of probates and things like that which basically supplements the public defense side. We do a lot of real property and stuff like that with minimal supervision. The rest of it is public defense work. When I went into it I was trying to do sixty percent and forty but it is eighty/twenty now.
- 682 Chair Ellis I was interested in the part of the report at page 23 that talks about Judge Margolis and indicates he believes a PD office would be the preferred model but understands the conflict problem may not make that feasible. My question to you is - and it is true you could never have just a PD in any county because of the conflicts - what is your reaction to the thought of trying to have SWOPDS have an office as part of the provision of defense services in Curry County?
- 697 J. Spicer First of all the offices are eighty miles apart so it is hard to supervise. It is not like going across town here. Two, I know the reasons we were asked to bid on it. The reason is basically the public defender office can't get people down there. The district attorney's office has a hard time keeping people down there. The current deputy earns \$54,000 a year and can barely make ends meet. He has a family and you just can't keep people down there. It is easier for those of us who have been there forever who have paid for our offices and paid for own homes to provide the work. The problem we are running into right now is that we are fifty-five and sixty-five.
- 712 Chair Ellis Are you a sole practitioner?
- 712 J. Spicer I am a sole practitioner. I haven't been all my life. Most of the time I have had associates, but I haven't been doing that lately.
- 714 Chair Ellis Is Jim also solo?
- 715 J. Spicer Right. We are both planning on adding once we figure out what this workload is going to be like.
- 718 Chair Ellis Any other reaction you want to share with us on this issue?
- 718 J. Spicer No. It is just impossible to keep people down there. You can't keep qualified people. The ones that they would bring down would be basically people starting out of school, so they had trouble with competency for the Measure 11s and things like that. That is about it. It is a recruitment problem.
- 728 Chair Ellis Okay. Any other questions for John?

729 J. Potter The impossibility is going to have to be addressed, is it not?

730 J. Spicer Right.

730 J. Potter You are not going to be there doing it forever. Gardner is not going to be there doing it forever.

732 J. Spicer No, but we have practices that we can turn over and that is what we are planning on doing basically.

735 J. Potter So when you are doing this recruitment that you are talking about, assuming there is a caseload to justify it, it would be that as the carrot potentially?

738 Chair Ellis How large is the DAs office in Curry?

739 J. Spicer It used to be three but they have cut back to two like the sheriff's office has been cut back. We feel like we're kind of in a fog when we look at what the future holds.

743 Chair Ellis I can see that.

743 J. Spicer There is another problem because right now when the federal government came through they gave us a one year continuance on the supplement or whatever you want to call it. We have only used half of it with the thought of carrying some over for the next year, but when those get cut back there will be another huge cutback and it could mean that there won't be any road deputies which would mean that there would only be one district attorney. With him still doing the administrative work he has to do, the workload will probably be cut back further.

756 J. Potter Could you sell Curry County to California?

760 Chair Ellis Any other questions? Thank a lot for coming.

762 S. McCrea Thanks, John.

765 Chair Ellis Paula, nice to see you again.

766 P. Bechtold It has been years.

767 Chair Ellis I think I first knew Paula, give me just a minute, I think it is going to be about 1970 that you were managing the then fledging, but grandiosely entitled Office of Metropolitan Public Defender. It consisted of that guy over there and Doug Green. Have I got it about right?

774 P. Bechtold Fairly close. I actually started there, I believe it was '72. I remember you well as the Chairman of the Board for the Public Defender's Office.

779 Chair Ellis Well I remember you well; you were running the show and doing a great job of it. I think you probably still are down here.

781 P. Bechtold That was when I was just in law school.

783 Chair Ellis Nice to see you again.

783 P. Bechtold Thank you. I was very honored to be asked to come here, especially when I found out you were the Chair and it was a chance to see you, but I didn't expect you to remember me quite frankly.

- 787 Chair Ellis I do.
- 787 P. Bechtold Then Ingrid told me that Jim Hennings always comes and I thought I hadn't seen him in years either.
- 789 Chair Ellis Old home week.
- 790 P. Bechtold I have not even seen the report, so needless to say I haven't read it. I'm kind of like a fish out of water here.
- 792 Chair Ellis But you have a lot of views about it.
- 793 P. Bechtold I do. I did meet with Ingrid and John a couple of weeks ago for lunch and a couple of the things we talked about there I have heard being touched on a little bit. I came late because I had a busy docket this morning, so I don't know what all you folks have heard at this point. I do have some concerns. For those of you who don't know, I am a judge here now in Coos and Curry Counties. I am actually in this area. We have three courthouses in Coos and Curry Counties. I am concerned about the declining caseload in Coos County which is again the direct result of timber money and federal cutbacks. I know that that has already been touched on. I don't know whether the public defender's office here and the consortium here are still paid basically on a per case theory. My sense from what I am hearing is that it is. I certainly would not want to see the quality of the services being provided here to be affected by a decrease in the criminal caseload because of primarily misdemeanors not being filed. I do know that both the consortium and the public defender attorneys work many more hours than they are ever compensated for to begin with. If they have fewer cases they can have a more civilized life and do an even better job for their clients. We face that same issue with the schools here with the declining enrollment in the schools. The state basically compensates per student and there is definitely some economy in scale. When you get to some point you can't provide the same level of service. There has to be some other factor built in to your smaller counties, your smaller caseloads, your smaller public defender offices, because there has to be a level that they can maintain so they can continue to keep experienced attorneys and attract new attorneys. That is one of the concerns that I have. The other one - and I don't know if it has been addressed yet this morning, I suspect it has been addressed elsewhere around the state is the therapeutic court which I am doing, the mental health court and have been now for over a year. The public defender's office is graciously staffing that and I don't know, and Carole probably does know, I'm sure Carole Hamilton does know, but my suspicion is at this point that that is considered one case per defendant for that public defender who is appearing every single month for 13 to 14 months, potentially up to five years, and that may be considered one case because that case was filed in mental health court and we have regularly, monthly, sometime bi-monthly meetings with that person and with the attorney present. Obviously, you can't be compensated on the same basis as picking up a case where you represent the person through plea or trial and sentencing and the case is closed. These cases live on potentially up to five years.
- 874 Chair Ellis Do you have any thoughts on the issue of how best to provide defense service in Curry County given its isolation and relatively small population? You have heard us talking about that. Do you have any reaction?
- 880 P. Bechtold There needs to be bonuses, quite frankly, whether Angel was talking about the loan payback for new attorneys coming out of law school for working at a public defender or any kind of public service type work. I think it has got to be the same problem in eastern Oregon. In your more isolated counties you have got to do something to attract people. Unless they are home grown and have family ties and know that it is very, very windy in Gold Beach. That is one of the things that hasn't been mentioned and a reason people don't want to live there. Unless they have some family ties or other connection, you are going to have to give them incentive to go and then hope they will fall in love with the area and stay.

900 Chair Ellis Other questions for Judge Bechtold?

903 J. Potter The wind, we haven't heard that.

904 P. Bechtold I have been told that one of the best jobs to have is to sell real estate in Gold Beach because the same houses sell over and over again.

907 Chair Ellis Well maybe with alternate energy being a big deal that will be a good fit.

910 P. Bechtold Yes. I am not sure how many jobs that will create but there is certainly a lot of wind down there. The only other thing I have heard referenced is the difficulty with finding attorneys on appeal for certain kinds of cases. I also do all the mental hearings and that is something that I know has been a challenge in the past - finding attorneys to represent the allegedly mentally ill person once I have determined that they are ...

923 Chair Ellis On appeal?

923 P. Bechtold On appeal.

925 Chair Ellis Help is on the way, I think. Thank you. Nice to see you.

929 S. McCrea Thank you. [end of tape]

TAPE 2; SIDE B

029 I. Swenson From the two counties I regret that there weren't more Curry County folks here. We have such limited time and we had scheduled a budget report but maybe could postpone that to the beginning of the retreat. It overlaps with our discussion.

032 Chair Ellis If that is legal let's do it.

033 I. Swenson I think so. We don't have any action item for the budget and maybe we could take care of the minutes and the other two action items before returning to the hotel for our retreat. We are going to be in the same room where breakfast was scheduled this morning. The Salmon room West, so if that is satisfactory we can take things in whatever order you would like.

Agenda Item No. 4 Approval of increase in Attorney Hourly Rate

039 Chair Ellis Let's do Action Item No. 4 and Kathryn if you would like to present that. I think this is the increase in the hourly rate based on budget package 108 or 801, whatever it was.

042 K. Aylward It was actually a combination of funds. Part of it is the inflationary adjustment; part of it was \$1.8 million that was in essential budget level, in Co-Chair's budget and the \$800,000 that was later appropriated by the legislature so that we could reach that target. I think that since it was pretty clear that that was what the legislature was trying to get us to. But aside from other discussions we will have about how funding should be distributed we just felt it was appropriate to ask the Commission to put this into place immediately, effective for appointments today.

052 Chair Ellis Let me understand the scope. This is moving non-capital cases from \$40 to \$45 for the hourly pay and then the capital cases \$55 to \$60?

056 K. Aylward That is correct.

057 Chair Ellis Is this just for individual lawyers appointed or do the hourly paid consortia also come into this.

059 K. Aylward There is one hourly paid, Yamhill County Defenders ...

060 Chair Ellis Is it MCAD?

01 K. Aylward There is one where this will happen and then there is another where this will happen, so there are two hourly paid consortia. With one of them, Yamhill County Defenders, their current rate for non-capital cases is \$40 an hour. In their contract there is a clause that says that if the legislature or the PDSC approves an increase in the hourly rate that it will become effective on the same timeline under their contract.

065 Chair Ellis For them?

065 K. Aylward For them. MCAD also has that same clause, but their current rate for non-capital cases is more than \$45, so this would not affect them at this point.

070 J. Potter The Lane County group?

070 K. Aylward It would affect all hourly paid attorneys.

071 Chair Ellis Assuming that the same volume of cases went to those affected, what is the dollar impact we are talking about?

074 K. Aylward 2.6 million.

075 Chair Ellis That doesn't compute because \$2.690 is the aggregate that we got in that package and I thought it was \$1.8 of that was attributed to this rate increase? Am I wrong?

080 K. Aylward I have Commission meeting stuff in my head as opposed to retreat stuff in my head. I am having a little trouble understanding your question.

082 Chair Ellis I am trying to understand how much in dollars we are talking about assuming we agree to this?

083 K. Aylward It is \$1.8.

085 Chair Ellis That was the number I was thinking we were talking about.

086 K. Aylward That was what was in Co-Chair's budget that would have allowed the increase to go to \$43.25 and \$60 an hour. We were then appropriated an additional \$850,000 to bring that up to at least \$45 and \$60.

089 Chair Ellis Help me out. I thought the history was that same \$2.6 was to address both some improvement in the hourly rate and a closing of the gap between defenders generally and DAs?

092 K. Aylward No.

093 J. Potter The second amount had \$800,000 plus another \$900,000 something to close the gap. There were two appropriations or at least numbers.

096 Chair Ellis This is that one-sixth gap closure concept.

097 K. Aylward Co-Chair's budget included in it an adjustment, a Mandated Contractor Compensation

Adjustment that would naturally have an impact on public defender offices as well. Co-Chair's budget had \$1.8 million more than our essential budget level. Co-Chair's budget alone would have provided one-sixth of the amount needed to close the gap between PDs and DAs and the \$1.8 million was sufficient to increase the hourly rate to \$43.25. That is where we would have been - sorry I misspoke - Co-Chair's essential budget level was sufficient to increase the hourly rate to 3.1 percent added on to \$40, so \$41.22 or whatever. There was still \$1.8 million over and above essential budget level. The legislature said "How much more money would you need to accomplish some of these particular tasks like hourly rate or closing the PD/DA gap?" The assumption was that if the entire \$1.8 were applied to the hourly rate alone that would get us to the \$43.25 and \$60 an hour. That is what Co-Chair's budget could do and having been asked the question "How much more do you need to increase some of these things?" we had to make some assumptions if you spent that \$1.8 million on the hourly rate, this is how much more you would need to increase the hourly rate more and more and more. Now we could have said "If we assume that that \$1.8 million is spent toward PD parity, then this is what you would need for the hourly rate," but we had been testifying that the pressure on the hourly rate was significant and it was likely that market forces would push that up in any case. It seemed appropriate to say that if the Commission decides to use that \$1.8 million to increase the hourly rate then this is how much more you would need. They came back and said "\$856,000 is appropriated in addition to Co-Chair's budget so that the \$43.25 an hour (which doesn't really help you at all) can get up to \$45 an hour." To get from \$40 to \$45 and \$55 to \$60 it is using the \$1.8 million that Co-Chair's budget had in excess of essential budget level and the \$856,000 that was tossed our way to get it up to \$45 and \$60 and a portion of the 3.1 percent inflationary adjustment, so, those three components.

- 136 Chair Ellis I am getting most of what you are saying but maybe not all of it. I am looking at Package 808 and it says "The subcommittee approves \$2,690,933 General Fund which will partly enable the PDSC to increase the hourly rate to \$60 and \$45 and reduce the prosecutor/contractor salary gap by one-sixth" and I am sensitive that we have many thoughts in the room as to how funding should be distributed. If I hear you and we approve this and if case levels stay where they are, which is a big variable in all of this, there is nothing left of Package 808 for the second purpose. Am I right?
- 147 K. Aylward There was nothing needed in Package 808 for the second purpose. The second purpose is achieved through the adjustment to the essential budget level.
- 150 Chair Ellis Okay and now my second, and I'll encourage you, last question, why should we do this now rather than include it in the mix of things that we discuss in the retreat and then see where it fits relative to everything else that hopefully we come to some conclusions to do?
- 155 K. Aylward Traditionally, the retreat had not been a forum where action items were included on the agenda and in order to be able to act on this quickly, I suppose you have a quorum and you have a public meeting, you could move an action item to the retreat agenda.
- 160 Chair Ellis I'm not saying that I have some determination here, but the other way would be to not act on it right now, include this in the discussion at the retreat and then at the November meeting, after everybody has processed all of this, act on this and whatever else we do.
- 165 I. Swenson Mr. Chair, if I could just add one comment, I think we presented this as an action item today because we felt that the legislature had told us to do this without actually issuing a budget note or something of that nature. They planned our budget around these assumptions. During our budget presentations we talked about the hourly rate and it was a good example of the problems with the funding of public defense. We basically informed them that we will need to go beyond this rate, very likely in this biennium, but I think their assumption was that at the very least we need to raise it by these levels. That is the reason that it is presented

independently. Clearly you have the discretion to vote how to use any funds that are not specifically tied, but it was our understanding that that was the expectation.

- 179 Chair Ellis I was present at the public side of this, I wasn't present at your meetings with Robin. As a system, I would feel more comfortable having had the debate on where do we go from here with the increment that we have been allotted and we get everybody's input. It may well be, and I certainly respect if you are telling me that there was pretty much an expectation this would be included, it may well be we will do it but I do feel some uneasiness voting an allocation without the benefit of broader discussion.
- 189 I. Swenson The only downside would be for the hourly folks for whom there would be a delay. You can certainly choose to do it that way. I would point out that the specific number that we provided to them in order to get that level was the number they appropriated.
- 193 Chair Ellis I do understand the history and I am looking at Package 808. On the other hand, I don't think it was specified by the legislation. I think it is in the drafting history does but not the legislation itself.
- 196 S. McCrea I would like to know what Robin has to say about it.
- 198 R. La Monte Let me see if I can add a little light to the darkness. The basis for the dollar amounts was the \$45 an hour, but that is your discretion. That is not a law. You have the ability now to pay people \$45 an hour, but that was the basis for getting to the number that was in the budget bill. Then there was a supplemental appropriation that was made in the end of session bill of \$900,000 that really is discretionary. It isn't factored in, in my understanding anyway, to the \$45 and the \$60. We had a discussion at the time that that money was appropriated about whether or not there was an expectation that that would then affect the hourly rate setting and decided that that was not required so that you have flexibility with that last appropriation.
- 212 Chair Ellis My perception is the committee wasn't really trying to wrestle with what I think we are being asked to wrestle with, which is you have many models of providers, and yes we do have some additional resources. How do we ...
- 215 R. La Monte Right. They weren't taking your discretion away. They used the model that Kathryn provided that said with the funds that are provided in the essential budget level which is essentially what goes to public defender offices and the supplemental amount, we could get to this number to deal with the problems that you are having both with the public defender offices and with the hourly rate. It wasn't the legislature saying to this Commission "Thou shalt."
- 224 Chair Ellis Thank you. That is exactly what I thought.
- 224 S. McCrea Then here is the follow up question that Barnes isn't asking and that I hear sort of implied with what Ingrid is saying, is there an expectation that this is what we are going to do and then the second part of that is, if we do something different do we have a potential credibility problem the next time we go to the legislature? That is kind of the concern that is being expressed.
- 230 R. La Monte Mr. Ellis was there. The discussion was the difficulty in getting attorneys at the rate that is currently being provided. The hope was that these additional funds would make it easier for you to get the compensation that is necessary and that is based on – how do I say this, you have an hourly rate that is your guideline and that if in fact you are able to get the services that you need at the hourly rate that is your guideline that has been increased by the amount of money that was provided well, good, but you still have the responsibility of finding representation at the rate that you are able to get attorneys to provide the services at. I don't believe the legislature was trying to take away your discretion. I don't believe the legislature

would be unhappy if you were able to get people at \$40 to \$43 an hour, obviously they are looking for efficiencies, but they established a floor, if you will, or a ceiling, a rate that the funds were provided at within your discretion. Does that help?

- 248 Chair Ellis I think it does. I'm not trying to prejudge anything, but I would feel better if this were part of the broader discussion before we acted on it alone.
- 250 K. Aylward I agree with you. I think the broader discussion will make clear what are extremely complicated things to think about it. What I would urge you to consider is whether it would be appropriate to have it as an action item at the end of the retreat so that it doesn't get delayed.
- 255 Chair Ellis That is certainly within the range. If there is consensus it will happen.
- 256 J. Potter Can I go back to the question you asked originally and I didn't write down the answer and I'll ask it again, how much money is this \$45 an hour raise going to cost us?
- 259 K. Aylward Can I tell you at the retreat? It is more than \$2.6 million. I will tell you at the retreat when I have a laptop.
- 264 Chair Ellis Is there consensus to defer this?
- 265 J. Potter If it is legal for us to vote on it at the end of the retreat I don't have a problem discussing it if we can vote on it at the end of the retreat. I would like to us make a decision while we are here in Coos Bay.
- 268 Chair Ellis The other way to do it is to just not adjourn this meeting until the end of the retreat. We could do that. I would rather not act on this in isolation without having had the broader debate.
- 271 S. McCrea That is fine.
- 271 J. Stevens I would say that if my office were covering this meeting and we adjourned and then took up this item as part of the retreat, we might have some questions about opening meeting requirements. If we don't adjourn this meeting I don't see an issue. Obviously we are not lawyers.
- 277 Chair Ellis Which way do you want us to go?
- 277 J. Stevens I would prefer not to adjourn this meeting, because then there is no question in my opinion.
- 278 Chair Ellis I have got my legal advice.
- 280 J. Stevens I don't think you have to tape the whole retreat. You have just suspended this for a while. If the legislator can do that why can't we?

Agenda Item No. Approval of OPDS Compensation Plan

- 288 Chair Ellis Do you want to go to attachment 5?
- 288 K. Aylward Yes. PDSC is required to set salary levels commensurate with other state agencies. Department of Administrative Services negotiated for the Executive Branch a series of cost of living adjustments and some other changes. The Judicial Department just last week announced what they were going to do for their employees. In the past PDSC has either aligned themselves with Judicial because we were emphasizing the fact that we were Judicial Branch. Sometimes we didn't know what Judicial was going to do and we did know what Executive was going to do so we followed their pattern. The suggestion that I have made

would be pretty similar to the Judicial Department. It is a 3.1 percent cost of living adjustment September 1, 2007 and a second 3.1 percent cost of living September 1, 2008, but in addition, the Judicial Department is providing an additional top step to all of the pay scales. They are making theirs effective January 1, 2008. I am suggesting March 1, 2008 for us. It doesn't impact any particular employee. You have to be on the top step and at your salary eligibility date for that to impact you. That three months doesn't make a difference to us but I believe we will know in February how much additional funding would be provided. Even though I'd like to make the commitment now, I would just like to wait until March to actually change the compensation plan.

- 311 Chair Ellis What is the definition of employee for this purpose? Are you guys part of this? Are the lawyers in what we now call the AD?
- 314 K. Aylward This is all of the full-time equivalent positions funded by the legislature for the Office of Public Defense Services. It is CBS, Ingrid and me, all the bodies in the building.
- 319 Chair Ellis Secondly, is it clear when you say an additional top step, is the percent increment or dollar increment clear?
- 321 K. Aylward It is generally five percent between steps.
- 322 Chair Ellis So if we vote yes for this then that is what we are talking about?
- 322 K. Aylward Yes.
- 323 Chair Ellis The third question I have is this minimum of \$80, how many wouldn't get \$80 so they need the minimum?
- 326 K. Aylward I think in our office it may be three or four employees.
- 327 Chair Ellis Not a big deal. They would be close to that. Any other questions?
- 330 K. Aylward I apologize for the typo under the Commission action. I obviously copied it from the one before. It is not an increase in the guideline rates it is an increase in compensation.
- 333 Chair Ellis Is there a motion?
- MOTION:** J. Stevens moves that we follow Kathryn's recommendation on OPDS salary adjustments.
- 337 Chair Ellis Is there a second?
- 337 J. Potter We are going to have no opportunity at the end of this retreat to discuss this some more? Is there anything that might impact our discussion at the retreat or anything that would take place in our retreat that might impact this?
- 341 K. Aylward It is my understanding that the Budget and Management Division will calculate the funding and seek an appropriation. They will send us the money to do this. We don't have a way to spend it. We could give it back, but if we don't approve something along these lines they are still going to give us the funding to be able to do it and I think employees, unrepresented state employees might be very disappointed that they are not at least keeping even with their represented counterparts.
- 349 J. Potter I think that answered my question. I'll second the motion.

Hearing no objection, the motion carried: **VOTE 4-0.**

Agenda Item No. 1

Approval of the Minutes of PDSC's June 14, 2007 Meeting

- 351 Chair Ellis On the minutes, are there any additions or corrections?
- MOTION:** Shaun McCrea moved to approve the minutes; John Potter seconded the motion; hearing no objection, the motion carried: **VOTE 4-0.**
- 356 Chair Ellis Ingrid, anything that you want to present on the management team?
- 358 I. Swenson I would sure like Pete to update you a little on some of the changes that are anticipated in his division if we can take time to do that.
- 360 Chair Ellis This is the world's most popular man because he has jobs.
- 361 P. Gartlan Would you like this now or at the retreat?
- 361 I. Swenson I think now if that is satisfactory with everyone. We could do this later if you prefer to recess.
- 364 S. McCrea We are not going to recess.
- 365 Chair Ellis Recess but not adjourn.
- 365 S. McCrea Okay.
- 366 P. Gartlan Good afternoon. For the record, Peter Gartlan, Chief Defender. I wanted to update the Commission with respect to some of the reorganization that is taking place at our office and what we are doing to implement the reorganization. As you know we got several more positions in the legislature and ...
- 371 Chair Ellis That is a total of eight?
- 371 P. Gartlan Correct.
- 373 Chair Ellis To be honest I was a little interested, it sounded like there were also four in juvenile, so it is a total of 12.
- 375 P. Gartlan We are trying to keep them separate because they are going to be implemented separately, so there is a total of eight for what is the division formerly known as "Legal Services Division" soon to be known as the "Appellate Division".
- 379 S. McCrea He doesn't like that acronym does he?
- 380 Chair Ellis That change in designation has just morphed? I saw it here.
- 383 S. McCrea Did we approve it? That is what he is asking.
- 383 P. Gartlan No and it is not official yet. I think we are still known as "Legal Services Division" and we are not yet the Appellate Division. I guess I misspoke. The division once and currently known, as the "Legal Services Division," soon to be known as the "Appellate Division."
- 389 J. Potter Do we have to vote on that?
- 391 P. Gartlan I hope not. The major piece that we are dealing with regarding the eight positions in the Legal Services Division is that we are creating two more chief deputies. This is long overdue. It will allow us to spread out some of the administrative responsibilities that Becky and I have

carried for several years. This will, I think, if I could put it in a phrase, put us in a position where we can work on the business instead of working the business. I think we'll be able to implement a lot of changes to create even more efficiencies in the future. I am really excited about that. Becky and I made a list and it was even exhausting to make it. I think by spreading out some of those administrative responsibilities it will improve the administration of the office and also get Becky and me back into the legal work a little bit more. I think it will improve the office all the way around. There were two promotions. One was Shawn Wiley who has been with the office I think seven years now, and the other is Bronson James. Bronson has been an attorney I think eight or nine years. He has been with the office for about two and a half to three years. Bronson has a particular background that we thought was really interesting. He has a corporate background so we think he is going to bring some strength, some different experience, expertise to the management team that it lacked. We are really excited about that. If you just look at the chief deputies we have a really stellar group that will work well together. You are familiar with Becky and Shawn and Bronson and they will all three bring enthusiasm, energy and incredible confidence. Next we promoted two Deputy II attorneys to become senior deputies. I don't know if you remember what the organization chart looks but the senior deputies are below the chief deputies. We rely on them for legal expertise and legal leadership. They are the team leaders. Again, we are really happy with the people we promoted. Ernie Lannet, who has been with the office for six years and Meredith Allen who had been with the office in the late 90's, went to Palau and came back about three years ago. They will be senior deputies. Again, I think we have been able to put people in positions that will really help us. Part of this reorganization has allowed us to put Robin Jones in a position to help not just us but the trial bar. She has been assigned to oversee the website. If you have used our website you know it is incredibly outdated, the Legal Services Division, so now we will have one person dedicated to that kind of oversight to really improve the outreach and be of assistance to the trial bar in the future. Robin will also coordinate CLE activities, not just within the office, but outside the office, external outreach again. That will elevate our profile within the criminal defense community. We are currently interviewing or receiving applications for the Deputy I positions and Deputy II positions. Deputy II positions closed at the end of July and Deputy I will close August 20. Deputy I positions are the entry level positions, so we are waiting for people who have taken the bar, recuperated and are ready to be interviewed. We hope to have those interviews and selections made by mid-September at the latest. Departures: Jamesa Drake left our office. Jamesa had been with us for about five years and she will be missed and she will be missed by the courts. She was very well received by the courts. We also lost a secretary and a paralegal. One secretary went to the Oregon Supreme Court and the other went to the Marion County Public Defender's Office. As far as the death penalty goes, we had a meeting with the Federal Public Defenders in July at the Federal Public Defender's Office. This was kind of a round table discussion with two federal public defenders, Matt Rubenstein, and our death penalty team which is five attorneys. Just to update you on what is happening with the death penalty cases currently coming into our office, our attorneys have met with the trial attorneys, the trial team, and there is ongoing discussion and transition with respect to that death penalty case. That is pretty much all I have.

- 477 S. McCrea That is a lot and it sounds like it is mostly good.
- 479 P. Gartlan It is good and I think we will see some real benefits over the next few months. I think by this time next year, or a few months into next year, we are going to be a really solid agency or division by whatever name.
- 483 J. Potter Did I understand that Jamesa Drake was going to continue to do appellate work for you long distance or take a case or two?
- 485 P. Gartlan We have arranged for her to come back in September. She has two cases in the Court of Appeals that are very important and she has one case in the Supreme Court, so she is coming

back. She is going to argue two cases on Friday the 7th and then one case in the Oregon Supreme Court on Monday the 10th.

491 J. Potter But no additional new cases?

492 P. Gartlan I doubt it. I think it was because of her decision that it wouldn't be economically feasible for her.

495 Chair Ellis Thanks a lot. We are not adjourned we are recessed.

[The meeting was reconvened on August 10, 2007.]

Agenda Item No. 4 Approval of increase in Attorney Hourly Rate

506 Chair Ellis We are at agenda item No. 4. It would be attachment 4 and the only modification would be the date August 9 would become August 10 on the recommendation.

514 K. Aylward But it says "for appointments on or after" and you wanted it to read "for work performed."

517 Chair Ellis On this one I would invite a motion.

MOTION: Shaun McCrea moved to approve; Janet Stevens seconded the motion; hearing no objection, the motion carried. **VOTE 4-0.**

525 Chair Ellis Now is there a motion to adjourn yesterday's meeting.

526 J. Stevens Are we done with everything that was on there?

527 Chair Ellis I think that is the only action item.

527 Audience What about the investigators?

528 Chair Ellis Right. Let's move to Items 8 and 9 which are to increase the hourly rate for investigators/mitigators, and Kathryn remind me of the numbers we came up with?

534 K. Aylward Twenty-eight dollars an hour for non-capital cases and \$39 an hour for capital cases.

537 Chair Ellis You will say this better than I will, the effective date would be?

538 K. Aylward For authorizations approved on or after August 10, 2007.

541 Chair Ellis With the opportunity for existing authorizations to seek reauthorizations at the higher rate?

543 K. Aylward That is correct.

543 Chair Ellis Is there a motion.

MOTION: Shaun McCrea moved to approve; John Potter seconded the motion; hearing no objection, the motion carried: **VOTE 4-0.**

548 Chair Ellis Now I believe that is all that we will have votes on today

551 J. Stevens So I move we adjourn yesterday's meeting;

Shaun McCrea seconded the motion; hearing no objection, the motion carried: **VOTE 4-0.**

Attachment 2

**OPDS's Draft Final Report to the Public Defense Services
Commission on Service Delivery in Washington County
(October 12, 2007)**

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, Clatsop, Lane, Lincoln, Linn, Multnomah, Marion, Klamath, Yamhill, Hood River, Wasco, Wheeler, Gilliam and Sherman 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 report includes the results of the Office of Public Defense Services' (OPDS) preliminary investigation into the conditions of Washington County's public defense system, the comments and discussion that occurred during PDSC's public meeting in Washington County on Thursday, May 10, 2007 and a proposed service delivery plan. The final version of this report will contain PDSC's service delivery plan for Washington County.

PDSC's Service Delivery Planning Process

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

Second, starting with preliminary investigations by OPDS and the preliminary draft of a report such as this, the Commission reviews the condition and operation of local public defense delivery systems and services in each county or region by holding one or more 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 in the final version of OPDS's 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, contractors subject to the Commission's service delivery plans are urged to implement the strategies or changes proposed in the plans. Periodically, these contractors report back to PDSC on their progress in implementing the Commission's plans and in establishing 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.

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 Douglas, Jackson, Multnomah and Umatilla Counties. In 2006, teams visited all of the juvenile contractors in Multnomah and Lane Counties and the criminal and juvenile contractors in Linn and Lincoln Counties. In 2007 site teams have visited the sole juvenile contractor in Clackamas County, the largest contract office in the state in Multnomah County and the sole criminal and juvenile contractor in Benton County. Another site visit is planned for Columbia County in December of 2007.

In accordance with its Strategic Plan, PDSC has also developed a systematic process to address complaints about the behavior and performance of public defense contractors and individual attorneys.

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 devoted two of its meetings to investigating the condition of juvenile law practice across the state and developed a statewide Service Delivery Plan for juvenile representation.

In 2007 PDSC undertook to review the delivery of public defense services in

death penalty cases. A final plan for providing services in these cases was approved by the Commission in June of 2007.

The Commission is also concerned about the “graying” of the public defense bar in Oregon and the 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. The Commission has also found that the impact of such shortages is greatest in less populous areas of the state, where fewer lawyers reside and practice, but where the demands for public safety and functional justice systems with the requisite supply of criminal defense and juvenile attorneys are as pressing as in urban areas of the state. 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

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).

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 task 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 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 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 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

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

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 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 in which they still represent public defense clients under contract with PDSC. Many of these attorneys received their training and

³ Id.

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, in post-conviction relief 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 Washington County

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 system begins with a 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 May 10, 2007 from 9:00 a.m. to 1:00 p.m., PDSC held a public meeting in Room B-30 of the Public Services Building in Hillsboro, Oregon. The purpose of that meeting was to (a) consider the results of OPDS's investigation in the county as reported in the preliminary draft 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 county's public defense system and services, and (c) identify and analyze the issues that should be addressed in the Commission's Service Delivery Plan for Washington County.

The initial draft of this report was intended to provide a framework to guide the Commission's discussions about the condition of Washington County's public defense system and services, 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. The initial draft was also intended to offer guidance to PDSC's invited guests at its May 10, 2007 meeting, 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 Washington County's public defense delivery system.

In the final analysis, the level of engagement and the quality of the input from all of the stakeholders in Washington County's justice system was the single most

important factor contributing to the quality of the final version of OPDS's report to the Commission and its Service Delivery Plan for Washington County.

OPDS's Findings in Washington County⁴

The Court

There are fourteen judges in Washington County serving a current population of 514,269 county residents.⁵ Judge Thomas W. Kohl is the presiding judge and Richard Moellmer is the Trial Court Administrator. The court maintains a central docket with master calendaring.

The District Attorney

Robert Hermann is the District Attorney of Washington County. He has thirty-seven deputies, two of whom are assigned to juvenile court. The office uses a lateral assignment system. Cases are handled from the initial filing to the conclusion of the case by the same deputy district attorney.

Criminal Case Processing

All criminal cases are processed initially through a courtroom in the Law Enforcement Center, which also houses the sheriff's office and the jail. Judge Rick Knapp is currently assigned to this court on a full-time basis. At arraignment defendants who are eligible for the new Early Case Resolution program (ECR), discussed below, are separated from those who are not. Persons ineligible for ECR treatment proceed to arraignment. Lawyers are not present for these arraignments. After arraignment the next hearing in felony cases is a preliminary hearing held a week later. In non-ECR cases a pre-trial conference is scheduled two weeks later if the defendant is in custody or four weeks later, if the defendant is not in custody. The county seeks to adjudicate all criminal cases within 120 days⁶. If a case is not resolved at the pretrial conference the next appearance is for case assignment on the Friday before the week of trial. All lawyers and their clients must be in the presiding judge's courtroom for case assignment to indicate whether each matter is ready for trial the following week. Cases are

⁴ OPDS's initial findings were amended in light of the testimony and other input received by the Commission on May 10, 2007. Data included in these findings was accurate as of the date of the public meeting but may have changed prior to the date of the final report.

⁵ By way of contrast, Multnomah County has thirty-eight judges and a population of 681,454. Washington County's population increased by fifteen percent between 2000 and 2006. Source: US Census Bureau.

⁶ Criminal cases, including felonies other than Measure 11 offenses, are resolved within 120 days of the arraignment. According to information received from the presiding judge, In 2001 there were 545 cases over a year old. As of December of 2006 there was only one misdemeanor and six felonies over a year old.

sometimes double set. If the first case does not proceed to trial, the back-up case is tried.

Trials are held on Tuesdays through Fridays. Mondays are pre-trial conference days. Each judge handles a certain number of pretrial conferences. There is very little time for each pretrial conference, although the number of pretrial conferences is decreasing as a result of the ECR program. In addition, the domestic violence docket, the diversion docket, the drug court, the mental health court and the civil motion docket are all scheduled on Mondays.

ECR Program

Prior to the implementation of the ECR program two of the judges undertook to conduct an early disposition program on their own. It was used primarily for probation violations and minor misdemeanors such as Driving While Suspended, Theft II and Theft III. A significant number of cases were resolved but there was no participation by defense counsel and there was some inconsistency in outcome depending on which judge was hearing the case.

In 2005, in order to address the issue of jail overcrowding, Washington County undertook to update its Criminal Justice System Master Plan. To assist with the project it retained the services of David M. Bennett, a nationally recognized criminal justice expert. To examine one mechanism for addressing overcrowding, Mr. Bennett took a team of Washington County officials to Reno, Nevada to observe its early disposition program. Adapting what they learned to their own county, Washington County officials created what may now be a model program, which appears to comply in all important respects with PDSC's Guidelines for Participation of Public Defense Attorneys in Early Disposition Programs.⁷

The list of misdemeanor and felony offenses eligible for ECR treatment is set forth in Exhibit B. The list includes property offenses, drug offenses and other miscellaneous non-person offenses. During the first three weeks of the program, of the 305 cases referred to the ECR court, 196 were resolved. The court also deals simultaneously with any pending probation violations and any violations arising out of the new criminal conduct, allowing the defendant full resolution of all pending matters and avoiding the need for additional court hearings. Probation staff is present in the ECR court with files for defendants with open probation cases. Probation staff also assists defendants in arranging for community service. Since the court also imposes restitution and fees, the trial court administrator plans to place a cashier at the justice facility to facilitate the receipt of these funds. Resolution of both the new charge and any probation

⁷ The Guidelines are attached as Exhibit A.

violations at the initial appearance means that there will be significantly fewer Failures to Appear since defendants will not be required to return to court.⁸

District Attorney Bob Hermann is very pleased with the results of the program to date. He assigned a very senior deputy to the court. The DA's office is able to provide discovery to the defense by 11:30 am for cases to be heard at 3:00 pm. Mr. Hermann believes that the program will not result in a widening of the net in his county.

Nine lawyers from four of the contract offices are participating in ECR. Currently contractors are receiving full case credit for these cases and a number of law enforcement and court representatives urged PDSC not to lower these rates because, although the lower level cases are now being resolved with less attorney time, the remaining cases are more difficult and will require more attention.

Drug court

Presiding Judge Thomas Kohl was instrumental in creating Washington County's drug court, which has now been operating for two years. Approximately thirty-eight clients are currently being served by the drug court and, in view of its success, it will expand to include up to fifty people. Initially, the court was available only to defendants accused of possessing controlled substances but it soon became clear that others, including defendants with significant non-person felony histories, could benefit from the court. The program lasts from twelve to eighteen months depending on the individual. Clients are in court once a week for the duration of their involvement. Keith Rogers of MPD has staffed this court since the beginning. A second attorney will be needed in the near future. MPD currently receives only their normal case credit for these cases regardless of the number of appearances that may be required.

Mental Health Court

A court for probationers with mental health issues has just been inaugurated. Judge Marco Hernandez organized the Mental Health Court Policy Planning Committee which created the court. Keith Rogers of MPD is a member of the committee. According to Judge Hernandez, approximately seventy-eight percent of Washington County's prisoners have mental health issues. Currently, there are only three participants in the court but the number is expected to grow to twenty and, eventually, to forty. Participants attend court proceedings once every two weeks. The length of the program is indefinite. A single MPD attorney currently staffs the court and the office receives the underlying case credit

⁸ Sheriff Rob Gordon indicated that this category of offenses had already fallen significantly after the county implemented a policy requiring arraignment before release. After ECR went into effect the number of Failures to Appear went from between twenty-five and thirty per week to none.

(generally a probation violation credit). A second attorney will be needed as the number of participants increases.

System Issues in Criminal Cases

A number of concerns about the operation of the criminal court system were brought to OPDS's attention during the course of meetings with local officials and providers. These included the time that is wasted by attorneys who appear at case assignment. The cases are scheduled in alphabetical order by client so lawyers with more than one client often have to spend much of each Friday morning waiting for their cases to be called. Some lawyers say that pretrial conferences are a waste of time, since the deputy district attorney who is present usually has no authority to settle the case for anything other than the terms of the written offer. In Measure 11 cases some attorneys reportedly fail to provide the state with information about the defendant that might persuade the district attorney to agree to a non-Measure 11 sentence. Attorneys are busy and sometimes cannot have their cases ready as soon as the court requires. One attorney suggested that the court create a special docket time for clients who have failed to appear so that they could come to court in lieu of turning themselves in to custody and waiting days for a court hearing. OPDS believes that all of these matters could be discussed and resolved at a meeting of stakeholders. Such meetings occur regularly in other counties. Judge Kohl indicated that he is willing to meet with anybody who has a suggestion for improving the system.

Juvenile System

Washington County has both a judge and a referee assigned full time to its juvenile court. The district attorney's office has two deputies handling juvenile cases. In addition to handling delinquency cases they also participate in dependency cases⁹ on behalf of the state until jurisdiction is established. Thereafter the Attorney General represents the Department of Human Services (DHS) and the State of Oregon in dependency and termination of parental rights cases.

Judge James Fun, a former deputy district attorney, was only recently assigned to the juvenile court. His predecessor, Judge Kirsten Thompson, worked with all of the involved parties to see that attorneys were present to represent parents and children at shelter hearings in dependency cases. In the past these parties had appeared without counsel at the initial hearing.

⁹ Deputy district attorneys are not always present for shelter and other hearings. DHS workers handle much of the legal work in the case, such as preparing the petition, creating and labeling exhibits, identifying witnesses and presenting the agency's position in court.

“Team decision meetings” are now being convened by DHS at the time of the initial shelter hearing in dependency cases in order to accelerate access to services for those parents who are willing to engage in them prior to adjudication.

Status conferences are set within thirty days of the shelter hearing and contested hearings are held approximately thirty days after that. There are no pretrial conferences in dependency cases so negotiations have to be conducted outside of the court process. The county generally achieves adjudication within the required sixty-day period.

Once disposition has occurred, the court may not review the case until the permanency hearing, nine months later. This practice may be changing, however with the court scheduling earlier reviews when needed.

The Citizen Review Board customarily reviews each case within 180 days of the date the child came into care.

Judge John Lewis has just started a new mediation program in termination cases.

There is a strong Court Appointed Special Advocate (CASA) program in Washington County, which is part of the joint Multnomah County/Washington County program. There are a hundred volunteers and three full-time supervisors in the program.¹⁰ CASAs are currently appointed in approximately fifteen to eighteen percent of the cases. In Washington County all CASA appointments occur after jurisdiction has been established.

System Issues in Juvenile Court

For a period of time members of the local juvenile court community were not meeting regularly. Judge Fun and Referee Michele Rini recently conducted the first of what are planned to be quarterly meetings of the bench and bar. This will be an appropriate forum for discussion of some of the issues that were brought to OPDS’s attention during interviews in preparation for the Commission’s review. They include the following.

There is a lack of adequate physical space for the parties to gather before court hearings and for attorneys to confer in confidence with their clients. The juvenile court area is very small and crowded. There are conference rooms in the Juvenile Department but these are not intended for attorney conferences and are not usually available. There is one large conference room that could accommodate a meeting between all of the parties in a case but it, too, is often in use by Juvenile Department staff. Attorneys find themselves discussing confidential matters with their clients in public areas. There is a need for a

¹⁰ This CASA program also has a training coordinator on staff. CASAs receive thirty hours of initial training with twelve hours of additional training required per year.

dedicated conference space. It was reported that the county is looking for additional space.

Lawyers are very busy and prefer to have cases set for specific times, if possible, to avoid the need to be in court waiting for a case to be called. Initial appearances in termination cases, for example, occur twice a month. All of them are set for the same time requiring all of the lawyers to be present. In addition court matters that are scheduled for a specific time are scheduled for only fifteen minutes. This is almost never enough time and, as a result, the court gets farther behind as the day progresses. People report spending hours of unnecessary time in court. When a case is delayed an attorney may be required to be in another court by the time the juvenile matter is finally called, further delaying that matter for the other parties and attorneys in the case. Although there are now two full-time judicial officers in the Washington County juvenile court, they are both very busy. Despite the press of other matters, it is reported that they devote as much time as needed to each case.

It was reported that Washington County takes longer to finalize adoptions than other counties. There appears to be a lack of available adoptive homes and, as a result, adoption committees sometimes have to be rescheduled. The parties may need to ask the court to monitor this process more closely.

Representation Issues in Juvenile Dependency Cases

Attorneys on all sides in juvenile proceedings in Washington County indicate that they enjoy good working relations with each other. While they may advocate forcefully for their clients in the courtroom, they reportedly maintain a professional relationship with each other and relate well to each other outside the courtroom. Some attorneys do not treat DHS workers with the same level of respect. In addition, there does not appear to be much collaboration between CASAs and some of the attorneys, even when their positions in a case are similar.

All of the attorneys are reported to work hard but some are considered less effective than others. The more experienced attorneys in all of the firms are described as good attorneys who know when to litigate. They raise appropriate issues and hold DHS accountable. For these attorneys the main concern is that they don't have enough time to meet with their clients.

Only a few lawyers are believed to meet with child clients regularly;¹¹ most meet with them rarely, and some never. Attorneys in this latter group acknowledge that their recommendations to the court are not based on first-hand information but on information provided by the DHS caseworker or the CASA. It was

¹¹ MPD attorneys as a group, a small number of individual lawyers from other firms, and several non-contract attorneys are generally held out as the attorneys who always meet with their clients, return phone calls and collaborate with parties sharing similar interests.

reported that a number of attorneys for children decline to present a position on behalf of their child clients, sometimes advising the court that they will decide whether to take a position when all of the evidence has been presented by the other parties in the case. This does not appear to constitute “representation” as contemplated in PDSC’s contracts.¹²

A lot of attorneys also reportedly fail to meet with parent clients before court. (Of course some parent clients may not cooperate with their attorneys.) Many attorneys also fail to attend DHS team decision meetings with their clients and fail to attend Citizen Review Board hearings.

For newer attorneys in offices other than MPD, it was reported that there is a lack of adequate training. They don’t appear to have mentors or receive initial training. Their caseloads are also said to be high and their compensation inadequate.

Some attorneys are difficult to reach and do not return telephone calls.

Representation Issues in Delinquency Cases

In delinquency practice the quality of representation appears to vary substantially from one attorney to another. Some attorneys are reported to do very good work, to communicate well with their clients and to prepare for hearings. Other attorneys are reported to be unprepared for hearings or even absent without having arranged for another attorney to cover for them, to fail to see their clients before court, and to fail to respond to calls regarding their clients. Recently the release of one youth had to be delayed because the attorney had asked to be consulted about the youth’s placement before he was moved and the attorney could not be reached. Sometimes law enforcement officers want to question a youth and juvenile department staff is unable to contact the youth’s attorney. Most attorneys don’t meet with the parents of their clients and this is particularly true of non-English speaking parents say they feel excluded from the process. Some attorneys provide their clients with reformation plans and police reports without deleting victim contact information. In the recent past there has been no forum in which the attorneys and juvenile court counselors could discuss issues of this nature. Judge Fun recently reinstated regular bench/bar meetings at which such issues might be discussed. Juvenile department staff members are not comfortable talking to supervisors in the attorneys’ offices for fear they might jeopardize the good will that does exist, and the efforts of a few in the past to raise performance issues was not well received by the attorneys.

¹² One attorney reportedly advised the court that he would not take a position one way or another in a termination case for fear of liability if the outcome for which he successfully advocated resulted in injury to the child.

Representation is currently not provided at in-custody shelter hearings in delinquency cases. Such hearings are fairly uncommon since the county has very few detention beds and most youth are released.

One commentator said that the younger attorneys may be settling too many cases. They don't have the skills to make good decisions about which cases should be tried.

Caseload Trends

As indicated in the table below, both the criminal and the juvenile caseloads in Washington County have remained relatively stable during the current biennium.

Date	Total Caseload	Juvenile
July 2001- June 2002	16,037	2,444
July 2002 - June 2003	14,395 (<i>BRAC period</i>)	3,124
July 2003 - June 2004	17,236	3,995
July 2004 - June 2005	18,012	4,718
July 2005 - June 2006	17,927	4,952

Although the population of Washington County is increasing, according to local law enforcement agencies the crime rate appears to have leveled off.

As more juvenile cases are going to contractors, there are fewer cases for the private bar attorneys to handle.

Public Defense Providers

Most public defense services in Washington County are delivered under contract with PDSC. The principal providers are the Washington County office of Metropolitan Public Defender Services, Inc; the Oregon Defense Attorney Consortium; and four private law firms: Brindle, McCaslin & Lee; Garland, Burton & McCaffery; Karpstein & Verhulst; and Ridehalgh & Associates. Each of the contract offices is described briefly below. In addition there are non-contract attorneys who handle cases on an hourly basis.

Metropolitan Public Defender

MPD began operations in Multnomah County in 1971 and opened the Washington County office in 1973. MPD is a private, not-for-profit corporation that contracts with PDSC for one hundred percent of its professional services. MPD has a five-member Board of Trustees that oversees the affairs of the

corporation. One member of the board is appointed by the chair of the Washington County Commission.

The MPD-WCO is one of two offices of MPD, Inc. As such, the central administration of MPD contracts with PDSC, and manages accounting and payroll, hiring and human resources, information technology, capital acquisitions and other aspects of the administration of MPD. The managers of MPD-WCO are part of the administration and are active participants in administrative decision-making. MPD-WCO functions independently and the managers have a great deal of autonomy in the day-to-day operations of the office.

MPD-WCO has twenty attorneys including the director, six investigators, ten legal assistants, four secretaries, one data integrity specialist and one alternatives worker who also acts as a legal assistant. Many employees have worked in the office for a long time; two years ago the median length of stay was reported to be seven and a half years.

A "team" at MPD-WCO generally consists of a full-time attorney, a half-time legal assistant and a one-third time investigator. Each team is assigned to one of the following groups within the office: the Major Felony Group, the Misdemeanor/Minor Felony Team, the ECR Team, the Juvenile Team, the Civil Commitment Team or the Spanish Language Team.

MPD-WCO evaluates every employee after the first six months of employment and has a goal of evaluating every employee once a year thereafter. A series of questionnaires has been developed which seek information about an employee's performance. These questionnaires are distributed to the employee's co-workers including both attorneys and staff. According to the director, feedback from judges and district attorneys has been solicited in the past. MPD-WCO has developed a form for obtaining client feedback but implementation of the process is reported to be in its infancy. There is a written complaint policy in place that can be used by clients and others.

MPD provides a formal full-day orientation for all newly hired employees. Immediate supervisors are responsible for the training of new employees in their sections. All new attorneys at MPD participate in a multi-day trial skills training program offered twice a year that utilizes a mock criminal case and lectures to teach trial tactics, strategy, ethics and professionalism. In recent years attorneys from other public defense offices have been invited to participate in this program if all of the openings are not needed for new MPD lawyers. Periodically investigators, legal assistants and other members of the support staff have half-day or day-long training programs devoted to professional development and training. There are noon-hour brown bag sessions approximately every other week that focus primarily on legal issues. Occasionally there are after-hours trainings on specific topics. Limited reimbursement is available to other staff for training. MPD has an attorney trainer who plans brown bags, the trial skills

training program, and other trainings. MPD also maintains a law library at each office and electronic motion and memo banks. The attorney trainer is available to consult with other attorneys regarding legal issues in their cases.

MPD staff attorneys and other MPD employees are represented by the American Federation of State, County and Municipal Employees (AFSCME).

This office is described as “very good, very stable” by one judge, and “the Cadillac” by another. A third judge said that while there are issues with some attorneys,¹³ the office is a solid, major player. One commentator said that the office does a good job but that the attorneys are “buried” by the number of cases they handle.

The Director of the office, Keith Rogers, is considered an important partner in all community justice initiatives in the county. MPD is listed as a “key stakeholder,” for example, in the Criminal Justice System Master Plan referred to above. MPD is involved in all three of the county’s specialty courts and its attorneys and staff participate in many criminal and juvenile justice work groups and task forces.

MPD’s contract includes all categories of cases except Non-Support, Post-Conviction Relief, and DUII Diversion.

A copy of Keith Rogers’ response to a 2004 questionnaire regarding the functioning of his office, and an April 2007 update to the questionnaire are attached as Exhibit C.

Oregon Defense Attorney Consortium

The Oregon Defense Attorney Consortium (the consortium) was formed in 2005 for the purpose of contracting with PDSC on behalf of its member attorneys. It is organized as a private non-profit corporation. There are three members of its board of directors, all of whom are members of the consortium. The consortium plans to recruit two additional board members from outside the consortium. Rob Harris was instrumental in organizing the consortium and serves as its executive director. The consortium includes approximately eighteen attorneys. Of the contractors, only MPD and the consortium handle Measure 11 cases and major felonies. The consortium also handles minor felonies and misdemeanors and participates in the ECR court. The consortium administrator receives information about any bar complaints against consortium members and actions taken by member firms in response. The administrator also inquires of the court periodically about member performance. The administrator receives complaints directly from clients and works with the attorney and client to resolve them.

¹³ OPDS was advised that the Director does not seem able to “ease out” unsatisfactory lawyers. On the other hand, Sheriff Rob Gordon said that if there is a problem with a public defender his office just calls MPD and it is taken care of.

The consortium is seen as providing very good representation¹⁴ and creating an opportunity for some of the best and most experienced lawyers in the county to handle public defense cases. The Harris firm has added new attorneys who are now being trained and other consortium members may also be adding new lawyers in the future. Rob Harris is described as a great asset - he is knowledgeable, provides good advice, has good skills, and gets along with everyone.

Mr. Harris is not satisfied with the rates the consortium is receiving under its current contract because they are lower than the rates received by providers in some areas of the state. As he has informed OPDS staff, he believes that there should be a presumption that contractors will receive equal rates and if any contractor receives more OPDS should be able to articulate the reasons for the difference.¹⁵

The consortium handles all categories of felony cases, misdemeanors, probation violations and a small number of post-conviction cases.

A copy of Robert Harris's response to OPDS's questionnaire to consortium administrators and a copy of the by-laws of the non-profit Oregon Defense Attorney Consortium, Inc. are attached as Exhibit D.

Washington County Indigent Defenders, P.C.

This firm is also known as Garland, Burton and McCaffery. Marvin Garland is the contract administrator. His firm has contracted with OPDS since 1994. The firm has a board of directors comprised of its shareholders. There are currently eight associates. The firm handles C felonies, misdemeanors and probation violation cases, and participates in the ECR program. It also began taking juvenile cases in January of 2007. Its monthly quota for 2006 was 212 cases. The actual number of cases it received per month was 182.

The Garland firm has been identified in the past, prior to the addition of two new partners, as experiencing the most difficulty with performance. Under current management the firm appears to be operating more effectively. It was reported that it seems more settled and the lawyers appear to be happier.¹⁶

¹⁴ Two judges rated the consortium as the best provider in the county.

¹⁵ At its August, 2007 retreat the Commission directed the Office of Public Defense Services to work towards mitigating rate disparities in any markets in which the disparity would jeopardize OPDS's ability to retain desired contractors. It noted that non-profit public defender offices provide services that consortia do not and rate disparities between public defender offices and other types of contractors may, therefore, remain. It directed that rate disparities between public defender offices within the same market providing similar services be mitigated, however.

¹⁶ One interviewee said that significant improvement is still needed. Attorneys continue to come to court without having met their clients. It was reported that two attorneys have just left the firm.

A number of interviewees expressed concern about the lack of training for new lawyers at this firm. It was considered a significant improvement that one of the partners was present in the courtroom to observe a new attorney in a recent jury trial. The firm has no formal training program but indicates that it is developing one. The firm reports that it performs regular evaluations of attorneys and staff. It also uses "team leaders" for the criminal and juvenile caseloads who communicate regularly with their team members by email. The lawyers also meet for lunch occasionally.

The distribution of funds within the firm was reported by observers outside the firm to be a problem. New attorneys were said to receive very poor salaries. Two interviewees recommended that PDSC review salaries in this firm (as well as in others) as part of the contracting process and require that adequate funds be distributed to the attorneys doing the work. The firm has now provided information regarding salaries that indicates that it pays competitive salaries.

A copy of the firm's questionnaire response and a copy of a letter received from Grant Burton regarding salaries at the firm are attached as Exhibit E.

Karpstein & Verhulst

This firm has been contracting with PDSC since 1994. It does not have a board of directors. Steven Verhulst is the contract administrator.

The partners in this firm are well respected in the legal community. The bulk of their contract is for juvenile work. The firm has six attorneys, three of whom are new. The firm has no formal training program but has a "hands on practice," assigning a supervisor who is available for consultation on a daily basis to each new attorney. Supervisors accompany new attorneys to their first trials. They are encouraged to ask questions and once or twice a month the attorneys get together to discuss cases over lunch.

The firm handles misdemeanors, probation violations and juvenile cases.

A copy of the firm's questionnaire response is attached as Exhibit F.

Brindle, McCaslin & Lee, P.C.

The Brindle, McCaslin & Lee firm has seven associates. Under its previous name of McKeown & Brindle it has been providing public defense services in Multnomah County since 1988 and in Washington County since 1995. It does not have a board of directors. The firm is reported to have undergone a lot of changes lately. The fact that Ted Brindle, the senior partner in the firm, is now working in Washington County is considered a positive development. This firm does not have a formal training program for its new attorneys although senior attorneys review cases with newer attorneys. Lack of adequate training was

reported to be a problem for this firm in the past. Recently, however, they have added some new but very experienced attorneys including a former deputy district attorney from Multnomah County.

The firm handles misdemeanors, probation violations and juvenile cases.

A copy of the firm's questionnaire response is attached as Exhibit G.

Ridehalgh & Associates, LLC

The Ridehalgh firm has been contracting with PDSC since 2000. It has seven attorneys, including Ronald Ridehalgh, who represent clients in C felony, misdemeanor, ECR, DUII Diversion, Domestic Violence Deferred Sentencing and juvenile cases. The firm does not have a board of directors. It has an employee manual and written job descriptions. Employee performance issues are generally addressed in one-on-one discussions. A number of creative awards have been devised to recognize attorney achievements. The firm has a formal complaint procedure for clients and others. It also has a sophisticated case tracking system. Little direct comment was received about the firm from interviewees although one judge said the firm did good work and had good staff continuity. In juvenile cases a single interviewee reported that Ridehalgh attorneys often fail to return calls and fail to attend treatment reviews. Mr. Ridehalgh addressed this allegation in a letter of May 17, 2007 which is included in Exhibit H.

The firm handles C felonies, misdemeanors, probation violations, contempts, and juvenile cases.

A copy of the firm's questionnaire response is included in Exhibit H.

Private Bar

In addition to the contractors there are attorneys who handle cases from the court appointment list on an hourly basis. The attorneys who handle juvenile cases on an hourly basis are considered important participants in the juvenile court system.

OPDS's Recommendations for Further Inquiry at PDSC's May 10, 2007 Meeting in Hillsboro

In light of the information which came to its attention during interviews with representatives of the Washington County juvenile and criminal justice systems, OPDS recommended that the Commission focus its inquiries and discussion at the Commission's May 10 meeting in Hillsboro on the following topics:

1. Structural issues. Washington County has significant structural variety among its providers – a strong public defender office, a consortium with both experienced and new attorneys, and a number of firms and individual providers. It would appear to be a system that permits more experienced lawyers to continue to participate in public defense while maintaining their private practices but that also provides new attorneys with a variety of options for becoming involved in public defense representation. The Commission may well determine that this is at least one appropriate service delivery model. If caseloads decline there may be a need for fewer providers. One component of this system that may be especially vulnerable if caseloads decline is the hourly rate attorneys since OPDS must see that its contractors' quotas are met before authorizing appointment of hourly rate attorneys.
2. Quality improvement. Most of the issues raised by county officials in discussions with OPDS staff related to the quality of representation by, and the adequacy of training for, newer public defense attorneys, rather than the structure of these organizations.

Of course increased funding would be an important factor in the effort to improve quality. Despite the Commission's effort in the last contracting cycle to direct limited new funds to contractors with the lowest case rates, Washington County contractor compensation (except for MPD) remains below average.¹⁷

Whether or not additional funds are available, there are steps that contractors should be encouraged to take to improve representation. The consensus of opinion among those who see new lawyers in the courtroom on a regular basis is that there needs to be a basic training course for these lawyers. They need an opportunity to learn the essentials of courtroom practice before appearing in the courtroom with their first clients. Training should focus on the "how tos" of courtroom practice such as how the jury selection process works, when and how to make a motion for judgment of acquittal, which motions should be made outside of the presence of the jury, that adjudication needs to occur before the attorney addresses disposition, etc. The judges are willing to help but say they are rarely asked. Contractors who do not have in-house training like MPD should confer with MPD, the county bar association, OCDLA, the state bar and others about how to create an appropriate training plan for new attorneys. In lieu of such a training program an effective mentoring plan for each new attorney could be an effective option. One interviewee proposed that PDSC include in its contract a requirement that all attorneys with less than 18 months' experience be required to attend a practical skills training on the essentials of courtroom practice.

¹⁷ True "averages" are difficult to calculate in view of the number of variables that must be considered. By "average" this report means the approximate average among similar providers.

It was reported that defense attorneys are missing an opportunity to be more effective in presenting their cases to juries. The prosecution makes frequent use of new technologies such as Power Point to better outline and present their cases. Defense attorneys say they simply don't have the equipment but others say they don't appear to be making any effort to get it. The trial court administrator's office may have some equipment it could make available. Local commentators believe it is more of a training issue than a funding issue.

In the area of juvenile representation, the issues identified in Washington County are similar to those identified in other counties – failure by some attorneys to visit with child clients and to advocate effectively for them, failure to meet with adult clients prior to court hearings and to advocate forcefully on their behalf for needed services from DHS and appropriate findings by the court, failure to attend Citizen Review Board hearings and planning meetings convened by DHS. All of these issues are addressed in the Qualification Standards for Court Appointed Counsel, PDSC's model contract, the Oregon Rules of Professional Conduct and the Oregon State Bar's Performance Standards. Heavy caseloads and insufficient training appear to be the principal causes of unsatisfactory performance, although some lawyers manage to do excellent work despite their caseloads.

3. Although attorneys are now present for shelter hearings in juvenile dependency cases and for the initial hearing in ECR cases, defendants who are not eligible for ECR and in-custody youth still appear without counsel at their arraignments. It is hoped that arrangements can be made in the near future for attorneys to be present at all initial hearings.
4. A number of interviewees noted the increasing need for bi-lingual and bi-cultural attorneys and office staff. The district attorney's office has ten employees who are Spanish speaking, including all of the receptionists, two victims' assistants, and two attorneys. MPD has a Spanish Language team to serve its Spanish speaking clientele. The consortium includes three member attorneys who speak Spanish. The Ridehalgh firm has successfully recruited a number of native Spanish speaking staff members, as has the Garland firm. But more Spanish speaking lawyers and staff are needed in both juvenile and criminal cases.
5. Because of its interest in the success of appropriately structured early disposition programs, the commission may want to closely monitor Washington County's ECR program and, if it proves successful, consider its use as a model in other jurisdictions.

PDSC's Public Meeting in Washington County

The Commission received comments on May 10 from the following guests, in order of appearance: Cal Downey, Susan Mandiberg, Hon. Thomas Kohl, Hon. Marco Hernandez, Susan Isaacs, Hon. Kirsten Thompson, Robert Hermann, Rob Harris, Hon Donald Letourneau, Susan Kopplin, Grant Burton, Ron Ridehalgh, Warren Bruhn, Jim Hennings, and Keith Rogers. An edited transcript of their comments and discussions with the Commission's members is included in Attachment 2 to the June 2007 Commission agenda.

PDSC Discussion of Washington County Service Delivery

At its June 14 meeting, PDSC members discussed the information provided at the May 10 public hearing. An edited transcript of that portion of the June 14 meeting is included as Exhibit I. Areas of discussion included the functioning of the MPD "satellite" office in Washington County, the relatively large number of providers in the county, caseload trends, rate disparities between providers in Washington County and other parts of the state, the role of the private bar in the public defense system in the county¹⁸, and the need for additional training opportunities for public defense lawyers.

PDSC's Service Delivery Plan for Washington County

On the whole, PDSC found that the public defense delivery system in Washington County is working effectively.

Although there is a relatively large number of providers in Washington County, there does not appear to be a need for significant change in that regard. The system includes representatives of each type of provider - a well-established public defender office, a new but strong consortium, a number of private firms - and it also includes some private bar attorneys who work on an hourly rate basis. Each of these entities has found it's own niche in the county. Only MPD seemed to indicate that it would like to receive a larger share of the caseload¹⁹. Except for some concerns regarding juvenile representation and the training of new lawyers that are discussed below, each of the providers appears to be covering its caseload adequately. No reports were received that attorneys were not appearing for court hearings or could not be reached by the court or clients. Each office also appears to deal with conflicts effectively since no concerns about conflict management were brought to the Commission's attention. With the number and diversity of providers in Washington County, OPDS has some added flexibility. If any contractor were to cease providing adequate

¹⁸ In addition to the testimony received on this issue at the June 14 meeting, a letter was also submitted to the Commission by Howard Moran. A copy of his letter and a subsequent email are attached as Exhibit J.

¹⁹ In addition, MPD Board Member Susan Mandiberg testified that in order to retain attorneys for more than a few years, MPD needs to receive a sufficient number of "high end" cases

representation there are alternative providers to whom additional cases could be directed.

If the caseload in the county continues to remain flat or to decline it is possible that fewer providers may be needed in the future. At its August 2007 retreat the Commission discussion included the following comments on potential caseload changes:

It is not PDSC's role to try to maintain a particular number of attorneys if the caseload declines. If the number of cases declines, however, it could well be appropriate for contractors to maintain their current staff with lower caseloads or reduce staff and increase compensation. With early disposition programs resolving many of the less complicated cases in some jurisdictions, the cases that remain for adjudication are more complex and difficult and the rates for these cases may need to be increased. In the past public defense providers have been told that they needed to take more cases if they wanted more money. That will not be the case in this contract cycle. There may not be additional cases to be taken and the commission needs to establish case rates that accurately reflect the cost of doing business.

The delivery system in Washington County should continue to include a role for private bar attorneys. These attorneys, who prefer not to be under contract with PDSC, appear to be serving an essential function in juvenile system in the county. As both the hourly rate attorneys and representatives of the court and the juvenile system noted, they bring to their work on behalf of juvenile clients broad knowledge and experience in related areas of law that many full time public defense attorneys may not possess. Their participation in the system can benefit not only their clients but the entire legal community by expanding the cumulative knowledge and experience of that community. While their participation may mean that fewer cases are assigned to some contract offices, in view of the relative quality of representation provided by these attorneys it is important to preserve a role for them.

Recommendations for Improving Quality of Representation

Training for lawyers

As noted above, there was broad consensus among those who see new lawyers in the courtroom that there needs to be a basic training course for these lawyers about the essentials of courtroom practice. Each provider needs to determine how best to provide this training for its own attorneys. The initial draft of this report recommended that these firms confer with MPD about its trial skills training program, and with the county bar association, OCDLA, the state bar and others about how to create an appropriate training or mentoring plan for new attorneys. One interviewee proposed that PDSC include in its contract a requirement that all

attorneys with less than 18 months' experience be required to attend a practical skills training on the essentials of courtroom practice.²⁰ Currently, there are limited trainings of this type available and new lawyers must generally start handling cases shortly after they are hired. The draft report recommended that, at the very least, each firm establish a mentoring plan for each new attorney that included a comprehensive list of the topics to be covered by the mentor before the new attorney could appear in court without the mentor being present. It was suggested that MPD, OCDLA, the Oregon State Bar, the Washington County Bar Association and others could assist in the development of the checklist. Such a checklist could be part of a training manual developed by the law firm.

After the draft report was issued, OPDS staff²¹ and the Executive Director of OCDLA met with all of the Washington County contractors on July 24, 2007 to discuss training options. Each firm identified its current method of training, which for most involves having the new attorney shadow an experienced attorney for as long as the workload allows, which generally is not very long. One firm created a manual for its attorneys. Existing training resources discussed at the meeting include the county bar association, Metropolitan Public Defender, Inc.'s trial skills training program, and OCDLA's new lawyer manual and annual seminar. It was reported that the National Institute for Trial Advocacy will be offering a "train the trainer" seminar in Oregon in the near future and that public defenders will be the first group invited to participate. The group agreed that additional training options need to be developed. Suggestions included asking the county bar association to schedule lunch hour trainings at the courthouse, asking the court to offer a one-hour new lawyer training by the judges every three or four months and/or a full day training once a year, and increasing the number of MPD trial skills programs offered annually. OPDS's General Counsel offered to assist contractors in designing training programs and OPDS staff indicated that requests could be made for funds to cover expenses related to attending trainings outside the metropolitan area. OPDS will discuss plans for improving training options with each of its Washington County contractors during the course of contract negotiations.

Use of courtroom technology

If lawyers believe, as reported by the court, that the effectiveness of their presentations could be improved by the use of new technologies, they should explore means of obtaining and learning how to use such technologies. The county bar association or OCDLA might be available to identify potential trainers. Much of the necessary equipment appears to be available through the court.

²⁰ If PDSC wished to impose such a requirement it would be more appropriate to include it in the Qualification Standards than in the contract.

²¹ The agency's executive director, general counsel, director of the Contract and Business Services Division and contract analyst for the region all attended and participated.

Standards for Juvenile Representation

The Oregon Rules of Professional Conduct (ORPC), the Commission's Qualification Standards, the state bar's Performance Standards for representation in delinquency and dependency cases, and the Commission's model contract all require attorneys to meet with their clients in a timely way and to provide them with competent representation. The ORPC and the performance standards also require that attorneys keep their clients informed about the status of the client's case; explain the case sufficiently to allow the client to make informed decisions in the case; and, with child clients, determine whether the child is capable of considered judgment about the decisions which are the child's to make and proceed either to represent the child's best interest or the child's expressed wishes, as appropriate. These requirements are not met by those attorneys who fail to visit with child clients and to advocate effectively for them, who fail to meet with adult clients prior to court hearings and to advocate forcefully on their behalf for needed services from DHS and appropriate findings by the court, or who fail to attend Citizen Review Board hearings and planning meetings convened by DHS when such attendance is required for competent representation in the particular case.

It is recommended that each firm that handles juvenile cases consider whether its attorneys are providing representation that complies with the applicable standards and, if not, immediately create a plan for improving representation to the appropriate levels. In approximately six months the Quality Assurance Task Force will be asked to contact each of the firms to learn about steps that have been taken to improve representation and to contact interviewees who reported concerns about representation to see if any improvement has been observed. In the course of its contract negotiations with these providers, OPDS should allocate juvenile cases only to those providers who comply with applicable standards.

Representation at initial hearings

Although attorneys are now present for shelter hearings in juvenile dependency cases and for the initial hearing in ECR cases, defendants who are not eligible for ECR and in-custody youth still appear without counsel at their arraignments. It is recommended that contractors work with the court, the district attorney's office and juvenile department staff to arrange for attorneys to be present at all initial hearings as required by the model contract.

Compensation issues

A number of witnesses expressed concern about attorneys not being compensated at all, or not being compensated adequately for the work they do in

special courts such as the drug court, the mental health court, and ECR.²² In drug court and mental health court, it may not be adequate to award a single credit under the provider's contract for each of these cases some of which might involve as many as fifty court appearances. On the other hand, contractors receive a full case credit for each case that is processed through the ECR program even though the case may take only a few minutes of the attorney's time. The district attorney and the judges expressed support for not discounting these cases since, on balance, those that remain will be more complex and difficult. Contractors should work with OPDS to address any issues they have about the rates of compensation for special court cases.

Rob Harris and witnesses at the May 10 meeting noted that MPD and contractors in some parts of the state receive higher rates of compensation than some Washington County contractors. In 2005 the Commission approved modest increases for contractors receiving the lowest rates. At its August 2007 retreat the Commission established its budget priorities for contracts beginning in January of 2008. Pursuant to the Commission's priorities, each contractor should seek the level of funding necessary to allow it to provide quality legal representation under all the circumstances that affect the cost of attracting and retaining qualified attorneys and staff in the contractor's area of the state.

Representation of non English-speaking clients.

Employers in Washington County, like those in some other Oregon counties, need to attract more bilingual and bi-cultural attorneys and office staff. The district attorney's office, MPD, the Ridehalgh, and the Garland firm have all had some success in attracting employees with Spanish language skills. Having these skills within the contract office benefits clients and requires less reliance on outside interpreters. OPDS should provide a stipend to contractors who employ bi-lingual attorneys and staff.

Monitoring of ECR Program

Because of its interest in the success of appropriately structured early disposition programs, the Commission should closely monitor Washington County's ECR program and, if it proves successful, consider its use as a model in other jurisdictions.

²² Cal Downey also raised a concern that attorneys participating in formal accountability agreements might not be eligible for compensation. ORS 419C.245 clearly provides, however, for counsel at state expense in these matters.

Exhibit I

Howard L. Moran, Attorney at Law

P.O. Box 230134 • Tigard, Oregon 97281 • (503) 590-2545 • Fax: (503) 590-2820 • e-mail: h Moranatty@netzero.net

September 18, 2007

Ingrid Swenson, Executive Director
Office of Public Defense Services
1320 Capitol Street N.E., Suite 200
Salem, OR 97303

RE: Indigent Defense Services - Washington County

Dear Ms. Swenson:

I am writing to you concerning indigent defense services in Washington County. As you may be aware, I am one of the “private bar” attorneys appointed to represent individuals in the Washington County Juvenile Court. Typically I am appointed to represent people in juvenile dependency matters and termination of parental rights cases. Unfortunately, I was not able to attend the Commission meeting held in Hillsboro on May 10, 2007, and I hope you will accept this letter in lieu of my personal appearance at that time.

To begin, and without attempting to put words in anyone else’s mouth, I believe I may be one of the ‘grizzled veterans’ the Commission heard about on May 10. The court does, I believe, rely on me to handle a number of matters that are atypical in nature. For instance, I represent a number of people who are in state or federal custody (and oftentimes in another state - occasionally in a foreign country). I also represent individuals with profound mental health and/or developmental issues - circumstances sometimes requiring the court appoint a guardian *ad litem*. Additionally, I currently represent clients that are terminally ill. I have had and continue to have matters involving the Indian Child Welfare Act (“ICWA”) and the Interstate Compact for the Placement of Children (“ICPC”). In the past two years, I’ve also had cases which involved the child refugee act and the Interstate Compact on Juveniles (“ICJ”). Moreover, I and a few other “private bar” attorneys have been appointed by the court to represent individuals identified as very difficult to work with.

As a result of my caseload, I believe I and my staff have developed a positive working relationship with corrections officials, treatment providers, Native American tribes, the Attorney General’s office, and foreign consulate personnel. As the Commission heard on May 10, the legal community in Washington County is a collegial group that generally works well together and is supportive of each other.

I believe the “private bar” attorneys who practice in the Washington County Juvenile Court provide clients, the court, and the public defense community, an array of experience in not only juvenile law, but also criminal law, family law, probate law, and contempt matters. In my view, it is imperative the Commission not allow circumstances to develop that effectively eliminates the “private bar” attorneys from the Juvenile Court. Not only would this deprive the clients and court of the experience “private bar” attorneys have, but it also deprives much younger lawyers the benefit of our collective experience (which we share freely on an almost daily basis).

I would like to address some of the specific issues raised at the May 10 meeting, as follows:

1. Training/Practical Skills: I certainly do not have the definitive resolution to this issue. As mentioned above, I am frequently asked by younger lawyers why I made certain tactical decisions or how I went about accomplishing certain tasks. I believe this is true for most if not all other “private bar” attorneys. I know I freely discuss with these lawyers the how’s and why’s of what I do and the tactical decisions I make.

Additionally, because of her background and training, my Legal Assistant is highly skilled in working with clients that suffer from profound mental health and/or developmental issues, and the service providers for those clients. I know she shares her knowledge and insight freely.

Perhaps one way this matter may be addressed is by the more experienced lawyers sharing their knowledge in a more structured manner.

2. Compensation: First, I believe kudos to you and your staff is in order. I do know how many years the Commission, and its predecessor agencies, have tried to increase the rate of compensation for indigent defense providers to no avail. While I suspect no one would consider an increase of \$5.00 per hour a windfall, it is certainly preferable to no increase at all and, perhaps, is a positive sign for future budgets.

In my particular case, the majority of my practice is providing indigent defense services. As such, I do appreciate the increased compensation and I certainly did not begin this practice with the idea of “getting rich.” Having said that, please understand that I cannot afford health insurance, do not have a retirement account, drive a car that is in excess of ten years old, and do not have/cannot afford to own a home. While I do not feel “overmatched” in the legal sense by District Attorney’s and/or Attorney’s General, it is certainly not fulfilling to realize that a Deputy District Attorney recently admitted to the Bar has a level of income and benefits that I simply cannot attain by representing indigent citizens.

I do know that you, your staff, and the Commission are aware of this disparity in compensation, and I’m confident you have been and are doing all you can to remedy the situation. Please know that you have my support in your efforts and that I can and will make myself available to assist you in any way possible.

3. Contract/Consortium Providers: As stated above, I believe it would be a disservice to the public, the court, and the indigent defense community if “private bar” practitioners were no longer practicing in the Washington County Juvenile Court. I believe that position is supported by not only the lawyers themselves, but also the court.

Currently I feel as though I am at a crossroad. Intended or not, the perception is that the Commission wants all indigent defense cases assigned to contract providers. As you are aware, in response to that perception, a number of current contractors have formed a new consortium, with the intention of including “private bar” attorneys in that consortium if they so desire. I have been asked to be part of that consortium and it seems as though my choices are: (a) Join the consortium; or (b) No longer provide representation to indigent individuals in the Washington County Juvenile Court, as all available cases will be assigned to contract providers.

Although I have spoken with representatives of the “new” consortium, I will be frank in saying that joining a consortium is not something I will do happily. I do not believe my caseload lends itself to the typical manner in which contract providers are compensated, and I find the notion of contacting your office and haggling over an additional case credit(s) for my atypical cases unappealing.

To be clear, I believe it would be necessary to contact your office to discuss additional case credit(s) for approximately 50% of my caseload.

In addition to the financial impact of my joining a consortium, I foresee this situation having a very real impact on the clients, the court, and the indigent defense community. The sooner atypical cases are identified and assigned to an attorney that has the experience necessary to effectively represent the client, the greater the likelihood the case can be resolved in a timely manner. To illustrate my point, I provide this example:

The State filed a dependency petition involving three children. Ultimately, the children were returned to their parents. The State subsequently filed a second dependency petition. Unfortunately, the second dependency matter did not result in reunification and the State filed petitions to terminate the parents' rights. In both dependency proceedings, the parties were represented by court-appointed counsel. I was appointed to represent one of the parents when the termination petitions were filed. Upon review of the file materials and meeting with my client, one thing became abundantly clear: My client had little to no understanding of the situation she found herself in; in fact, her mental retardation was to such a degree a guardian *ad litem* was appointed on my motion. Additionally, the caseworker was under the misapprehension that, because my client was in this country illegally, her mentally retarded children (who were citizens of the United States) were not eligible for Social Security and other benefits. This is particularly tragic because a number of issues identified by the State could have been remedied, in whole or in part, by supplementing the household income. To add insult to injury, the State proposed a non-relative adoptive placement for the children without having exhausted potential relative placements in Mexico. I took this matter to trial and, while we put up the best fight possible, my client's rights were terminated. The State did concede, however, that relative placement in Mexico was appropriate.

Why did this happen? In my opinion, this situation developed because my client's previous attorney had no particular experience in dealing with mentally retarded individuals, nor any particular skill in understanding the evaluations my client was

subjected to. Moreover, I believe my client's previous counsel did not understand the Social Security system, or the pressure that can be brought to bear by a foreign consulate. To be clear, I am not suggesting that had I been appointed to represent my client sooner the outcome would have been any different - I am saying that the outcome *may* have been different given the fact the second dependency petition was filed as a result of one of the children injuring herself and the parents' inability to effectively address that injury because of a lack of financial resources.

4. Assignment of Court-Appointed Counsel: The Commission heard testimony concerning the role of verification specialists in the appointment of counsel. That information, I believe, relates predominately to the criminal court. In the Washington County Juvenile Court, "private bar" appointments are handled by the Judge's staff or by the Judge him/herself in the courtroom. The Juvenile Court clearly makes an effort to appoint "private bar" attorneys to cases in which the attorneys experience and skills are most needed. There is a reason why Assistant Attorney General Kathleen Payne routinely compliments this office on our ability to handle difficult cases - and it isn't because she and I haven't been toe-to-toe on more than one occasion "discussing" the merits of a particular matter.

It is my hope the Commission will consider letting indigent defense contracts in such a manner that "private bar" attorneys will be able to continue practicing in the Washington County Juvenile Court. In the alternative, I would request the Commission devise a plan which permits the current "private bar" attorneys to accept both contract and non-contract cases. Failing that, I am concerned experienced attorneys who have much to offer clients, the court, and the indigent defense community, will simply move away from the practice of juvenile law when it becomes apparent there are not a sufficient number of cases to maintain their current caseload. Moreover, if these same attorneys feel as though they must join a consortium to financially survive, that does not guarantee they would be financially able to accept the atypical cases (or, in the alternative, grow weary of having to bargain with the agency for additional case credits). I am not suggesting that I, or any other "private bar" attorneys, only have atypical cases - that is not the case. However, when I have been appointed to represent a client in a more traditional juvenile dependency and/or termination case, I believe my billings to your agency reflect that fact.

Page Six
RE: Indigent Defense
September 18, 2007

Ms. Swenson, I'd like to thank you and your staff for all your efforts. I've been a member of the indigent defense bar long enough to be able to look back at some of the policies and procedures that were previously in place, and can say without hesitation that your office is clearly more efficient and effective. I'd also like to thank you for taking time to read this much-longer-than-anticipated letter, and I will look forward to your response.

Very truly yours,

A handwritten signature in black ink, appearing to read "Howard L. Moran". The signature is written in a cursive, slightly slanted style.

Howard L. Moran

HLM:jmt
0003114.jmt

cc: Barnes H. Ellis
Caroline Meyer

"h Moranatty" <h Moranatty@netzero.net>

09/25/2007 11:04 AM

To <Ingrid.L.Swenson@opds.state.or.us>
cc "Barnes H. Ellis" <bhellis@stoel.com>, "Caroline Meyer" <Caroline.Meyer@opds.state.or.us>, <Kathryn.N.Aylward@opds.state.or.us>
Subject Re: Washington Co Juvenile Court - Indigent Defense

Dear Ms. Swenson:

Thank you for your prompt reply to my letter. I hope the Commission finds the information helpful during its consideration of juvenile cases in Washington County. As an addendum to my letter, I am aware that some of the very experienced private bar attorneys have, thus far, expressed no willingness to join any consortium. That fact may change with the passage of time but, as I sit here, a number of attorneys who are highly qualified and well thought of by both court and counsel have no plans to join either the current or proposed consortium.

I would suggest that the Commission not rely on conflict cases to maintain the caseload of private bar attorneys. In addition to the current consortium, the "new" consortium would include the balance of the current contractors in Washington County. As such, I would expect the conflict cases to remain within the consortium - thus negating the possible appointment of a private bar attorney. That fact, together with the diminished number of delinquency and dependency cases being filed, would likely result in very few cases available for private bar attorneys.

Again, thank you for your time and consideration in this matter.

Howard L. Moran
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P.O. Box 230134
Tigard, OR 97281
Telephone: 503-590-2545
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Attachment 3

**OPDS's Draft Report to the Public Defense Services
Commission on Service Delivery in Judicial District No. 15
(October 12, 2007)**

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, Clatsop, Lane, Lincoln, Linn, Multnomah, Marion, Klamath, Washington, Yamhill, Hood River, Wasco, Wheeler, Gilliam and Sherman 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 report includes the results of the Office of Public Defense Services' (OPDS) preliminary investigation into the conditions of the public defense systems in Coos and Curry Counties and a summary of the testimony presented to PDSC at its August 9, 2007 meeting in Coos Bay. The final version of this report will include PDSC's service delivery plan for these counties.

PDSC's Service Delivery Planning Process

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

Second, starting with preliminary investigations by OPDS and the preliminary draft of a report such as this, the Commission reviews the condition and operation of local public defense delivery systems and services in each county or region by holding one or more 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 in the final version of OPDS's 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, contractors subject to the Commission's service delivery plans are urged to implement the strategies or changes proposed in the plans. Periodically, these contractors report back to PDSC on their progress in implementing the Commission's plans and in establishing 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.

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 Douglas, Jackson, Multnomah and Umatilla Counties. In 2006, teams visited all of the juvenile contractors in Multnomah and Lane Counties and criminal and juvenile contractors in Linn and Lincoln Counties. In 2007 site teams have visited the sole juvenile contractor in Clackamas County, the largest contract office in the state in Multnomah County and the sole juvenile and criminal provider in Benton County.

In accordance with its Strategic Plan, PDSC has also developed a systematic process to address complaints about the behavior and performance of public defense contractors and individual attorneys.

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 undertook 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 devoted 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 2007 PDSC undertook to review the delivery of public defense services in death penalty cases. A final plan for providing services in those cases was approved by the Commission in June of 2007.

The Commission is also concerned about the “graying” of the public defense bar in Oregon and the 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. The Commission has also found that the impact of such shortages is greatest in less populous areas of the state, where fewer lawyers reside and practice, but where the demands for public safety and functional justice systems with the requisite supply of criminal defense and juvenile attorneys are as pressing as in urban areas of the state. 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.

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).

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 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 quality 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 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

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

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 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

³ Id.

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 15

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 system begins with a 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 July 18 – 20 Commissioner John Potter, OPDS public defense analyst Billy Strehlow and Executive Director Ingrid Swenson visited with stakeholders in both Coos and Curry Counties. In addition to talking to PDSC's contractors in the district, they also met with the judges, the trial court administrator, district attorneys, juvenile department directors, the DHS Child Welfare Program Manager and members of her staff and representatives of the Sheriff's Office in both counties. Written responses to questionnaires were also received from the three contractors in the district. Copies of these responses are attached as Exhibits A, B and C.

As summarized below, at its meeting in Coos Bay on August 9th, PDSC heard directly from invited guests and others about the delivery of public defense services in the district and some of the challenges facing the public safety systems in Coos and Curry Counties.

The preliminary draft of this report is intended to provide a framework to guide the Commission's discussions about the condition of Coos and Curry Counties' public defense systems and services, and the range of policy options available to the Commission – from concluding that no changes are needed in these counties to significantly restructuring their delivery systems.

In the final analysis, the level of engagement and the quality of the input from all of the stakeholders in Judicial District 15's justice systems could turn out to be the single most important factor contributing to the quality of the final version of

OPDS's report to the Commission and its Service Delivery Plan for Coos and Curry Counties.

OPDS's Preliminary Findings in Judicial District 15

A. Overview of Funding Crisis in Coos and Curry Counties

While the funding crisis in Oregon's "timber counties" has been well documented, the extent of the impact on county services in Coos and Curry Counties can hardly be overstated. OPDS staff was advised that 68% of the general fund in Curry County and 50% in Coos County had come from the federal government. When the Congress eventually approved a one- year extension of funding under the Secure Rural Schools and Community Self Determination Act, both counties had already determined that they would need to make significant cuts in public safety spending. When funding for the additional year was ultimately provided, the counties took different approaches to use of the funds. Curry County rehired some of its public safety personnel. The Coos County Commission decided against restoring positions, however. Among the impacts in Coos County that were described to OPDS staff were the laying off of 85 county employees, the closing of nearly half of the jail beds, and the loss of half of the Sheriff's patrol deputies. Cuts in these and other county programs are discussed below in connection with particular agencies and functions.

B. The Court

There are six judges in Judicial District 15 who preside over proceedings in three separate court facilities – the Coos County Courthouse in Coquille, the Coos County Courthouse annex in North Bend and the Curry County Courthouse in Gold Beach. Judge Richard Barron is the presiding judge and Ed Jones is the Trial Court Administrator. The two newest circuit court judges - Jesse Margolis and Cynthia Beaman - have been assigned to the Curry County Courthouse. Judges Barron, Michael Gillespie and Martin Stone are located in Coquille and Judge Paula Bechtold is assigned to the North Bend Annex. The courts in both counties are working toward using the same model for processing cases. Some hearings have different names in the two counties and some court related functions are performed by different agencies in each county.

C. Coos County

(a) Judicial Assignments

Presiding Judge Barron handles juvenile cases, domestic relations cases that include children, and criminal cases that are tied to the family court process. Judge Bechtold handles non-jury cases, violations, small claims matters, FEDs, probate, domestic relations cases not involving children, mental health court and

civil commitment hearings. Judges Stone and Gillespie are the principle trial judges for civil and criminal cases.

(b) Special Courts

Drug Court - Coos County initiated its drug court program in February of 2005. It has processed approximately 300 Possession of Controlled Substance cases to date. The court meets once a month. Challenges to the ultimate success of the court include the lack of adequate funding for community corrections and the lack of a sufficient number of qualified treatment providers at low or no cost to participants.

Mental Health Court – This court was initiated a year ago. It is a post plea program that currently has six to eight persons enrolled. It meets once a month.

Family Court - The county is in the process of creating a court for families with 0-3 year olds in protective custody. Mental health, drug and alcohol, and parenting services will be included. The court will start with five families. On August 24, 2007 there was to have been a meeting with the attorneys to discuss the potential benefits of the program to their clients. One of the goals of the court is to limit the number of times children in care are moved. Representatives of a number of different agencies including mental health, DHS, the trial court administrator, juvenile and adult probation staff all contributed a significant amount of time to planning the new court.

Coos County also has a deferred sentencing program for domestic violence cases which was started in approximately 2000. It is available to both male and female offenders. It requires completion of a one-year education program. The county also offers a voluntary twelve-week education program for victims of domestic violence.

Both the drug court and the domestic violence deferred sentencing program are early disposition programs which defendants must elect within seven days of arraignment.

(c) The District Attorney

Paul Burgett is the Coos County District Attorney. He will retire in December of 2007. His chief deputy, Paul Frasier, is expected to be appointed to fill the vacancy. The office recently lost one deputy district attorney position and will not fill the vacancy created by Mr. Burgett's retirement. After his retirement there will be one district attorney and five deputies. This loss of personnel will affect the volume and seriousness level of cases filed in the county. Mr. Frasier believes that each deputy can handle an annual caseload of 725 cases including all of the cases reviewed and not filed. This means that some categories of cases will have to be treated as violations. At this point the plan is to treat as violations all

Class B misdemeanors and below, all non-person A misdemeanors and some Assault 4 cases if there is no injury. DUIs, Reckless Driving cases, and Driving While Suspended felony cases will be treated as crimes. One deputy DA is assigned to juvenile court but this deputy is currently out on family leave. The office currently handles juvenile dependency cases only through disposition. In the past they were able to appear at post-dispositional review hearings as well.

(d) Public Safety Agencies

Prior to the budget cuts the sheriff's office initiated approximately twenty-five percent of the criminal cases in the county according to the district attorney. Now there are very few cases initiated by the six deputies assigned to patrol duty. In terms of other law enforcement agencies, there is an Oregon State Police Area Command office in Coos Bay. There are also seven small police departments in the county that are reportedly in good financial condition.

(e) Criminal Case Processing

Initially, all criminal cases are docketed centrally. Once set for trial, however, they remain on the assigned judge's docket. Up to six trials may be set for trial on a single day.

The docket moves quickly in Coos County. It is described as a county-wide "rocket docket." In 2006 cases going to trial in Coos County were about half the age of the average case statewide. Once a plea offer is declined a case may be reset if the request is made within two weeks of the initial setting or thereafter, only for good cause shown. The state, of course, has the option of dismissing⁴ and refilling the case but the defendant who is denied a continuance must either plead to all counts or proceed to trial. There are no judicial settlement conferences in Coos County.⁵ Trial rates, particularly jury trial rates, are significantly higher for felony cases in Coos County than for cases in rest of the state⁶. Whether or not the relatively high trial rate is related to the fast pace of the docket is unknown. The system works well in the opinion of the Chief Deputy District Attorney. His office has been able to provide deputies to try the cases and except on very rare occasions there have always been judges and courtrooms to accommodate all of the trials set on a particular day. One key player in the local court system said that the court is not very understanding of the parties' struggle to keep up. This individual feels that disregard for the interest of the litigants has led to a less than cordial relationship among the

⁴ Statistics provided by the court indicate that the District Attorney's office dismisses about 32% of felonies and 37% of misdemeanors that are set for trial.

⁵ Judge Barron reports that in a discussion that occurred several years ago both the prosecution and the defense advised the court that judicial settlement conferences would not be helpful.

⁶ The average trial rate for felonies in Oregon in calendar year 2006 was 5% with approximately 8 court trials for every 10 jury trials. In Coos County 7.8 percent of felony cases went to trial and there were roughly six times as many jury trials as court trials.

members of the local criminal bar. Another member of the local bar expressed general approval of the speed with which cases are resolved in the county but noted that in individual cases some defendants are disadvantaged, especially when busy prosecutors do not have adequate time to thoroughly review the evidence prior to making a plea offer.

Presiding Judge Richard Barron testified that prior to implementation of the current system in the late 1980s, virtually all of the cases were set for trial even though the great majority of them were eventually settled, often on the eve of trial. He also noted that continuances are granted in approximately nine percent of the cases, which is within the range recommended for efficient court management.

Despite the loss of public safety personnel, the criminal caseload in Coos County showed an increase during the first six months of 2007. In January through June of 2006 there were 375 felonies and 536 misdemeanors filed. In January through June of 2007 there were 394 felonies and 800 misdemeanors. It is expected that a significant decline in cases will occur in the second half of 2007. OPDS staff would describe the caseload as essentially flat.

(f) Juvenile Dependency System

Initial juvenile court appearances occur every morning at 8:15. These cases are then heard the following judicial day at 8:15 with counsel present. Appearances in response to summonses in juvenile cases are scheduled for 9:00 a.m. every Monday with a further proceedings date two weeks later. Most cases settle within the two-week period but may be set over if more time is needed. Dispositions are scheduled for 3:00 p.m. on Mondays and trials are scheduled for two Thursdays of the month beginning at 9:00 a.m. Termination trials are set on the regular court docket.

Judge Barron has been the juvenile court judge for many years. He is described as the driving force in juvenile matters in the county. In addition to hearing the juvenile court docket, he is also the trial judge in most dependency and termination cases.⁷ DHS staff say he is knowledgeable, concerned and caring. He has initiated a number of innovative programs and approaches to handling cases. He organized the family support team which accelerates access to services for parents and he initiated the Coos County Infant and Toddler Court Team which will start in September. Because so many of the children in care are under the age of five he has generally preferred to appoint CASAs for these

⁷ In many counties, the judge who monitors the progress of the dependency case is not assigned to hear the termination of parental rights case. Attorneys who object to the termination case being heard by the same judge who has, in most cases, already approved the change of plan from return to parent to adoption, move for a change of judge. This practice appears to be rare in Coos County. It may be that in each termination case that is assigned to the judge who heard the dependency case the attorney has determined that it is in the clients' interest to have the case heard by the that judge instead of another judge.

children, rather than attorneys. About half of the children in care have court-appointed CASA's. A CASA volunteer said that CASAs are never appointed until after jurisdiction, however, so that children have no one, other than the other parties to the case, to advocate for their interests prior to jurisdiction. Recently the court has reportedly been appointing attorneys for children more frequently, however, especially for older children.⁸

The DA participates in dependency cases only until the initial disposition hearing. The Attorney General's office represents DHS in termination cases and usually gets involved as soon as the agency has decided to seek termination.

DHS has a staff of 50 in the county and as of mid-July there were 170 children in foster care. Half of these children are under the age of five. According to DHS, in the 2001-03 biennium Coos County had the highest child abuse rate in the state. It is now 14th.

The Citizen Review Board in Coos County is very active in the review of dependency cases, convening hearings every six months. Attorneys generally attend these hearings as well as family decision meetings, youth decision meetings, and the like.

Dependency cases, like criminal cases in Coos County, move fairly quickly with jurisdiction often being established within 45 days.

DHS anticipates that there will be fewer dependency cases in the County as long as the Sheriff's Office is operating at its current level. The Sheriff's Office had previously been involved in approximately 60% of the dependency referrals.

(g) The Juvenile Delinquency System

The Coos County Juvenile Department lost one third of its staff in the recent budget cuts. Rather than leaving the decision about which positions to cut to the Juvenile Department, the County Commissioners made the decision. The fewest cuts were made to detention center staff. The facility holds twelve youth and includes a treatment center. Two beds are rented to Curry County. Most of the cuts were made to the probation staff, which declined from six to two and three/fifths FTEs. The Juvenile Department Director reported that youth are now exhausting local options sooner and more youth are being committed to the training school. The county routinely exceeds its cap at the training school and consequently pushes for adjudication on Class A felonies⁹ since commitments on

⁸ Judge Barron said that with only six law offices taking appointments in juvenile cases, appointing attorneys for children in all cases would probably lead to more conflicts and the need for additional out-of-county attorneys. These attorneys often appear for court hearings by telephone, which is satisfactory, but it appears that they may also be meeting with their clients only by telephone.

⁹ Youth committed on these offenses occupy Public Safety Reserve beds that do not count against the county's cap.

these offenses do not count against its cap. Although youth may initially receive probation on Class A felony offenses, with few community resources available they are less likely to succeed and more likely to be committed on probation violations.

The juvenile department director would like to see fewer cases reduced from felonies to misdemeanors because she believes many of the youth who need felony level services are not receiving them.

She said that alternative treatment in juvenile sex offense cases is not available in the county.¹⁰

(h) Coos County Public Defense Providers

There are two contract providers in Coos County, Southwestern Oregon Public Defender Services, Inc. and the Coos County Indigent Defense Consortium. The consortium handles only conflict cases¹¹.

Southwestern Oregon Public Defender Services, Inc.

This non-profit public defender office currently provides services only in Coos County although it previously served both Coos and Curry Counties¹². The firm has a Board of Directors comprised of three outside members, one selected by the president of the county bar association, one appointed by the presiding judge and one selected by the other two members.

There are currently six full time attorneys at SWOPDS. There had been seven until one attorney resigned in February of 2007. Carole Hamilton, the administrator of the office, believes that the appropriate caseload for each full time attorney is approximately 25 to 27 new cases per month. To maintain that

¹⁰ Alternative treatment in sex offense cases generally involves an amendment or postponement of proceedings on the delinquency petition to allow a youth to engage in treatment services. If such services are successful the petition may be dismissed or treated as a dependency petition preventing the youth from having a non-expungible record or having to register as a sex offender. There is a significant disparity between counties as to whether juvenile departments, prosecutors and judges are willing to consider supporting such treatment. Attorneys for youth have been successful in a number of counties at persuading the court, sometimes over the objection of the juvenile department and the district attorney's office, to grant alternative treatment. While appellate case law has limited the circumstances under which the court may grant relief, the appellate courts have not determined that alternative treatment is beyond the discretion of the juvenile court to allow. Efforts in two legislative sessions to prohibit the practice were rejected. The effort of defense attorneys in all of the contract offices which have been evaluated by site visit teams of OPDS's Quality Assurance Task Force, to advocate for clients in a variety of circumstances, including representation of youth in delinquency cases involving allegations of sexual abuse, is an important component of every quality assessment. It is, therefore, one of the issues generally covered in OPDS's preliminary investigation.

¹¹ A spreadsheet setting forth the caseloads of both Coos County providers and the Curry County consortium is attached as Exhibit D.

¹² The office ceased providing services in Curry County in 2001.

ratio the office will probably need one more attorney but Ms. Hamilton has decided not to fill the vacancy until she has more information about caseload trends in the county. Recruiting and retaining attorneys is difficult. New attorneys in the DA's office receive \$3577 per month. Starting pay at SWOPDS is \$3087. Ms. Hamilton would like to increase the compensation paid to attorneys in her office.

SWOPDS has a written personnel policy manual and performs written evaluations of its employees. New attorneys are assigned experienced mentors. The administrator meets regularly with the judges in the county to inquire about attorney performance and sometimes listens to audio tapes of their trials. Financial support is provided for attendance at CLE sessions but additional funding would be needed to allow attorneys to take advantage of national training seminars, which Ms. Hamilton believes her attorneys should attend.

Coos County Indigent Defense Consortium

This consortium is comprised of five attorneys who devote varying percentages of their professional time to public defense representation. Sharon Mitchell is the administrator of the consortium. Each member of the consortium receives an equal share of contract funds (except that the administrator receives an additional amount for performing her administrative duties.)

The consortium does not have a board and does not include any quality assurance processes.

As noted above, the consortium is appointed only to those cases in which the public defender's office has a conflict preventing representation. The court assigns cases to individual consortium attorneys on a random basis. Separate appointment lists for Measure 11 and termination of parental rights cases prevent individual attorneys from receiving a disproportionate number of these cases.

Hourly rate providers

There are several attorneys from the Eugene and Roseburg area who appear regularly in Coos County cases. OPDS records indicate that there are only 1.2 cases per month that are assigned to the private bar.

(i) Comments regarding the quality of representation

SWOPDS

The following comments were provided regarding the quality of representation provided by SWOPDS attorneys.

Complaints about public defenders not seeing their in-custody clients are “rare.” Attorneys seem to have a lot of clients but appear to be prepared. One SWOPDS attorney in particular is seen by the sheriff’s office as going the extra mile for his clients and really caring about inmates.

Most attorneys work cooperatively with DHS in dependency cases. Some parents complain that the attorneys who represent them in dependency cases see them only outside the courtroom for five minutes prior to court hearings¹³. One CASA volunteer said that some attorneys don’t read the file until they get to court and don’t seem to know where their clients are. Some attorneys do excellent work. All of them seem overworked. Two public defenders were identified as being particularly good at getting things done for their dependency clients between hearings.

With respect to delinquency cases it was reported that Coos County defense attorneys are doing good work. They are looking for the best outcome for kids¹⁴. They see their juvenile delinquency in-custody clients regularly. The two attorneys who handle these cases spend a lot of time with their in-custody clients. Over time, representation in juvenile delinquency cases has improved in Coos County. There used to be an attorney who just didn’t care, but the new lawyers are doing very good work.

The chief deputy district attorney and others indicated that if they observed a problem with the conduct of an attorney with the public defender’s office they would bring it to the attention of Ms. Hamilton who would deal with it.

Another deputy district attorney indicated that there is an institutional rivalry between the DA’s office and the public defender’s office. Attorneys there sometimes decline reasonable offers. Some of the motions they file are not well founded.

Ms. Hamilton is described by opposing counsel as always willing to “work outside the box” when it comes to creating specialty courts and other non-routine approaches to handling cases. She is also felt to be a good spokesperson for the defense.

Ms. Hamilton has served on several OPDS site teams. During site visits she not only provided valuable advice to the contractors being evaluated but also used the opportunity to identify best practices that she could use in her own office. Ms. Hamilton is a member of the Local Public Safety Coordinating Council. Two

¹³ DHS staff and others noted that clients can be hard to reach and the lack of an adequate public transportation system is a major problem in the county.

¹⁴ Of course attorneys for youth in delinquency cases are required to advocate for the client’s expressed wishes, not for what the attorney may believe to be in the client’s best interest. Nevertheless, in support of the client’s expressed wishes it is important for the attorney to help identify outcomes and services that will serve their clients well.

attorneys in her office are also actively engaged in community organizations supporting young people.

Coos County Indigent Defense Consortium

Comments about the quality of representation provided by the consortium included the following.

One prosecutor indicated that if a relative of the prosecutor were charged with a crime the prosecutor would recommend that the relative seek representation by a consortium attorney.

When the sheriff was able to retain more defendants in custody there were complaints about consortium attorneys not seeing their clients regularly.

Most attorneys work cooperatively with DHS in dependency cases¹⁵. Some parents complain that the attorneys who represent them in dependency cases see them only outside the courtroom for five minutes prior to court hearings. A CASA volunteer said that some attorneys don't read the file until they get to court and don't seem to know where their clients are. Some attorneys do excellent work. All of them seem overworked. Consortium attorneys sometimes fail to request discovery in dependency cases as required by a standing local court order. If they do not request it, it is not provided and attorneys have to appear in court without having reviewed the case developments. Three consortium attorneys were identified as being particularly good at getting things done for their clients between hearings.

With respect to delinquency cases it was reported that Coos County defense attorneys are doing good work. They are looking for the best outcome for kids. They see their custody clients regularly. Over time, representation in juvenile delinquency cases has improved in Coos County. Most of the consortium attorneys are good. Some are temperamental.

Consortium attorneys are always ready to work outside the box.

Hourly attorneys

These attorneys were generally described as providing good representation. Some concern was voiced about the cost to public defense of having attorneys come from outside the county.

(k) Issues for Consideration

¹⁵ Some of the comments made with respect to consortium attorneys were also made regarding attorneys with the public defender's office and therefore appear twice in this report.

Among the issues that the commission may wish to consider as it reviews service delivery in Coos County are the following needs articulated by members of the criminal and juvenile justice systems in the county:

- (1) A number of those interviewed indicated that there is a need for at least one additional attorney to handle the public defense caseload in the county. DHS believes that more attorneys would help to reduce caseloads and this would allow attorneys to spend more time with their clients and do more preparation for hearings. They could also have more direct contact with service providers¹⁶
- (2) The Trial Court Administrator noted that one obstacle to recruiting attorneys to Coos and Curry Counties is that spouses and partners of attorneys have difficulty finding employment in the area. Mr. Jones thought that a loan forgiveness program might be a very positive incentive for attorneys to relocate to the area.
- (3) Since the volume of some case types is relatively small, attorneys may not develop expertise in all areas of practice. Attorneys with expertise in specific areas of practice could be made available as “resource attorneys” on complex sentencing guidelines issues and Indian Child Welfare Act cases, for example.
- (4) Recruitment and retention: One of the judges recommended that public defenders, who seem to have heavier caseloads and receive less compensation than consortium attorneys, be paid the same amount as the DAs.
- (5) One judge recommended that all of the attorneys obtain additional training on the rules of evidence.

D. Curry County

(a) Judicial Assignments

Jesse Margolis, a former attorney with the SWOPDS office and Cynthia Beaman a former member of the Curry County Consortium, are the two Circuit Court Judges assigned to Curry County Courthouse in Gold Beach. Judge Beaman had only recently been appointed to the bench at the time of the OPDS visit to the county and Judge Margolis had been there for only a few months.

(b) The District Attorney

¹⁶ Public defender offices and some consortia, such as Klamath Defender Services use paralegals to assist their attorneys in performing some of the functions that can be performed by non-attorneys, such as visiting with child clients and contacting service providers.

Everett Dial is the District Attorney for Curry County. When initial budget cuts were made he lost both of his deputies. One deputy position was added back after funds were restored. When eliminating one deputy position, the County Commission decided that the office could no longer prosecute support enforcement cases, and these prosecutions were returned to the Department of Justice for prosecution. The District Attorney's office will also have less involvement in juvenile cases than it has had in the past.

(c) The Sheriff's Office

In addition to the financial crisis faced by the Sheriff's Office, the former Sheriff was recalled from office on June 13, 2007 after being indicted for sexual harassment and other misdemeanor charges. He has since been convicted of all the charges. Allen Boice was named the new sheriff.

(d) Criminal Caseload

Although the proportion of cases charged as felonies in Curry County decreased in the first six months of 2007 as compared with the first six months of 2006, the total number of criminal cases filed in Curry County has actually exceeded the number of cases filed in the first six months of 2006¹⁷.

Some of the position cuts did not take effect until July 1 of 2007 so the full impact will not be known for at least several months.

(e) Juvenile Dependency System

There are 8 DHS staff persons in Curry County and forty children in foster care. All services within the county are located in Gold Beach which means that parties from other parts of the county must find transportation to the county seat for all required services¹⁸ or travel to Coos Bay or Crescent City, California for services. District Attorneys appear only for contested hearings in dependency cases so DHS must prepare its own petitions and represent itself at all other hearings. The Attorney General's office has counsel present for permanency hearings, however. The Citizen Review Board conducts reviews every six months and attorneys are reported to be present for these hearings most of the time. Attorneys are rarely appointed for children in dependency cases and currently, due to an upheaval in the Curry County CASA program, there are only three available CASAs. New CASA volunteers have been recruited, however, and should be available soon.

¹⁷ According to the Trial Court Administrator in the first six months of 2006 there were 108 felonies, 282 misdemeanors and 1636 violations filed. In the first six months of 2007 there were 98 felonies, 326 misdemeanors and 1833 violations filed. OPDS would describe this caseload, as well as the caseload in Coos County, as flat.

¹⁸ There is a "bus loop" on Mondays, Wednesdays and Fridays.

(f) Juvenile Delinquency System

There are currently 74 youth on probation in Curry County, 26 of whom are on formal probation.

The Curry County Juvenile Department has laid off 9 staff members since February of 2007. Consequently, minor cases are not filed and are closed with a warning or a letter to a parent.

(g) Defense Providers

Curry County Consortium

This small consortium has undergone a number of recent changes. John Spicer remains the contract administrator but the other two members of the consortium have left – one to fill a vacancy on the circuit court bench. Two new attorneys have recently been added - Jim Gardner, who has been practicing criminal and juvenile defense in Curry County for a number of years and Rick Inokuchi who is also a member of the Coos County Indigent Defense Consortium. Both Mr. Spicer and Mr. Gardner are considering adding associates to their firms but need a third consortium member to handle conflicts.

The consortium does not have a board of directors and operates under the terms of a written Operating Agreement among consortium members. There are no evaluations of consortium members but input is sought from the judiciary and the consortium is one of the few contractors in the state that provides clients with the opportunity to evaluate the representation they receive.

Hourly Rate Attorneys

Two Coos County attorneys are often appointed in public defense cases in Curry County. These appointments have generally been on an hourly basis although it appears that Mr. Inokuchi is currently receiving cases directly from the consortium. OPDS records indicate that only .7 cases per month are assigned to the private bar.

(h) Quality of Representation

OPDS staff received the following comments regarding the quality of representation provide by the Curry County Consortium.

The Sheriff's Office noted that there aren't as many complaints from inmates as there used to be. John Spicer must be overwhelmed with the number of clients he has but he does a good job. He seems to assess cases well, files motions and goes to trial.

Mr. Spicer handles most of the delinquency cases. He is described as being very good with kids. He sees them often. He is reasonable and doesn't ask for "outlandish" things. Jim Gardner is said to definitely be an advocate for his kids. Both attorneys file motions on behalf of their clients and try a lot of the delinquency cases.

In dependency cases it was reported that one attorney is only sometimes prepared for hearings and must sometimes be called and reminded to come to court. There have been no termination of parental rights trials in a number of years. Attorneys do appear for CRB hearings and attend family meetings. The attorneys here don't handle a high volume of juvenile dependency cases so they lack experience. In juvenile cases there are areas of practice in which attorneys do not seem well versed.

(i) Issues for Consideration

Among the issues that the commission may wish to consider as it reviews service delivery in Curry County are the following needs articulated by members of the criminal and juvenile justice systems in the county:

- (1) Both Curry County judges, the trial court administrator and a representative of DHS indicated that there is a need for more attorneys in the county, although OPDS records indicate that only .7 cases per month are being assigned to the private bar. Although Mr. Inokuchi is apparently a third attorney handling cases assigned to the consortium It is not clear that he is able to handle a sufficient number of cases because his office is located in Coos County and he has a large caseload there. In addition, both of the principle attorneys in the consortium are approaching retirement age and need to have succession plans in place.
- (2) Judge Margolis indicated that he believes that a public defender office would be the preferred model for service delivery in the county but understands that the conflict problem may not make that feasible¹⁹.
- (3) Although the caseload may decline due to shrinking public safety resources, consortium attorneys will need to be compensated sufficiently to make their practice in the county viable. Current rates for appointed counsel are simply not adequate to attract participation by private attorneys in the county. The billing rates for these attorneys is in the \$200-250/hour range. The district attorney's higher salary range has also been insufficient to retain experienced lawyers.

¹⁹ As noted above, SWOPDS previously had an office in the county but ceased providing services there in 2001.

- (4) The Trial Court Administrator noted that one obstacle to recruiting attorneys to the county is that spouses and partners of attorneys have difficulty finding employment in the area. Mr. Jones thought that a loan forgiveness program might be a very positive incentive for attorneys to relocate.

Since the volume of some case types is relatively small, attorneys may not develop expertise in all areas of practice. Attorneys with expertise in specific areas of practice could be made available as “resource attorneys” on complex sentencing guidelines issues and Indian Child Welfare Act

PDSC’s August 9, 2007 Meeting in Coos County

Judge Michael Gillespie was invited to make the initial presentation since Presiding Judge Richard Barron was unable to appear until later in the morning. Judge Gillespie said that although the district was a desirable place to live and work, recruiting new attorneys to come to the area and remain there had been difficult. He indicated that SWOPDS would need more financial support in order to compete for attorneys. Attorneys in the office are paid significantly less than attorneys in the private sector but are also paid less than attorneys in other parts of the public sector. SWOPDS is a critical resource. That office does a great job of training new lawyers and provides support for other public defense lawyers in the area. In order to perform these functions the office incurs overhead costs beyond those incurred by other contractors. Once attorneys are trained by SWOPDS and gain experience they either fill vacancies in the consortium or go elsewhere. New deputy district attorneys are not well paid but, at minimum, SWOPDS needs to be able to match DA starting salaries in order to be competitive locally.

Judge Gillespie said that SWOPDS appears to be handling conflicts appropriately. Some attorneys in the area have been relieved from representation for incompatibility with the client. This has not been necessary with any of SWOPDS’s attorneys.

There are two attorneys from other areas who often accept public defense cases in the county when local attorneys have conflicts or are unavailable. Both of them have been very cooperative and handle the cases adequately.

The Chair then welcomed Judge Barron. He told the commission that lawyers from other parts of the state have been asked to handle cases in Coos and Curry County, especially juvenile cases. This practice is likely to increase if the number of consortium attorneys gets smaller. When attorneys leave the consortium for private practice there is not usually anyone ready to take the departing attorney’s place. The consortium decides who can become a member and they do not appear ready to add any new attorneys. In Curry County there is even more of a problem. There needs to be a system for getting people to come

to Coos and Curry Counties and to stay. Judge Barron came to Coos County in 1971 to accept a position in the district attorney's office. It is a great community, a great place to live and raise children.

Before the current case management system was put in place in Coos County, almost every case was assigned a trial date at arraignment. Cases went away late but they went away and that did not seem like the most productive way to run the system. After obtaining input from both the prosecution and the defense, the court decided to implement its current system. Under that system, a plea date is set three, five, or seven weeks after arraignment depending on whether the defendant is in custody and whether it is a felony or a misdemeanor. The average age of cases going to trial in Coos County is half of the statewide average. Although the preliminary report indicated that resets were rarely granted, in approximately nine to eleven percent of the cases over the years, postponements have been approved. The public's interest in speedy resolution of cases has to be balanced against the interests of the litigants in the particular case. If a request for postponement is made within fourteen days of receiving notice of the trial date, the request is automatically granted. The thirty-five percent dismissal rate includes cases that are permanently dismissed and some that are refilled. In a few of the cases that are refilled a request to postpone has been denied.

Carole Hamilton at SWOPDS is an effective administrator. Her office previously provided representation in Curry County and should consider doing so again. Curry County is fairly isolated and it can be difficult to get there at night or in bad weather. It was hard to keep people down there.

Funding cuts in Coos and Curry Counties may well affect how cases are negotiated and may increase the number of trials. A drop in cases may mean that lawyers actually have appropriate caseloads. They have had heavy caseloads at times in the past. Other times they have dropped off. The caseload has fluctuated. Instead of reducing payments if caseloads decline, people may be able to do a better job.

If a public defense attorney fails to perform adequately, both Judge Barron talks with the attorney and, sometime, if the attorney is a public defender, with Ms. Hamilton.

Despite a natural rivalry between the DA's office and the public defender's office and occasional personality clashes, the system works well. There is communication among the members of the criminal justice community. SWOPDS has been cooperative in the mental health court, the drug court, and the domestic violence deferred sentencing program. SWOPDS also agreed to have attorneys present for initial hearings in juvenile cases. The consortium also participated at first but no longer sends attorneys to these hearings. SWOPDS

handles about seventy-five percent of the caseload and has been extremely cooperative with the court.

The juvenile system used to be the poor stepchild of the system but it involves serious issues and the providers take it seriously. The law is complicated but SWOPDS and the consortium attorneys have learned how to handle these cases.

Chief Deputy District Attorney Paul Frasier testified that his office has had difficulty attracting and retaining attorneys. After new deputies are trained they go elsewhere. The Coos County District Attorney's starting salary for new attorneys is \$3,575 per month. It is not competitive with Clackamas, Clatsop or Deschutes Counties. The majority of deputies who leave go to work at other prosecutor's offices. Currently the Coos County District Attorney's office includes the elected DA, the chief Deputy and five other deputies. When the elected DA retires at the end of the year his position will not be filled. Mr. Frasier is not sure what is going to happen to the caseload. Decisions will need to be made when the seventh position is lost in December. In the short term one deputy recently resigned and needs to be replaced and one deputy is on long term medical leave. One effect of having fewer deputies is that more cases will be treated as violations. He said he hoped that trial rates would go down. If they went up, further adjustments would have to be made.

The docket in Coos County moves quickly and that means that if cases are not settled and are set for trial subpoenas need to be issued only once. For the most part defense attorneys are going to trial in the cases they should, although, of course, some clients may decide to go to trial when they shouldn't.

There is good communication between the prosecution and the defense in Coos County.

Nancy Lee Stewart, the Child Welfare Manager for Coos and Curry Counties thanked the commission for coming. She said that DHS has good working relationships with attorneys in both counties. They participate regularly at citizen review board hearings, family meetings and with child and family mental health teams. The attorneys seem to have to work very hard to keep up. The more support they have the more effective they can be for their clients. Juvenile dependency cases have gotten more complex over time. Interagency team meetings have been helpful, so have the Juvenile Court Improvement Project legislative updates. Clients often lack telephone service and transportation.

Nick Nylander, a member of the Board of Directors of SWOPDS and Carole Hamilton testified next. Mr. Nylander said that the three-member board meets once every couple of months. They have an "open door policy" with Carole Hamilton. The office has operated efficiently and smoothly since the fiscal crisis of 2002-03 ended.

Mr. Nylander said that SWOPDS is an indispensable service provider to PDSC and needs more funding in order to attract and retain an adequate supply of attorneys. The board's goal has been to match the DA's salary scale. It would also like to reach parity with other public defender offices. The entry level salary at SWOPDS is \$3,087 compared to \$3,575 for district attorneys. Salary increases would also help with retention. Experienced lawyers provide better representation and develop long term relationships with district attorneys. Currently there are six attorneys at SWOPDS, including Carole Hamilton who maintains half a caseload in addition to her administrative duties. Three of the attorneys have significant experience and three are in the one to two-and-a-half year range. Carole Hamilton said that two of the newer attorneys are the kind of lawyers they would like to retain but they have children, large student loans, mortgages and SWOPDS's salaries are not competitive. In addition there are not a lot of health care options and health care is expensive in the area. Ms. Hamilton said that her contract with OPDS currently limits the amount she can expend for each employee for health care to \$500 per month.²⁰ The office's internal reimbursement rate for mileage is only \$.30 per mile, well below the state and federal rates.

Carole Hamilton said that SWOPDS had ceased providing services in Curry County in December of 2001. Mr. Nylander said that the office had been asked to provide services there and did so but it was hard to recruit people to go there and difficult to train and mentor them. The lawyers down there were isolated and when the consortium offered to provide services at a lower cost, SWOPDS did not feel it could match the consortium's offer. There were other issues including conflict between the bar and some members of the bench who are no longer there. Carole said that since Gold Beach is not within commuting distance lawyers who do not live in Gold Beach must go down for weeks or months at a time.

Ms. Hamilton described some of the activities in which she and some of the other attorneys at SWOPDS have participated such as the special courts, OPDS's site evaluation teams, the Contractor Advisory Group, and various community projects to benefit clients.

The District Attorney's office is prosecuting fewer offenses as crimes so the caseload is declining. Ms. Hamilton does not believe that her office can handle a greater percentage of the cases than it now does because it is already assigned all cases other than those in which it has a conflict. She described the conflict identification system used by her office.

Matt Muenchrath and Megan Jacquot from the Coos County Indigent Defense Consortium testified next. Mr. Muenchrath grew up in the area and returned to Coos County in 2001 to fill a vacancy on the consortium. Ms. Jacquot initially

²⁰ The OPDS model contract for 2008-2009 deleted the cap on health care payments.

worked at SWOPDS but had a large family and needed more income than SWOPDS was able to provide. They talked about the advantages of being in the consortium. Mr. Muenchrath said that the per unit contract seemed to work well except in juvenile dependency cases where there has been a significant increase in the types of meetings and proceeding in which the lawyer needs to be involved.

Mr. Muenchrath said that young attorneys could be recruited to practice in Curry County assuming the position was well publicized and the pay was attractive.

John Spicer, the administrator of the Curry County Consortium, said that very few Coos County attorneys practice regularly in Curry County. Curry County is isolated and even if an attorney can find work there, there is generally no suitable employment available for the attorney's spouse. In addition, housing is very expensive in the area. The district attorney's office has had difficulty keeping people there. Currently, Mr. Spicer and another attorney, Jim Gardner, are the active members of the consortium. It is easier for them to survive in the area because their homes and offices are paid for. They are trying to add a third member. It is difficult to predict what will happen with the caseload since there have been significant cutbacks in law enforcement funding. Operating a public defender office in Curry County would be difficult to do. Gold Beach is eighty miles from Coquille.

Judge Paula Bechtold testified that attorneys with both of the Coos County public defense providers work many hours for which they are not compensated. If the caseloads decline they would have time to do better work for their clients and could have some time for their personal lives. As with the schools, in small communities there are economies of scale. The system must be maintained even though the number of people served may be small.

Judge Bechtold is the mental health court judge. The court has been operating for over a year and is staffed by SWOPDS. It is not unusual for an attorney in these cases to have to appear thirteen times or more throughout the course of the proceedings. Attorneys can't be compensated at the regular case rate for these cases.

In order to find lawyers to practice in Curry County there need to be bonuses such as a loan repayment program. The same problem must exist in eastern Oregon.

A Service Delivery Plan for Judicial District 15

[This portion of the report will be completed at the conclusion of the Commission's discussions and deliberation.]

Attachment 4

**OPDS's Final Report on Service Delivery in Judicial District No. 7
& PDSC's Service Delivery Plan for the District
(Hood River, Wasco, Gilliam, Sherman & Wheeler Counties)
(June 8, 2006)**

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 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 contains the comments during PDSC's April 13, 2006 public meeting in Judicial District No. 7 from judges, prosecutors, public defense contractors and other justice professionals in the district, and reflects the deliberations of PDSC leading up to its adoption of a service delivery plan for the district. In conclusion, the report sets forth PDSC's Service Delivery Plan for Judicial District No. 7.

PDSC's Service Delivery Planning Process

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

Second, starting with preliminary investigations by OPDS and the preliminary draft of a report such as this, the Commission reviews the condition and operation of local public defense delivery systems and services in each county or judicial district by holding one or more public meetings in the area 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 district, PDSC develops a "service delivery plan," which is usually set forth at the conclusion of the final version of OPDS's report. That plan

may confirm the quality and cost-efficiency of the local public defense delivery system and services in the area 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 area, (b) outline the structure and objectives of the area's delivery system and the roles and responsibilities of local public defense contractors and (c) when appropriate, propose revisions in the terms and conditions of the region's public defense contracts in the area.

Finally, under the direction of PDSC, contractors subject to the Commission's service delivery plans are urged to implement the strategies or changes proposed in the plans. Periodically, these contractors will be asked to report back to PDSC on their progress in implementing the Commission's plans and in establishing 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 of the state. 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. In accordance with its Strategic Plan for 2003-05, PDSC has also developed a systematic process to address complaints over the behavior and performance of public defense contractors and individual attorneys.

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.

The Commission is also concerned about the “graying” of the public defense bar in Oregon and the 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. The Commission has also found that impact of such shortages are greatest in less populous areas of the state, where fewer lawyers reside and practice, but where the demands for public safety and functional justice systems with the requisite supply of criminal defense and juvenile attorneys are as pressing as in urban areas of the state. 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

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).

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 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 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

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

³ *Id.*

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 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 determining 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 on the Commission's part, 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, PDSC held a public meeting in the Hood River County Courthouse. The purpose of that meeting was to (a) consider the results of OPDS's investigation in Judicial District No. 7 as reported in a preliminary draft of this report,⁴ (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 was intended as 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 district to significantly restructuring the district's delivery system. The preliminary draft of this report also provided 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 were 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 is probably the single most important

⁴ Relevant portions of the preliminary draft of this report, which differ significantly from this version of the report, are set forth in Appendix A.

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 invited written comments from any interested public official or private citizen prior to the Commission's April 13th meeting in the district for inclusion in the final version of this report.⁵

A Demographic Snapshot of the Counties in Judicial District No. 7⁶

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 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).⁷ The

⁵ Other than written responses to a questionnaire from one of the Commission's contractors in the district, OPDS did not receive any written comments in response to this invitation.

⁶ 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).

⁷ 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.

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 53.⁸

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 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

⁸ 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.

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.⁹

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.¹⁰

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.¹¹ The firm's 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 B.

⁹ 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.

¹⁰ 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.

¹¹ 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.

Aaron and Associates has been, until recently, the solo practice of Brian Aaron, who has practiced in the District for approximately 15 years.¹² Mr. Aaron provides services in Hood River County under contract with PDSC,¹³ 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.¹⁴

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 perception in both Hood River and Wasco Counties, however, that the turnover rate of Morris Olson’s lawyers over the years has been 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 level of training and supervision that new lawyers receive at Morris Olson, though virtually all observers complemented the firm’s lawyers for their professional skills and ethics once they gained some experience.

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.¹⁵ Mr. Morris indicated during OPDS’s March visit that, more recently, lawyer turnover at his firm has decreased and the firm’s membership has stabilized.¹⁶ The firm’s responses to the site visit teams’ questionnaire in Appendix B describe its effort to train and supervise its lawyers in some

¹² Mr. Aaron hired a new associate a day or two before OPDS visited his office in March.

¹³ Aaron and Associates’ current contract through December 2007 is for 228 cases per year at an annual rate of \$74,784.

¹⁴ WSIDC currently has a contract for 204 cases per year at \$62,628. Neither Aaron and Associates nor WSIDC responded to OPDS’s request to complete relevant portions of the questionnaire contained in Appendix B.

¹⁵ 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.

¹⁶ At the Commission’s April 13th meeting in Hood River, Mr. Morris presented data which suggested that his firm’s turnover rate is relatively normal for a law firm of seven lawyers. See Appendix C.

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 B, 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 the most 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 lawyer 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.¹⁷ 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.

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

¹⁷ Based upon comments from the administrator of WSIDC at PDSC's April 13th meeting in Hood River, OPDS understands that, while Mr. VanValkenburgh no longer has an active public defense practice, he does make himself available to provide mentoring and advice to the two associates in his firm that currently constituted WSIDC.

counties' defense attorneys.¹⁸ 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

¹⁸ 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.

PDSC's Public Meeting in Judicial District No. 7

As noted earlier, PDSC held a public meeting in the Hood River County Courthouse on April 13, 2006 from 11:00 a.m. to 4:00 p.m. The purpose of that meeting was to (a) consider the results of OPDS's preliminary investigation in Judicial District No. 7 as reported in a preliminary draft of this report, (b) receive 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 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 Commission received comments on April 13th from the following guests, in order of appearance: Presiding Circuit Court Judge, Hood River County District Attorney John Sewell, Jack Morris, a senior partner in Morris Olson, Wheeler County District Attorney Tom Cutsforth, Circuit Court Judge John V. Kelly, Kevin Hashizume, the administrator of WSIDC and Brian Aaron of Aaron & Associates. An edited transcript of their comments and discussions with the Commission's members and staff is included in Appendix C.

PDSC's Service Delivery Plan for Judicial District No. 7

PDSC agrees with OPDS's conclusion in the preliminary draft of this report that the public defense delivery system and the Commission's contractors in Judicial District No. 7, in general, are operating effectively and cost-efficiently and that its primary contractor, Morris, Olson, Smith & Starns, P.C., in particular, is a well-established, well-run law firm made up of knowledgeable, first-rate public defense attorneys.¹⁹ The Commission shares local concerns in the district, which were expressed to OPDS during its preliminary investigations, that the limited supply of qualified public defense attorneys poses problems

¹⁹ This section in the preliminary draft of this report, entitled "Preliminary Recommendations for a Service Delivery Plan for Judicial District No. 7," is set forth in Appendix A.

for the quality of justice and a threat to public safety if the lawyers who currently take court-appointments leave the district, retire or stop taking appointments for economic reasons.²⁰ The Commission also concludes, as OPDS suggested, that there may be a shortage of available training and supervision for new lawyers entering public defense practice in the district.

Because of the generally high quality of public defense services and providers in the district and relatively few immediate problems facing its public defense delivery system, this Service Delivery Plan for Judicial District No. 7 offers only a few suggestions for improving the delivery of public defense services. The plan does, however, address several issues of organizational structure that were raised by OPDS in its preliminary draft of this report, not because they have any immediate application to service delivery in the district, but because they may be relevant there in the future or, currently, in other parts of the state.

1. *OPDS, in close collaboration with Morris Olson and other contractors in Judicial District No. 7 should, whenever necessary and feasible, pursue PDSC's strategies designed to increase the number of qualified public defense attorneys in the district.*

The Commission recognizes that the single most important factor in successfully recruiting and retaining qualified public defense attorneys in any area of the state is adequate funding of the public defense function by the Oregon Legislature. That remains one of PDSC's highest priorities. Nevertheless, the Commission has identified a number of strategies designed to encourage qualified public defense attorneys and new attorneys interested in public defense practice to consider moving to underserved areas of the state like Judicial District No. 7.²¹ The Commission itself is pursuing some of these strategies, like the establishment of student loan forgiveness programs, through its official role as an advocate for an effective state public defense system before policymaking bodies like the state legislature and the United States Congress.

Even in the absence of additional resources, PDSC firmly believes that a coordinated strategy by OPDS and its contractors to actively recruit graduating law school students for legal practice in underserved areas of the state will produce results. In particular, new lawyers will be drawn to regions of Oregon like Judicial District No. 7 by (a) a statewide directory of job openings administered by OPDS and (b) recruitment teams made up of lawyers from less populous areas of state, who can impress upon anxious law students facing a highly competitive job market that places like Hood River and Wasco County offer professional opportunities and a quality of life that many law school graduates will be unable to find along the I-5 corridor. PDSC urges OPDS and contractors like Morris Olson to coordinate such efforts with OPDS's new Diversity Task Force, which will likely be designing and implementing similar strategies to encourage attorneys and legal staff of color to consider practicing in areas of the state with professional opportunities and welcoming communities.

²⁰ Indeed, one of PDSC's two contractors in Hood River County, Brian Aaron, informed the Commission that he plans to discontinue his public defense practice because he can no longer support his law practice or his family with the revenue he receives from a contract with PDSC. See Appendix C.

²¹ See the list of six strategies set forth in Appendix A.

During the course of OPDS's preliminary investigation and PDSC's public meeting in Judicial District No. 7, it became obvious that this part of the state offers a quality of life and accessibility to other parts of the state – most notably, the Portland Metropolitan Area – than many Oregonians may not appreciate. This leads the Commission to wonder if those in the local legal community who have participated in this planning process may be underestimating the area's attractiveness and opportunities for new lawyers. While the good fortune of local home owners' rapidly growing equity presents an obstacle to homeownership for newcomers and entry-level job seekers, those circumstances are by no means unique to Judicial District No. 7. And, as Jack Morris noted, salaries in his firm are commensurate with the salaries of Portland's public defenders offices, where the housing market may be equally inflated. More importantly, while PDSC is not eager to promote commuting, distances from The Dalles or Hood River to East Portland and other more affordable housing markets are no greater than the common commuting distances along I-5. In short, the opportunities for a fulfilling law practice and quality of life in the district, and the chances of attracting to new lawyers to the area, appear equal to or greater than most areas of the state.

Of course, any "pipe line" of new lawyers will quickly disappear if a local legal community greets new arrivals with indifference, or fails to offer them meaningful opportunities for training and mentoring. Hence, the Commission offers the following recommendation.

- 2. When, in the estimation of the Circuit Court, PDSC's contractors and local district attorneys, there is a need for additional training and mentoring for private attorneys who take court appointments in Judicial District No. 7, Morris Olson should propose a formal training and mentoring program to the Commission, to be performed and compensated pursuant to contract.*

PDSC concludes that current conditions in Judicial District No. 7 do not call for more formal training and mentoring programs for new public defense attorneys. The Circuit Court judges with whom the Commission and OPDS have spoken indicate that, while all of the lawyers currently on the district's court-appointment lists are qualified, some are excellent but others have less than ideal work habits and office practices. While local perceptions vary over the number of new or untrained lawyers that Morris Olson has employed in the past, no one in the district questions the skill and experience of their current lawyers, who are generally regarded as excellent. Finally, while some in the district question the current depth of experience at WSIDC, the consortium's administrator reports that the lawyers at Morris Olson and throughout Wasco County are willing and able to offer their advice and assistance.

In the event new lawyers happen to arrive in the district or the foregoing recruiting strategies prove successful, and these new lawyers fill the district's greatest need by taking court-appointments that Morris Olson cannot handle due to conflicts, PDSC believes that a more systematic training and mentoring program will be necessary to ensure the continuing quality and cost-efficiency of public defense services in the district. Thus, the Commission proposes that, when local justice policymakers identify

the need for more training and mentoring of new lawyers, Morris Olson, which admittedly performs most of the functions of a public defenders office in the district, should, in accordance with that role, design and propose to PDSC a formal training program for new public defense lawyers practicing outside of its offices. The Commission recognizes that such a program would need to be recognized and agreed to under the terms and conditions of its contract with Morris Olson.

3. *The organizational structure of PDSC's primary contractor in Judicial District No. 7 as a private, for-profit law firm (a) has not interfered with the performance of its role as PDSC's primary contractor in the district, (b) may have preserved and promoted its performance of that role in a manner well suited to local circumstances and (c) may offer an organizational model for primary contractors in similar circumstances.*

In its preliminary draft of this report, OPDS posed the question of whether the organizational structure of a private, for-profit law firm was best suited for carrying out the obligations of a primary public defense contractor and the mission of PDSC. For the purposes of providing guidance for similar-situated contractor and regions of the state and the development of plans for the future of Oregon's public defense system, OPDS suggested that a private law firm may not be as willing to accept the degree of transparency in its operations and accountability to a public agency like PDSC as a not-for-profit corporation headed by a board of directors with outside members and staffed by full-time, salaried public defense attorneys under the direction of a professional public defense manager.

During the Commission's April 13th meeting in Hood River, Jack Morris forcefully defended the structure of the Morris Olson law firm, highlighted the many ways in which the firm has served the role of a public defenders office in Judicial District No. 7 and offered a number of persuasive reasons why the organizational structure of Morris Olson was essential to establishing and maintaining that role in the district – most notably, the ability to supplement the income of the firm's members with privately retained cases and to establish rapport with clients who trust private defenders more than public defenders. Because OPDS's preliminary draft report communicated consistently favorable reports of the superior performance of Morris Olson and its lawyers, and the relevant observations in OPDS's draft were aimed at the development of future plans for Oregon's public defense system and for other areas of the state, PDSC interpreted Mr. Morris's remarks primarily as a claim that private, for-profit law firms offer a superior organizational model for the delivery of public defense services outside of Oregon's urban areas in the state, rather than a defense of his firm's particular structure and performance in Judicial District No. 7.

Notwithstanding his persuasive arguments in support of this claim, Mr. Morris's presentation to PDSC on April 13th, along with other information that OPDS and PDSC have been able to gather about the Morris Olson firm, leads the Commission to reach two separate but related conclusions. First, the performance of Morris Olson or any organization, whatever its structure, depends primarily on the quality of the people it employs. Morris Olson, indeed, Oregon's entire public defense system, have benefited from the firm's ability to attract a core group of first-rate attorneys, including senior

lawyers who have been imbued with standards of management and a commitment to excellence through prior professional experiences at places like Metropolitan Public Defender, Inc. In the absence of an employment relationship with public defense attorneys, PDSC and OPDS must recognize that their role in promoting incremental improvements in the quality of public defense services by changing the structure of local delivery systems or by establishing quality assurance programs are no substitute for successful efforts to employ highly qualified lawyers.

Second, the advantages that Morris Olson's organizational structure offers in Judicial District No. 7, including the ability through retained work to supplement the income of lawyers who may not otherwise be able to remain with the firm and the ability through revenue from that work to continue providing services in outlying areas like Gilliam, Sherman and Wheeler Counties or during state budget shortfalls like "BRAC," demonstrate once again the truth of the maxim that "one size does not fit all" in terms of local delivery systems for public defense services in Oregon. When it assumed responsibility for administering the state's public defense system and initiated this planning process in 2003, PDSC recognized that no one organizational structure for delivering public defense services is superior to all other structures in every county of the state, and that each county has a unique set of circumstances, including its own legal culture and community, unwritten practices and procedures and local resources, that requires an organizational structure tailored to the needs and history of the county. The organizational structure and outstanding performance of Morris Olson in Judicial District No. 7 reaffirms the wisdom of this approach to administering and structuring Oregon's public defense system.

Finally, PDSC is left with the conclusion that *depending on local circumstances* it may well be that a non-profit corporate structure may ensure professional management, transparency in its operations and accountability to the Commission and the community is the most suitable organizational structure in some counties. On the other hand, the flexibility and resilience offered by a private, for profit law firm like Morris Olson, particularly when its lawyers are excellent, may be the most suitable organizational structure in other counties.²² Moreover, when there is an adequate supply of available lawyers, a consortium may be the most suitable organization in some counties due to its capacity to handle conflict of interest cases cost-efficiently. In short, the answer to which organizational structure is the best one for a particular county or judicial district is "it depends."

4. *PDSC urges public defense contractors like Morris Olson to collaborate with OPDS and OCDLA in offering public forums or open houses for public officials in their counties or judicial districts for the purpose of providing information about the realities and challenges of public defense practice.*

²² The fact that a law firm shared other positive attributes of Morris Olson, like the implementation of office policies and procedures developed at established public defense offices like MPD in Portland and a recognition that the role as PDSC's primary contractor in a county or judicial district calls for open and responsive working relationships with OPDS and the Commission, would add to the suitability of that organization in another county or district.

PDSC could make this recommendation to almost any public defense contractor in Oregon; however, the recommendation is made to Morris Olson for three reasons. First, the firm offers a model in the state of what can be done to provide excellent legal services with inadequate resources, and what will be lost if the level of state funding continues to fall behind the rate of inflation and cost of living in Oregon. Second, the particular skills and experiences of Morris Olson's attorneys increase the chances that communications with local elected officials will have positive effects. At least two of the firm's senior attorneys have management experience in other public defender offices, one has recently been recognized by the Citizens Review Board for excellence and contributions to children and families in the district, and another has experience as legal counsel to a key legislative committee. Finally, the firm forthrightly admitted to the Commission that it has not devoted its efforts and talents to informing local public officials about the accomplishments and mission of Morris Olson and the other public defense firms and attorneys in Judicial District No. 7.

At the Commission's May 11, 2006 meeting in Portland, Morris Olson expressed the view that these public forums should be held first in more populous counties and judicial districts in the state because more public officials and public defense attorneys reside there and, therefore, the participation in and impact of forums held in those areas would be greater. That may be true. PDSC will defer to the collective judgment of OCDLA's staff and members and OPDS staff and advisory groups with regard to the appropriate location, structure and schedule for these events; however, the Commission also accepts Morris Olson's offer to lend its talents and support to the first public forums, wherever they are held.

PDSC can offer some suggestions about the form a public forum or open house for local public officials might take. The lawyers in the Commission's contractors, the staff of OPDS and the staff and members OCDLA, will obviously have many other ideas.

The Commission suggests that a report like this one accompany letters of invitation to state and local officials in the counties or judicial districts where the forums will be held. In addition to state legislators and city and county officials, judges and other justice officials should be invited to these events in order to offer their perspectives on the essential role and precarious condition of the local public defense system. The staff of OPDS and appropriate representatives of OCDLA should attend and, depending on the date and location of these events, members of PDSC should be invited too.

Given the likelihood that these public forums will succeed in conveying the importance of Oregon's public defense system and the threat that inadequate state funding poses to the system's continued existence and, as a consequence, to the public safety of all Oregonians, PDSC intends to urge public defense contractors throughout the state to sponsor these forums. Because the 2007 legislative session is just six months away, PDSC hopes that several forums can be organized and presented during the fall and winter of 2006.

This proposal is based on the Commission's conviction that Oregon's public defense community cannot expect OPDS's small staff, PDSC's volunteer members and the few

lobbyists retained by OCDLA to secure increased state funding for public defense without more widespread participation in legislative and political processes by individual public defense attorneys and organizations across the state. PDSC believes that communication in local communities between public defense attorneys and their state and local elected officials is among the most effective strategies to develop greater understanding and support for public defense in Oregon.