

Members

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



Ex-Officio Member

Chief Justice Thomas Balmer

Executive Director

Nancy Cozine

PUBLIC DEFENSE SERVICES COMMISSION

PUBLIC DEFENSE SERVICES COMMISSION MEETING

Wednesday, January 23, 2013
10:00 a.m. – 2:00 p.m.
Office of Public Defense Services
1175 Court St. NE
Salem, Oregon 97301

AGENDA

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| 1. Action Item: Approval of minutes - PDSC meeting held on December 14, 2012 (<i>Attachment 1</i>) | Chair Ellis |
| 2. Discussion of Service Delivery Plan for Linn County | Chair Ellis
Commission members |
| 3. Commission on Public Safety – the final report and expectations for legislative session | Craig Prins |
| 4. PDSC Policy Option Package Priorities (<i>Attachment 2</i>)
Members | Chair Ellis
Commission

Contractors |
| 5. Executive Director's Annual Report to the Commission (<i>Attachment 3</i>) | Nancy Cozine |
| 6. OPDS Monthly Report <ul style="list-style-type: none"> • Appellate Division Update • Fuller Update • Budget Update • Proposed Revision of Certification Process for Capital Providers | OPDS Management Team |

Please note: Lunch will be provided for Commission members at 12:00 p.m. The meeting location is accessible to persons with disabilities. Please make requests for an interpreter for the hearing impaired, or other accommodation for persons with disabilities, at least 48 hours before the meeting, to Laura Kepford at (503) 378-3349.

Next meeting: March 14, 2013, 10:00 a.m. – 2:00 p.m. at the Office of Public Defense Services. Meeting dates, times, and locations are subject to change; future meetings are posted at: <http://www.oregon.gov/OPDS/PDSCagendas.page>

Attachment 1

PUBLIC DEFENSE SERVICES COMMISSION

OFFICIAL MINUTES

Friday, December 14, 2012
9:00 a.m. – 2:00 p.m.
Linn County Circuit Court, Room 200
300 Fourth Ave. SW
Albany, OR 97321

MEMBERS PRESENT: Barnes Ellis
Chip Lazenby
John Potter
Per Ramfjord
Hon. Elizabeth Welch

STAFF PRESENT: Nancy Cozine
Kathryn Aylward
Paul Levy
Peter Gartlan

The meeting was called to order at 9:00 a.m.

Chair Ellis welcomed the newest Commission member, Per Ramfjord.

Agenda Item No. 1 Approval of minutes – PDSC meeting held on October 19, 2012

MOTION: John Potter moved to approve the minutes. Hon. Elizabeth Welch seconded the motion; hearing no objection, the motion carried. **VOTE 5-0.**

Agenda Item No. 2 Oregon eCourt – ODJ's Odyssey

Chair Ellis invited Bryant Baehr, Chief Information Officer with the Oregon Judicial Department (OJD), to provide an overview of the Oregon eCourt program. Mr. Baehr explained that he would show a short PowerPoint overview, then a quick video, about eCourt. He described the vision of the Oregon eCourt program as providing better access, better information, and better outcomes. It is business transformation software, going from the paper to the electronic environment, that can provide a paperless or paper on demand environment, an electronic courthouse 24/7, and will replace 50 billion pieces of paper each year. Mr. Baehr explained that OJIN, the current COBOL based system, doesn't have the capabilities that customers, the public, and the court need – no online or electronic content management capabilities. He then gave a brief overview of the project from 2008 until present, which included the development of a web portal, which is already operational and includes ePayment using a DAS secured pay solution, and selection of Tyler Technologies' Odyssey product as an off the shelf product that offers eFiling, a case register, content

management, scheduling, financial management, and statistics capabilities. He noted that before installation in the first county, they had to migrate data from OJIN, and examine business processes in the courts, which consumed about a year and a half of planning.

He explained that the Odyssey product is in over 200 counties and states throughout the United States, with about 22% of the U.S. population somehow covered by an Odyssey product. The Oregon eCourt program is governed by three groups. The executive sponsors, which includes the Chief Justice, the State Court Administrator, Judge Murphy, and Judge Waller, decides where the resources go. The steering committee decides scope and budget – and is made up of a diverse group of bar members. Then, the Oregon eCourt Executive Leadership Team – including Mr. Baehr, the training department, and the eCourt project director – make the day to day decisions. The OJD is committed to doing as little customization as possible in order to make the project more affordable.

Yamhill was designated as a pilot court and went live on June 4th. Linn, Crook, and Jefferson went live Monday, December 10th. The project is scheduled to end in June of 2016. Jackson goes up in March. Clatsop, Columbia and Tillamook in August. Benton and Polk in January, and then Multnomah in May of 2014. Judges can navigate the electronic files with a touch screen, but some have gone with regular computers and monitors that are a little bit bigger. Judges will be able to electronically sign documents. They can also customize what they want to see on the bench per case. An attorney can say, “Can you please tag page no. 54 because we will be going back to it soon.” The judge can attach an electronic note and say, “Okay. I am tagging page 54.”

Chair Ellis asked about storage of trial exhibits in the electronic environment. Mr. Baehr indicated that the courts have not yet decided how to handle paper, video, or object-type exhibits, explaining that those are now returned to lawyers, and that storage is a space issue, even in an electronic environment.

Judge Daniel Murphy joined the conversation, and indicated that judges’ experiences on the bench have been pretty good, but that staff has so much to learn that things have slowed down. He indicated that sentencing in criminal cases is taking twice as long. He expects that to change as they become more proficient in using the software. Based on the Yamhill experience, Judge Murphy hopes that by March they will be back to normal processing speeds. He also noted that staff now uses email for court matters, which is an adjustment for everyone. Judge Murphy said that he does not expect the courts to be able to reduce staff, given the reductions that have already occurred, and because of an approximately 25% increase in criminal filings in the county in 2012, and the staff time required to assist *pro se* litigants, they will need all of their current staff members, even with the Odyssey product installed.

Chair Ellis asked about the cost of Odyssey, both to acquire the license and the start up costs and ongoing annual costs. Mr. Baehr said that the entire project is about \$98 million dollars. Chair Ellis asked whether there are other vendors besides Odyssey that state court systems around the country have acquired. Mr. Baehr explained that AMCAD and Tyler are about the only two with a comprehensive product. Chair Ellis asked about the product used in the federal courts and Mr. Baehr said they built it themselves.

Chair Ellis asked whether the Odyssey program might help identify conflicts sooner. Judge Murphy indicated that because it is a person based system, it can be searched by attorneys, or parties, or anybody that is in the system, much more effectively. Mr. Baehr noted one other feature of the product, which is a Turbo Court or Turbo Tax type of environment for *pro se* litigants on the civil side.

Commissioner Potter asked about the backup for this system. Mr. Baehr explained that the data is stored in multiple locations and if the primary location goes down, the backup can be functional statewide within about ten minutes.

Agenda Item No. 4 PDSC – 2013 – Schedule – Date Selection

Chair Ellis confirmed all circulated dates, changing only the October meeting, to October 25th so that it will coincide with the management conference, to be held at Salishan. He noted that the January meeting is in Salem, the June meeting in Bend, and that the locations would be in Salem unless otherwise scheduled at a later date.

Agenda Item No. 3 Linn County Service Delivery Review

Chair Ellis began the Linn County Service Delivery Review with an explanation that the Commission, over the last at least eight years, has adopted a policy of going from one section of the state to another to meet with the people who are involved in the justice system in each of those locations to try to get an understanding of how the system is working in each community, recognizing that one size does not necessarily fit all. He noted that the Commission is interested in timing, efficiency, whether attorneys are available and doing good work, and in cost. The Commission's charge is, on the one hand, to deliver quality services commensurate with national standards, but on the other hand, to do so in the most cost efficient way possible. He also explained the different provider types that offer services across the state.

Chair Ellis then invited Linn County District Attorney Jason Carlile to share his thoughts. Mr. Carlile started by explaining that he has supported the rule prohibiting negotiations after the trial setting, noting that it is important to make decisions about cases early on. Mr. Carlile says that he encourages his eleven deputy district attorneys to be realistic with their negotiations right off the bat, in order to get justice better and quicker, and that the defense bar seems to be in general agreement, although each case is certainly unique. Mr. Carlile's attorneys engage in a vertical model of prosecution, meaning that the deputy DA assigned to the case handles it from the very beginning to the very end. When they know the case and have authority over the case, they are best able to make decisions about the case; they know if they don't give a reasonable offer, they will have to try the case. Mr. Carlile believes that this has really helped keep the numbers of trials down. Mr. Carlile has one deputy assigned to juvenile court work, both delinquency and dependency, and two deputies DAs who do the domestic violence cases, but the rest are generalists.

Mr. Carlile explained that the DV Court started with a federal grant years ago, and that though federal funding stopped, through the courtesy of the defense bar and the court, they have been able to maintain two elements. First, the court has cooperated in getting trials set - from beginning to end, they try to close those cases within 45 days. The sheriff also, if the case is identified as domestic violence, holds the defendant in jail. Defendants can bail out; most are conditionally released when they see the judge the next day, but it eliminates the revolving door of getting out of jail and returning to the house to fight.

Chair Ellis asked Mr. Carlile about the felony trial rate in Linn County. Mr. Carlile explained that the vertical representation model, early, reasonable offers, and the no settlement rule help. He also noted that there is open file discovery early in the case, and that there is a high level of trust between the defense bar and his office. Chair Ellis asked whether the statewide trial statistics include things that settle day of trial. Mr. Carlile was not sure. Commissioner Ramfjord asked whether other district attorneys around the state employ the same rule. Mr. Carlile indicated that it varies statewide, but that his impression is that in a great number of the counties it is like Chinese water torture - appearance after appearance, and a lot of time being expended on each case.

Chair Ellis asked Mr. Carlile about his thoughts regarding defense representation in Linn County. Mr. Carlile indicated that many of the attorneys are of his generation, are colleagues and friends, and that the trust level is very, very high. Their recent addition of a new attorney has been a good thing, because transitions need to happen. Chair Ellis asked about recruitment on the prosecution side, and Mr. Carlile said he has hired people with experience from other counties, noting that the current market is good for hiring.

Chair Ellis inquired about the lack of defense lawyers at arraignment, and whether that model is working efficiently. Mr. Carlile responded that the appointment information goes quickly to the defense bar, the discovery goes out, and in most cases, the plea offer goes out right away, so there is not much lost time. He said that he has not had any experience with a different approach, so just doesn't have enough information to give a ballpark guess about how it would work. Mr. Carlile also pointed out that the report says the pretrial conferences are 60 days out, but in custody cases are scheduled about two weeks after arraignment, and out of custody cases are about four weeks after arraignment. Mr. Kuebrich added that the out of custody pretrial conferences used to be set two weeks out, but most were continued, so they started scheduling them out further. Commissioner Potter asked whether the District Attorney's office implemented its new electronic discovery system. Mr. Carlile said that it has been implemented and is working pretty well, but that there is still some work to do.

Chair Ellis invited Captain Todd Vian, the Linn County Sheriff Commander, who attended at the request of Sheriff Mueller. Chair Ellis asked about defense lawyers' access to in-custody clients. Captain Vian indicated that there are two "non-contact" attorney visiting rooms that allow communication through glass, over telephones, and it is as private as the Sheriff's office can make it; it is not monitored by cameras or audio recordings. Attorneys are also allowed to use the video courtroom as a meeting space, which is within the secure perimeter of the jail. If an attorney needs to have physical contact with the client, that room can be used. It isn't monitored with any recording equipment, but deputies can visually watch and make sure that the inmate doesn't do anything he is not supposed to do, or they don't try to take something from the attorney or attack them. There are three additional contact visiting areas, but they try very hard not to use those because there is absolutely no monitoring in them - they cannot see into those rooms - there are no windows, and no window on the door, so it is a security and safety risk to use them. Commissioner Potter asked whether there is any potential solution to the limited number of attorney visit rooms. Captain Vian indicated that they could possibly add one or two rooms in the general vicinity of inmate visitation area, where family members come in and visit, but that money is the problem. Captain Vian added that he could understand the concern, because he routinely goes in and out of the jail through the lobby and can see attorneys, maybe one or two or sometimes three at a time, waiting in line to get into those rooms. Commissioner Ramfjord asked whether there is a system for scheduling those. Captain Vian said there is not; they are open 24 hours a day, seven day a week, and rooms are available on a first come, first served basis. Commissioner Lazenby asked whether there are overcrowding problems in the jail. Captain Vian indicated that they do routinely release people through a matrix system. In March, 48 of 230 jail beds were eliminated, and Captain Vian personally laid off 11 staff members. The Sheriff's office has been working with the courts, and the district attorney, to manage.

Chair Ellis invited Roger Reid, administrator for the Linn County Consortium, and Paul Kuebrich, a member of the consortium, to share their thoughts. Mr. Reid explained that he and Paul have been practicing together for more than 30 years. They started together in private practice, and about 25 years ago the two of them formed the Linn County Consortium of attorneys, and handled district court misdemeanors. When the circuit court criminal case attorneys disbanded, they took over that work, and have been contracting with the state for more than 25 years. During that 25 years there have only been three who have withdrawn from the consortium. One of them was killed in an automobile accident. Janet Botano left last year to join the juvenile consortium, and Mr. Reid semi-retired several years ago. Mr. Felling took over Mr. Reid's cases. The consortium currently has nine attorneys. Tyler Reid

is the newest; he joined in October. He graduated from Willamette University, and the consortium has assigned two mentors for him - Paul Kuebrich and Tim Felling.

Chair Ellis asked about consortium members' percent of the practice in criminal versus other case types. Mr. Reid indicated that it varies among all of them, with seventy to 85% of them practicing criminal law fulltime. Chair Ellis asked about members with significant retained work. Mr. Reid said that one attorney has about 35% retained cases and 65% court appointed cases, but other consortium members have less retained work.

Chair Ellis asked about the consortium's structure, noting that it appears to be fairly informal. Mr. Reid agreed that it has always been informal, but explained that the nine attorneys want to be independent contractors, and that they have a corporation that was formed in 1998. There are four members on the board: Mr. Reid, Mr. Felling, and two outside members, an accountant and Derek Hews, an attorney with the juvenile consortium. Mr. Reid clarified that the two new board members were just added in response to the Commission's requirements. Mr. Reid indicated that board insurance is expensive, and that he will be asking for funds to cover that expense during the next contract cycle.

Chair Ellis asked about the consortium's "split the check" model. Mr. Reid explained that each member of the consortium receives the same, equal amount each month, which works well for the consortium members. Chair Ellis clarified that this means that a member with 35% retained work gets the same split as the members who are 100% devoted. Mr. Reid confirmed the Chair's understanding. Mr. Kuebrich explained that attorneys are appointed off a list, and the court simply appoints the next attorney on the list to each new case, which repeats indefinitely. Though there are variances, by the end of the month and end of the year, each of the nine attorneys should have been appointed to a relatively equal number of cases. The attorneys who choose to do retained cases work longer hours to cover the larger caseload. Chair Ellis asked whether Mr. Reid took an equal amount; Mr. Reid said he takes very little - just for administration.

Chair Ellis asked about the experience level of the participants in the consortium. Mr. Reid said that seven out of nine of them have over 25 years of experience. Mr. Felling has about 10 years of criminal experience. The newest member has only two months. Chair Ellis asked about the consortium's quality assurance mechanism. Mr. Reid said that he handles any complaints about the attorneys, and explained that the court sends him notifications of any client or any defendant who is dissatisfied. Mr. Reid contacts the defense attorney and inquires about the matter. Mr. Reid also receives complaints from the Oregon State Bar, and contacts the attorney immediately. He asks the lawyer to provide him with a copy of the attorney's response letter to the Bar. Since June of '08, the consortium has handled about 15,000 cases, and they have had 29 complaints. All 29 of those were resolved, and he believes that they were resolved favorably. He expressed that it is very important to him, and to the members of the consortium, that clients be treated fairly, and that they get the best defense possible. He also noted that some defendants are unreasonable. Chair Ellis asked whether they ever had to let someone leave the consortium because quality was inadequate, and Mr. Reid indicated that they have not, but that there are a couple they are watching now.

Chair Ellis asked about the process for adding members. Mr. Kuebrich responded by explaining that he has known Tyler Reid since he was a young boy, that he knew his academic record - he graduated magna cum laude - and knew of his passion. Though there was a not a formal structure in place, the members came to consensus and brought him on board. Most consortium members feel that a more formal process needs to be developed, and that now it is just a question of taking what has worked extremely well for 25 years as an informal relationship among eight or nine people that care very deeply about the work they do, and feel very deeply about each other. They want to make sure that each is doing a good job, and that the stresses in life are dealt with in an appropriate way, and though he realizes that more structure is needed, he is not sure that structure for structure's sake is always good.

Chair Ellis asked whether other lawyers in the community have ever had an interest in becoming part of the consortium. Mr. Kuebrich said they have never been made aware of it, and that they hadn't had a new, young lawyer come to town, with the exception of Tyler, in recent memory. He believes the reason is that the economics of law have changed drastically, and it is virtually impossible to simply go out and hang up a shingle in a town where a person is not known. Mr. Kuebrich stated that when they do need to attract new lawyers, they will need to actively recruit from outside the area.

Chair Ellis asked whether consortium attorneys are compensated at the same level as district attorneys in Linn County. Mr. Kuebrich said that he doesn't believe they are - consortium lawyers don't have retirement or health insurance. They have to pay a secretary, phones, offices, equipment - it is all expensive.

Chair Ellis asked about the demographics of Linn County, and whether there is a significant minority population. Mr. Kuebrich said that there is a significant Hispanic population, and that they have very good interpreters who are available with very short notice.

Chair Ellis asked about the gender mix in the consortium. Mr. Reid said that the only female here left six months ago, that the juvenile consortium has women lawyers, and that in Linn County, women comprise about 30% of the Bar.

Commissioner Ramfjord asked about the best management practices manual and client survey that are being developed. Mr. Felling explained that their client survey is similar to the juvenile client survey, and covers topics like how quickly the attorney returns the client's call, how quickly they met with the client, how responsive they were, and how well they explained the law and the process. Mr. Felling described the best practices manual by taking the Public Defense Services best practices document and addressing how the consortium is meeting those standards, or why a particular standard might not apply. If they aren't meeting a standard, Mr. Felling is reaching out to other consortium groups to determine how they might best meet the standard. He then presents it to Roger, who presents it to the group in the monthly meeting.

Mr. Felling shared that he feels very passionate about the work that he does, and he has absorbed that from every member in the consortium; everybody wants to provide high quality representation. He also expressed a desire to attract new lawyers, but explained that part of the problem is the compensation and high student loan debt, which Chair Ellis noted is around \$110,000 for law school graduates. Mr. Felling explained that for many, augmenting their income with private work is necessary. Commissioner Potter asked whether an attorney can make a living wage solely through the contract. Mr. Felling said that is a challenge, with the burden of law school debt.

Commissioner Welch asked about the rule regarding no negotiating after the trial date is set. Mr. Kuebrich said he was a vocal opponent when it was implemented by Judge McCormick, but that in fairness, with the current presiding judge, it is a rule, but there are exceptions to that rule, the exceptions are granted based upon the merit of the need, and that the presiding judge is likely to let parties settle notwithstanding the rule. Commissioner Welch asked what the rule accomplishes. Mr. Kuebrich shared his belief that its intended purpose is to send a message to defendants to quit wasting time, and another intended goal is to send a message to deputy district attorneys to look at the case early on. Commissioner Ramfjord asked whether the rule is imposing unfair consequences on some of the defendants because they take a little time to get the point of having to plead guilty and then they have to plead guilty to something that is harsher than what they could have plead guilty to earlier. Mr. Kuebrich replied that he believes the more serious consequence is not that they are being forced to plead guilty to something more serious, but that they are forced into a trial that has the potential to have an outcome that is far worse than what the attorneys could have negotiated. Mr. Felling added

that one mitigating factor is that the DA's office is often willing to agree to a continuance when required by the circumstances of a particular case.

Chair Ellis asked about the system without lawyers at arraignment. Mr. Kuebrich indicated that the group has considered watching the arraignments to see if there is anything they could add to the process, noting that there is a push for early resolution through the courts. They've heard that the state would be making limited offers to the defendant that may or may not be available later down the road. These offers are made in minor cases, because nobody at the time of arraignment is going to take a deal if it means going to jail. The consortium has not wanted to be involved with this kind of situation. Mr. Kuebrich suggested that the DA has become aware that this is an issue, and that this week he received a call from the deputy district attorney who was going to do walk in arraignments, who said he was suspending that practice and was not going to make offers any longer. What usually happens is the judge's staff reads a spiel about what their rights are. The judge takes the bench and he deals with any represented defendants. He leaves the bench. People have time to fill out the paperwork. Then the court calls the balance of people, who want an attorney. They leave the courtroom with instructions to contact the defense attorney within 72 hours. If they are held in custody the lawyer goes to see them within 24 hours. The court notifies the defense lawyer, who usually knows the same day or the next day, that there is a new appointment. Within a day the lawyer has the discovery. When they get the notice of appointment, the secretary generates a letter to the client with the next court date and an appointment usually about a week and a half out, to give time to review the discovery. If the client is in custody, Mr. Kuebrich goes within the required period of time if only to say, "Hey, I'm Paul. I don't know a thing about you yet but I am your guy and I will be back this weekend. Because there is limited space we will maybe meet on Saturday and Sundays." Mr. Kuebrich said that he doesn't see that there is a lot for lawyers to do at walk in arraignments, but that they are willing to be there.

Chair Ellis asked Mr. Kuebrich whether there is anything the Commission can do to improve. Mr. Kuebrich said that while he has not dealt with the Commission, he has dealt with the OPDS staff, and they have been wonderful when approving non-routine expense requests, explaining why a request is denied, and that the analyst has been great about keeping in contact and making sure that problems are resolved.

Chair Ellis asked for more information regarding the consortium's training and supervision program. Mr. Kuebrich indicated that Tyler Reid is following Tim and Mr. Kuebrich around, and that he and Tim are following Tyler Reid around regularly, and that he hasn't made a court appearance without one of them present since he started, even for the most routine matters. Tyler will sit through any number of misdemeanor trials and felony trials, including Measure 11 trials, with Tim and Mr. Kuebrich, and he may or may not be an active participant - he may question a witness, or may not, but he is at least going to see what it does a long time before it happens. Then the goal is to have him start doing solo appearances on relatively routine misdemeanor probation violations and maybe even some routine non-serious felony probation violations. Then work him into doing misdemeanor trials, with either Paul or Tim there, until they are comfortable that he can fly on his own. Mr. Kuebrich added that Tyler came to the group with some experience - he clerked at the Marion County District Attorney's Office while he was in law school, and had some significant responsibilities in juvenile court, and tried juvenile cases on his own. They want him to have the reputation that all of the consortium members have, to learn the practice of law the way it was years ago - more collegial, more dependence on handshakes, more dependence on one's word - to learn those values as well as how to practice quality law. He feels that the measure of the person is just as important, and he needs to learn those values so that when he goes in and talks to a deputy district attorney and asks for more time, the answer isn't, "Why do you need it?" The answer is, "Okay."

Chair Ellis asked whether all consortium members are independent practitioners, and Mr. Kuebrich indicated that they are; no law firms; all in separate offices. Mr. Kuebrich added that though they are in separate locations, they all talk to each other constantly, and take each other's conflicts when necessary. Mr. Felling added that since he and Tyler are in the same building, they talk about every case three or four times a day, and that Tyler has a similar relationship with Mr. Kuebrich.

Chair Ellis asked about the consortium's experience working with the appellate division. Mr. Kuebrich said the system works well, and that there is very good communication.

Chair Ellis invited Lene Garrett, CASA Director, to share her thoughts. Ms. Garrett noted that the preliminary report was very accurate as it reflects the work of the juvenile consortium and the juvenile court process, but noted that CASA serves only about 40% of kids – around 90 to 95 cases - so the information that she has is based only on the kids they are serving, and not the other 200 who do not have a CASA. Ms. Garrett explained that CASAs are appointed to the cases that are highest need. A CASA attends every shelter hearing, and receives the petition and the affidavit. Cases are prioritized based on four criteria: (1) whether children are placed in non-relative foster care (2) whether there was a significant injury or the death of a child or a sibling in the case, (3) does the child have significant identified needs, and (4) age, with a focus on ages zero to three and 12 and over. Because data shows that once a child enters the dependency system at around age 12, they are likely to age out of the system, they want to ensure that there is a CASA in their life that is helping them navigate their way, particularly around educational needs and placement to ensure that they at least graduate from high school and have some connections when they leave the system.

The CASA program has grown in the last three years from 36 to 94 CASA volunteers, and as the program has grown, Ms. Garrett expressed her feeling that relationships with system partners have improved immensely. They have worked very hard to understand legal processes in Linn County, and to train CASA volunteers about processes, so there are clear expectations regarding the role of each party in the case. Ms. Garrett indicated that the consortium has also improved in a number of areas. Children are seeing, or at least hearing from, their attorneys more frequently than they did two and a half to three years ago. There is more open communication, when it is appropriate, between CASA volunteers and attorneys for parents. Ms. Garrett explained that contact between the CASA and the parent early in a case can help CASA volunteers get support to kids – simple things, like going to the home and getting a child's blanket and taking it to the foster home. She also pointed out that while children are in foster care, CASA volunteers are the connection that is pretty consistently involved, consistently seeing the child and consistently showing up at all meetings, making parents' relationships with the CASA volunteers that much more important. Ms. Garrett indicated that this is one area where there is still room for continued discussion within Linn County, so that in instances where the attorney for the parent is not comfortable with the CASA meeting with the parent, at least they can facilitate a meeting with the attorney present. Ms. Garrett expressed appreciation for the dependency work group, where there is open dialogue about what is working well and what isn't working well, and the open communication she is able to have with Melissa Riddell, the consortium administrator. Ms. Garrett said that while attorneys are having more face to face contact with clients now than in the past, there is still room for improvement, and she expressed support for the idea of having more lawyers in the consortium. She also shared support for the idea of having attorneys at shelter hearings, and more safety planning and exploration of options that would avoid removals. Ms. Garrett also noted the lack of visitation services, and the need for additional visitation options. She shared the plight of a 13 year old girl who has been in foster care for almost three years, who is to the point where she may not want to visit her parents any longer because she misses half a day school and thinks it is affecting her grades. To be able to accommodate visits after school hours would be ideal, particularly for kids who are of school age and are missing school. If they live in the outer areas of the county and they have to come into Albany, they could miss almost an entire day depending on the time of the visit.

Ms. Garrett expressed confidence in Linn County's abilities to address families' needs, and the commitment level from the attorneys, the child welfare staff, and the judges, to ensure that they are providing services with the resources that they have available. Ms. Garrett also noted the increase in kids who are "crossing over," meaning they start in the dependency system and end up also in the delinquency system. CASA is providing training to advocates on the delinquency system and how to effectively advocate when kids start committing minor delinquency offenses. She explained that that is one of the reasons why teens also have a CASA, though it is not typically a priority – they tend to look at the zero to three or the zero to five - but with the studies of brain development, and knowing what happens, there is an opportunity to help in those teen years.

Commissioner Potter asked about the number of CASA volunteers in Linn County compared to other counties, and Ms. Garrett responded that Linn County has about the fifth highest number of volunteer advocates in the state. She noted that the average time of volunteerism with their group is almost three years, and that in Jackson County, where Ms. Garrett used to work, it was hovering around the five year mark. Commissioner Potter asked what Ms. Garrett would say should be done in Linn county that is not being done, as relates to public defense. Ms. Garrett said there is still room to continue to learn about each other, and to improve the communication avenues for CASA volunteers and the parents of the children they serve, so that parents are less suspicious of CASAs, and understand that the motivation of the CASA is to benefit children and not to ding a parent for doing something wrong. Commissioner Ramfjord asked whether there any efforts to try to have a more standardized process by which certain contacts are made to ensure both the opportunity for contact, and improved communication. Ms. Garrett said that they have not, but that it is a good idea and something to explore, and emphasized hope for such dialog based upon the relationship between defense providers and CASA, which has improved dramatically in the last few years.

Commissioner Lazenby asked about diversity within the pool of CASA volunteers, and within the population they are serving. Ms. Garrett said that they are very diverse. Linn County CASA applied for a national grant two years ago, and found that they match almost exactly between the diversity within kids and the CASA volunteers. CASA continues to work on it; they are up to nine volunteers who speak Spanish, a couple of others who speak another language, and they also have the ethnic component. Though they are not extremely diverse in the county as a whole, the volunteer base is pretty reflective of the kids.

Chair Ellis invited Melissa Riddell to share information about the Linn County Juvenile Defense Corporation. Ms. Riddell said that there are six members, and she has been the administrator since January of 2011; the previous administrator, Jody Meeker, held the position for 10 years, and Ms. Riddell has been a member of the consortium since 2008. Ms. Riddell worked for Ms. Meeker while she was in law school, starting in about 2002, and continued as an associate when she passed the bar in 2004. Ms. Riddell explained that in addition to the administrator changes, the consortium has had a shift in its membership over the last few years, and that they do not suffer from the "graying of the defense bar" issues that are confronting other consortiums around the state; they also have a good gender balance within the consortium.

The consortium has a board of directors with six board members, and they have independent contractor agreements. The board includes a municipal court judge, Doug Moore and Mark Taleff who are both former members of the consortium, John Hawkins, who used to work for the Linn County Juvenile Department, and Mack Walls and Derek Hews who are attorney members. Chair Ellis requested clarification, and Ms. Riddell confirmed, that of the six board members, two are attorney and four are outside members. She indicated that there is some office sharing, but each attorney has their own staff.

Ms. Riddell noted challenges attorneys face regarding availability, noting that they must be available to the court a significant amount of time. She explained that consortium members are not opposed to adding members, but that the compensation would have to increase, as it is very hard for people to do this work on a part-time basis given the amount of time attorneys are expected to be certain places. Chair Ellis asked whether consortium members do this work on a full-time basis. Ms. Riddell said that some do some municipal court work and a little bit of retained work, but at least four members are exclusively dedicated to the juvenile contract. Ms. Riddell used to do some retained work, but she feels that representation for contract clients is very time intensive, and doing it well requires all of an attorney's time.

Chair Ellis asked about appointment of counsel in delinquency cases. Ms. Riddell explained that in Linn County, the juvenile department explains the right to counsel, and that the court sometimes goes through the colloquy with kids. While she doesn't believe that there is enough questioning of the youth, there have been times when judges appoint attorneys for kids even when they say they do not want counsel. Ms. Riddell expressed support for appointment of counsel in all juvenile delinquency cases. Ms. Riddell also addressed the matter of attorney appearances at shelter hearings, explaining that as a group, they are not opposed, but the court docket makes that challenging. Right now shelter hearings and delinquency hearings are held at 1:30 every day, but will be moving to 2:30 every day. Consortium attorneys are in regular juvenile court appearances at that time on Thursdays and Fridays, and the court will not allow attorneys any time to be able to be present at shelter hearings. The court is concerned that proceedings will take more time if attorneys are present. The court has recently also canceled all dependency settlement conferences; they are all off the docket and will be set on a Friday afternoon for a pretrial conference. She noted that the court docket is a problem, and though statutorily juvenile dependency cases should be scheduled within 60 days, other cases get priority. Commissioner Welch expressed concern about the cancellation of settlement conferences, and asked Ms. Riddell about the plan. Ms. Riddell indicated that they just found out about the cancellations, and they are hopeful that they will be able to work things out with the assigned deputy district attorney and DHS, but there is no plan at this point, and she is also concerned.

Chair Ellis asked Ms. Riddell whether there is anything the PDSC could do better for providers. Ms. Riddell indicated that they get a lot of support from OPDS. Ms. Riddell indicated that the consortium has just gone through a period of transition, during which they were short at least one full position, which contributed to availability challenges. Now that they are back up to our full six, the attorneys do have more time. She also confirmed Commissioner Potter's suspicion that it would help to have an increase in compensation. Ms. Riddell ended by introducing the other members of the consortium.

Chair Ellis invited John Meade from DHS to share his views with the Commission. Mr. Meade said he has 34 years of experience in ten different counties, and he was not accustomed to the level of advocacy that exists in Linn County. He explained that in his previous experiences, attorneys were more inclined to encourage their clients to cooperate with DHS, but he says they have worked through most of that, and he has been really pleased with the dialogue that has gone on, and the willingness of the defense bar to have discussions. He noted the Family Treatment Court as an example, as it requires parents to make an admission that they have a problem with drugs and alcohol to participate. Everyone worked through that together as a group, which felt very cooperative, but he also expressed his wish that attorneys wouldn't feel the need to be at initial family decision meetings, where he wants to have his staff engage with families as soon as they can, in a spontaneous way, when the family needs help. From his viewpoint, having an attorney in that meeting is sometimes very cumbersome and also creates a level of distrust. He noted that this is probably a natural tension everywhere. Chair Ellis expressed support for a blend of the two styles – adversarial and cooperative. Mr. Meade said they have reached a very good balance, and that Judge Murphy does push everyone to work together to improve the system.

Commissioner Welch asked whether the resources available to DHS are at an all time low. Mr. Meade confirmed that this is the worst it has been in 34 years. Commissioner Welch asked whether, with the absence of treatment resources or the restriction of them, the defense bar is putting pressure on the agency to fulfill fundamental federal and state legal obligations. Mr. Meade said that they do get challenged on reasonable efforts, but noted that despite the lack of resources statewide, Linn County does better than most. The Linn County Council is pulling system partners together to discuss coordinated services in order to avoid huge gaps. Linn County DHS is severely understaffed, which has brought constituent complaints when there used to be none, but they do have a staff that matches fairly well the ethnic makeup of the community, and they do the best they can.

Chair Ellis invited Torri Lynn and Lisa Robinson from the Linn County Juvenile Department, and asked about the practice of juveniles waiving the right to counsel, and the role the department plays in talking with the juvenile about the right to counsel. Mr. Lynn explained that the probation officer meets with the youth and family, reviews the police report, and asks them if they are going to be requesting an attorney. The probation officer advises them of their rights, but does not offer any legal advice. Chair Ellis expressed the concern that a young person might think, “if I waive counsel then they will think more favorably of me.” Ms. Robinson explained that the initial conversations are done with families present, and parents who can help guide and direct the youth. If there is any indication that they are confused, don’t understand, or need more time to think about it before they make an appearance before the court, if that is where they are headed, they revisit all of those rights again before any statement is made before the court. So there are two or three times before they are actually telling the court that they are waiving their right. Mr. Lynn added that it is not unusual for a youth to say, “I don’t want an attorney,” then go to court and request an attorney. Chair Ellis asked whether it would be a big wrench in the system if the rule prevented waiver without an attorney counseling on the issue of waiver. Mr. Lynn said that he didn’t think it would be a big wrench, but that they have worked pretty hard as a system and with the defense consortium around timeliness of the system, and that he has always felt pretty comfortable with the system, and that usually, in more serious cases, the court is going to appoint an attorney whether the kids say they want to waive or not. Commissioner Ramfjord asked whether there is variation from judge to judge, in terms of the depth of the inquiry or the nature of the inquiry. Mr. Lynn replied that there is a standard judge on the main dockets, where it is pretty consistent, but that in detention review hearings there might be some variety on how in-depth the judge goes, with some going a little more in-depth than others. Commissioner Welch noted that parents are part of the problem– they are often mad that the kid did something wrong, they have to miss work, etc., and that pressure alone is enough. Ms. Robinson noted that the department is not opposed to having defense attorneys at detention review hearings or the initial appearances.

Chair Ellis thanked everyone from Linn County for their comments, and invited them to come to the next meeting, on January 23, in Salem, when Commission members will talk about what they learned and whether there are areas of concern in the service delivery plan for Linn County. He explained that after that, the discussion will be incorporated into a revised draft of the report and circulated, and after comment on that, the Commission usually adopts the final report. Chair Ellis invited participants to send Nancy Cozine any additional comments or thoughts so that those could be shared with Commission members in January.

Agenda Item No. 6 Adjustment to furlough schedule

Ms. Aylward explained the agency request for adjustment to the furlough schedule.

MOTION: Hon. Elizabeth Welch moved to adjust the use of furlough; Chip Lazenby seconded the motion; hearing no objection, the motion carried. **VOTE 5-0.**

Agenda Item No. 7 OPDS Monthly Report

Chair Ellis noted that Dan Bouck was in the room and invited him to provide an update regarding Douglas County. Mr. Bouck shared that there is a temporary solution to the affidavit issue that is working now. The judge made a finding that there is good cause to allow attorneys to file an affidavit within two weeks of the appointment of counsel. The district attorney agrees with the solution. Mr. Bouck suggested that it would be helpful to have the Commission back to Douglas County 2014, because the Commission's presence was what made things move forward, and because he thinks the Commission would be happy about what is happening there.

Ms. Aylward provided a budget update. She explained that at the September E-Board, the PDSC informed the Legislature that it would need \$4.9 million. The Legislature gave the PDSC \$2 million, leaving \$2.9 million in projected expenditures unfunded for the 2011-13 biennium, with the expectation that PDSC would request additional funds during the 2013 regular session. She said that, in the meantime, the projections indicate a need of \$3.7 million. With monthly expenditures of about \$9 million, a difference of \$800,000 is quite common, and much of it is because of contract overages. Ms. Aylward said that she and Ms. Cozine would be going to the full session in February or March to request funds to cover the remaining projected expenditures.

Ms. Aylward also explained that the Governor's 2013-15 budget was released. She reminded Commission members that the Governor makes no recommendation on Judicial or Legislative Branch budgets, but applies a percentage cut that corresponds to the average applied to Executive Branch agencies, which, this time, is about 3% less than the PDSC's current service level. She noted that the Governor's budget is built on the assumption that the PERS and sentencing reforms will be passed by the Legislature.

Mr. Gartlan provided an update regarding the appellate division. There were three offers and three acceptances for Deputy I positions at OPDS; Mr. Gartlan provided some information about each new lawyer.

Mr. Gartlan went on to discuss the problem of attorney office space, and the increasing need for attorneys to share very small offices. Chair Ellis speculated that for appellate work, without clients coming into the office, the need for private space wouldn't be very high. Mr. Gartlan explained that for appellate work, lawyers need to get into their own world for awhile, and if somebody else in the office is on the phone or something, it breaks up the kind of trance that lawyers need to get into. Commissioner Potter noted that the offices are pretty small, and asked whether the attorneys are sharing it five days a week. Mr. Gartlan said that attorneys who share offices are allowed to arrange an extra telecommute day, but that Wednesday is team meeting day, so all lawyers must be there. He concluded by saying that there are currently two attorney-share offices, and there will potentially need to be another two. Commissioner Potter asked whether there are alternatives to the current office space, and Ms. Aylward described all of the reasons why the current office location is ideal, and noted that because it is a relatively small number of people who are sharing, OPDS is on the cusp of a problem. Commissioner Potter asked whether a story could be added to the building. Ms. Aylward said that all options were explored when the building was being renovated, and the architect had to redraw and redraw to get 48 attorney offices.

Chair Ellis asked whether a Portland office had been explored, and Commissioner Ramfjord noted that DOJ has a Portland office. Mr. Gartlan said that DOJ has a situation where AG attorneys are permanently up in Portland. He said that it has been a real challenge for them to maintain the same culture, and it is a concern.

Chair Ellis announced the Commission's intent to enter into an executive session for the purpose of the performance review of the executive director. Before entering executive session, he read the following statement:

“The Public Defense Services Commission will now meet in executive session for the purpose of conducting a performance review of the OPDS Executive Director. The executive session is being held pursuant to ORS 192.660(2)(i), which permits the Commission to meet in executive session to conduct performance review of the chief executive officer of any public body. Representatives of the news media and designated staff shall be allowed to attend the executive session. All other members of the audience are asked to leave the room. Representatives of the news media are specifically directed not to report on any deliberations during the executive session, except to state the general subject of the session as previously announced. No decision may be made in executive session. At the end of the executive session we will return to open session and welcome the audience back into the room.”

Following the executive session, the Commission resumed their public meeting and adjourned.

PUBLIC DEFENSE SERVICES COMMISSION

UNOFFICIAL EDITED TRANSCRIPT

Friday, December 14, 2012
9:00 a.m. – 2:00 p.m.
Linn County Circuit Court, Room 200
300 Fourth Ave. SW
Albany, OR 97321

MEMBERS PRESENT: Barnes Ellis
Chip Lazenby
John Potter
Per Ramfjord
Hon. Elizabeth Welch

STAFF PRESENT: Nancy Cozine
Kathryn Aylward
Paul Levy
Peter Gartlan

The meeting was called to order at 9:00 a.m.

Agenda Item No. 1 Approval of minutes – PDSC meeting held on October 19, 2012

0:04 Chair Ellis Okay. Well good morning everyone. Thank you for coming. Welcome to the Public Defense Services Commission meeting. I do want to acknowledge that we have a new Commission today. Per Ramfjord is our new Commissioner. Welcome Per. The first item is the approval of the minutes from October 19, 2012. Are there are additions or corrections to the minutes? If not, I would entertain a motion to approve.

MOTION: John Potter moved to approve the minutes. Hon. Elizabeth Welch seconded the motion; hearing no objection, the motion carried. **VOTE 5-0.**

Agenda Item No. 2 Oregon eCourt – ODJ's Odyssey

0:53 Chair Ellis I might just mention for the folks from Linn County that we have tried to schedule our meetings so that we have three or four a year in different communities. It is our hope to get acquainted and get an understanding how the defense system is working in your community. This is intended to be an interactive conversation. We are here to listen and learn about what is going on here. I understand the first topic is Oregon eCourt and Byrant Baehr. If you would like to step forward and share with us what is going on.

1:45 B. Baehr I would be happy to. Thank you, Mr. Chair and members of the committee and audience, I am Byrant Baehr and I am the Chief Information Officer with the Oregon Judicial Department. Nancy very nicely said I have four hours to talk about the Oregon eCourt so be ready. Actually, I will keep it very brief, probably less than an hour. I actually have a

demonstration of what the Odyssey product is. I was going to actually show you what the judges do on the bench, and I have a video of that but I couldn't bring enough hardware in here to do that because it is actually hardwired into the system and I would have to run cables through elevator shafts and all that. I don't think the county wanted me to do that. So with your permission, I will go ahead and start on my presentation here and then give you a quick tour of the video and go forward from there.

- 2:36 Chair Ellis Go for it.
- 2:36 B. Baehr Wonderful. It is going to display here on the screen and I have to apologize. He locked it and I don't have his password. If I can request a five minute continuance, I will quickly go get the password. I am sorry.
- 2:53 Chair Ellis Denied.
- 2:58 B. Baehr I will be right back. I do apologize.
- 3:00 Chair Ellis This is not the first time I have seen someone who is going to display technology and can't get it started.
- 3:13 N. Cozine Chair, if I could suggest we could quickly review the dates for meetings.
- Agenda Item No. 4 PDSC – 2013 – Schedule – Date Selection**
- 3:19 Chair Ellis Let's go to Attachment 3, item no. 4 of the agenda.
- 3:27 N. Cozine I have one amendment. I neglected to remember that at the October meeting, it needs to be October 25th if we want it to coincide with the management conference, we moved that date one week this year to provide a little more time between the Juvenile Law Training Academy and the Management Conference.
- 3:48 Chair Ellis We have done that as long as I can remember – coinciding with the management conference, so I think we should. Where is that going to be?
- 3:54 J. Potter It is going to be at the Salishan Resort.
- 3:58 Chair Ellis So October 18 should become 25. Still a Friday.
- 4:08 N. Cozine Correct.
- 4:08 Chair Ellis And is there – do you know the locations on these meetings?
- 4:14 N. Cozine We do not know the locations.
- 4:14 Chair Ellis Okay. Except for that one.
- 4:20 N. Cozine And June will be the annual conference in Bend.
- 4:35 Chair Ellis Any one have any issues with the calendar? What is the 23rd?
- 4:53 J. Potter The January meeting.
- 4:53 Chair Ellis Yes. Which I appreciate because I am going to be away.
- 4:58 J. Potter That is in Salem?

5:04 N. Cozine That is in Salem.

5:02 Chair Ellis Okay. Well I don't think that requires a formal motion, but I think we are in good shape.

5:29 Chair Ellis What we could do while we are waiting is, Roger do you want to start? We will interrupt you when he comes back. We are very interested in learning about your consortium. Oh, never mind. Here we go.

5:47 B. Baehr Mr. Chair, members of the Commission, I apologize for our short delay. Passwords - got to love them. At least we can say we are not the State of South Carolina that releases 3.9 million individual tax returns and has to spend five million in protection for the next several years. The eCourt program. This is a brief presentation we give on the Oregon eCourt program, and then I have Odyssey on here that I will fire it up to show you what the Odyssey program does. Then I have a video on what it looks like from the judge's perspective. So the vision of the Oregon eCourt program is better access, better information, and better outcomes - that is the goal. You want to have a good vision for a program. That is our vision for it. What we are going to do here is a brief history of the Oregon eCourt, where we are at the present and where we hoping to go with the future with this program. So what is the Oregon eCourt program? It is business transformation software. It is going from the paper to the electronic and you can see from the pictures here that we have a lot of paper. We have paper stored just about everywhere you can think we can stuff paper. So the goal is to provide a paperless or paper on demand environment, an electronic courthouse 24/7, replace 50 billion pieces of paper each year. OJIN, which is our COBOL based system, has been rock solid for 25 years, but it doesn't have the capabilities that the customers and the public and the court is looking for in the future. It doesn't have the online capabilities. It doesn't have electronic content capabilities. I will give you an example. The original people who coded OJIN never envisioned we would hit a billion financial records. That happened back in August and it shut down our system for three days. What ended up happening is, once it hit a billion, it started rewriting itself. Luckily OJD still employed the person who designed OJIN and he was able to go in, and it took him two or three days to fix it. We have a billion financial records in there now and it is just not sustainable in a COBOL based environment going forward and you can't find very many COBOL programmers these days. So we want to replace OJIN. Real time access provides better service internally and externally. So just a brief history, we started strategically planning in 2001. We started really discussing it in 2004. In 2008 went to the legislature to look for funding, which included not only the trial courts but the appellate court. In the appellate courts right now you can efile. They are on electronic content management. So Chief Justice De Muniz, former Chief Justice De Muniz, was famous for saying he was sitting in court on the eastern side of the state and they had to sign a bunch of orders. He popped on his iPad and click, click, click, read them and signed them and they were automatically done and sent through the system versus carrying truckloads of files with him as he would travel. When you can have that flexibility you operate more efficiently. We started with what we are going to call the best of breed approach, and basically the way I explain that, and this is for folks who like to tinker with cars, is basically taking a General Motors engine and pairing it with a Ford transmission and putting a Toyota front end on it. Theoretically they all work, but they are not designed to work together so you have to drill new holes and put bigger bolts in it. It is not going to respond the way it should because it wasn't designed to do that. What we were going to do, because the market didn't have it at the time, is put these separate components together. Some had financial, some had electronic content management, and some had case management and we were going to force them to work together because we really didn't have an option. Well between the 2008 and 2010, all of sudden the option became available. So some courts went on what is know as the on based system, five courts throughout the state did, but we ended up stopping that and saying, "We have got a better solution here. Let's not put money into building something that we have to make work. Let's look for a single solution provider." This is probably a good point for me to stop if you wanted to talk with Judge Murphy on his very limited schedule this morning.

10:52 J. Murphy I have about 30 to 45 minutes.

10:53 B. Baehr Okay. With the chair's permission I can keep going.

10:56 Chair Ellis Keep going.

10:56 B. Baehr What we ended up doing is saying, let's not try and make these different components. Let's not make Microsoft Word and Lotus work together, let's end up finding something that is designed to work together like a Microsoft suite of products. We did that in 2010. Integrations into the appellate courts were integrated in 2009. They have had over 220,000 filings to date. They have a web portal that includes ePayment using a DAS secured pay solution. We have got the infrastructure set up for it and the electronic content management worked fully with that in 2011. Hence what the Chief was able to do is look at pleadings, look at documents, sign electronically and get it on its way. Just to give you an idea of the complexity of something like this, this is a full chart that we developed basically looking at all the plans that were put together to do this. A comment we get is, "you are doing it off the shelf, so don't you just sort of upload it and goes?" Well, we had to look at migrating data from OJIN. We had to look at business processes in the court. We had to look at the requirements for our case management system. It took a good year and a half of just planning to put this together and documentation before we could even start to look at plugging it in. That can be frustrating for some because if you are not in this type of environment you go to the store and you buy the software or you download it like Turbo Tax and it just starts working. When we have all these legacy systems to try to do, we had to do a lot of planning and so this just gives you an idea of a lot of the planning that was done and how the components work. So the single solution provider approach takes advantage of technology advancements. We are not the only state on this. There are seven other states. Minnesota, North Dakota, most of Florida. A good chunk of Texas is on this. I believe a good part of Illinois is on this, if I am not mistaken. The State of Washington is also looking at doing this. California would dump their best of breed approach after they spent almost 600 million dollars. They are now looking for something like Oregon is doing. I get plenty of calls from California saying, "Can you give us some advice on how to do this?" We are like, "Sure, Oregon is happy to help out California with this kind of stuff." It is less risky. There is less cost. You have got professionals on staff that know their program and we have got time to understand it. The neat thing about it too is when Minnesota does something we are not necessarily going to have to pay for that. If Minnesota does this great advancement that they pay for then we get that by default. If we do something like we are designing an entire jury management system. When we do that we are going to pay for it. Minnesota and the other states and counties will get that. This Odyssey product is in over 200 counties and states throughout the United States. Right now I think the last statistics I saw were 22% of the U.S. population is somehow covered by an Odyssey product or in Odyssey. It is getting bigger. So what is it? It is case access, eFiling, ePayments, statistics, which then flows into the case management content and financial management component of the courts. They can do those things externally and then come into our system electronically. When eFiling, which is at its beginning stages of testing right now and starting for attorneys the attorney will be able to efile a case, scan it in, send it to us, we will say that it is accepted or rejected and they will pay online and you are done. The case is entered into the system. If the parties agree to eService, instead of getting things in the mail you would get an email that says you have been served. You can open it and you can track how the communications flow. You will have a copy of it. The other party obviously has a copy of it. I joke that somebody could get into an accident, whip out their iPhone, fill out something, what is your email and then I would just sue them in small claims court right there before the cops arrive, but I don't think we are quite there yet. The goal with this is it is an integrated approach instead of a piece meal approach. We are working on jury management. We are also working on a supervision module as well. So how does this work? The Oregon eCourt is governed by three groups. The executive sponsor which is the Chief Justice, the State Court Administrator, and Judge Murphy is a sponsor and Judge Waller the presiding judge in Multnomah. They are the ones who make the decisions

on where resources go. How we enter into contracts in some respects, and how we handle scope, budget, and process. The steering committee gets down to the nuts and bolts. What actually are we doing with scope? What actually are we doing with budget? That is made up of a diverse group of a bar members. It has judges and staff on that and trial court administrators as well. Those are our own the group type folks who are going to be experiencing this. We have what is known as the Oregon eCourt Executive Leadership Team. I am one of them. The head of the training department is one of them. The eCourt project director is on that team as well. We make the actual day to day decisions on this project going forward. We have a very robust government structure including a number of stake holders throughout the state. It is not just a person in a small room with a computer making a lot of decisions that have a lot of impact. I know you can't really read this, but what we ended up doing is, on these kinds of technologies projects, everybody wants to do their own thing. How about if it did this? How about if it did that? That can be very costly and very time consuming. What we ended up doing is picking an off the shelf product. We don't really want to customize it. Because when you start getting into customization you could often upgrade half. So if Tyler says, "Okay, we are upgrading our total project for something that Minnesota did or something that California may do," we would say, "Oh, sorry, we can't take that because we have customized it and the other part of it is we don't have the time or the budget to do that. We don't have the way to chase different functionality, so what the guiding principles did is said, "Okay, here is what we are looking at with the system. Here is what we will do." Where this really became critical is when we were going through the requirements process, we had a group of a lot of staff saying this is how the case goes through the system. This is what the parties need to see. This is what the judges need to see. There was some desire at times to just tweak the system a little bit, let's just change it. We went back to our guiding principles and said, "No. We are buying an off the shelf product. If we need to change, then we will change first, before we change the product." This was very helpful as we were putting this together and ready for deployment. Organizational change management is a critical component to this because you have some staff that have been doing the same thing for 30 years. I will show you a picture of this. We have been on a key based input. You have seen in it the courts. They just kind of pounded information with key strokes. We actually had to think about, "do people know how to use a mouse?" You would think at home environments they probably would, but when you are doing the same thing for 20 years, same key strokes, same codes, and you then need to philosophically change how you do business. We just can't say, "tomorrow you are going to be doing it differently." We ended up instituting a very robust organizational change management as it relates to "what are you doing?" How are you going to do it in the future? Realistically some folks adapted to that very well. Some folks who were very close to retirement did retire. This is a holistic change on how the court is going to do business, but we were able to identify that early on and work with the presiding judges and courts and staff to say, "How do we do this going forward?" The average person, before an Odyssey roll out, gets 40 to 50 hours of training before they even get onto the system in production. That is a lot of stuff you have to do on the front end to get ready for that. A very strong organizational change management and the results that is Judge Collins, then Chief De Muniz, now Chief Justice Balmer, so the common joke on this who ever had that case right there had an instant appeal. That was our go live June 4, in Yamhill. I don't know Judge Murphy if we took any pictures like that for you here. Yamhill went live June 4. Linn, Crook, and Jefferson went live Monday. What we ended up doing is designating a pilot court which was Yamhill. That is where we are going to test it and see if it works and get it all ironed out. Linn, Crook, and Jefferson were early adopters. So we got a lot of this stuff working and let's see if we can refine it even more before we roll out. The next adopter is Jackson, which comes live in March. Then we go into production. Then we start crossing the state. When this project ends in June of 2016 that is how long it is going to take us to go through each court and get the configuration ready. Get the training done. Get the deployment done. It seems like a really long time but when you look at all the work that has to happen. For example in Linn County we migrated over 711,000 OJIN records into Odyssey. Now the folks really shouldn't look at OJIN now, it would only be for

a confirmation of something. That is all in Odyssey now. We had 3.1 million images that were in our system somewhere all got migrated over into Odyssey.

- 21:04 Chair Ellis When will you do Multnomah?
- 21:06 B. Baehr Multnomah is May of 2014. We are actually doing that in what we would call “The Big Bang Theory.” Multnomah will go down ...
- 21:17 Chair Ellis Sounds like a black hole.
- 21:20 B. Baehr I hope with good results. I am sure they will be. We are going to bring in up to 30 to 40 additional trainers to help train Multnomah around April of 2014 through May of 2014, and then they are going to come up on a Monday morning with the Odyssey product. We looked at parceling it apart and maybe doing civil first and then criminal and then other components. When we figured out Odyssey we had purchased it, deployed it, and we understood it a little bit better. The got the folks who know OJIN, which I only have two and a half of those folks left who really understand how the system works. They said if we tried to pick apart OJIN and just do components of it, they couldn’t reliably tell me whether the system would be stable. The choice I had was pick apart OJIN and hope it still works with the 2.5 folks left, or do it all in one shot. I didn’t want to put the entire state in jeopardy having OJIN go down and be somewhat unrepairable for a period of time. So we decided to do Multnomah all at once. We are on our way to do that. What is next? Well I was hoping to take a vacation here, but I don’t think I will be able to. We have been doing for this for quit awhile. Phase one, which was the Yamhill. Phase Two, which is the early adopters, which is the Crook, Jackson, Jefferson and Linn. Crook, Jefferson and Linn are done. Then we get into the velocity side of things. Once we have ironed out 90% of the issues you get more into a plug and play environment. What then slows you down a little bit more is all the training and change of management that needs to come. We can show up with the disk and here you go, but you have got the data conversion and document conversion and then you have got a lot of training and business process identification that needs to happen before you can actually flip the switch. So that is our plan. The program is scheduled to end June of 2016. We are on track for that and we actually under budget right now. That was very exciting to tell the legislature who enjoys talking about technology projects.
- 23:31 Chair Ellis They will take the money.
- 23:31 B. Baehr We are only 2% under budget. There wasn’t a lot, but it was nice to be able to them Tuesday that we were on schedule and a little bit under budget, versus, we have to wait another year until we have \$10 million dollars. I would much rather have the first one than the second conversation. So looking ahead at Linn, Crook, Jefferson in December and then Jackson in March. Clatsop, Columbia and Tillamook in August. Benton and Polk in January and then Multnomah in May of 2014. You would think you would go from Jackson to Multnomah and that has been a common question. The reason is, it is going to take us a year to really work on the data migration images and some of the business process identification, so we didn’t want to not do anything for that year. So we picked a series of smaller courts, smaller than actually Linn County is, because that should require less energy and we have expertise now in Linn, Crook, Jefferson and Yamhill that can help us deploy. We wanted to keep the ball rolling in preparation for Multnomah. I am sure if you have dealt with OJIN these are the screens that you see. It is very text based screen. This is for folks who hadn’t seen OJIN. This gives you an idea of what it is like. The interesting dynamic between OJIN and Odyssey is, when you put a case into OJIN, you really chunk it up with a lot of comments. Because once you put the file away, especially if you were in Multnomah, it was like eight floors down stuffed in a basement somewhere or in an off site storage, you really didn’t want to have to go back and get it. What happened in OJIN is you put a lot of comments in there. Defendant did this. Plaintiff did this. Odyssey, because the document is stored with the case electronically, you

don't have to put as much information into Odyssey which saves you on staff time for keying in all the information because you have it right there on the document. So that was a dynamic shift for us, for people who are used to putting down a lot of information in OJIN, they didn't have to put as much. That was a neat dynamic. This is just a screen shot of Odyssey and another screen shot. With the Chair and boards permission what I am going to do is switch here for a second and actually pull up Odyssey. So this is a case in Odyssey right now. This is an offense felony case that is in Yamhill right now and it is closed. To give you an idea this is the general screen that the staff would look at. It has the basics on the case. It has the most recent hearings. It has got a way to track statistics, which OJIN had a little bit harder of a time doing that. Odyssey is designed to track statistics. It has got very clearly what the cross-referenced numbers are for the DAs. As you can see from the main screen here it has a lot of information right up front. We also have what is known as case flags. One of common things is, when I put my thing [cursor], that says domestic violence on it. One of the common things that happened, and I am sure Judge Murphy has seen this more than once or twice, is somebody will come into the court and want to pay a fine, a fee, or do something and you can't really tell whether the person has a warrant or not throughout the rest of the state unless you do a rather intensive search through OJIN to look for it. Now when that person comes in and says I want to do something you type in their name and it will immediately say if there is a warrant or some kind of issue comes up with what we call a case flag that will say, "Warrant warning." This person has a warrant. When I was a trial court administrator in Clatsop what we would generally do is say, "We are having a little problem with the computer right now. If you could just sit for a minute we will get all worked out." Then you pick up the phone and call the sheriff's office and they come and escort the person away. It wasn't very easy to tell whether somebody had a warrant in a different county in OJIN unless you really dug down deep. With this the second they pull up the name and they verify it, it will tell them if they owe money. Is there a domestic violence case that we need to be concerned about if there is a hearing? Those tend to be some of the harder cases in the courtroom to here because they can result in some violence. Is there a warrant that we need to be worried about? That all displays very quickly for whoever has the case in front of them. I wasn't going to go into all the things, but what I wanted to show you was the documents tab. This is where the documents are stored. For example when a court staff pulls up a case this is what they would see as it relates – it is moving a little bit slower because we are not really on the network. I am kind of faking it out, but this is what court staff will now be able to see at the instant click of a button, is all the documents that are attached to the case and they can scroll through and see what is happening. What the different pleadings were. What the different dynamics were versus going and having to pull the case file. So the court staff have the documents at their fingertips right away. They have the financial information right at their fingertips as well, instead of having to go look into a different component of the system. You can see this person had certain fines, fees or assessments for the charge. It also has a way to look at if the court wants to look at statistics as it relates to case closures. One of the questions that came up is, you will see that the judges have these new computers on their benches. Some have gone with touch screen. Some have gone with just regular computers and monitors are a little bit bigger. What I want to show you and I will have to apologize because I don't have amplification here, is this is what is known as a judge's session work. So the judge sees basically sees slimmed down version of Odyssey on the bench. It is really designed for what the judge would be doing. Electronically signing, scanning documents and looking at the case from a broader perspective instead of having to thumb through the different components. This was actually a demonstration of what Odyssey does. I can walk you through it. This is the judge's session works. It gets away from storing things. That is the courtroom. What it will show here in a second is actually what session works looks like. This is basically what the computer looks like although it can be in different configurations. What it does is it provides a graphical interface for the judges to actually look at specific documents and page through it like you would on an iPad. It allows the judge to go to specific pages and/or tag specific pages. They can look at their calendar more efficiently. Look at specific charging documents or filing documents right there at the touch of a button. You can look at a case summary. The judge can customize what they want to see on the bench per case. If an

attorney says, "Can you please tag page no. 54 because we will be going back to it soon." The judge can put a note on there and say, "Okay. I am tagging page 54." Depending on how the judge wanted it, you can either still have it mouse driven or you can have it fingertip driven like you would on an iPad. Judge Murphy has had recent experience with that can you walk you through that a little bit. The goal was to not try to have the judges navigate the entire Odyssey product. The goal was to take it in a way for judges to consume who are going through information very quickly, or to have at their fingertips all the information that they need on the case that the parties have provided. That is the idea of the judge's system on the bench versus what the staff sees which is more data entry driven and more statistics driven. That is basically eCourt. Where we are at right now in some of the eservices is you can ePay if you have a fine, fee or assessment anywhere in the state courts right now. On the circuit court side of things you can pay for a citation online. If you have a post adjudicated case with a payment plan you can pay that online right now. The last statistics that I saw had us at about 51,000 transactions and over six million dollars in the last 12 months that people have paid online. How you translate that out into staff work is, that meant we didn't have to open up the envelope. We didn't have to run the credit card. We didn't have to accept the cash. We didn't have to go to the bank to do that. That is all being done externally by the customer by paying online, which is a great efficiency for court staff. That is live in every court throughout the state. When OSP writes a citation that feeds into our system electronically now and we are almost ready to open up the door for Linn because we are working on some piping issues, but when a trooper issues a citation – I am lucky to say that I haven't got one in awhile so I haven't experienced this from the front end. But they have a machine and they swipe your driver's license. They type in the violations as it spits it out on a register receipt. That then get electronically transferred to the court and uploaded into our system and the next day the person can, if they choose to plead and pay, they can pay right there. What used to happen, and I was from a court that did 7,000 out of 11,000 cases were citations, it could take a week for OSP to get the tickets to us. Then we had to hand enter all that information into OJIN. So somebody, especially a tourist would say, "I just want to pay this and be on my way." We would say, "Well, we haven't got the citation yet. It is going to take us about a week or two to get it in the system. Can you call us back?" Now 24 hours later they can pay it. The initial test for eFiling in Yamhill County was about two weeks ago. I like to call that our "plumbing test." It was successful although we have to do a little bit of tweaking on how the money goes from Chase to US Bank and into the Treasury and we are working on that right now. We are working on setting up our next test. Once those tests are successful then Yamhill will go live with eFiling for a brief period of time. Then we will turn the switch on for Linn and Crook and Jefferson. The only thing that we cannot accept eFiling yet is an initiating document from the district attorney. You could have 50 charges. We would have to have our system coded to every potential charge and Tyler is working on that for a number of other states, but we just don't have that capability right now. So the initiating document from the district attorney's office would still have to be in paper, but once that case is initiated everything else can be done electronically when we turn those doors on. Civil cases you can initiate via electronic once we get it configured and turned on. We are hoping to do that relatively quickly. That is eCourt in a nutshell.

35:41 Chair Ellis

What happens with the trial exhibits because that is an enormous amount of paper?

35:49 B. Baehr

And it can be kind of chunky stuff. Like here is the actual block of wood. I don't know how to scan that into a system. What we haven't decided yet is what we do with exhibits yet. What we use to do is just return them to the parties and then if the case went on appeal the parties would send them back to the court and we would send them to the Court of Appeals. I don't know the answer. Part of the concern for us is memory is actually getting somewhat expensive because more and more people want to store things electronically. You have to have the memory to do that. We have a lot of images already in there. Some videos we could probably store electronically but that just takes up space. So the short answer is we haven't decided that yet. Right they are being returned to the parties and then if there is an appeal it goes back to the court. We haven't figured that out yet.

- 36:47 N. Cozine Just to clarify regarding paper exhibits, are those being stored? Or are those also being returned?
- 36:53 B. Baehr If they were entered as part of the record in a case then they are being stored electronically because they would have been scanned into Odyssey. A transcript or something like that. If it comes in as a picture of a nun or a weapon or something like that, I am not sure what the courts would do with that. They may scan it or they may not. I don't know how everything is being handled.
- 37:50 J. Murphy If we were scanning in exhibits we would have to scan them all in. There would be a master exhibit list because we use those now. Each exhibit is numbered. For appellate purposes we would have to scan them all in.
- 38:12 B. Baehr And the appellate is asking for all of their information electronically. What happens when it does come in like the chunk of wood or something like that we would scan and ship it off electronically. There is some debate about what we are doing with exhibits because we haven't quite figured that all out yet. The transcripts getting submitted by the transcriptionist directly to the Court of Appeals.
- 38:42 Chair Ellis Judge, you were going to be part of this presentation and I know your time is limited.
- 38:48 J. Murphy I don't have a lot to add. Bryant has been very thorough. The judge's experience on the bench has been pretty good. I think for the staff we have slowed things down just because there was so much for them to learn. From the user perspective, I think what they are seeing is some slow down. We have temporarily had to eliminate settlement conferences. Sentencing in a criminal case is taking twice as long. That will change as we become more proficient in using the software. Based on the Yamhill experience, by March, I am hoping we will be about where we were. People are also adjusting just to the fact that there is not as much paper. We are not printing things and handing them out physically. We are emailing things to people and I think there is an adjustment there for everyone.
- 40:07 Chair Ellis There must be a savings in personnel associated with this.
- 40:13 J. Murphy Here is my expectation and this is crystal ball stuff. Nobody can really tell you. In the initial implementation the irony is it takes more people and more paper when you first do it. The reason for that is because it is a whole new system and you have to learn how to do it, but they had to keep doing all the production. Ultimately, I don't think it will result in us letting anybody go. What I see happening is, if you apply a curve in terms of the number of people we have to hire in the future, that curve will be flatter. We will have to hire fewer people in the future because the electronic system will allow us to be more productive. I don't expect the courts will be reducing staff.
- 41:09 B. Baehr If I could add one thing, the courts took a 17% reduction and laid off quite a few people at the last round of reductions, so there are really two dynamics to it. We kind of took the hit that we may have gained in efficiency with eCourt. The other thing is the mitigation for future needs. People tend, as things get more complicated, to want more people. The goal is to have the system in place to mitigate some of that need, but the courts are already down several hundred.
- 41:44 Chair Ellis I know Chief Justice De Muniz, or former Chief Justice De Muniz, comments that we had all these great savings, and the legislature just took them.
- 41:52 B. Baehr Like the Deschutes County Courthouse if you call after 2:00 in the afternoon you can reach no one. They have turned off their phones after 2:00. Several courts are closing at 4:00 and not opening up until 8:30. We are hoping, as this gets better and we become more efficient, that

we will be able to mitigate some of the future need. A friend of mine is in the banking industry and when you use to have to mail in checks for payments and all that, it took a lot of people but they didn't have to be real skilled to open up the envelope and pull the payment out and key in your payment. What happened is the banks originally said if we go to online payments we can lay off all those folks and it is not going to be a problem and we can save a ton of money. What the banks ended up realizing is they may have laid off an \$8.00 an hour per person, but they needed to hire the \$50 an hour person to make sure the computer is working. So the banks, at the end of the day, after years and years of analyzing, basically said that at the end of the day we provided a better service to the public. We did not save any money but because we were able to provide eService and better access; we are getting our money quicker and we are getting more efficient in how we do our business.

- 43:04 Chair Ellis What is the cost of the Odyssey both to acquire the license and the start up costs and ongoing annual costs?
- 43:13 B. Baehr The entire project is about \$98 million dollars. About \$36 of that million dollars goes to titling. That is for licensing and implementation and configuration of the product over five years, or four and a half years to install it. The other part of that is some of OJD's overhead to do that. We have a staff of about 40 people who have been working on this for a number of years, for planning documents, data migration, change management, all the documentation has to go with the financial components of it, so \$98 million dollars and then the ongoing maintenance cost is about \$1.5 million dollars with a three or four percent escalator for the next five years. So we basically go from \$1.5 million to \$1.8 million through another five years past our warranty period, which is 18 months after we are done. I know that was a lot of math. So June or July of 2014 we are done. We have an 18 month warranty period for the product. Then we start paying \$1.5 million dollars a year in maintenance costs up to about \$1.8 million dollars at the end of that five years.
- 44:26 Chair Ellis Are there other vendors besides Odyssey that state court systems around the country have acquired, or has Odyssey got the inside track?
- 44:37 B. Baehr This was all done through an open and competitive procurement. There were a number of companies that showed interest, but when we narrowed the scope to say, "We want electronic content management, financial management, case management, and electronic content management that narrowed it down to two. Those two were Tyler Technologies and a company called AMCAD which is based out of Virginia. We ended up doing site visits for both and Judge Murphy got to go to Clark County Nevada. We don't say Las Vegas anymore and he got to San Antonio, Texas. I ended up having to go to Fargo, North Dakota in the dead of winter. There are great pictures of me in snow banks there. When we did a comprehensive review of both, and Tyler Technologies was number one. There are a couple of other smaller systems out there. The State of Vermont just canceled their contract with a company based out of Utah. It was a case management company. It really boils down to about two that can comprehensively do this.
- 45:52 Chair Ellis The federal courts have been electronic for quite awhile. Who do they use?
- 45:58 B. Baehr They built that in-house; built that themselves. It has been around for awhile. That is a home grown product for them.
- 46:13 Chair Ellis Do you want to add anything judge?
- 46:16 Judge Murphy The only thing I was going to add about the personnel change - there are two things that are happening right now. One of them is, in 2012, we experienced about a 25% increase in criminal filings.
- 46:27 Chair Ellis Statewide or here?

- 46:29 Judge Murphy In Linn County. So these increases in caseload have an impact on staff. I think the bigger thing in the long run, as Judge Welch knows well, the number of pro se litigants in family law, and in other areas. We are barely able to provide to adequate service over the counter to people who come in and need help with court forms. One of the things that I am excited about, is that every person who is freed up from doing data entry, is going to be able to help people work with the court system. This doesn't have a direct impact on public defense, but maybe it frees us up to process things more efficiently. It is just a matter of shifting. There is already more that we should be doing than we have money to do. So eCourt allows us to stop doing some of the menial tasks that some of the staff has to do.
- 47:48 Chair Ellis One of the things in the indigent defense deal that we have found in some counties, and I don't know if it is an issue, here is conflicts that surface after the appointment the lawyer gets spending a lot of time on a case and then it turns there is a co-defendant or a witness that he or she had a prior relationship with. Is there anything in this system that might help identify conflicts sooner?
- 48:18 Judge Murphy There is. There is a person based system so you can actually search by attorneys, or parties, or anybody that is in the system much more effectively. I think we have had a pretty good experience in Linn County with conflicts deep into the process. Those are usually identified pretty early. It is not an issue.
- 48:46 P. Kuebrich It isn't a problem. For our small group, we can identify someone we've represented.
- 48:50 Chair Ellis You do it the old-fashioned way, with an institutional memory?
- 48:52 P. Kuebrich Yeah, it is just a matter of finding someone else in the consortium who can take it.
- 48:54 Judge Murphy But for the bigger counties, what is going to be nice about this, is you can very quickly look in this person based system and see who their attorney is, but every attorney that they have had in the past within the system.
- 49:24 Chair Ellis That could be a significant savings from our point of view.
- 49:30 B. Baehr Mr. Chair, one thing I was going to add on too, as a component of this, is for those who use their software to do their taxes like a Turbo Court or Turbo Tax type of environment, part of this process and what we budgeted for is working with the companies through Tower Technologies to call Turbo Court. The theory of the Turbo Court, and they actually have this product in other states, is that it is a walk through process for *pro se* for the civil side. Dissolutions, Family Abuse Prevention Act, those types of things, and actually the Family Abuse Prevention Act Turbo Court component is active in Multnomah. You can go to one of the centers there, and I forget what they call those centers, but a help center, and you enter into the computer system to answer certain questions. That gets printed out and sent to the court, so at least they are getting something that is more legible at times because it has been done by a computer, and then the court can process that. The way this product really shines is that you can go through and complete a dissolution on line and submit it to the court and then that is your side of it is a walk through side asking questions. How many kids do you have? What is your income? What are the dynamics the case? They actually have in several states the ability to do that. That is a component of this going forward. We just haven't gotten there yet because we have been more focused on implementing the base product.
- 51:06 Chair Ellis Okay. This has been very helpful.
- 51:12 J. Potter Just a quick question, without going into too much detail. What is the fail safe? What is the backup for this system?

51:15 B. Baehr We refer to that as our off-write program. Are you doing talking about an Odyssey backup?

51:24 J. Potter Catastrophic meltdown. Information is supposedly lost.

51:29 B. Baehr Okay. I was thinking of it as part of the product didn't work but we have got passed that. We have our main data center which is the National Guard Facility in Salem. Twenty-four hour lock down and secured rooms. Independent power systems. Multiple redundant systems there. In addition to that we have what is known as our fail over system. Our fail over system is in Douglas County, but I am not going to tell you where. It is in Douglas County and the reason it is in Douglas County is there are a lot of fiber lines running between here and the I-5 corridor. Everything is replicated into the Douglas center. If something happens at Anderson, all the data is backed up in near real time within minutes. It is real time backed up in Douglas. If something did happen in Anderson like a huge fire or earthquake and we got sucked into the hole whatever it was, Douglas was picked because it is a little bit more remote from that. This is the fail over, because things do happen at the Anderson Readiness Center now and again. Massive power failure - even though the generators were supposed to work - they didn't. Within 10 minutes we can be failed over to our Douglas Center which brings all the courts back up within 10 minutes. If something catastrophic happens, we can run it simply off of the Douglas Center indefinitely until we bring Anderson back up or find a different location. We are backed up in multiple cases.

53:05 Chair Ellis Any other cases for Byrant? Thank you. This has been very informational.

53:14 B. Baehr Thank you. I have really enjoyed being here. If you don't mind, Mr. Chair, I would like to remove my technology stuff real quickly for you. I can do that very quickly and I will be out of your way.

Agenda Item No. 3 Linn County Service Delivery Review

54:27 Chair Ellis Nancy will be back in just a minute. Our next item of business is the Linn County Service Delivery Review. I might make a few comments before we get into that. This Commission, over the last at least eight years, has adopted a policy of going from one section of the state to another to meet with the people that are involved in the justice system in each of those locations to try to get an understanding of how the system is working your community. We have had a philosophy that one size does not necessarily fit all. We have been quite willing to listen to how defense delivery is occurring in the particular community. On the other hand, we have been very impatient with communities that really haven't made good progress in the areas that we are interested in. We are interested in quality of service. We are interested in timing, efficiency, are attorneys available and doing good work that way, and we are interested in cost. Our charge is, on the one hand, to deliver quality of service commensurate with national standards. On the other hand, to do so in the most cost efficient way that we can. So that is our role. We are here today to listen and interact. We are not here with kind of authoritarian mindset, but we do want to hear what is happening. We do want to hear what the thought process is. We, as you know, there are several different types of providers that we work with around the state. The largest single component of defense provision is community based public defender. We don't have one of those in this county. That might or might not be a topic that someone wants to talk about whether we should consider that in this area. The second type of provider that we work with, which is what we have in this county, are consortia but that used to be kind of just a loose phrase that lawyers that wanted to do this practice anyway would find a way to organize themselves and operate in some kind of a informal rotation or rolodex. We are pushing very hard to make consortia much more structured than that. Much more able to handle training, supervision, new lawyers coming in and lawyers that really are not qualified or doing as good job as we think they should be exist. So that is the second type of arrangement that we have. Several places in the state we contract with law firms, and some of our best providers are private law firms that engage with us on a contract basis. Then finally, particularly in some specialized practice areas, like post

conviction relief would be an example, and we do some of this on spill over appellate work, we certainly do it in the capital case area, we will contract with individual lawyers. That is roughly the four types of arrangements that we have around the state. Several of the larger areas will have a combination. They will have a community based public defender for a significant portion of the caseload. A consortium which is less of a problem from a conflict point of view than an entity like a PD would be for the balance of the caseload. We are flexible in our thinking as to what best fits a particular community. We are not very flexible in our thinking if we don't get the feeling that the quality factor is being addressed. That is my way of introduction. I don't know is the district attorney here? Jason, I think you are next on our program.

59:32 J. Carlile

Up first?

59:33 Chair Ellis

According to my sheet you are. Do you want to come up and share some thoughts with us.

59:38 J. Carlile

I am Jason Carlile. I am the Linn County District Attorney. I really don't have a lot to say. I will make a couple of comments and then offer myself up to you for any questions that you might have. One of the things that was of interest to me is, I noticed the report referred to the rule that we have in Linn County about no negotiations after the trial setting. I want you to know that I support that rule and we have for many, many, many years. Part of the philosophical reason for that is I believe that it is important to make decisions about cases early on rather than hope for a miracle at the end. I encourage my deputy district attorneys to be realistic with their negotiations right off the bat so we can close the case right off the bat. That will help us get justice better and quicker. I think the defense bar is in general alignment with that as well, although each case is certainly unique and we have to work on that. We engage in vertical model prosecution. That means that the deputy DA assigned to the case handles it from the very beginning to the very end. The philosophical or pragmatic rationale for that is people who know the case and have authority over the case are best able to make decisions about the case and close the case, rather than have a bunch of hands on the stool shall we say. I think that has really helped us keep the numbers down with the trials. My guy or gal that has the case they know they are going to be trying it. They have to face the music one way or the other.

1:01:33 Chair Ellis

How many deputies do you have?

1:01:34 J. Carlile

Eleven.

1:01:34 Chair Ellis

So a total office of 12?

1:01:39 J. Carlile

Right. One of those deputies does the juvenile court work, both delinquency and dependency. We are generally generalists. The exception to that rule is I have two deputies DAs who do the domestic violence cases. There is some reference to the DV Court in there. A short side trip. The DV Court started with a federal grant years ago, far away. We lost that money and through the courtesy of the defense bar and the court, we have been able to maintain some vestige of it. We used to have a half-time judge that was paid for by the grant, a probation officer, lots of things with the victims. But now we are just using bailing wire and chewing gum and we are trying to keep it going as best we can. There are two elements that I am very grateful that we have been able to maintain. The court has cooperated in getting trials set. From beginning to end we try to close those cases within 45 days. Even after we lost the judge we are still doing that on average which is phenomenal especially in domestic violence. The older those things get the more chance you have for more crimes and the less chance you have for justice. The other thing that the sheriff does is if the case is identified by domestic violence they cannot point out of the jail. They can certainly bail out and when they see the judge the next day most of them conditionally release, but it eliminates the revolving door of point of jail and go back to the house and fight. Go back to the house. Fight. It is a spiral

downward. Those are two things that we have been able to maintain through the cooperation of the court and the defense bar. They have helped us keep those two things going.

- 1:03:43 Chair Ellis I think you have a copy of the report there. I was interested in page 12. There is a statistic that is quite striking. It said that in 2011, on a statewide basis, that the felony case trial rate here is 2.8 compared to 4.4 statewide. I have a theory what maybe going on here, but I am interested in your thoughts.
- 1:04:16 J. Carlile You would like my guess?
- 1:04:16 Chair Ellis Yes.
- 1:04:16 J. Carlile I will give you my guess. I think that that rule that I talked about is a part of it.
- 1:04:26 Chair Ellis The settlement rule.
- 1:04:26 J. Carlile It forces us to kind of buck up right off the bat rather than – human nature wants to drag things out. That is just human nature and we are humans and I know the defendants would oftentimes like to debate and delay the evitable too. If they have to make the call early on then I think it helps us. I think another reason for that is that the relationship between the prosecution and defense bar. I think we are able to cut through a lot of preliminary dancing and get to the end.
- 1:05:04 Chair Ellis Do you give open file discovery early?
- 1:05:11 J. Carlile They are in our offices all the time and we are talking all the time. I am about retire so my generation is getting a little more antiquated I know. The older I get the more that I believe that relationships ultimately answer all of life's questions.
- 1:05:34 Chair Ellis Go back to your comment about the settlement rule that you described. I was wondering if statistically elsewhere in the state, day of trial settlements which you don't have here count as trials. If that is true that would answer.
- 1:05:54 J. Carlile I don't know. I will tell you we are not absolutely perfect on that rule. The judges will give us a little wiggle room once in awhile. If somebody doesn't show up or somebody got sick and died. If there is a significant change in the case, if you will, the judges will let us settle later on. That is the exception. But what counts as a trial is exactly my question and I am not a state's stats person, so I just don't know the answer to that.
- 1:06:33 Chair Ellis It doesn't sound intuitively obvious to me that your settlement rule would lead to more settlements. Maybe it does but that doesn't seem to me intuitively obvious.
- 1:06:47 J. Carlile Well I labeled that as guess. Let me put it to you this way, if the routine is first you sit it for trial, I just think too many things get set for trial. I think if you can narrow that down through some kind of shifting process, I think it helps your trial rate. If you have people with the mindset it has to be then be sure before you ask the judge for the trial date. I just believe that helps. Can I prove it to you? No I cannot.
- 1:07:30 P. Ramfjord I am just curious in your communications with other district attorneys around the state, to what extent do they employ the same rule? To what extent do they employ it as rigorously as you? Is it your view that you employ it more rigorously and that is why you get the different results?
- 1:07:47 J. Carlile It varies so widely statewide. Now I am walking on a little thin ice so don't go to the bank on this, but across the state I think a great number of the counties you show up for the first appearance and you get a trial date. It is like Chinese water torture. Appearance after

appearance and a lot of time being expended on is this case going to go or is that case going to go. I am not so sure some of the other counties have the vertical prosecution but not all. I think that is an important factor. You have got to have both knowledge and responsibility to make those cases go away. That is not a very nice way to put it. To be efficient with the resources you have got to have responsibility and knowledge and about the case to make things happen.

- 1:08:46 Chair Ellis Talk to us about your counterparts on the defense side. How would characterize the defense services of this county?
- 1:08:53 J. Carlile They are getting as old as I am. Most of them are my generation. I think they have gotten a little new blood which is a good thing because transitions need to happen. Most of them are colleagues and friends, frankly. We talk a lot. I think the trust level is very, very high. I think that really helps us too. If one of them tells me, "Listen Jason, I am going to do X." I don't have to file a motion. I don't have to litigate it. I don't have to worry about it. I would hope they would say the same about me. I think it just shortens things up. One of the blessings we have is that longevity. We have been able to build relationships because of the many years and the relative smallness. I don't think it will work everywhere.
- 1:09:47 Chair Ellis One of the things we listen for is the graying of defense bar in a particular community. Are you attracting younger lawyers here, or is not so much or how would you describe that?
- 1:10:10 J. Carlile As district attorney I have got some – I am hiring my kids now. In fact I am hiring kids that are younger than my kids. You have to talk to the defense guys and gals about that. I just don't have a very good figure on that to help you much at all. I know they have gotten the one new fellow in and a very young fellow around my kid's age. I don't know what the market is like or what the interest is.
- 1:10:38 Chair Ellis From your point of view is it hard to attract new deputies?
- 1:10:41 J. Carlile No.
- 1:10:42 Chair Ellis It is a buyer's market.
- 1:10:46 J. Carlile Of late it has been because several counties have taken some big hits. The timber revenue dependent counties have been taking big hits. My last hire was I hired one of the guys – I called up my buddy from Josephine County and I said, "Steve, who are you letting go? How do you feel about them?" I hired one of those guys. It is not always a buyer's market. I think one of the appeals that our office has is generally lawyer like the fact that they handle cases and they are responsible for them.
- 1:11:24 Chair Ellis One thing the report said that surprised me, frankly, is lawyers are not appointed at arraignment – or they are not present at arraignment. They may be appointed then and the lawyer communicates with the client later. That isn't typical. I think elsewhere in the state that would be viewed as unusual. My question to you is, from a system point of view, do you think that is working efficiently? Is there a time gap that is problematic? How would you answer that?
- 1:12:09 J. Carlile First of all I will confess again. I have never seen the other system work, so I don't have a real good basis of comparison. I can tell you what happens here. The court appoints the personal lawyer if they ask for it. Ninety or 95% of them get a lawyer. That information goes quickly to the defense bar. It comes quickly to us. Once we get – well, I used to call them pink sheets. Now we get them electronically. Don't get me started on that. I will just leave that one alone. Our normal process is once we find out the defense attorney then bang the discovery goes out and hopefully in most cases, and I think it is true in most cases, the offer goes out right away. So there is not much lost time in there. Now would it work better the

other way? Not having any experience, I just don't have enough information to give you even a ballpark guess on that. I just wouldn't want to go there. We have it systematized very well so things happen pretty quickly. One of things that I noticed in there – sorry I can't tell you the page, but it said pretrial conferences are 60 days out. You can correct me if I am wrong. If they are in custody it is about two weeks. If they are not in custody it is about four weeks. I don't know where the 60 days came from unless I was having a brain lapse and said the wrong thing.

- 1:13:53 P. Kuebrich We used to try to do everything much shorter and what we found out is we were having multiple court appearances where people weren't showing up. The court would have to pull the file and everybody saying this isn't ready to make a decision yet, so the presiding judge said, "what let's do is kind of keep the in custody done in a shorter time frame, and on routine cases, bring them back 30 days out from the initial appearance to see whether they are ripe, or whether we need additional time." The court is pretty free with giving us additional time if we need.
- 1:14:29 Chair Ellis Could you state your name for the record?
- 1:14:29 P. Kuebrich Paul Kuebrich. I am part of the defense consortium.
- 1:14:31 J. Carlile If it is before the trial has been set, generally the court gives us much more leeway because we want to make sure when the trial gets set that it really means something. About two weeks in custody and four weeks out of custody, and, of course, the court allows flexibility if it is a complex case of some sort. We can both contact and get it set out further on if necessary. Maybe some more investigation of whatever is required.
- 1:15:03 J. Potter You mentioned discovery going out right away. When Nancy and Shelley and I sat down with you, you had talked about implementing a new electronic discovery. Has that been implemented?
- 1:15:13 J. Carlile Yes. I am almost afraid what these guys are going to tell you about that. We will see how it is working. I think it is working pretty good. We are not there yet. We still have some work to do. We are trying.
- 1:15:33 Chair Ellis Okay. Other questions? Thanks.
- 1:15:37 J. Carlile Thank you very much for your time. Good luck to you.
- 1:15:38 Chair Ellis If you guys are paired up you can both come up. He is riding shotgun? What did you think we were going to do?
- 1:16:02 C. Vian I am Captain Todd Vian, the Linn County Sheriff Commander. Sheriff Mueller asked me attend this forum. He wasn't able to make it. I am going to do the absolutely best that I can to answer any questions that you might have. As far as anything to add to what I was able to read, I don't think I had any additional information. If there are any questions that I can help you with?
- 1:16:28 Chair Ellis One of the areas that is always a challenge is access for the defense lawyers for the in custody defendant. How do you handle that?
- 1:16:36 C. Vian We have, just based on limitations of our facility. Our original jail was built in 1989. I don't think, in my opinion, of course I wasn't there at the time, not a lot of forethought was given to an expansion in that area. We have two what we call "non-contact attorney visiting rooms." It is through glass over telephones. It is as private as I guess we can make it. It is not monitored by cameras or audio recordings. We have our video courtroom that we do the close circuit television with the ...

1:17:25 Chair Ellis So the defendant stays in the jail facility and the appearance is by video.

1:17:30 C. Vian Correct. The attorneys come into our lobby area and we let them into those rooms. Our video courtroom is also within the secure perimeter of the jail. It is closed circuit TV with the courthouse. We have contracts with a couple of municipal courts and that is where we do most of our arraignments. If we have a capital case, a murder case, and an attorney needs to have physical contact with their client as far as going over whatever it is that they need to do, we can put them in that room. Again, we don't monitor it with audio recording or anything like that, but we are able to visually watch and make sure that the inmate doesn't do anything he is not supposed to do, or they don't try to take something from the attorney or attack them. So security wise that is about the best we can do for a contact room. We have three additional contact visiting areas. We try really hard not to use those because there is absolutely no monitoring in them. We cannot see into those rooms. There are no windows. No window on the door, so we try really hard not to use that just based on it is a jail and we are housing people that we don't trust.

1:18:52 C. Lazenby You said it was built in 1989. Do you have overcrowding problems? Do you have to release people because of crowding?

1:19:02 C. Vian We do routinely release people. We have a matrix system that we call a point system. In March we cut our jail beds by 48. We were originally 230 beds, so we cut a significant number. We have been working with the courts, the district attorney, and I really don't want the word to get out, but we are managing. We are doing okay. I personally sent 11 people home. They were laid off. It is not easy but we are making it work.

1:19:37 J. Potter Captain, when Nancy and I met with you, you talked about these contact rooms and Nancy put in there that there were three non-contact visiting booths but there is only two?

1:19:45 C. Vian There are only two.

1:19:46 J. Potter Then subsequent to that we talked to a variety of defenders out there. That was the one area of concern that was raised a number of times. Is there any potential solution? Is there any flexibility?

1:20:02 C. Vian I could see there are a couple of ways that the non-contact visiting rooms are located in the general vicinity of inmate visitation area where family members come in and visit. There are potentials to be able to add potentially one or two rooms into that area. Money is the problem. I understand their concerns and their issues because I routinely go in and out of the jail through the lobby and I can see guys maybe one or two or sometimes three at a time waiting in line to get into those rooms.

1:20:45 P. Ramfjord Do you have a system for scheduling those and, if so, what is it?

1:20:50 C. Vian No we don't. We are open 24 hours a day, seven day a week. It is basically a first come, first served.

1:20:56 Chair Ellis Okay. Thank you.

1:20:50 C. Vian Thank you.

1:21:00 Chair Ellis Ric Bergey of probation. How about Lene Garret from CASA? Then Roger you come on up. If you want to join him? We are use to having a witness and then a shotgun right behind them.

1:21:57 R. Reid Good morning. My name is Roger Reid. I am attorney and the administrator for the Linn County Consortium. This is Mr. Kuebrich. Paul and I have been together for more than 30 years. We started together in private practice and about 25 years ago we started the Linn County Consortium of attorneys and there were only two of us, Paul and myself. At that time we did the district court misdemeanors. Later on the circuit court criminal case attorneys disbanded and so we took over for them. We have been doing a contract with the state for more than 25 years. During that 25 years there have only been three who have withdrawn from the consortium. One of them was killed in an automobile accident. One last year, Janet Botano, she transferred to the juvenile consortium, and I semi-retired here several years ago and Mr. Felling took over my cases. We have nine attorneys in the consortium at the present time. One of them is a new member. He came on board in October. He graduated from Willamette University. We were supposed to be on at 12:30 and I told everybody to be here. They could come all day but I told them be here specifically at 12:30 and they appear at that time and he will appear. He is a good man. He is going to be a good attorney. We have two mentors for him now. Paul Kuebrich and Mr. Felling, who is here in the office. They have taken control of him. Also, when he was introduced to the rest of the consortium, the rest of the consortium was instructed that if they see him in court and he makes a mistake they should talk to him afterwards. He has eight other mentors after him all the time.

1:24:19 Chair Ellis Of your nine, what percent of the practice of each of those is criminal versus other?

1:24:27 R. Reid It varies among all of them. Seventy to 85% of them are criminal fulltime.

1:24:38 Chair Ellis Then I noticed several references in the report that some of your members have significant retained caseload.

1:24:49 R. Reid Yes.

1:24:55 Chair Ellis Describe that to me. In other words what percentage of practice of your members is retained cases versus appointed cases?

1:25:01 R. Reid I think one attorney has 35% retained cases and the 65% are court appointed cases.

1:25:10 Chair Ellis That would be the highest retained case percentage?

1:25:15 R. Reid Yes.

1:25:21 Chair Ellis I also noticed that your structure is still fairly informal.

1:25:28 R. Reid Yes it is. We have done that all the time. The nine attorneys want to be independent contractors and they are independent contractors. We have a corporation.

1:25:38 Chair Ellis Who do they independent contract with?

1:25:39 R. Reid The corporation. We have a corporation.

1:25:42 Chair Ellis So you do have a corporation.

1:25:47 R. Reid We have a corporation and it was formed in 1998.

1:25:54 Chair Ellis And who is the board of the corporation?

1:25:54 R. Reid We have four members on the board. One of them is a member of the consortium; Mr. Felling, myself and then we have two outside board of directors. I asked why they wanted outside directors and I was informed that one of the reasons was that there was some embezzlement in a consortium, so I wanted to pick an accountant. So we have an accountant

on board and then we have another attorney, Derek Hews, and he does juvenile work. He is with the juvenile consortium. I picked him for two reasons. One is that he is active in the community and the second one is he is active in the juvenile consortium, so we can use some of his information in our consortium.

- 1:26:45 Chair Ellis I am a little confused. The report or the draft and that is all we are talking about at this point, at page 18 says, "The consortium began establishing a board in 2011, but it is still in the process of adding members, and continues to work out other details." You make it sound like you have had a board since 1989, and you have got four members and two are outside.
- 1:27:10 R. Reid No, no, we haven't. The two new members we were just informed here a couple of years ago that we had to have two outside board members.
- 1:27:26 Chair Ellis That is a rule that we put in.
- 1:27:26 R. Reid That is right. The first thing that came up was this, we had to get directors and officers insurance because there was some concern that maybe the directors may be responsible if one of the attorneys had some malpractice work. I had a hard time getting insurance to cover the directors and officers. After I checked with the Professional Liability Fund Insurance Company and they said they didn't do that for you guys and so forth. I finally had to find an insurance firm in Corvallis. I now have insurance on the board of directors and on the officers. I don't know what it covers myself, but to protect the outside directors primarily, primarily. It costs \$30000 to \$400 a year.
- 1:28:27 Chair Ellis There are a lot of consortia around the state. I don't know the number but what it is Nancy 20 or so? So you are not the first and I am going to suggest that you communicate with Paul Levy, our general counsel, I think is in a position to help you solve that problem.
- 1:28:52 R. Reid I took it up with the state and told them that if we had to get it in the future then I am going to put in a request for reimbursement of that \$3,000, or I tried to see if maybe the state could maybe find an insurance company to give insurance for all of the consortia.
- 1:29:17 Chair Ellis If it is any comfort to you, I have been involved with public defense for a long time, 40 years or so, and I have yet to hear a claim asserted against a board.
- 1:29:27 R. Reid Well let me be perfectly frank with you. I personally don't think the insurance is worth anything myself, because I don't think it is necessary.
- 1:29:44 Chair Ellis The likelihood of a claim, and a successful claim, based on history, at least, pretty low.
- 1:29:54 R. Reid The same opinion that I have personally. I was listening to the other attorneys and the other members on the board and they said to get insurance.
- 1:30:07 Chair Ellis I was interested in the same passage of the report. That you use what is described her as a "split the check" model. Can you explain that and describe how that works?
- 1:30:15 R. Reid What that is, is we enter into an agreement with the state and they say they will pay us so much money per month on the cases. It comes to the corporation. Every month we divide that nine ways.
- 1:30:39 Chair Ellis So now based on who has done how much work?
- 1:30:40 R. Reid No it isn't. It was discussed with the members and they are still in agreement that if we are certain that we are going to receive X amount of dollars per month, it is better for better for them, to know that we are going to receive this.

1:31:02 Chair Ellis So this member that you have that is 35% retained cases gets the same split as the members who are 100% devoted?

1:31:08 R. Reid He gets the same number of cases. They do the same number of cases. The cases are on a rotational base. When a case comes up the court appoints the attorney. Each attorney receives approximately the same number of cases every month. It varies from month to month. The person who is doing outside criminal work, he does the same number of court appointed cases as the one who does 90% of his work on court appointed. That is the fair way to go.

1:31:47 P. Kuebrich Just to clarify what happens. Because I think it is going to dovetail into the discussion of arraignments and about how contact is made and things. The board has kind of a master list with all of our names on it that just simply repeats indefinitely. When the case is called and the court inquires as to whether an attorney should be appointed the clerk tells the judge who the next person is on the list. That person gets assigned. If you subtract the statistical variances that are created by the way cases are counted. In other words, you might get John Doe and he might have a case in which you could count five or six cases. It is still only for our purposes one case so that at the end of the day there is going to be some variance, but at the end of the month and end of the year, each of the nine attorneys should have been appointed a relatively equal number of cases. Now, some choose to do private or retained work, and stay up until 12:00 at night working their files, then they can do that. The other ones want to manage their time to an eight or nine or 10 hour day, they simply decide not to take appointed cases. It varies along the way. I take a couple of retained cases a month if it is something that looks like it needs to be done and interests me. I don't do a great deal of them, but I am 60 years old and I don't want to work until 12:00 at night.

1:33:18 Chair Ellis Sixty is nothing.

1:33:26 P. Kuebrich It is the miles and not the years. There isn't really a discrepancy in the amount of money people are paid over their caseload. The "split the check" model for us works fine. It eliminates a lot of accounting and hassle and everybody seems to be happy.

1:33:53 Chair Ellis Now if I understood from the report you don't take cases yourself anymore. You act as the administrator but you get a split on the check too?

1:34:01 R. Reid Very little. Just for administration.

1:34:05 Chair Ellis There was reference by the district attorney about the aging of the defense bar here. Can you give me a sense of the experience level of the participants in the consortium?

1:34:27 R. Reid Seven out of nine of them have over 25 years of experience. The other two, Mr. Felling and the new attorney, they have less. Mr. Felling has probably 10 years of criminal experience. The other guy only has two months.

1:34:48 Chair Ellis What is your process to be satisfied that the quality of representation is adequate? In other words, is there a mechanism if a court or a client is not satisfied that they can communicate that? Have you ever had an issue, if somebody gets into too much drinking or something, and is not performing adequately. How do you handle that?

1:35:14 R. Reid Any complaints about the attorneys?

1:35:18 Chair Ellis Yes.

1:35:19 R. Reid The court sends me notifications of any client or any defendant who is dissatisfied. I contact immediately the defense attorney and ask specifically what happened on this matter. I receive complaints from the Oregon State Bar and I contact the attorney immediately. I have a

complete file on all of the attorneys there. Since I have been doing this, I figured it out and I had since June of 08, I have had 15,000 cases in our consortium approximately. Out of that we have had 29 complaints. All 29 of those have been resolved and I think favorably. It is very important to me, and to the members of the consortium, that they be treated fairly and that the best defense for the defendant is given. We just have to be realistic about it. Some of the defendants are unreasonable. Why didn't you get me off this case? Why didn't you call

- 1:36:45 Chair Ellis I am shocked to hear that you have unreasonable defendants.
- 1:36:54 R. Reid And I ask the consortium member to write me a letter and tell me what happened. They write me a letter and I get a copy of all the responses to the Oregon State Bar. The judge will either notify Mr. Felling or myself if they are having trouble with a specific attorney. We discuss that. Our main objective, our only objective, is to get the best defense for the defendant.
- 1:37:34 Chair Ellis Have you ever had a situation where you had to let someone leave the consortium because quality was inadequate?
- 1:37:37 R. Reid No. I will perfectly frank with you. We have a couple we are watching now.
- 1:37:51 Chair Ellis And the process that you have is essentially yourself?
- 1:37:53 R. Reid That is right and some of the members of the consortium. It is a small group. They are concerned about keeping the consortium going and giving the best quality of defense that they can.
- 1:38:15 Chair Ellis What was your process for admitting the younger lawyer, the one from Willamette who has been active for just a couple of months?
- 1:38:20 R. Reid It wasn't my idea. It was Mr. Kuebrich's idea.
- 1:3:29 Chair Ellis I don't care who answers. I am just interested in it.
- 1:38:29 P. Kuebrich The process was kind of two-fold. One is that had known this individual since he was about this big. I knew the life experiences that he had before. He entered law school after some other education, some other endeavors. I knew what his academic record was because he graduated magna cum laude. I knew what his passion was. Ms. Boytano was leaving and there was a void. There was a not a formal structure in place that said what we did with this share. Over the years different people have had different ideas about what exists. I think there is still a split among the individuals. I think the individual practitioner owns nothing. They have a contractual relationship. There is nothing to give or sell or barter, but I felt strongly enough about this kid's potential that I just said this is the way it is going to be. We finally came to a consensus and brought him on board. We know that transitions are going to have to be made and that a more formal process needs to be developed. I think a good number of the members of the consortium feel the same way. There needs to be structure in place. The comments that are in report, that we are working on it. Give us time were my comments. I understand that some more structure probably would be beneficial. I think everybody agrees. It is just a question of now taking what has worked extremely well for 25 years as an informal relationship among eight or nine people that care very deeply about the work they do, and as least as importantly feel very deeply about each other. In making sure that each other is doing a good job. Making sure the stresses in life are dealt with in an appropriate way. Make sure that we have a conversation in the hallway or in the office when it is necessary. But I realize the world is changing. I realize that more structure is needed. I am not sure structure for structure's sake is always good.
- 1:41:04 Chair Ellis Have you had other lawyers in the community that want become part of the consortium?

1:41:07 P. Kuebrich We have never been made aware of it. To speak to an earlier question about the ease of hiring, and correct me if I am wrong guys, haven't had a new, young lawyer come to town, with the exception of Tyler, since Jesus was a small boy. I think the reason for that is when I started you went to the presiding judge and you signed up and you volunteered to get \$25 for a misdemeanor and \$50 for a felony and you could maybe buy groceries until you could establish a practice. The economics of law have changed drastically. I would say it is virtually impossible to just simply go out and hang up a shingle in a town where you are not known and you are going to prosper, like when I was starting. When we do need to attract, then I think we need to actively recruit from outside the area. There isn't a pool within this geographical area from which to draw. There aren't people coming to us and saying, "Let me in. Let me in."

1:42:19 Chair Ellis For your lawyers that a high percentage of their practice is indigent through the consortium, do you have a sense of a differential between their economic situation and their counterparts in the DA's office? Are they comparable? Is one higher than the other?

1:42:45 P. Kuebrich We are probably on the lower end of because we don't have retirement. We don't have health insurance. We have to pay a secretary. Unlike Marion County we are not operating out of the trunk of our car. We have phones and we have brick and mortar and that is expensive, but I think that is important to do that so that these people have a place that they know that they can go to. They know that somebody is going to be there to answer the phones. They know they are going to get a phone call back that day. That costs money. I certainly don't think we are any higher on the hog and probably lower than a public sector employee.

1:43:26 Chair Ellis Are the DA group of comparable age? Do they tend to be younger?

1:43:31 R. Reid They used to be.

1:43:40 P. Kuebrich Jason came after I did. He has two senior deputies that are at least my age. The group probably drops down from there to the mid-40s and then there is a new hire from the class of 2011, I think. Then he has back-filled in with some more experienced people but not older than their mid to late 30s. It is a continuum.

1:44:20 Chair Ellis I don't know the demographics of Linn County that well. Are there significant minority populations in the county?

1:44:30 P. Kuebrich We have an Hispanic population. We have very little by way of Asians or African-Americans. Some Indians.

1:44:46 Chair Ellis On the Hispanics, do you have someone with language competence?

1:44:49 P. Kuebrich Do we have attorneys with language competence? Some in English. We have access to really good interpreters on a really good basis. If I want an interpreter to meet me at the jail at 3:30 this afternoon, then I will have one.

1:45:13 Chair Ellis What is the gender mix in your consortium?

1:45:15 R. Reid That is one of the problems. We lost our only female here six months ago.

1:45:27 Chair Ellis Within the bar in Linn County what is the gender split?

1:45:31 R. Reid Most of them are in the juvenile consortium there. Probably 30% are woman in the bar here.

1:45:44 P. Kuebrich But if you look at the two consortium together that are providing indigent defense services, they are not under represented. Just happened that this group just hasn't had any turnover since it was started years ago.

1:46:03 P. Ramfjord The report talks a little bit about the best management practices manual that you are developing and the client survey you are developing.

1:46:06 R. Reid Tim Felling is working on that.

1:46:03 R. Ramfjord It would be interesting to hear about what that covers and what the manual covers and how it is being developed. What resources you are looking to in developing that and a little bit on a client feedback form too.

1:46:30 T. Felling Well, on the client feedback form - we talked to the juvenile consortium about the form they use, and then some other consortiums.

1:46:37 P. Ramfjord So what do you have in that form?

1:46:43 T. Felling It asks how quickly the attorney returns your call. How quickly they have met with you. How responsive they are to your concerns and how well they explain the law to you in your case and the process that you are going through.

1:47:12 P. Ramfjord Then can you describe the best management practices manual a little bit.

1:47:16 T. Felling We took the report that the Public Defense Services put out and we have gone through each section either addressing how we currently are meeting that standard, or how that particular standard might not apply to us. Then we if we aren't meeting that standard then I have been having discussions with the juvenile consortium and also the consortium down in Eugene and I have called a couple of others as well. To see how they are dealing whatever that is and then when I come up with an idea on how we should approach it, then I present it to Roger and he also presents it to the group in our monthly meeting. The consortium has a monthly meeting and then the board also reviews that. It is a process. We want to address every aspect of it. At least for me, I feel very passionate about the work that I do and I think I have absorbed that from every member in our consortium. Everybody wants to do a high quality and a good job. We also want to attract blood as you were just talking about. I think part of the problem at your last Commission meeting you talked to some younger attorneys who were saying they love their work and they are passionate but they don't have the compensation.

1:48:48 Chair Ellis And they have got \$110,000 in loans.

1:48:54 T. Felling Tell me about it. I am living that.

1:48:54 Chair Ellis You have that too?

1:48:54 T. Felling I think the consortium can address that in a way that allows attorneys to do some private work and essentially augment their income that comes through the consortium. I think that if you look at raw numbers, sure it could be 90% of your actual work is indigent defense, but it cuts down to 70% of your income, or 60% in some cases.

1:49:26 J. Potter Is it safe to say that you can't make a living wage from the cases that come to you solely through the contract?

1:49:50 T. Felling Well I have two kids. Yeah. I think it is a challenge with the burden of law school debt, certainly it would be hard to attract somebody to do that.

1:49:51 J. Potter But the cases that are coming to you, is it 90% of your time to do those cases?

1:50:05 T. Felling Yes.

1:50:05 J. Potter I just thinks this gets back to what you were saying earlier, Roger, in order then for you to get more money to earn a living wage you have to work 110% or 120% to make ends meet.

1:50:15 T. Felling You would or get privately retained cases that pay significantly higher. Our counterparts in the private bar doing the same amount of work make four times as much money.

1:50:29 Hon. Elizabeth Welch I have a question and I am not sure who I should address it to, so I won't worry about it and you can. I want you tell us how you view this rule, I assume it came from the court, that there is to be no negotiating after there is a trial date set.

1:50:49 P. Kuebrich I was one of the really, really vocal opponents of that rule. It was Judge Rick McCormick who implemented that a good number of years ago. It came about after Linn County, along with two other counties and I can't remember which ones they were, were called to task because their docket was completely out of control. They sent us to a meeting with a guru from out of town by the name of George Gish. He was supposed to be the world's expert on docket management. We all spent three days talking about docket management and we came away from the meeting, and what I came away with was Mr. Gish saying, "Never miss an opportunity to close a file." What Judge McCormick came away with was you have to set a deadline for negotiations and once it is set you cannot let them negotiation. I don't know how we were at the same meeting, but we were. In fairness, with the current presiding judge, it is a rule, but there are exceptions to that rule and the exceptions are granted based upon the merit of the need. If the case changes significantly in complexity, or one of the other parties develops witness problems, or if one of the other parties finds a witness that they didn't have before - and you have a pretty decent reason. The presiding judge is likely to let you settle the case notwithstanding the rule.

1:52:20 Hon. Elizabeth Welch What does the rule accomplish?

1:52:23 P. Kuebrich I don't think it accomplishes very much, quite frankly. The presiding judge and I are big boys so we can agree to disagree. I am not afraid to be vocal. I think its intended purpose is to send a message to defendants to quit wasting our time. If we need trials then let's set a trial. But don't ask for a trial with the goal of that kicks my case down the road four months and I don't have to worry about it and then I will plead guilty the morning of trial, because I am telling you that is the mindset of a lot of criminal defendants. Another intended goal is to send a message to Jason's people and to us to look at your case early on. If you need a trial we will give it to you. If you don't then try to find a way to settle it, but once we set it we expect to have a trial. Now the further problem with that has now become we have got a horrible docket again. Notwithstanding this eCourt, it is going to get worse before it gets better because of eCourt. This is going to take a lot of time to implement. Our docket is going to get worse than it is. So for instance, Tuesday of this week, I think there were seven cases set for trial before two judges. Now where the logic is at this point of saying, "Six of these you can't settle even if you want to," I don't know. The reality of it is that notwithstanding that rule than four or five of those cases probably did settle because Judge Murphy issued a memorandum about three months that suspended the rule until December 12 because the docket has gotten out of control. From December 12 on this rule is going to go back into being enforced.

1:54:23 P. Ramfjord Is the remedy getting rid of the rule and putting the rule back into place.

1:54:30 Hon. Elizabeth

Welch Thinking about it from experience in Portland, which is a very different kind of culture anyway, if the objection were we are going to give a trial date and that trial date is set in stone. Okay? That is a very good idea because it respects the rights of the public. It respects the victims and the witnesses. In other words, this is a date that means something and it sticks. But it is hard to imagine how anybody benefits from the rest of the implications of this.

1:55:13 P. Kuebrich Early on that model kind of was in place because we passed the pig. We had gotten rid of the big number of backlog cases because the word from Mr. Carlile to his people and from the judges and let's get these things settled. Let's get this docket manageable again. Then over the time the pig came back. I didn't write it.

1:55:46 Chair Ellis Do any of you have an explanation for this case trial rate of 2.4 here versus 4.4.

1:56:03 P. Kuebrich I have seen counties that thought they needed extra judges and you can manipulate that docket any way you want to make yourself look as busy as you want. I don't know where those numbers are being pulled from, but I suspect there are things that are being called trials that are 15 minutes hearings. They are appearances that were set for a trial but that trial didn't go that day.

1:56:31 Chair Ellis But it still counts as a trial.

1:56:30 P. Kuebrich I don't know statewide because I haven't gotten old and I limited my practice, as of late, to this general area. I don't know what other counties are doing and how - if each individual circuit court is responsible for generating the individual numbers that then go into making up that number, I think there are a lot of variables that could be there. I think in some cases it is creating statistics to justify existence.

1:57:01 Chair Ellis You are shocking me again.

1:57:03 P. Ramfjord One other question about the no negotiation rule or not continued negotiation rule, in my experience I also think there are criminal defendants who it just takes some time for them to realize that they have to plead guilty. To some extent do you feel that this rule is imposing unfair consequences on some of the defendants in your system? Because they necessarily take a little time to get the point of having to plead guilty and then they have to plead guilty to something that is harsher than what they could have plead guilty to earlier.

1:57:42 P. Kuebrich I think the more serious consequence is not that they are being forced to plead guilty to something more serious than maybe what they could have later, but they are forced into a trial that has the potential to have an outcome that is far worse than what the attorneys could have negotiated.

1:58:05 P. Ramfjord So you end up spending more money in a sense having them in the system longer. They are potentially incarcerated longer than they otherwise would have been incarcerated. While the purpose of this might be to save the docket, you may not actually be saving money down the road.

1:58:25 T. Felling There is something that addresses that a little bit and that is our relationship with the DA. In fact, before I came to this meeting I had this situation going on. I had a client with potential aspergers problem. I needed to do some work on the case. We can't do the regular timeline. It has been going for awhile. The court wants to move it along. The DA's office wants to move it along. I just went to his office and said, "We need more time. Please give us more time, and he said, "Okay." That is what the trust and relationship is. It is not just a stalling for stalling.

1:59:04 Chair Ellis You heard my questions to District Attorney Carlile on the method by which lawyers get assigned to defendants here and it is unusual, I think, that the lawyers aren't there at arraignment. I am interested how that system works and are there issues with it?

1:59:35 R. Reid We had a discussion at our monthly meeting and we all decided that Mr. Kuebrich could discuss this, so Paul going to fill you in.

1:59:41 Chair Ellis You are the designated hitter.

1:59:44 P. Kuebrich I guess so. I think I already described the way it works on a rotating basis. Over time this is the process that developed. On a number of occasions as a group we have said let's go over, watch the arraignments, and see what is going on. See if there is anything there that we could add to that process. I think you are aware of it and I don't know if it is statewide or just by local county rule or whether everybody has adopted it, but there is this push for early resolution through the courts. The word we got was that the state would be making limited offers to the defendant that may or may not be available later down the road. Usually on minor cases, because nobody at the time of arraignment is going to take a deal that is going to volunteer to go to jail. Disorderly conduct and pay the \$500 and plead to the violation and get out of here. We were concerned that might have been a subject for abuse, but what could we do about it? Here is the reality is there is Bud Light and there is Pepsi Light but there is no representation light. I can't envision a scenario in which I can tell a defendant to either accept or reject one of these walk in offers without knowing the facts of the case. I am potentially goofed up if I do or I don't. I know that the DA has become aware that this is an issue. I know that this week that I got a call from the deputy district attorney who was going to do walk in arraignments. He said he was suspending that practice and was not going to make offers any longer. So what happens is the judge, staff, reads a spiel about what their rights are. The judge takes the bench and he deals with any represented defendants. He leaves the bench. They have time to fill out the paperwork..

2:01:41 Chair Ellis And those are going to be the retained the cases?

2:04:43 P. Kuebrich No. The retained cases are going to go first because the judge wants to get the ticking watches out of the room so he can hear himself think. Then they will call the balance of them. They leave the courtroom with instructions to contact our office within 72 hours. If they are held in custody we have to go and see them within 24 hours. The court notifies us - I have had maybe one or two cases in 30 years where they have lost a piece of paper, but I usually know the same day or the next day that I have gotten a new appointment. Within a day I have got discovery. The day I get the notice of appointment, my secretary generates a letter to them saying we know we have been appointed. We will go back to court on such and such a date. Mr. Kuebrich would like to see you in his office and usually a date about a week and a half out, because by then I for sure have discovery and have had a chance to see it. If it is an in custody person, then I go within the required period of time if only to say, "Hey, I'm Paul. I don't know a thing about you yet but I am your guy and I will be back this weekend. Because there is limited space we will maybe meet on Saturday and Sundays." I don't see that there is a lot we can do at those walk in arraignments. We are willing to be there. You guys sign the checks. If you tell us you want somebody at walk in arraignments, we are going to have somebody at walk in arraignments. I am not real sure what their role will be.

2:03:07 Chair Ellis But it struck me as curious that the retained cases the lawyers are there.

2:03:13 P. Kuebrich That is because they have been contacted weeks in advanced by the client. Maybe I am missing the picture here. The lawyer is there for the retained cases because the retained client came into their office two weeks ago and said, "I got this ticket. I am supposed to appear in two weeks. Will you go with me?" And he says, "Yes." These people that are coming for arraignments have been given citations by the police or are in custody and simply brought to the courtroom. They have never had an opportunity to go out and see if they could have a

lawyer with them at arraignment. Quite frankly the way the arraignment process works here, I am not sure what role they would fulfill, but I am happy to make certain someone is there

2:03:52 Hon. Elizabeth Welch

Do the retained lawyers do anything at arraignments?

2:03:55 P. Kuebrich

Yeah. They say, "Can we come back in six weeks. We have received the district attorney's information. The name is correctly spelled. We have read the advice of rights consequences. Can we come back in four weeks?"

2:04:07 Hon. Elizabeth Welch

That is what they do.

2:04:07 Chair Ellis

One of the reasons we have these gatherings is to give you all a chance to tell us how we can do our job better. This is a rare moment. Any suggestions? Any comments about staff and your relationship?

2:04:28 P. Kuebrich

I would like to address that. I have not dealt with the Commission. I have dealt with the OPDS staff and they have been wonderful. There have been occasions where they have gone out of their way to find funding for a witness that may not have been absolutely crucial, but was crucial to avoiding a post conviction relief claim, even if it was going to resolve favorably to me.

2:04:55 Chair Ellis

You are talking experts?

2:04:55 P. Kuebrich

I am talking experts. When they have rejected a request for funding they have been clear as to why they are doing that and helpful with suggestions as to how, if I really need this funding, I might better address my request.

2:05:17 Chair Ellis

And that is still on what we would call the "non-routine expense."

2:05:21 P. Kuebrich

Our analyst has been very good about keeping in contact with us and making sure that we are either working to resolve - as you are probably aware we got out of whack budget wise for awhile. We have now solved that problem and are back to the positive side, but our analyst has been very good. She has been helpful whenever I have had a question. Lorrie has been good. Paul. I think you have a great staff working for you.

2:05:45 Chair Ellis

And the promptness of payment is.....

2:05:54 R. Reid

It is deposited in the bank. We get the okay from the bank to write the checks. My secretary writes the checks out and the attorneys are called and they come over and pick them up. We are within walking distance so they are usually there within 10 minutes.

2:06:15 Chair Ellis

One thing that I wanted to go back to, you have the young lawyer and you may have just been describing it with the sense of humor, but the way you described it was if he makes a mistake one of the older consortium lawyers will tell him.

2:06:31 R. Reid

There is more to it.

2:06:31 Chair Ellis

I would like to rephrase it. Can you tell us what your training and supervision program is?

2:06:39 P. Kuebrich

He is following Tim and I around and Tim and I are following him around regularly. I have been to a number of his court appearances. I don't think he has made a court appearance without one of us present since he started and that has been before even the most routine matters.

2:06:55 Chair Ellis Do you view him as Measure 11 qualified?

2:07:01 P. Kuebrich Absolutely not.

2:07:02 Chair Ellis So how is that handled?

2:07:04 P. Kuebrich What we are doing is getting away from a model that was used 37 years ago where somebody said you never learned to swim in the shallow end of the pool. What our plan is, and what will happen, is Tyler will sit through any number of misdemeanor trials and felony trials, including Measure 11 trials, with Tim and I. He may or may not be an active participant. He may question a witness. He may not, but he is at least going to see what it does a long time before it happens. Then the goal would be to have him start doing solo appearances on relatively routine misdemeanor probation violations and maybe even some routine non-serious felony probation violations. Get him some trial experience. Get him some experience before the court. Then work him into doing misdemeanor trials where one of us will be with him for the first number of trials until we are comfortable that he can fly on his own.

2:08:00 Chair Ellis This sounds a lot better than how it was first described.

2:08:12 R. Reid Yesterday he was scheduled to sit at counsel table with an attorney from the consortium. He went to court. The court had another case pending so it had to be continued. When he has time he will go with other attorneys in the consortium.

2:08:28 Chair Ellis Are all your consortia members independent practitioners?

2:08:34 P. Kuebrich Yes.

2:08:34 Chair Ellis So you don't have law firms as consortia members?

2:08:38 P. Kuebrich No. Everybody has their own place. Their own brick and mortar. Their own everything.

2:08:43 Chair Ellis Do they all tend to be in the same building?

2:08:48 P. Kuebrich No. They are all separate. There is Tim and I and Tyler and Forrest are in the building across the street. Everybody else is gathered in different buildings around town, but we are a pretty close knit group. We talk to each other constantly. I just can't stress how well it works. In the conflict area for instance, somebody is reading through the file and holy crap didn't want to see that name come up. It is a question of an email that goes out to all the other members saying this is the issue that I have got. It is rare that I don't have an email back within five minutes from somebody saying ship it over. Sometimes what you are asking to be shipped over is a multiple sex abuse, Measure 11, Jessica's Law case. But we know that tomorrow that it may be on the other foot. We are not Multnomah County. We are not Metro Defenders. We are a group of eight friends that practice passionate criminal defense. We are invested in making sure that each of us do what we are supposed to do. Going back to Tyler, he didn't come to us completely green. He clerked at the Marion County District Attorney's Office while he was in law school and had some significant responsibilities in juvenile court. He tried juvenile cases on his own. He didn't come to us green, but that is not to say that we are going to say that is the end of all of his training. I want him to have the reputation that I think all of us have. I want him to learn the practice of law the way it was when you and I were baby lawyers, and you before me a little bit. It was a lot more collegial. There was a lot more dependence on handshakes. There was a lot more dependence on what your word was. There wasn't any of this setting somebody up to walk into court and get ambushed by the other side. I want him to learn those values as well as how to practice quality law. But the measure of the person is just as important to me. I want him to learn those values so that when he goes in and talks to a deputy district attorney and asks for more time, the answer isn't, "Why do you need it?" The answer is, "Okay."

2:11:10 T. Felling Since we are in the same building, I should say that he meets with me and we talk about every case three or four times a day. The same thing with Paul.

2:11:24 Chair Ellis So one other subject that I wanted to address. We have an appellate division. We have the head of it over here. Any of your cases that require an appeal, we take. I want your observation how that handoff works and are you comfortable with how that is being handled?

2:11:46 P. Kuebrich It works well. In fact I have uniformly told clients, for which an appeal was going to be appropriate, that they were going to be in the best hands that they could possibly be in. It didn't matter that they were indigent and they weren't paying for it. You can't buy that kind of experience and you can't buy what they do sometimes at any price. The handoff is easy. The online referral form for me works well.

2:12:20 Chair Ellis Do you tend to stay in touch with the appellate lawyer that is handling your case?

2:12:24 P. Kuebrich If they need me they call me and I provide whatever assistance they need. Most of what they do is based on the record and they always ask in their referral form if you need contact, and it you check ye, and you get it. Do you want a copy of the brief? Check yes and you get it. It is kind of hard to get that and find out how inarticulate you were.

2:12:51 Chair Ellis We all sound like Lily Tomlin when the transcript comes out.

2:12:52 P. Kuebrich I think they do a really good job.

2:13:01 Chair Ellis Okay. Any other questions for the consortium members? Why don't we take about a 10 minute break and then come back.

(Recess)

0:05 Chair Ellis Let's bring the meeting back to order. Lene Garrett is here from CASA. Would you like to start. Welcome. Thank you for coming.

0:20 L. Garrett Thank you for inviting me. I actually didn't prepare a whole lot to say and I guess I am going to start a little bit - as I read through the report it was very interesting. I think it was very accurate as it reflects the work of the juvenile consortium here and the juvenile court process. I would like to say as well that CASA can only speak to the kids that we have a court appointed special advocate case to. So we have the ability here to only serve about 40% of kids, which is about 155 children. It runs around 90 to 95 cases. The information that I share is only based on the kids that we are serving, and not the other 200 who do not have a CASA.

1:13 Chair Ellis Help me understand how the ones you get come to you and the ones that don't come to you.

1:16 L. Garrett I am happy to do that. In this county we have an agreement with the court and with child welfare that the CASAs that are appointed are appointed to the cases that are highest need. So in our office, we triage those. We attend every shelter hearing and we receive the petition as well the affidavit, so we are familiar with the case. Unfortunately we don't have a CASA for those cases early on. We prioritize them based on four criteria. The criteria are: (1) are they removed from their home and placed in foster care and unsupported by family? That means they are with strangers. They are not with family members. (2) Was there significant injury or the death of a child or a sibling in the case? (3) Do they have significant identified needs and the fourth one is we really look at the age. Right now we are focusing a great deal honestly on zero to three and then 12 and over. We had an increase in the number of teens in this county for – I am going to say pretty consistently the last two years and based on our data that shows once a child enters the dependency system at around age 12, there are likely to age out of the system. We want to ensure that there is a CASA in their life that is helping them

navigate their way particularly around educational needs and placement to ensure that they at least graduate from high school and that they have some connections when they leave the system. That is our particular area of focus within our program. Like I said, we showed nearly 200 kids on the list without a CASA. We're doing the best we can. On that note, our program has actually grown in the last three years from 36 CASAs to 94 that were active in 2012. We are doing a great deal of work to ensure kids have a voice and an advocate in the system. I guess a couple of things I was going to just share a little bit about is that I believe as our program has grown significantly in the last three years, the relationships with the partners that we interact with and the other parties to the case has improved immensely, and I hope you will hear that same information from the juvenile consortium. We have worked really hard to understand the legal processes here and then to also train our CASAs to understand those processes, so that we have clear expectations of each role of the parties in the case. The consortium here, in my opinion, also improved in a number of areas. There has been some change within the consortium members and I think that has caused some change. We are seeing more often the children are seeing their attorneys, or at least hearing from them more frequently than they did two and a half to three years ago. There is more open communication when it is appropriate, obviously, between CASAs and the attorneys for parents, which when I arrived almost three years ago that was a real challenging area for us. It is important that CASAs have access to parents for the purpose of being able to say to them early on that, "I am the child's advocate. I am court appointed. I am party to this case and what is it that you desire for the child? What is it that is important for me to know as I advocate for your child through this process? What can you share with me?" Sometimes that information is as simple as they have a significant blanket that they need to go to sleep with every night. The CASA can facilitate going to the home and getting that and taking it to the foster home. That seems like a really simple thing but to a 13 or 14 month old child that is the world. So those early conversations with parents are really important and even though we are a party to the case, we try to not create an adversarial position and our goal and purpose is to get children back home as soon as possible. While their children are in foster care, we really are the connection that is pretty consistently involved, consistently seeing the kid, and consistently showing up at all meetings. I am really glad to report that I feel that we have made great progress in working with the consortium to have better access to the parents, and even if that is meeting with the parent with their attorney. That is probably one area that we could continue to work on is if the attorney for the parent is not comfortable with the CASA meeting with them, then at least we have more opportunities to facilitate a meeting with the attorney present. That is one thing. I think the other thing that we are doing really well is the dependency work group that we have is an open opportunity to have conversation and dialogue about what is working well and what isn't working well. Judge Murphy facilitates those meetings and there is good work that is done in those. I have appreciated the communication that is open with Melissa Riddell, the consortium manager, and we really just have good working relationships here and that benefits the families that we are all trying to serve. I guess, in the area of visitations with children and that are face to face, there is always room for improvement, but at the same I look at that group and the number of cases that they are trying to manage with a small group and I can see where the report states that it might be important to grow that group. I would absolutely agree. I think that they would be afforded the opportunity to do a better job for their client and ultimately that results in cases getting closed sooner and children going home. I definitely recognize their work load. Please stop me if you have questions. In regards to addressing the shelter hearing attendance, so in this county as far as I know we have never had, or have not had in a long time, attorneys available at shelter. Attorneys are assigned at shelter, but there is not an attorney there to represent the clients. I have a firm belief that if that were possible parents would have an opportunity to have representation that will allow them to understand the best way to engage immediately in the case and the case planning with DHS and with accessing services. It is always concerning when we get somewhere between two and seven weeks down the road and we are at a settlement conference. Sometimes parents have not reached out to their attorney and they are just now seeing them for the first time and they are heading into a settlement conference with just a few minutes to really review the case. To review their options and what they may be

willing to do or not willing to do and all of those things. I don't believe that is through the fault of the consortium. I think it is the nature of what we have here to work with. I do believe that is a benefit to the families overall and, of course, being the voice for the child I would hate to see that a child has been in foster care seven weeks and we are at settlement conference and there is something that could have been done early on that would have allowed that child to already be back with their parents. I am not saying that we should consider dismissing a petition, but I do think we need to look at placement options and if there is enough level of safety and if parents can engage in services earlier and provide that safety net, then children should be allowed to remain with their family. It is mentioned in the report as well the concerns around adequate visitation for children with their parents while they are in care. That is a problem. DHS is accurate in saying their funding is a challenge. I know that to be true as well. I think they do pretty well trying to accommodate families. Again from the child's perspective, I was just talking to a CASA last night who has been appointed to a young girl who is 13 for almost three years. She is to the point where she may not want to visit her parents any longer because she misses half a day school and she thinks it is affecting her grades. So to be able to accommodate some of these visits after school hours would be ideal particularly for kids who are of school age and are missing school. If they live in the outer areas of the county and they have to come into Albany, they could miss almost an entire day depending on the time of the visit. That is the one of things that I wrote down. I am just excited because as I read through this report it validated some of my concerns, highest concerns, in regards to the overall system, and at the same time I feel very confident in Linn County addressing the needs and the commitment level from the attorneys, the child welfare staff, and the judges to ensure that we are providing what we can with the resources that we have available.

10:21 Chair Ellis

Your focus is only in the dependency area?

10:23 L. Garrett

It is. We do have increase once again with the number of cases that CASA is serving. We are seeing an increase with kids that are crossing over. We are doing some work on our end to have training provided to our advocates to understand the delinquency system and then also to effectively advocate when they start committing minor delinquency offenses. I know that if you have been in foster care since you were five and now you are 12 and you are still in foster care and you start acting out, none of us should be surprised but we should be there to help them navigate as best they can and to try to keep them on track. Again, that is why some of our focus and emphasis has been on ensuring that teens are also having a CASA appointed in that age group. It is not typically a priority of our system overall. We tend to look at the zero to three or the zero to five. With the studies of brain development and knowing what happens, we have an opportunity in those teen years and I would hate to see us miss it.

11:32 Chair Ellis

Other questions for Lene?

11:36 J. Potter

You seem to have a pretty active CASA group here and your enthusiasm is infectious and you have 85 or so volunteers. In the grand scheme of things, as you look around the state, do you have more volunteers per capita than other counties?

11:56 L. Garrett

I think we are the fifth highest number of volunteer advocates in the state as far as CASA programs.

12:04 J. Potter

On a per capita basis or total bodies?

12:07 L. Garrett

You know I haven't checked the per capita. I probably should do that. I actually came from Jackson County. I spent 10 years there as the program manager and we were able to grow that program significantly as well. I firmly believe that when you have the staff that are trained and understand the work, understand our mandate, understand the child welfare system and the legal system, and you bring in volunteers who have a heart to affect change in the life of a child, to be effective in that advocacy you can grow a great group. Not only that

but you can retain a great group. Our volunteers now are at that three year mark. There average time of volunteerism with our group is almost three years, which is really encouraging. I know in Jackson County it was hovering around the five year mark. In Clackamas County it is very similar. That is what makes great advocates is you become more and more familiar and have a better and deeper understanding of the systems that you keep an eye on.

- 13:11 J. Potter Between Jackson County and Linn County you have some perspective. What would you do in this county that is not being done as relates to public defense?
- 13:24 L. Garrett I think we still have some room to continue to learn about each other. Meaning that as our advocates are appropriately trained and respond appropriately within the case, we develop a respectful relationship and then the attorneys are not so suspicious of our motives. So our CASAs are trained and learn to understand that children benefit when they can go home and that they belong with their family when that is at all possible. The other thing is safety. If a child is considered to be safe by the law in their home then children need to go home. The other thing is CASAs are taught how to learn about families and whether that information is good, bad, or otherwise, how do we use that to positively advocate for the child? I will give you a quick example. If a child has been in foster care for nine months and a parent has not actively engaged in drug alcohol treatment and that is the one barrier to the child returning home, we may talk to the parent and learn that they have not actively been attending group or attending treatment and we are going to report that, but the report is going to be, “Your Honor, we strongly encourage the parent to engage in drug and alcohol treatment. They have not done that. That is the barrier to their children returning home to them and their children need to go home.” It is not a report that is negative saying, “Those children need to be forever removed or yanked from that parent.” It is the parent needs to engage so that children can go home because that is where they want to be. Once we have that dynamic within a group of people, then there is less suspicion on attorney’s parts about what a CASA’s real motivation is. The motivation is to benefit children and not to ding a parent for doing something wrong.
- 15:24 J. Potter So just hone it down real specifically. When you say you want to have better communications to erase suspicions.
- 15:31 L. Garrett Yes. I think that CASAs have a real opportunity to be that one person in the case that is going to remain objective and can bring key information that will allow the case to move forward. If we had a more open communication process and a more trusting relationship, that would benefit. Does that make sense?
- 15:55 P. Ramfjord It does and I think I have a little follow up question on that and it relates to the scheduling issue that you talked about it with trying to get people together all the time. Would it be helpful, or are there any efforts in place, to try to have a more standard process by which certain contacts are made, so that you would ensure both that you get the contacts and that you get that level of communication that you are talking about. Are there any efforts to do that?
- 16:28 L. Garrett I don’t know that we have. I just chatted with Melissa because we haven’t met as a group in about 18 months and it is time to do that. That is definitely something that we should toss around. I can see that there would be some benefit in looking at that for sure. I don’t believe that we have done that. I do want to emphasize that this relationship has come a long way and I think it has improved significantly. Hopefully you will hear the same from them. I think we have done some really good work. Thank you. That is a very good suggestion.
- 16:59 Chair Ellis Other questions?

17:00 C. Lazenby Just to follow up on your line of questions earlier, Mr. Chair, at 85 volunteers how diverse is that. With the kids that you are serving language issues with Spanish and Russian and some other. How diverse are your volunteers? Are you able to handle that?

17:18 L. Garrett Interestingly enough, we are very diverse. We applied for a national grant two years ago and we were almost exactly – so if we looked at the percentage of kids racially, and then the number of kids who have CASA volunteers, we were almost right exactly matched with our percentage of volunteers to the percentage of the kids. I did say we have continued to work on that area, so I think we are up to like nine folks that speak Spanish and then a couple of others who speak another language, as well as the ethnic component. We have not as diverse of group in the county as a whole, but again our volunteer base is pretty reflective of the kids.

18:03 Chair Ellis Thank you. We appreciate it.

18:10 L. Garrett Thank you for the opportunity.

18:11 Chair Ellis Melissa. Welcome.

18:21 M. Riddell Thank you.

18:23 Chair Ellis Thanks for coming. Do you want to share with us a little about your juvenile consortium?

18:29 M. Riddell I am Melissa Riddell. I am the administrator of the Lincoln Juvenile Defense Consortium. We have six members including myself.

18:42 Chair Ellis How long have you been the administrator?

18:40 M. Riddell I have been the administrator since January of 2011. Prior to that there was another administrator that held the position for 10 years.

18:56 Chair Ellis And how long have you been in the consortium?

18:57 M. Riddell I joined as a member of the consortium in 2008. Prior to that I worked for Jody Meeker, who was member and the former administrator of the consortium. I worked for her while I was in law school. I started working for her in about 2002, and then when I passed the bar in 2004, I continued as an associate. I have been doing this work for that period of time.

19:19 Chair Ellis Good.

19:19 M. Riddell We have a board of directors. We have right now six board members, although I think in the materials our bylaws say we have five, but we are going to be amending those to say at least five board members. We have independent contractor agreements.

19:34 Chair Ellis Of the board, what is the mix?

19:40 M. Riddell We have a municipal court judge. We have Doug Moore and Mark Talliff who are both former members of the consortium. We have John Hawkins who used to work for the Linn County Juvenile Department. He is retired. Mack Walls and Derek Hews are the attorney members that serve on our board.

19:59 Chair Ellis So out of the six, two are attorney members and four are outside?

20:05 M. Riddell Correct. Do you have specific questions or do you just want me to address?

20:12 Chair Ellis I do have a few but I wanted to get the background out first.

20:16 M. Riddell We are all independent contractors. We have our own offices for the most part. There is some office sharing, but we all have our own staff. In reviewing the preliminary report, one of the issues that we wanted to address was, it seems to give the impression that we are not available. That our availability is limited.

20:40 Chair Ellis On the shelter hearings.

20:40 M. Riddell In general, I think. That was kind of the information that I had gathered from it. We are required by the court to be available to the court a significant amount of time. So every Thursday and every Friday we are here. We have to be available the first three Wednesdays of every month for Citizen Review Board hearings. That leaves us typically Mondays and Tuesdays for trial days and to meet with the clients and to attend meetings and appointments. The difficulty is that we are not opposed necessarily to adding members, but if the compensation were to remain the same, it is very hard for people to do this work in this county on a part- time basis given the amount of time that you are expected to be certain places.

21:35 Chair Ellis Are your members essentially full-time in this work?

21:39 M. Riddell Yes. Some do some municipal court work and a little bit of retained, but I know that at least four of our members are strictly doing the juvenile contract at this point, myself included. I used to do some retained work but this is very time intensive and if you want to do it well you need to be dedicated to it.

22:03 Chair Ellis One area that as I read the report troubled me. This is a topic that we have talked to others elsewhere in the state on, and that is appointment of counsel in delinquency cases. The intelligent waiver of right to counsel in delinquency cases. It read to me, tell me if I am wrong, but essentially DHS has the conversation with the juvenile.

22:38 M. Riddell The juvenile department.

22:44 Chair Ellis Okay. Is there a lawyer counseling the juvenile on the issue of would it be a good idea for you to have a lawyer?

22:55 M. Riddell No. The court sometimes goes through the colloquy with them and questions them. I personally don't believe that they do enough. I personally don't believe that they do enough questioning of the youth. There have been times, however, when judges have appointed attorneys for youth that say they do not want counsel.

23:14 Chair Ellis I will be quite candid. We have been very sensitive to the fact that a juvenile faced with the question of waiving counsel, there is a lot of implied pressure on that juvenile to waive.

23:28 M. Riddell Absolutely.

23:28 Chair Ellis And by definition they are a juvenile. Where we are headed, I think, is to try to get a system where no waiver ever occurs without a lawyer being in the picture counseling the juvenile on the issue of waiver. What is your reaction to that?

23:51 M. Riddell I would support that. I believe our group would support that. There have been many times when we have been, as a group, sitting in court watching this occur and concerned about a youth leaving. I think there have been a couple of times when I have even mentioned something to the juvenile department that this youth probably needs an attorney just based on the charges. My position is that every juvenile should have an attorney in court representing them.

24:30 Chair Ellis I think we are not disagreeing, but it did strike me that this county may be way at one of end of the spectrum on that relevant to what we are hearing elsewhere. I don't know the situation here well enough to know what is the right to change that. That just struck me as real point of vulnerability.

25:00 M. Riddell I don't know how we necessarily can address that with the court at this point. There was a time when almost every juvenile was being appointed counsel. Then there was a shift in the juvenile delinquency assignment and this was even before Judge Egan took over the juvenile delinquency assignment. There were fewer appointments in juvenile cases. I have seen Judge Egan accept waivers of counsel, but I think he is more likely to appoint if he truly believes the youth isn't making the voluntary waiver.

25:43 Chair Ellis Chief Justice De Muniz, I think it two years ago, sent a communication to the judges on this subject.

25:50 M. Riddell Yes.

25:55 Chair Ellis And I have reason to believe our current Chief Justice Balmer shares the views that you and I have been agreeing on here. That may be the right route to go. Have the Chief Justice in his role as chief administrators of the courts really not just cajole circuit judges but require it. Thank you. We will work on this. I didn't mean to interrupt you but that was a topic that I was very concerned about as I read the report.

26:36 M. Riddell There is a lot of discussion about appearance at shelter hearings. As a group we are not opposed to appearing at shelter and detention review hearings. The problem is more the court docket. Right now shelter hearings and delinquency hearings are held at 1:30 every day. They are going to be moving to 2:30 every day. Thursdays and Fridays we are in regular juvenile court appearances at that time. The court has not taken the position that they will allow us any time to be able to be present at those appearances. We discussed this even as recent as yesterday at a meeting. The response that we got from the court was that they just don't see how it is going to be possible for us to appear at shelter hearings because, frankly, it will take up more of the court docket if we are present. Yesterday, also, we got a memo saying that in juvenile dependency cases we are no longer having settlement conferences effective this coming Monday. Any dependency settlement conferences that are set are just off the docket and will be set on our Friday afternoon for a pretrial conference. We really struggle with the docket here. I have addressed this with the court numerous times that statutorily juvenile dependency cases are 60 days. We had a case scheduled this last Monday for trial. It was continued for a reason - a late discovery issue. The first date that the court gave us to reset it was in early March. That was the first available date that they told us there was. That is just not acceptable for families. We are in a situation where the court will not set over family law cases. So family law cases may be clogging up the docket or other lower priority cases, but the docketing system really creates problems for setting juvenile matters timely.

28:46 Chair Ellis The court indicated that you are looking at the potential of a social worker member of your consortium.

28:52 M. Riddell We have discussed that as a group.

28:53 Chair Ellis Tell us about that. That is an interesting concept.

28:57 M. Riddell Sometimes it is very difficult because we feel like we are doing a lot of social work. We are trying to get things moving forward. DHS case workers are overwhelmed. They are overburdened. They have high caseloads just like everyone else. It might be beneficial to us to have a social worker that can somewhat assist clients to get engaged, or even just review

the DHS records and point things out that a social worker should or could be doing to assist a family.

29:30 Chair Ellis I am curious because I would say we are in the business of providing counsel as opposed to social workers. How do you envision the financing if you do this?

29:46 M. Riddell We haven't worked out those details yet. That is something that we would have to address with OPDS and the Commission, but it would certainly have the potential to free us up from some of the - I don't want to say hand holding, but some of the more social worker like things that we do on a daily basis.

30:04 Chair Ellis But your thought would be that the consortium entity would contract with the social worker?

30:11 M. Riddell Potentially. We haven't actually figured that aspect out yet.

30:19 Chair Ellis We will stay tuned.

30:19 J. Potter Have you talked to the folks in Klamath Falls?

30:21 M. Riddell I haven't had an opportunity to actually connect with them. We have left a couple of messages back and forth.

30:31 Chair Ellis Does your office represent parents as well juveniles?

30:32 M. Riddell Yes. All six attorneys within our consortium are appointed to either represent a parent or children in a particular case.

30:47 Chair Ellis Other questions for Melissa? How can we do our job better from your point of view?

30:51 M. Riddell I think that we get a lot of support from OPDS. The only thing that I did want to touch on is the graying of the defense bar. Our consortium is markedly different in composition.

31:04 Chair Ellis We are told that your gender mix is different too. Is your age mix different also?

31:05 M. Riddell It is. We have recently had some retirements from our consortium. I think that has also contributed to the presumption that we are not very available. We have just gone through a period of transition. During that time we were short at least one full position and there were two attorneys that were phasing out. It was chaotic for a period of time and we were carrying much higher caseloads. Now that we are back up to our full six that has really lessened. I know that my calendar is much more free than it was prior. I think in some respects when the Commission came in for the pre-site visit, people remember the close in time history and not what it has been over the last year or two. The perception is that we have been much less available than we actually are at present.

32:05 Chair Ellis The report two or three times refers to contract administrator changes and membership changes. It wasn't clear to me what those changes are that you are adjusting to.

32:20 M. Riddell I took over as administrator in 2011.

32:26 Chair Ellis So that is one.

32:26 M. Riddell Subsequent to that the former administrator left the consortium approximately seven months after I took over as administrator due to some health issues and other problems. Then we had Mr. Talliff who retired technically the end of May of this year. Ms. Brady, who had been a member of the consortium, also retired at the same time. It wasn't quite her retirement and so

we thought we had one position to fill and we needed to fill two. Fortunately we had a pretty good applicant pool this time. There were people that were qualified and could pick up pretty quickly. We still did training. These were not new attorneys that were new to this work. That has helped a lot.

33:28 Hon. Elizabeth Welch

I want to go back to the cancellation of settlement conferences. That is mind-boggling to me. How is that going to work? What are you going to do?

33:37 M. Riddell

I think we are still trying to figure that out. The court is just putting them on the docket for a pretrial conference. I think that we will try to resolve the cases as we can with the district attorney's office and DHS. My concern is that he thinks by freeing this time up for the docket, my concern is that we are going to be setting more trials and taking up more docket time and it seems counter-intuitive to me to do that. I don't get to make those decisions.

34:02 Hon. Elizabeth Welch

How engaged is the district attorney that is assigned to juvenile in the process of getting ready to settle or litigate a dependency case?

34:13 M. Riddell

Right now the deputy that is assigned to that rotation is very involved in that. I think each deputy has their own style, but right now I know that she is meeting with DHS regularly early on in the case. She sometimes sends offers similar to what she would in a criminal case almost. We have found that to be very helpful. When we are meeting with our client, even sometimes that first meeting, we are able to have that discussion with them. That sometimes moves us towards resolution. The settlement conferences though are invaluable. We can tell our client until we are blue in the face what the proof the state will have is, but sometimes having someone in a black robe telling them that too - on the other side too sometimes the state needs to hear from the court that they are not going to be able to prove their case. That moves towards resolution as well. I am really concerned that those are disappearing.

35:11 Chair Ellis

Other questions for Melissa?

35:16 J. Potter

I don't have a question for you Melissa. I was expecting your answer to the Chair's question what can we do better, how can we serve you better, that your answer would be "get us more money."

36:30 M. Riddell

I think that is obvious.

35:38 J. Potter

I understand that. I am pleased that you didn't say anything, but the fact that you didn't then I will twist it around a little bit. I think I mentioned to you before that you have Representative Olsen and Senator Close from this district. If you have not created a personal relationship with those representatives and senators then you need to do that especially in the juvenile arena. The Commission can go to the legislature. The staff can go to the legislature. OCDLA can go to the legislature, but the real stories, human interest stories coming from you, go a long way to helping get more money into the system. The notion of having social workers plugged into it is a good discussion to have.

36:24 M. Riddell

Thank you. I will certainly do that. Just so the Commission is aware the majority of our group is present. I don't know if anyone else wants to add anything? I am not hearing anything.

36:35 Chair Ellis

I do want to say that I am very impressed with the attendance here today. It is very gratifying. We come to listen and so do you. It is very, very helpful.

36:48 M. Riddell

Thank you.

36:48 C. Lazenby Could you have your members just sort of briefly identify themselves so we can put names and faces together.

36:52 Members Derek Hews. Janet Boytano, Andrea Boucher. Mack Walls.

37:02 M. Riddell Brendon Kane is not here right now. Mark Talliff who is a member of our board.

37:14 Chair Ellis Anyone else that wishes to share thoughts with us?

37:23 N. Cozine Mr. Meade is here from DHS. I didn't know if you had some questions for John Mead.

37:33 Chair Ellis Come on up, John. Thank you for coming. Is there anything you would like to share with us about DHS's perception of how the system is working here?

37:55 J. Meade I have been at this 34 years. I have been in 10 different counties. My first experience coming here was that I wasn't used to the level of advocacy that we got from the defense bar. I was used

38:12 Chair Ellis You mean there was more advocacy here than elsewhere?

38:12 J. Meade Yes.

38:15 Chair Ellis That is a good thing from our perspective.

38:14 J. Meade Not from a social worker's. I was used to being able to start in a more cooperative basis with our clients. I saw our defense bar as a barrier to that. I think we have worked through most of that. I have been really pleased with the dialogue that has gone on, and the willingness of the defense bar to have discussions with us. We have a good example of that with our Family Treatment Court that we have created. We were concerned at the beginning whether they would allow their clients to participate in this program because it is a voluntary program. It basically takes an admission that they have a problem with drugs and alcohol to participate, and a historic problem. We worked that through together as a group which felt very cooperative to me. For the most part my fears and concerns about that have been put aside. There are still some issues and I think this is probably just the nature of our work. For instance family meetings, I want to have my staff engage with families initially up front as soon as they can. I want it to be spontaneous. I want it to be in the moment when the family needs us. To have to put an attorney in that meeting is sometimes very cumbersome and also creates this level of distrust.

39:44 Chair Ellis We call it adversarial.

39:47 J. Meade We as social workers feel that we could work that through and that we have the family's best interest at heart. That is probably a natural tension wherever you go. It is cumbersome and it makes things more difficult. I think we think as social workers that we could get better outcomes sometimes without those layers. We can live with it.

40:11 Chair Ellis It is a constant challenge. On the one hand what you describe as excessive advocacy and more adversarial environment, too much of that I think we would agree may not be constructive. At the same time if you get too paternalistic, that can have its own set of dangers. I guess my own instinct is more a blend of the two styles is helpful.

40:43 J. Meade Yeah. I think we have reached a very good balance. Our judge has really tried to push us to work together. We have a monthly meetings. The dependency group meets every month. We also have a group we're trying to build in response to Senate Bill 964. We are trying to create drug free housing for our clients without any funding. So far it is paying off. I think we are heading in the right direction with using the Oxford house model and doing some

modifications. That has been a helpful conversation and I feel like it is a partnership with the defense bar. That is good. I noticed one comment in the report that mentioned that - I think this came from me. I guess I wanted to correct. I believe it is the perception that there was a comment about our courts having a different standard on jurisdiction. Taking jurisdiction in this county different than other counties then I have been in. My point wasn't to be critical of the court. I just wanted to make that clear. My point was just to recognize that there are real differences in our neighboring counties on both sides. Marion and Lane County. Cases that they would get jurisdiction of automatically, we don't even file them because we have had numerous times where we have gone to court and we have now sat with our district attorney and those legal sufficiency from your standpoint in front of this court and they say, "No." I don't know if that is an issue that gets voiced to you in the differences between courts and what they see as a basis for jurisdiction. It is a really obvious one to me that you can move from county and county and have totally different outcomes. I guess that is the way the law is. It is a matter of interpretation. I am not critical of our courts. I think they challenge us to do really good work. They hold us to a very high standard in terms of proof. I guess I just wanted to point out that I wasn't intending to be critical of our court.

43:03 Hon. Elizabeth
Welch

I think it would be safe to say in your career, wherever you have been, that the resources available to your agency are at an all time low.

43:12 J. Meade

This is the worst experience that I have had in 34 years.

43:20 Hon. Elizabeth
Welch

What I am curious about, and this has come up elsewhere and obviously it is a problem to some degree, is the absence of treatment resources or the restriction of them and in some cases you have some treatment resources you have never had in this county. How much pressure are you getting from the defense bar on fulfilling your fundamental federal and state legal obligations? Are lawyers raising those issues in court? Lack of adequate services for their parent clients?

43:55 J. Meade

Sure. We get challenged on reasonable efforts. My experience is that despite the lack of resources statewide this county does better than most. I just came from the Linn County Council Meeting. We are meeting with our CCOs, the new health organizations to try to look at how to make sure that we don't pull what we already have working well apart in this transition to the CCOs. For instance, I have four mental health therapists from Linn County in my office stationed there. They are seeing kids every day. They are doing assessments there. The Linn County Counsel is another good example. It is made up of school superintendents, CASA director, the relief nursery director, myself, Juvenile Department Director Frank Moore. We all get together once a month to talk about coordinated services and trying to make sure that there aren't huge gaps. We take those back to our organizations or communities and then try to solve problems on that level. I think it is a pretty good system. It doesn't answer all the huge deficiencies we have. We are staffed at about 65% of what our caseloads earn. That is a problem. We can't do all the work. I can feel it on the phone calls that I get daily from legislators about constituents complaints. I didn't get calls for two years when we were staffed at full level. I get them weekly now. It is a reflection of our ability to be responsive to our community. I also wanted to speak to diversity. I think we have done a really good job in terms of staff hiring. We just got a report two days ago. They did this sort of green light, yellow light, red light thing in terms of your hiring practices and who you have representing your community and we had all green lights across the board for all well represented ethnic groups. We have really tried to match our staff with their community. That has been important for us.

46:09 Chair Ellis

Other questions for John? Thanks.

46:17 J. Meade

Thanks.

Agenda Item No. 6 Adjustment to furlough schedule

46:17 Chair Ellis Unless there is someone else who wants to share thoughts with us here, I am going to suggest that we go to Item no. 6, Kathryn, the furlough schedule.

46:31 K. Aylward I thought you were going to sum up the report and make recommendations for

46:45 Chair Ellis I think what we typically do is at our next meeting after people have had a chance to absorb what we heard here and we see the write up then we will have that conversation.

47:03 K. Aylward As the Commission will recall in the October, 2011 meeting we outlined our schedule for furlough days and it included 2012 and on through 2013. There are three schedule furlough days. We had had something happen that made me re-analyze the situation and the picture that we are looking at. We have had a couple of surprises, vacancies, we have had two people resign and take other jobs.

47:43 Chair Ellis Within CBS?

47:43 K. Aylward No, no, no, within appellate division. At the beginning of this biennium the legislature cut all state agencies the same percentage cut. It was an unspecified cut and agencies were expected to figure out how to deal with that. Obviously it was too big of a cut. It was 5.5%, something like that. It was huge. For most agencies that is obviously a personnel cut and you have a choice between doing layoffs or doing something like furloughs. The executive branch, because they are represented by unions, there is a tendency for them to say, "We don't want any of our members laid off. We will all link arm and we will all take a share of this so furloughs are better than layoffs." Our agency is unrepresented. The Commission was free to decide whether they wanted to do layoffs or have furloughs. The problems with layoffs, especially when you are talking about an appellate attorney, is that it takes so long to train them that if you lay someone off after you spent all that time training them then you have wasted that resource. In addition, you have to pay unemployment if you lay someone off. You are not gaining as much as you might otherwise. Plus it is not nice. Nobody wants to do it and you feel bad and it is bad for morale. I don't know if it was ever presented to this Commission as an option. I think the management team sort of said, "Oh, no. We are not going to do that. Let's do furloughs and we will do enough furloughs to make that same cut." But now we have a slightly different situation with the two attorneys that have left and we are looking at replacing them. When I started to analyze the numbers and I thought wait a minute. I have got existing attorneys that are already trained and for whom I am paying \$1,500 a month in health insurance. I am paying the full amount of health insurance even if I say, "Go home on Friday. You are furloughed, but I am still going to pay your full health insurance." So the marginal cost of putting those hours back into the system is less. I have already covered the health insurance now I am just paying the hours and the PERS. But if I get a new employee, I just added \$1,500 a month for health insurance for that new employee without fully using the capacity of the existing experienced, trained, productive, and paid for attorney in terms of health insurance. So you bring the new person in and I look at this in terms of buying attorney hours. So the hours that I buy from this person, the first day I spent \$75 on their health insurance and all they did was read the ORAP rules all day. I am not getting any productivity out of that person until they have had a certain amount of training. So it is not just, "are they being productive," but the resources that you are using to train that person. Not only am I paying for your full health insurance, but I want to drop your productivity by 5% by furloughing you and I want to drop it by another 10 or 15% by having you sit and train this person whose hours are not productive. When you do the math and figure it out it just seems crazy to do that.

51:09 Chair Ellis Why isn't this just the flipside of the original logic that we went to furloughs to avoid layoffs, but now that you have vacancies bring the furlough people back in?

51:25 K. Aylward Because the three problems with doing layoffs is that you lose the training. Well you lost that anyway. The person went for a better paying job - or are you agreeing with me?

51:38 Chair Ellis I am agreeing.

51:38 K. Aylward The other thing is you don't have to pay unemployment because they quit and it is not sad.

51:49 C. Lazenby I understand what you are saying but one of the assumptions that I want to question and have you explain, is I remember Peter Gartlan saying to us when he had vacancies last time that he had a 150 applications for two spots. The problem they had is they had so many qualified people applying to plow through that and get rid of them. I am kind of questioning your lack of productivity assumption in this that there is such a steep ramp up. There is such a shallow ramp up time for these people if we are getting experienced appellate lawyers who are applying for these positions to come in here. They might sit the first day reading the ORAPs, but they are probably going to be writing briefs within - is there a longer transition period than what I am thinking about?

52:41 P. Gartlan They are not experienced. Peter Gartlan for the record. Commissioner Lazenby they are not experienced. Typically the people we get they are fresh out of law school, within a year out of law school, so it is intensive training.

52:57 C. Lazenby I got the expression that you had experienced people that were applying for those spots. Those were the folks that were going to rise to the top and you were going to give consideration to.

53:03 P. Gartlan We had some experienced people apply.

53:12 C. Lazenby I didn't want to get into the specifics of that search. That is why I wanted to have this conversation about the lack of productivity assumption. If you have a pool that is that deep and that qualified, it seems like that would mitigate that.

5:21 K. Aylward I see this going on in the office. With a new employee it is usually Pete Gartlan who will spend hours, every day with the person training them, teaching them, how to set up a file, what our office expects, and then beyond that you have someone else who is editing their briefs and re-editing their briefs until - it seems like a very slow process before they are actually producing.

53:47 Chair Ellis This is listed as an action item. What is the action?

53:48 K. Aylward Only because last October when we presented all of the COLAs, the furloughs, schedule, everything for the whole biennium, it included three dates in 2013 to be furlough days. Because you voted to adopt that, if we want to now unschedule those furlough days then we figured you had to vote to do that.

54:15 Chair Ellis So that is the action item. To undo the furlough days in 2013?

54:21 K. Aylward That is correct. I have the dates for the record if you want to know.

54:22 Chair Ellis Didn't I read somewhere that the Governor and the Executive Branch he was opposed to furloughs?

54:33 K. Aylward The Governor said that his 13-15 Governor's budget assumes that there will not be furloughs. That wouldn't start until July 1. Legislative Branch is not doing furloughs is what I have been told. There is a mix of things going on out there. I think the Governor's statement that

- furloughs were meant to be a short-term fix and are not something we can carry on. I think that is true.
- 55:05 Chair Ellis This feels like a no-brainer as I sit here.
- 55:14 K. Aylward It does to me. I think we are all sensitive to the fact that people in other agencies who do have a furlough on January 18, will say, "Hey. How come you don't have a furlough? That is not fair. You must have a lot of money." I did talk to LFO about this just to make sure. The legislature isn't requiring furloughs. LFO confirmed that the cut was an unspecified cut that agencies could manage with whatever they thought was the best use of their resources.
- 55:54 Chair Ellis Is there a motion?
MOTION: Hon. Elizabeth Welch moved to un-suspend the use of furloughs or stop the use of furlough; Chip Lazenby second the motion; hearing no objection, the motion carried.
VOTE 5-0.
- 56:23 J. Potter I think for the sake of the audience explaining the process that is going to take place with the review on Linn County from this point forward might be helpful.
- 56:29 Chair Ellis Okay. At least how I envision it, others may chime in, but we have very much appreciated the input that we got from all of you today. At our next meeting which I think is January 23, and that will be in Salem. You are always welcome to come because all our meetings are open. We will talk about what we have learned and what we have learned and whether we see areas of concern in the service delivery plan as it exists here. Then staff will incorporate those comments into a revised draft of the report and I am sure that will be circulated to you. After we get comment on that, usually the meeting after that, we will adopt the final report. Am I saying it the way you envisioned it?
- 57:32 N. Cozine That is the way I understand the process.
- 57:41 Chair Ellis So between now and our next meeting any of you that have additional comments or thoughts that you want to be sure we take into account, send them to Nancy and that will get to us. You are certainly welcome to join us at the meeting in January. Any questions or comments? Nancy, what is your pleasure. Do we want to do the Option Package Priorities or the OPDS report?
- 58:16 N. Cozine Chair, I think the OPDS monthly report would probably be appropriate next. The other thing I wanted to point out is the juvenile department, either the director Torrie Lynn or his manager, Lisa Robinson, had intended to come at 1:00. If there are no questions from the Commission from those individuals then I would email them right now and let them know.
- 58:33 Chair Ellis The only question that I would have is this waiver of counsel question and I think that is worth having them.
- 58:44 N. Cozine Great. I will leave it as is. I also wanted to let you know that there lunches available for the Commission members whenever you want.
- 58:57 Chair Ellis If Commission members don't mind eating and working simultaneously, let's pass out the lunches. Usually staff does all the talking on the report and we will do the eating.
- 0:07 Chair Ellis Dan. Thanks for coming. Update on Douglas County.
- 0:08 D. Bouck We have a temporary working solution that is working now. The long term solution so of follows up on what John Potter was saying is that I am going to be spending some time in Salem because we have to change a rule that would force me out of the office. But we have a working solution. It has been working now for several months.

0:38 Chair Ellis Can you describe both the solution and what needs to

0:39 D. Bouck The problem was our first appearance when the client shows up in court and gets arraigned they ask, "Do you want an attorney?" Yes. Go do the paperwork and you will be assigned an attorney." Your case is assigned to judge so and so. The rule says you have to file the affidavit right then. We haven't even met the client whether we need to or not. The judge made a finding that there is good cause and that as long as we file it within two weeks they won't be disputed. Although the rule doesn't really say we are allowed to do that that is what we are doing. The district attorney agreed. If anyone challenged it, it probably wouldn't hold up. But all the parties that are involved it all agree and it is working. We need to solve it with Salem. It won't cost any money, it is just I am learning how to go about navigating that.

1:35 Chair Ellis Can't you get the Governor to call a special session?

1:39 D. Bouck I have looked on the computer and it says you have the meeting schedules already for 2013. When you work on your 2014 schedule, if you would hopefully include coming back down to Douglas County again. We had a CJAC meeting the first time ever in October and then we finished it up in November. Our presiding court judge made it very clear that the only reason he was willing to do it was because you guys came to town.

2:18 Chair Ellis What can we do for you next time?

2:19 D. Bouck Show up. Basically because you guys came down he felt somewhat obligated to then do it. We actually accomplished a little bit of stuff, which was good. The sad thing is – well one of the problems of the agenda list of items is the judge's perspective that the court is backed up and it is because the attorneys are not doing their jobs well and such. So before that meeting happened at our monthly defense meeting we brought the DAs in and we went over what the agenda was and their concerns. When we attended it we explained that is not what is going on. Even law enforcement agreed that it is a combination of just workload. There is a change in the personality of our clients that is making it hard. It was a whole variety of things. It wasn't just that we weren't trying, but we also then had a series of ideas of things we could do to help maybe move the docket along some. The judges said, "Let's look at that and we will come back next month." Basically the judges are unwilling to make any changes in anything they do is basically the answer. Individually they are willing to consider things, but as a collective no judge was willing to make any changes at all which was sort of disappointing. At least the lines of communication are open, so as long as you guys come down and better yet if you could bring the Chief Justice along.

3:47 J. Potter Your request is to have another meeting scheduled in 2014 in Douglas County to help spur this first act.

3:51 D. Bouck Especially if the Chief Justice happened to come and we would be encouraged then to sit down and be more creative in figuring out how we can move the docket along. I heard a lot of things from Linn County sounded familiar. One sort of made me smile because they said they were trying to do PV cases in 45 days, but the judge had a family emergency and he had to leave and they rescheduled this docket. The first date that the judge would be give me on his calendar for a felony trial, out of custody, was June. I needed a multiple day trial it probably would have been longer than that. They are a mess but they don't want work with us. I think we are going to work on it. We have some ideas. The other reason for me to want you to come back down is that I think you will be happy to see some of the changes. This is the end of my first year with our expanded contract and I'm encouraged as to what we hope we will be able to show we have done and are doing. I am hoping that there is going to be a consortium in the next contract cycle to do our conflicts, which will take care of some issue. I encourage you to come back because I think you are going to be happy as to where we are at.

5:03 Chair Ellis This is encouraging.

5:04 D. Bouck I see a lot of good things barring a massive loss of money, or I see a lot of really good things if someone finds a whole lot of money in their future, which I know is not going to happen. Otherwise, no, it would be nice to see you come back again because it will help me and I think it will showcase what we are doing well in our county.

5:26 Chair Ellis We appreciate being welcomed. We felt welcomed last time. Thanks.

5:32 D. Bouck I just wanted to let you know that that is where we are at and we will keep muddling through.

5:43 Chair Ellis If that door is closed, have I violated the opening meeting law?

5:43 P. Levy It is not locked.

Agenda Item No. 7 OPDS Monthly Report

5:54 Chair Ellis Are we ready on the report?

5:59 P. Levy My only report is that I am going to sit here and use this table.

6:11 K. Aylward Can I go? I think one of the things on here was budget update. That is easy to have me talk about budget while you eat because it is not everyone's cup of tea. First of all, this biennium I will tell you where we are. At the September E-Board we informed them that our need was \$4.9 million. Our special purpose appropriation was \$3.5, so we already were above what we had originally told them that we needed. We got the \$2 million. Then that would leave us still \$2.9 million short. In the meantime it has gotten \$800,000 worse. It has changed in the projections. Now we are looking at needing \$3.7 million. Now \$800,000 sounds like a lot of money, but it will pop up and down \$800,000 pretty easily. Our monthly expenditures are about \$9 million about, so that \$800,000, even though it sounds like 9% up or down, it is quite common. A lot of that has to do with contract overages. If someone has a \$100,000 a month contract and they have been running at \$110,000, we say, "Suck it up. Deal with it," but after a year they say, "You know what. You owe us \$120,000." We say, "Okay. Here is \$8,000." You will see these big chunks of overages payoffs. Whereas if somebody is below what we tend to do is say, "Oh, you are supposed to be at \$100,000. You are not making it. We will drop our payment down to \$95,000 and it slowly comes in not like a big chunk of change like a payoff." So Nancy and I will be going to full session probably February or March. Early in the session they do a rebalance for this biennium. The figure today is \$3.7. By then it could be \$4 or \$4.5 or it could be \$3.

8:29 Chair Ellis So from a process point of view when the legislature resumes and comes into regular session, then does this move from an E-Board issue to the current legislature?

8:40 K. Aylward That is correct. The December E-Board which was this week, last week, is the last Emergency Board. Then everything in the emergency fund reverts to the general fund and it is for the next legislature to appropriate or not appropriate. So as far the next biennium goes, since the last Commission meeting the Governor's budget was released. As you know Governor makes no recommendation on Judicial or Legislative Branch budgets, but what he has done in the past and has done again this time is to do a percentage cut that corresponds to the average around the other state agencies, Executive Branch agencies. For us that cut is 3% less than our current service level. I am going to go over some stuff because we have a new commission member.

9:44 Chair Ellis The rest of us totally understand this but for Per's sake go ahead.

- 9:53 K. Aylward The current service level, if nothing changes here, is what you are going to need next time. Because for most state agencies they are cost driven by personnel and their personnel are in the computer. They look in the computer and they say, "Hmm. Well this person is going to get a step and this person is topped out. You have all these people and the PERS is going to go up to a good lord 22% or whatever." They figure it all out and they say, "Okay. Here is how much you need next time." It is really quite a mechanical process and that is current service level. So they are saying, "Oh. The Governor is saying 3% less than current service level. But what he has also recommended, and whether it passes judicial inspection, he is saying the reason I know you agencies can afford this 3% cut is that I am going to recommend changes to PERS. So this budget assumed the 22% PERS increase. So the Governor said I want to make two changes to PERS. I will propose that the legislature pass these changes into law. One of them is the "uplift" they call it for out of state retirees. It started when some federal pensioners said, "How come my federal pension is taxed when my state pension isn't taxed. That is not fair." What ended up happening is the state said, "Fine. We will tax your state pension too. Now it is fair." Well the people who had already retired said, "No. We had a contract and this was going to be untaxed, Oregon income tax." So then PERS said, "Okay. We will give you an uplift because now we are making you pay tax so you are now all whole again, but they gave the uplift to all retirees. Of course those living out of state are saying, "Okay. We will take that uplift." They are not paying Oregon income taxes. That is an easy in my view. That is a small piece.
- 12:02 Chair Ellis I would think politically that shouldn't be that hard.
- 12:06 K. Aylward The second component of the Governor's cuts involve capping the COLA at \$24,000 a year. So PERS have an annual COLA awarded July 1 of every year. It can't be more than 2%. So let's say it is 2%, and what the Governor is proposing is that it won't be a 2% increase on your full pension, only 2% up to \$24,000 a year. So if your pension is \$48,000 a year it will be as if you got a 1% COLA. I kind of like it. It is progressive. They are saying half of the retirees are making less than the \$24,000, or some large percentage would be unaffected. But the people at the really high end, the Bellottis or whatever, 2% of theirs is ...
- 13:02 Chair Ellis Just tell me what it means for Mike Bellotti and I will understand.
- 13:11 K. Aylward The funny thing is if those two changes past, the 21.4% or whatever, is built into the budget for PERS costing next time. It would actually drop the cost of PERS down to 16.8%, so therefore in your current service level budget, I am cutting you 3% because, guess what, you are not going to need that 3%. So from an agency's point of view it is like okay. You are giving it to me because I need it and now you are taking it because I don't need it. I am still whole. I am really, really encouraged about this budget in general. It signals that maybe there is money in the system. You can judge from the Governor's budget overall how drastic it is.
- 14:04 Chair Ellis If folks asked me, I saw you come out with all guns blazing on this cap.
- 14:09 K. Aylward I think they will. Again, I don't know. I don't know whether the legislature will go for it. I don't know whether if there are lawsuits that it will be upheld by the courts. I don't know. But at this point agencies are all in the same boat and the Governor says that I only gave you this much money because I assumed these things would happen. Now if these don't happen he will then say, "Well too bad. You have to find ways to cut." But 3% is better than the 8.5% and 12% and these big numbers we have been seeing in the last four years. There was another tiny adjustment, which wasn't made for our agency not related to PERS. For Executive Branch they have all these enterprises and it just means big computer stuff. So each little agency is developing their own thing and DAS said, "No, no, no. We are going to take back 5% of the administrative budget of each of these agencies. We are going to put it in a pot and we are going to use this pot so that we can do statewide enterprise systems. We think that is more efficient so we are just holding that back." They didn't do that to us because we are

different. We are not in the system as what is your administrative budget. I don't know? Is it CBS? Is it Nancy? What is our administrative budget? We don't break it down like that. So bottom line is those little cuts were made but the total of 3% for us is about – and I even wrote it down, \$7.5 million. In addition to that the way it works is the current Governor's budget – let's assume this whole PERS things sorts itself out. That budget has no COLAs and no merit increases. What they then do is set aside a certain amount of money. They call it the salary pot. This time it is \$81.5 million. That sits there and then Executive Branch starts negotiating with the unions and the unions say, "We want steps. We want bonus steps. We want COLAs." The management says, "We can't afford it," and they tussle about it. It generally ends up being \$81.5 million because that is what you have. I think there could be extreme situations where more money was required, but I would be surprised if the unions – if you know that money is sitting there you are going to keep fighting till you get it all. It is labeled a salary pot. So out of that \$81.5 million then executive will come back and say, "Okay. The unions have agreed a 1% COLA this year and a 2% COLA next year and everyone gets their merit steps or whatever. At that point we would come to the Commission and say, "Okay. Here is what they are going to do. Here is what we think we should do." But our share of that salary pot will be divided out exactly according to whatever executive negotiates with the unions. So if the cost of their employees means they would get \$8 million. If we are one-eighth of them then we get \$1 million. The just do it on numbers. It means there is more money coming for salaries. That is all I have to say.

- 17:55 J. Potter More money coming for salaries for the state or OPDS?
- 18:01 K. Aylward See the other thing too is if you look at a state agency that 85% personnel and you do your whole PERS kind of we hopes this works thing. That would drop you 3%. They look at us and we have the account with \$240 million dollars of money that we need to spend. They are saying that whole PERS thing we get to cut you 3%. I am looking at that and saying, "No." You cut 3% of our 75 people. That sack of cash isn't having any PERS savings or whatever. We are just leaving that alone for now. The Governor has always cut us the same as other agencies and then we come forward and say, "We are not the same as other agencies and here is what you need to do to fix it."
- 18:54 Chair Ellis Any sense how the legislative line up is going to look for us this year.
- 19:02 K. Aylward I will leave the legislature to Nancy because she is far better at it than I am and more political. I don't care who you people are just give me my money. You can ask Nancy.
- 19:17 N. Cozine Chair Ellis and members of the Commission, the legislature was in town this week - Legislative days for this week were Monday, Tuesday, and Wednesday. I was in the building visiting with legislators and talking with people about what it is store for the 13-15 biennium and meeting with some of our new legislators. At this point committees have not yet been decided upon. We are not sure who is going to be on the Public Safety Ways & Means subcommittee. That committee is very important to us. I have met with some members of Ways & Means. Everyone is fairly circumspect on things are going to play out. As you heard, in the Governor's recommended budget there are reforms that are proposed. Much of his budget relies upon not only the PERS reforms, but also the Commission on Public Safety work product results and whether or not any of those are passed by the legislature. The Commission on Public Safety actually was having a teleconference today to talk about the report and what the recommendations are. I believe they originally had been hoping to hit about a \$50 million mark in terms of savings. I think through the negotiation process that number has been whittled down quite significantly because the reforms that the committee is willing to pass forward for consideration is more limited than what was originally on the table. That whittling down process will continue and we will know in the next several weeks what potential that has.
- 20:56 Chair Ellis This is Chief Justice De Muniz's group?

20:57 N. Cozine It is.

20:57 Chair Ellis And the savings is all in corrections?

21:00 N. Cozine They are all through corrections through a variety of different approaches. We don't yet have their final recommendations.

21:12 C. Lazenby Which are more likely to get moved because of the change in partisan in the legislature, right? Especially through the correction changes.

21:23 N. Cozine I think the new composition would lead one to believe that there was broad support for something that infuses dollars into education over corrections. There is some pretty vocal opposition to the proposed changes. I think that many people are hopeful that the change in composition will allow things to move through.

21:53 C. Lazenby Very delicately put though, I might say.

21:57 Chair Ellis Elections have consequences.

22:05 N. Cozine It is such a moving target right now. It was never a prepackaged deal and it remains that way. People are still having very intense conversations about what will be recommended and who will support and who won't support.

22:24 Chair Ellis Do you want to talk about office space?

22:26 N. Cozine I was going to ask Pete to talk about that. I wanted to add to the legislative mix that between the last meeting and now we actually had a really productive tour of Multnomah County with our LFO analyst. We took him both through criminal and dependency processes up there to let him see – he had already met with one of our defense providers there.

23:10 Chair Ellis MPD?

23:12 N. Cozine He had already met with MPD, so this was an opportunity for him to watch attorneys in court. He also met with Keith at MDI. He observed dependency prelims. It was really a very good day. He was able to see – when we went to criminal presiding court it was a situation where there was someone who was supposed to show up in court who wasn't there, and it became apparent that they were released at 4:00 in the morning. That had significant mental health issues. They tried to track her down. They couldn't find her. When we later went to go watch arraignments in JC4, there was another woman who was so similarly situated, she couldn't address the court. She was terribly mentally ill and it really demonstrated the work that our lawyers have to do to keep these individuals engaged in the system. That particular individual, it was her second arraignment. She had a similar release type situation. The lawyer who was doing the arraignment remembered her, she remembered all the reasons for concern in keeping her in custody because she had serious decompensation issues when she was in custody. It was a really very moving demonstration of the work that our attorneys do. We planned another similar tour for new legislators in Multnomah County that we will have next week. We are collaborating with the community corrections and with the court on that one so that they can see the process through and see how much work our defense attorneys have to do, why they can't just dictate the schedule, how many different entities are pushing on what the schedule has to be and when, and that our defense providers, to some degree, are at the mercy of this larger system.

25:01 J. Potter Who went?

25:02 N. Cozine The first one was Steve Bender, our legislative analyst. We are still in the RSVP process for the legislative tour. I will report back in January.

25:21 P. Gartlan For the record, Pete Gartlan. This is the appellate division update. First, last time I reported about the interview process we were engaged in. We ultimately did make three offers and got three acceptances. All excellent prospects. The first is Emily Seltzer, who is a graduate of Lewis & Clark and she clerked at the Fed PD in Portland. She started with us last week. The next is Sarah Laidlaw. She is from Arizona State University and she clerked at the Fed PD in Arizona and the Maricopa County PD office. She has a background in journalist and a degree in journalism. All the reports we get is she is a very good person and an excellent attorney. Third is Rond Chananadech. He is a University of Oregon graduate. He is currently working for Judge Lynn Nakamoto on the Court of Appeals. He had been a paralegal at the San Francisco Public Defender's Office before going to law school. He will begin in April of 2013. We typically stagger people so that the mentor doesn't stagger too much. That brings up the next issue on the agenda and that is the office space. We have an office space problem. We currently have all the offices, attorney offices, occupied. We have one office that has two places in it, two work spaces, and we have used that in the past for the incoming attorneys, newer attorney, and it kind of worked because that way they don't feel as isolated and they have kind of mutual support. It is not really the ideal situation that we would want for too long. When Sarah arrives in January she will go into that office that has two work stations. So when Rond begins in April we will be confronted with a possible situation. If no attorney leaves we may have to ask two attorneys to office share, two current sitting attorneys to office share that it would free up one of those attorneys' office for the new attorney. We kind of have to create one office in April and that is if nobody leaves. My experience has been that typically we have an attrition rate of about one or one and half per year people leaving. We may have a problem in April and if we do we will address it. We currently do have two attorneys sharing an office. Two of our senior attorneys and it works for them and it works for us, so it is on a volunteer basis.

28:55 Chair Ellis It does seem to me that appellate work you are not going to have a lot of clients coming into the office, so the need for private space doesn't seem to be all that high is it?

29:12 P. Gartlan For the appellate work you want to get into your own world for awhile.

29:20 Chair Ellis But your world is that screen.

29:23 P. Gartlan Your world is that screen but if somebody else in the office maybe on the phone or something it breaks up the kind of trance that you want everyone to get into.

29:35 J. Potter Your offices are pretty small to begin with. You are double-bunking in there.

29:37 P. Gartlan We are double-bunking. Two people are sharing one office. We will also have another office where two people will be sharing.

29:44 J. Potter Are they sharing it everyday or are some of them working from home?

29:50 P. Gartlan We have allowed them to arrange a schedule and we give them an extra telecommute day. They are typically only sharing that office one day a week and that is a Wednesday. Wednesday is our meeting day.

30:04 J. Potter It would just make more double-bunking then?

30:09 P. Gartlan Potentially. There may be another – we may ask two more attorneys to double-bunk.

30:16 Chair Ellis I thought we just heard from Kathryn that you had two vacancies.

30:18 K. Aylward We have five vacancies right now. Three either just got filled or are about to filled by the people that Pete named, so that leaves us two.

30:29 J. Potter So the problem is not going away?

30:33 K. Aylward We are just stalling.

30:33 J. Potter So what is the thought about the building that you are in and about the space that you have and the alternatives?

30:42 K. Aylward I am never going to leave that building because it is wonderful and perfectly located and so close to everything. So in my view there would be some additional space that we would need as we grow, or we get real space age and just tell everybody to telecommute or CBS division is now down to just a robot and you can have my offices. There could be some change. The problem is that it is a small enough number – is it two or four – we are right on the cusp. Obviously if it were 15 people don't have a place to work then you need to get space somewhere else, but when it is so few you try to juggle.

31:37 J. Potter Is the building's current capacity the capacity of the building in the sense that their can't be a third story. You can't build out in front? The owner of the building can't do anything else?

31:46 K. Aylward As you know that was an empty shell and it was tight. The architect had to redraw and redraw every time I kept telling him I need 48 attorney offices. It was a jigsaw puzzle.

32:01 Chair Ellis Is it still owned by the nice guy from Colorado?

32:04 K. Aylward It is. They own the two buildings behind us that are now vacant. In the alley behind us there are two kind of low bunker type buildings. Every so often they call and say, "Are you sure you don't need some more space." Again, it is kind of not worth it for two people. My personal view is that I think it is a wonderful advantage to businesses that employees can work at home with their own computers sitting in their own chair. I think that is something that should be capitalized on and maybe the role of the analysts is such that they don't really need to meet. Maybe an analyst is just a phone and a computer. In which I will take free office space. That is just my view.

33:01 Chair Ellis So I assumed when I saw this item that what I was going to hear is some of lawyers would like to stay in Portland and not commute to Salem every day.

33:13 P. Gartlan Why would you ever think that?

33:17 Chair Ellis Here it has been five minutes into this discussion and I haven't heard that?

33:23 P. Gartlan It is kind of constant refrain from our attorneys. It could be an opportunity perhaps if there is a good situation economically where we could piggy back with another agency that is looking to fill in some office space. It could be an opportunity to develop some kind of plan, but the logistics make it difficult. It is a challenge to our office. I think one of the reasons that we have a good office is that we have this kind of ability to interact with each other on a daily basis. It is hard to break up that culture. How do you allow people an office space somewhere else and have them still interact with the bulk of the office.

34:12 Chair Ellis This is a weird conversation. I brought up the topic and I thought you would be here hawking. You are bringing up all the questions that I would have brought up had you done that.

34:28 J. Potter Do you want to switch seats?

34:28 P. Ramfjord DOJ does it quite a bit. They have their satellite office in Portland and people spend time up there and spend time in Salem.

34:36 P. Gartlan I know. They have gone to a permanent situation where there are AG attorneys who are permanently up in Portland. That hasn't worked out. It is a real challenge. How do you maintain the same culture?

34:58 Chair Ellis I am not hearing you make that proposal at this point. I am hearing you say it is right at the cusp and there may be ways to do more at home days and maybe some doubling up and we can get along for awhile. Okay.

35:14 P. Gartlan That is where we are. Next item is we are having our annual Holiday event next Tuesday and you are all invited. The Holiday event we have a morning of CLEs. We have a reading of the common-law from Blackstone. Then we have our potluck and our white elephant exchange in the afternoon and our holiday party. I wanted to mention that one of the speakers we are going to have is Ryan O'Connor. Ryan used to be a senior deputy in our office and he was the attorney who was on one of the cases, *State v. Lawson/James* that Justice De Muniz issued a couple of weeks ago about eyewitness identification. It was really Ryan's proposal and his brief that offered a framework, not the complete one, but definitely the framework for what turned out to be Justice's De Muniz's groundbreaking opinion. We are pleased for Ryan. He is no longer with us but he is doing good work. Next Wednesday we are going to have Justice Durham at our next PD coffee, pastry, and chitchat. He will be over at 9:00 and he will address the attorneys for about 45 minutes or so and they will drink coffee and he will drop some pearls of wisdom on us, at least I told him he has too. Finally, I think I described last time the Supreme Court cases. I won't go through that again. If you have any questions about those I would be glad to answer. That's it.

37:26 J. Potter I would like to say, Pete, at the Ken Morrow life time achievement award that was given Paul De Muniz, you did a marvelous job of introducing the Chief and framing his political/professional career very nicely.

37:44 Chair Ellis I would second that. I thought you did a great job.

37:47 P. Gartlan Thank you. You sound surprised. I am only kidding.

37:56 Chair Ellis Are you digging for more praise?

37:57 P. Gartlan Thank you very much. I have a long relationship with the Chief and it was my pleasure and it was heartfelt.

38:06 G. Harazarbedian Mr. Chair, might I briefly interject. We have often talked about the difference between appellate counsel and trial counsel. Our office has its annual holiday open house gathering today at 5:00. We have substituted the CLE portion for a blues band.

38:28 Chair Ellis You might be Torri and Lisa. Would like you guys like to come up and share a little time with us. Thank you for coming. I know you are busy. You are both with the juvenile department? Anything you wanted to share first, or shall we ask questions.

38:49 T. Lynn Go ahead and ask away. I think we are ready.

38:54 Chair Ellis There was one subject in the report and this is not the only community that we have this question. It relates to the process for juveniles waiving right to counsel. If I understood from the report, the way it is handled here is that your department talks with the juvenile and out of that comes either a request for an attorney or a waiver. Have I got it about right?

39:25 T. Lynn Yes.

- 39:26 Chair Ellis I have to say that a lot of us are very concerned about any juvenile being asked that question, without a lawyer there to advise them as to whether waiver is really in their best interest or not. What I am interested in is you telling us how the process works and what reaction, if any, you have to the statement that I just made.
- 39:55 T. Lynn There are probably a couple of steps to that. One is the probation officer when they meet with the youth and family they go over the police report and have those conversations with the kids and their families. They ask them if they are going to be requesting an attorney. We advise them of your rights, but obviously we are not lawyers. We will not really offer any legal advice.
- 40:23 Chair Ellis Here is the worry. As I say we have had this discussion elsewhere in the state. I am not singling what happens here out. But by definition you are talking about a juvenile, a young person. There is probably, whether you feel you are part of this or not, I don't know, but there is probably a sense on the juvenile's part, "if I waive counsel then they will think more favorably of me." If I waive counsel it is like I am cooperating with the system. That is very discomfoting to those of us who are lawyers and we have spent our lives believing that representation is really an important thing. The concept that we have talked about it is one that says no waiver will occur without a lawyer being involved counseling the juvenile on the issue of whether waiver is or is not appropriate for juvenile. Do you have a reaction to that?
- 41:31 L. Robinson I just think that for how we serve kids and families, those conversations are initially done with families present and parents who can help guide and direct youth. But if there is any indication that they are confused or they don't understand or they need more time to think about it knowing what the referral is, they have that time and before they make an appearance before the court if that is where we are headed, they also revisit all of those rights again before any statement is made before the court. So there are two or three times before they are actually telling the court that they are waiving their right. They have been advised of those rights and have had a chance to seek other direction from their parents, met with an attorney or a representation, so it doesn't happen as quickly and it is not just a one time conversation or statement.
- 42:26 T. Lynn I would say it is also not unusual when we have talked with the youth and family to say, "I don't want an attorney." Then go to court and request an attorney. That is not unusual to happen.
- 42:40 Chair Ellis I did not practice in the juvenile area so I don't claim – I have someone to my left who knows a lot about this, but I will keep venturing with my limited knowledge. It just does seem to me that a particularly very bright youth may figure out or think he has figured out or she has figured out, waiver will be viewed as a good thing. They probably don't understand, very few people would, all the potential consequences of waiving as opposed to not waiving. Would it be a big wrench in your system if the rule was no waiver without an attorney counseling on the issue of waiver?
- 43:33 T. Lynn I don't think it would be a big wrench. I think we have worked pretty hard as a system and with our defense consortium around timeliness of the system. Not having great lengths of time between appearances and whatever the disposition of that case may be.
- 43:58 Chair Ellis This would have to be done in a way that it wouldn't bring the whole system to a stop.
- 44:02 T. Lynn That would be another step in the process. I guess I have always felt pretty comfortable that regardless of the conversations that we have with kids, the court has those same conversations again with kids and families and explains what their rights are, then again requests, "would you like an attorney?" Usually, in more serious cases, the court is going to appoint an attorney whether the kids say they want to waive or not. The court will say they are not really

comfortable with proceeding especially if it is in relation to a probation violation where placement could be an issue. Custody to the state could be foreseen there.

- 44:42 Chair Ellis We have been told there is a wide range around the state in terms of numbers of waivers. Some counties there seem to be a very high number of waivers. Just leaves me with the feeling that that is probably because the way that system works the juvenile is put in the position, at least thinks they are in the position, that if I waive I will get some benefit from that. I will curry favor.
- 45:13 T. Lynn If you can tell us what juveniles are thinking you would be a rich man. I think that is going to vary with every single kid. I think an important part from our perspective is that what they decide is what they decide. It doesn't change what our recommendation is whether they decide they want an attorney or not. I think it is pretty clearly put up front that it is clearly their decision. It is not going change anything that we are doing as far as any recommendations that we might make to the court. I think we try to make very clear to the kids that we are not directing them in one direction or the other. It is really their choice. The court goes over that again with them as well.
- 45:55 P. Ramfjord In the discussion with the court, do you see variation from judge to judge in terms of the depth of the inquiry or the nature of the inquiry?
- 46:06 T. Lynn I guess detention hearings would be the time where we would have a variety of judges. We have a pretty standard judge on our main dockets. I think part is pretty consistent. The detention review hearings there might be some variety on how in-depth the judge may go. Some probably are a little more in-depth than others around inquiring what that exactly means and do they understand and those kinds of things.
- 46:36 Chair Ellis Any other questions for...
- 46:42 Hon. Elizabeth Welch I don't want to start.
- 46:46 Chair Ellis She knows a lot more about this than I do.
- 46:49 Hon. Elizabeth Welch Parents are as much of the problem in this discussion then any other factor. Parents are madder than hell at the kid for a variety of reasons. Number one, the kid did something wrong and they have to be there and miss work and all that stuff. That pressure alone is enough. The average kid post Measure 11 is what, 12, 13 years old that you are dealing with.
- 47:31 T. Lynn Is probably about 14 or 15 years old.
- 47:37 Hon. Elizabeth Welch So Measure 11 hasn't cut your population down that much?
- 47:42 T. Lynn We don't have a huge number of Measure 11 cases. I guess I would like to be clear that I am not opposed to whatever the system is. If the system is that they are going to have an attorney – if that becomes a rule then we will deal with that and move forward. I am not opposing what the recommendation is.
- 48:06 Hon. Elizabeth Welch These kinds of changes have to come from within an organization. I don't think that any external force can change the way you do your job or the way the judge does his or her job. The issue is people talking about this. It has been an issue statewide for about 34 years.

48:31 L. Robinson

It was clearly mentioned when we were providing or answering for your audit, are you opposed to defense attorneys showing up at detention review hearings or an initial appearance? The answer is absolutely not. Whether they are scheduled and time allows for that, we are happy to notify of any hearing and invite anyone that can speak on behalf of the youth or guide them in his or her decision. It is not a part of our county. We are not opposed to it. If there is a way to implement it, we will do what we can to notify the defense counsel so that they can be present.

49:05 Chair Ellis

Thank you both. Nancy, we are not going to have time to do the policy packages. So we are about convert to executive session. This relates to our review of the executive director. I will read the following statement so Mr. Levy has been satisfied that the law has been follows. "The Public Defense Services Commission will now meet in executive session for the purpose of conducting a performance review of the OPDS Executive Director. The executive session is being held pursuant to ORS 192.660(2)(i), which permits the Commission to meet in executive session to conduct performance review of the chief executive officer of any public body. Representatives of the news media and designated staff shall be allowed to attend the executive session. All other members of the audience are asked to leave the room. Representatives of the news media are specifically directed not to report on any deliberations during the executive session, except to state the general subject of the session as previously announced. No decision may be made in executive session. At the end of the executive session we will return to open session and welcome the audience back into the room." Now what I would like to do is have a few minutes each with the three direct reports. I think it may be best to do that separately, which is what I would propose. What don't we start with you Paul. Nancy, Kathryn, and Pete just step outside.

Attachment 2

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Public Defense Services Account

100 Juvenile Dependency Representation

Package Description

Purpose:

The purpose of this policy package is to provide funding to reduce trial-level juvenile dependency caseloads in order to address chronic and serious quality of representation issues. This package would allow the agency to improve the quality of legal services in juvenile dependency and termination of parental rights cases.

Over the last six years, the agency has evaluated and sought to improve the work of its juvenile contractors through a number of approaches including comprehensive performance reviews; promotion of best practices; provision of education and training opportunities; investigation and resolution of complaints from judges, attorneys and clients; the creation of a juvenile law resource center; and the creation of a juvenile appellate section within the Appellate Division. Despite these efforts, a statewide survey and the agency's site visit evaluations and structural reviews disclose continuing deficiencies in the quality of representation being provided statewide.

How Achieved:

The agency estimates that workloads exceed acceptable levels by approximately 20%. The agency is taking a multi-biennial approach by requesting incremental improvements over three biennia. This policy package would permit the agency to reduce current caseload levels in juvenile dependency and termination of parental rights cases by approximately 7%. The agency has followed with interest an ongoing effort in Washington State to address similar issues. Significant caseload reduction was a key component of a highly successful parent representation pilot project in that state. What began as a pilot project in three counties has now been extended to twenty-five counties.

If this policy package were funded, the agency would ensure that reduced caseloads actually resulted in improved representation by making such reductions conditional upon agreement to implement established best practices, participation in mandatory training sessions, and rigorous evaluation.

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Staffing Impact: No impact on staffing.

Revenue Source: \$3,818,237 from general funds.

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Appellate Division

101 Employee Commensurate Compensation

Package Description

Purpose:

This package will enable the Appellate Division of PDSC to provide quality legal representation through recruitment and retention of expert attorney staff who will be capable of providing quality and cost-efficient appellate representation. The package provides one third of the funding needed to establish attorney salary schedules comparable to attorney salary schedules at the Department of Justice, a goal that is consistent with legislative directive: "The Public Defense Services Commission shall * * * [a]dopt a compensation plan, classification system and personnel plan for the office of public defense services that are commensurate with other state agencies." ORS 151.216(1)(e).

How Achieved:

In developing the requested salary structure, the agency used the Department of Justice's Appellate Division as the comparable agency. Agency and Department of Justice attorneys appear on the exact same cases from opposing sides. The following chart compares agency attorney salary ranges with the ranges of comparable positions in the comparison agency. (Steps are current as of the April 2012 PICS freeze used for budget preparation.)

	Step 1	Step 2	Step 3	Step 4	Step 5	Step 6	Step 7	Step 8	Step 9	Percentage increase required to match top step
Asst Atty General	5288	5551	5825	6120	6428	6737	7060			
Deputy Defender 1	4789	5037	5288	5550	5825	6120				15%
Sr Asst Atty General	7435	7808	8205	8616	9042	9493	9967	10465		
Deputy Defender 2	5550	5825	6120	6424	6743	7080	7433	7804	8195	28%
Attorney-in-Charge	7332	7699	8089	8490	8906	9351	9813	10308		
Sr Deputy Defender	6120	6424	6743	7080	7433	7804	8195	8605	9036	14%

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Historically, the agency hires recent law school graduates into the entry-level Deputy I attorney position and devotes significant management-level resources to training during an attorney's first six months of employment. The training investment shows returns for the agency after twelve months, when the typical entry-level attorney becomes increasingly self-sufficient and productive. After two to three years, the Deputy I attorney has demonstrated sufficient competency to warrant consideration for the Deputy II position. After two to three years in the Deputy II position (or five years with the agency), the attorney is an experienced, competent, and valued contributor to the agency. Unfortunately, this time period coincides with the greatest salary disparity between the agency and the Attorney General's office, the attorney is experienced and attractive to other firms, and the time loss and fatigue associated with a two-hour daily commute from Portland or Eugene leads many attorneys to consider and seek employment elsewhere. Since 2003, twenty six attorneys have left the agency, many at the the four-to six-year mark.

The policy package helps address the glaring compensation inequity between state employees on opposite sides of the same cases, would mitigate the brain drain that occurs around the five-year employment mark, and enables management to direct training resources into case production. The policy package would enable the agency to recruit and retain attorneys who are committed to and capable of achieving the agency's goal of providing quality, cost efficient legal representation.

Staffing Impact: No impact on staffing.

Revenue Source: This package would require an additional \$279,155 from general funds.

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Professional Services Account

102 Public Defense Provider Compensation

Package Description

Purpose: To provide funding necessary to:

- attract and retain qualified attorneys in nonprofit, public defender organizations, primarily in Multnomah, Lane, Jackson, Deschutes, and Washington Counties;
- increase the hourly rates paid to attorneys who provide legal representation in public defense cases on an hourly rate basis (versus a flat, average cost per type of case basis under contract) — hourly-rate compensated cases represent a small portion of the public defense caseload; and
- increase the hourly rates paid to investigators who accept work on public defense cases.

How Achieved:

Adjustment Toward Public Defender Contractor Parity

The first component of this policy package would allow some adjustments to be made in response to the difficulty nonprofit, public defender organizations are having attracting and retaining qualified attorneys. Eleven of the current public defense contracts are with nonprofit public defender offices. Full-time attorneys and staff employed with these organizations are restricted to performing state-paid, public defense work only. In other words, the nonprofit contractors differ from their private law firm and consortium public defense contractor counterparts in that private, retained work is not available to the nonprofits to supplement their state-funded contracts.

One measure of their ability to attract and retain attorneys is whether the salaries of such attorneys are competitive within their local communities with attorneys engaged in comparable types of legal practice. A comparison of public defender attorney salaries and prosecution salaries in the same counties (based on the Oregon District Attorneys Association 2012 salary survey) showed that, based upon average salaries, public defender salaries for eight of eleven nonprofits were less than those for prosecuting attorneys. The differences between public defender attorney salaries and their prosecution counterparts ranged from \$7,838 to \$41,186 per attorney

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per year. The projected full biennium cost of increasing public defender attorney average salaries to the level of prosecution average salaries in their respective counties totals \$6,989,187 based upon 2012 salary levels. Neither benefits nor non-attorney staff salaries were compared in the 2012 study.

Benefits (such as PERS) that generally are available for government-employed attorneys (versus independent contractors, such as public defenders) make it more difficult for public defender offices to attract new hires. Retirement benefits available to public defender attorneys range from 6% to 10% employer contribution programs. Two of the 6% programs have been in effect for less than fifteen years. Prior to their establishment, there was no provision for retirement.

Approval of the amount requested would allow for some adjustments and improvements in salary for public defender offices in those counties where there is significant disparity with prosecutor salary levels. It is clear, however, that the amount does not represent the total cost of establishing salary and benefit parity for public defenders and their staff. The requested funding would be allocated to public defenders based upon greatest salary needs. For example, no improvements in the current public defenders' benefit program, such as retirement programs, are contemplated within the requested funding. Rather, the amount is viewed as a first step in establishing greater consistency in salary levels between public defender and district attorney staff. Reaching full parity in terms of both salary and benefit levels is a longer-range effort.

But public defense offices don't compete only with prosecutor's offices for qualified attorneys. It is also important to note that both prosecutor and public defender salaries lag significantly behind the average salaries of attorneys engaged in other types of practice. The Oregon State Bar's 2012 Economic Survey report noted that average full-time public defense attorneys' and prosecutors' salaries (\$68,246 for public defenders, and \$93,979 for public prosecutors) were well below any area of private practice. (Business and corporate litigation lawyers reported an average salary of \$192,715. Family law practitioners received an average salary of \$99,637 and private criminal defense lawyers received an average of \$134,779.)

Hourly Rate Increase for Hourly Paid Public Defense Attorneys

The current guideline rates (\$45 per hour for non-death penalty cases and \$60 per hour for death penalty cases) have increased by only \$5 per hour since June 1991. The requested funding would allow an increase in the current rates to \$53 per hour for non-death penalty cases and \$72 per hour for death penalty cases for the 2013-15 biennium.

The 2007 legislature provided funding for the 2007-09 biennium that permitted PDSC to increase the guideline rates for hourly-rate paid counsel statewide for the first time since 1991. Prior to 2007 public defense funding was inadequate, despite inflationary adjustments, to permit the agency to increase the rates, due to the fact that actual public defense caseloads generally exceeded the

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projected caseloads on which appropriations were based. Other demands on the Professional Services Account, such as continuing expenditures on death penalty cases filed in previous biennia, also contributed to the need to adopt a conservative approach toward administering public defense funding and prevented the Commission from increasing rates. A limited number of exceptions to the guideline hourly rates had been made in years just prior to 2007 on an individual case-by-case basis or for certain types of cases, such as post-conviction relief cases. For a number of years, there has been a shortage of attorneys who are qualified and willing to accept appointment to post-conviction relief cases.

The small increases in hourly rates that were implemented in August 2007 did not result in rates that bear any relation to rates regularly charged for their services by attorneys who handle criminal and family cases for retained clients. The Oregon State Bar's 2012 Economic Survey reports statewide average and median criminal defense hourly rates at \$214 and \$200 per hour. Family law attorneys statewide charge \$214 (average) and \$200 (median). Family law practice is similar to the work performed by public defense attorneys in juvenile dependency and termination of parental rights cases. To the extent attorneys who perform public defense representation at \$45 and \$60 per hour responded to the Bar's survey, those hourly rates would have helped contribute to the lower overall rates.

Just as with automobile mechanics or plumbers who are paid on an hourly basis, hourly rates paid to attorneys, whether in the public or private sector, are meant to include overhead costs such as staff salaries, taxes and benefits, rent and other office costs, and necessary capital. Overhead expenses frequently are estimated by attorneys to be 50% of the hourly rate. Assuming 50% overhead expenses and an average of 1,800 billable hours in one year, an hourly-rate paid public defense attorney working full time at \$45 per hour would receive \$81,000 per year, with half of that amount (\$40,500) paying for overhead and half being available as attorney salary.

The Consumer Price Index increased 69% between 1991 and 2012. Adjusted for inflation, the 1991 rates of \$40 and \$55 per hour should be \$67.66 and \$93.03 per hour in 2012.

Hourly Rate Increase for Hourly Paid Investigators Who Provide Public Defense Services

The amount requested for the 2013-15 biennium is the amount needed to allow increases in the rates paid investigators from \$28 to \$30 per hour in non-death penalty cases and from \$39 to \$41 per hour in death penalty cases.

Until 2007, with the exception of some investigation services in death penalty cases beginning in 1996, the public defense guideline rate for investigation services had been \$25 per hour since at least 1988. It appears that in most and perhaps all counties,

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the rate had been \$25 per hour since the state's assumption of responsibility from the counties for public defense in 1983. For death penalty cases, the hourly rate had been \$25 per hour until mid-1996 when that rate was increased to \$34 per hour for the most experienced investigators. In 2007 the Legislature provided sufficient funding to permit the agency to raise the rate in non-death penalty cases from \$25 to \$28 per hour and from \$34 to \$39 in death penalty cases.

Despite the increases that took effect in August 2007, investigator rates remain inadequate. The Public Defense Study Commission, established to study the public defense system during the 1999-01 interim, received testimony from investigators and non-investigators that the number and the quality of investigators who accept public defense work has diminished overall. This is due in significant part to the lack of increases in the hourly rates paid to these investigators and the hourly rates available in other public and private sectors for the same pool of investigators.

The table below summarizes the three components of this package.

1.	Funding to increase full-time public defender salaries to corresponding deputy district attorney salaries.	\$2,329,729
2.	Funding to provide an increase in the hourly rate paid to attorneys (\$53/hour non-capital; \$72/hour capital).	\$1,799,868
3.	Funding to provide an increase in the hourly rate paid to investigators (\$28/hour non-capital; \$39/hour capital).	\$732,814
Package total		\$4,862,411

Staffing Impact: No impact on staffing.

Revenue Source: \$4,862,411 general funds.

Attachment 3

Public Defense Services Commission

The Executive Director's Annual Report for 2012

Introduction

The Public Defense Services Commission (PDSC) was able to continue meeting or nearly meeting its Key Performance Measures and annual goals, as outlined in its strategic plan, during 2012. The PDSC also fulfilled its statutory obligations to provide quality public defense services in a cost efficient manner. These successes were achieved despite continued step increase freezes, mandatory furlough days, and reduced spending in all areas of operation.

PDSC's Accomplishments in 2012

1. The Commission

The Commission held eight public meetings during 2012, and had a partial day retreat. At the PDSC's January meeting, the Commission discussed the upcoming February legislative session, the Executive Director's Biennial Report to the Oregon Legislative Assembly, and gave feedback regarding the 2012 contracting process, which was completed at the end of 2011. Following the meeting, PDSC members had a retreat to discuss strategic planning and succession planning for the Office of Public Defense Services.

The Commission met again in March. At that meeting, the Commission discussed and ultimately approved an adjustment to the contribution amounts required through the Application Contribution Program (ACP). The new amounts simplify the structure, making it easier for court staff to administer the ACP. The Commission also discussed the number of juvenile delinquency cases that are adjudicated without the appointment of counsel. As they have in the past, Commission members expressed concern about waivers of counsel in juvenile delinquency cases, and asked OPDS general counsel to provide information regarding the Commission's decision making authority in this area. In March, Commission members also heard from OPDS general counsel regarding the statewide public

defense survey results, which are compiled from comments made by judges, district attorneys, and other system partners regarding the quality of defense services throughout the state. The survey showed some areas of needed improvement and required further follow up by OPDS analysts in those counties. This process remains an effective tool in identifying and addressing problems that arise in each jurisdiction.

In May, the Commission met in Douglas County to conduct a service delivery review, discussed further below.

In June, the Commission received updates regarding the provision of public defense services in Clackamas and Yamhill counties, with very positive reports regarding changes made by contractors in both of those counties. The Commission also heard about a recent case, *State v. West*, regarding a defendant's right to receive non-routine expenses (further discussed below). The Commission accepted contractor comments regarding the 2013-15 agency request budget, including potential policy option packages.

The Commission spent time reviewing the best practices for boards and commissions at its August meeting, and after reviewing those, confirmed that it does adhere to the best practices, and that it is in compliance with the best practices. The Commission also reviewed the OPDS customer service survey results, which measure the satisfaction of customers served by the Contract and Business Services division (CBS). The survey results were very positive, and confirmed that CBS continues to provide exceptional service. The Commission approved the Service Delivery Plan for Douglas County, and received an update regarding the review of Oregon death penalty contract providers.

The September PDSC meeting included a discussion of death penalty case filings, which had been increasing at a rate that is above average, and recent opinions in capital post-conviction relief cases that included reversals for inadequate assistance of counsel. All of the cases involved trial attorneys that no longer have a contract with OPDS. The Commission also discussed the PDSC's policy regarding disclosure of billing records. This policy was fully discussed through the next several meetings, and amended at the October meeting.

At the Commission's October meeting, members heard from three public defense practitioners. The discussion highlighted the need for increased funding for public defenders, many of whom are not able to continue working as public defenders due to the low compensation and significant law school loan debt. The Commission requested additional information regarding student debt and loan forgiveness and repayment options; this information will be provided at the March 2013 PDSC meeting.

The December meeting included a Service Delivery Review in Linn County, an overview of the Oregon Judicial Department's eCourt program, and an annual review of the Executive Director.

The Commission performed two Service Delivery Reviews in 2012 - Douglas County in May, and Linn County in December. Each jurisdiction presented with issues unique to their own counties. The PDSC will continue to monitor representation and planning for those counties to ensure the provision of quality public defense services. The Commission also received updates regarding representation in Lincoln, Clackamas, and Yamhill counties. In those counties, problems identified in earlier service delivery reviews were addressed, and the Commission heard testimony indicating that representation has improved in both counties as a result of the changes.

The Commission also addressed budget issues, with regular briefings regarding the February legislative session and September emergency board request. The Commission reviewed the 2013-15 draft budget and policy option packages at the June meeting, and contractors were invited to comment upon the proposed policy option packages. The Commission approved the PDSC 2013-15 budget narrative at its October meeting.

Finally, the Commission experienced changes in its composition during 2012. Former Chief Justice Paul De Muniz stepped down as Chief Justice at the end of June 2012. Chief Justice Thomas Balmer became the third Chief Justice to serve as an ex officio member of the Commission. One of his first official acts was to appoint a member to replace outgoing Commission member Peter Ozanne. During these transitions, Commission members expressed their significant appreciation for the work of Justice De Muniz, and Peter Ozanne, both of whom played a critical role in shaping public defense services in Oregon. After a thorough search, the Chief appointed

Per Ramfjord to the Commission. Commissioner Ramfjord is a lawyer at Stoel Rives in Portland, who served as an Assistant US Attorney, and has experience providing pro bono representation for petitioners in capital PCR cases. Chief Justice Balmer and Commissioner Ramfjord have been wonderful additions, and have already been instrumental in supporting and guiding the work of the agency.

2. OPDS's Contract and Business Services Division

A. Public Defense Program Administration

During 2012, the Contract and Business Services Division (CBS) successfully managed all aspects of OPDS business, including its primary obligation - the administration of existing contracts scheduled to end in December 2013. Statewide caseload variances, with significant upticks in some counties, declines in others, and an above average number of aggravated murder charges, yielded an increase in expenditures.

Throughout 2012, CBS analysts and accounts payable representatives managed all contract responsibilities, which included regular monthly payments for over 100 contracts statewide, review and approval or denial of non-routine expense requests, and reimbursement of providers for routine expenses. These activities resulted in more than 25,000 payment transactions and review of more than 17,000 expense requests.

CBS staff continued to make internal process improvements throughout 2012. The paperless non-routine expense review system developed in 2010 remains in effect and was expanded this year to include paperless vouchers used in the accounts payable unit. The new system has the added component of sending a copy of the fee statement to the attorney who requested the service to confirm that the duration and description of work billed is appropriate.

The Division continues to meet its Key Performance Measure (KPM) target regarding customer satisfaction, with a continued high level of confidence in the work of the division expressed by customers through spontaneous emails and comments. The Division will solicit specific customer satisfaction feedback again in 2014, when it sends out the biennial customer service survey.

B. CBS Division Director

The CBS Division Director provides management and oversight of all CBS business functions. The Director also serves as the Chief Financial Officer, responsible for creating and implementing the 2011-13 budget.

During 2012, the Division Director developed a caseload tracking system in which all data statewide is stored in a single database from which individual contractor spreadsheets pull “live” data. This not only saves manual data entry but allows the agency to analyze a wide variety of statewide data.

The Division Director continued to work on upgrading the juvenile database and developed processes to enable the juvenile unit to begin electronic filing.

The Division Director also developed a new spreadsheet based timesheet system for all employees. Not only did this eliminate the need to produce and circulate paper timesheets, but it had the added benefit of preventing mathematical errors and errors claiming vacation or sick leave that was not available.

The agency request budget for the 2013 legislative session was developed during the latter part of 2012. It includes the current service level plus three policy option packages, for a complete package that is 16.5 percent above the 2011-13 legislatively approved budget.

C. General Counsel

OPDS General Counsel continues to provide guidance to the Commission, OPDS staff and its customers on legal issues, attorney ethics and standards of practice. As mentioned in the summary of Commission activities during 2012, General Counsel provided the Commission with several trainings and updates regarding policy matters throughout the year. In March, he summarized statutes outlining the Commission’s authority to adopt policies, rules, procedures and guidelines for juvenile delinquency cases. General counsel also presented on the topic of public meetings laws at the March meeting. In June, General Counsel discussed a recent court ruling in

State v. West, 250 Or App 196 (2012), which addressed the criteria for determining whether a non-routine expense request is necessary and reasonable. Also in June, General Counsel provided an update regarding the best practices for boards and commissions, highlighting the Secretary of State's audit report regarding boards and commissions. Following that presentation the PDSC reviewed its own practices to ensure that it is in compliance with best practices for boards and commissions. General Counsel began in August a several month discussion of OPDS practices regarding disclosure of records when PCR litigation is pending and the state seeks disclosure of OPDS records, and the written PDSC policy regarding disclosure. In October, the Commission adopted a new policy that better reflects the state of the law, and will aid the agency in its efforts to appropriately respond to requests for disclosure.

General Counsel regularly assists OPDS staff, courts and providers concerning the scope of the right to appointed counsel under state and federal law. In this regard, he drafted a memorandum for trial courts regarding OPDS's understanding of *State v. Fuller*, 252 Or App 391 (2012), which held that the constitutional protections of a criminal trial are required in some prosecutions for violation offenses. He also litigated, in the trial court and on mandamus to the Oregon Supreme Court, the question of whether a death-sentenced inmate is entitled to the appointment of counsel at state expense in his civil declaratory judgment action seeking to invalidate the Governor's reprieve of his execution. Both courts denied the request for appointment of counsel, as urged by General Counsel.

General Counsel continued to provide critical services within OPDS quality assurance programs. Counsel planned, coordinated, and participated in the peer review of the contractors in Clatsop County. He also completed the review of five death penalty contract providers, which resulted in the continuation of all contracts for which the contractor requested continuation. Counsel works closely with the death penalty provider community, and attended regular meetings, providing organization and oversight for the death penalty peer panel, and the death penalty resource attorney program.

Administration of the OPDS Complaint Process and Attorney Certification Process are additional quality assurance responsibilities of OPDS General

Counsel. General Counsel continues to work closely with the Oregon State Bar to ensure that the OPDS complaint process is not duplicative of their work. General Counsel also assists in the review of non-routine expense requests to help ensure compliance with constitutional and statutory requirements to provide funding for experts and other case expenses when a sufficient showing is made that the assistance is reasonable and necessary.

3. Appellate Division

The Appellate Division (AD) continues to function well under the leadership of the Chief Defender and three Chief Deputy Defenders. Each Chief Deputy is responsible for discrete areas within the division (outreach, operations, and personnel). Through its management and team structure, AD trains, supervises, and evaluates its forty attorneys, allocates and redistributes manageable individual caseloads, and maintains documentation of its workflow. During 2012, the Division processed approximately 1642 incoming criminal case referrals, and filed notices of appeal in 1140 cases. In addition, the Juvenile Appellate Section processed 313 case referrals, filed 271 notices of appeal, and assigned 204 cases internally.

AD management revised the AD Manual and distributed the final version in October 2012. This manual documents all processes and expectations for the division, and is a critical source of information for AD management and employees.

The Appellate Division was able to fill several positions in 2012, in both the criminal and juvenile sections. Each position received applicant pools of 120 to 160 individuals, with many qualified candidates. The Division agreed to hold several positions vacant through the current biennium, increasing the pressure within the Division to rely upon attorneys who are well trained, experienced, and accomplished in appellate court practice. Nine of the 40 attorneys in the Division have been with OPDS for less than two years.

The Division's Criminal Section was able to further reduce the median filing date for merit briefs in the Court of Appeals. At the end of 2011, the Criminal Section's median brief filing date was 234 days. At the end of

2012, the median brief filing date was reduced to 224 days. (For historical perspective, at the end of 2006 the median brief filing date was 358 days.) The longstanding internal goal is to reduce the median filing date to 180 days.

The Division continues to have an active practice in the Oregon Supreme Court. In 2012 the Oregon Supreme Court issued fourteen opinions (eight favorable to the defense) in criminal cases litigated by AD's criminal section, including the groundbreaking opinion in *State v. Lawson/James*, 352 Or 724 (2012), which dramatically alters how Oregon courts analyze the reliability and admissibility of eyewitness identification. Senior Deputy Ryan O'Connor proposed much of the analytical structure that the court ultimately adopted.

The Juvenile Section continues to serve Oregon well by pursuing cases and obtaining opinions that bring clarity to Oregon's juvenile dependency laws. The unit litigated and won its first case in the Oregon Supreme Court, *Department of Human Services v. J.R.F.*, 351 Or 570 (2012). The Court of Appeals issued seventeen opinions in 2012 that address the rights of the parents and describe for the trial bench and bar how various provisions in the juvenile code operate and impact procedural and substantive decisions in dependency cases.

Attorneys from both the Criminal and Juvenile Sections continue to have interaction with the trial bar through CLE presentations, the Attorney Regional Contact Program, and by responding to an increasing number of daily inquiries from the trial bar. Attorneys from the division gave CLE presentations at, among others, the annual Oregon State Bar (OSB) Criminal Law Section CLE, at OSB's Appellate Section CLE, and at multiple OCDLA programs, including the OCDLA annual conference and the Juvenile Law Training Academy in Eugene.

4. Executive Director

The responsibilities of the Executive Director, as set forth in ORS 151.219, were completed throughout the course of the year. As noted above, the Executive Director planned a short Commission retreat in January, so that PDSC members could provide guidance regarding strategic and succession planning for the agency. After this retreat the Executive Director scheduled

several meetings with the management team to further develop agency succession planning. These meetings offered members of the management team an opportunity to discuss the tasks they view as most important to moving the agency forward.

Also in January 2012, the Executive Director traveled with PDSC Commission member Peter Ozanne to appear before the Michigan Commission on Indigent Defense. The Michigan Commission was created by Michigan Governor Rick Snyder through an executive order. Commissioner Ozanne and the Executive Director provided the Michigan Commission with information regarding Oregon's public defense system. Much of Oregon's model was built into Michigan House Bill 5804, a bi-partisan bill for the establishment of a permanent commission to oversee the provision of public defense services in Michigan.

The year afforded many opportunities for the Executive Director to talk with legislators about the work of the PDSC. Preparation for the short February legislative session began at the end of 2011, and continued into January and February. The Executive Director and CBS Division Director met with legislators throughout 2012, first to discuss PDSC's need for funds that were held back in the 2011-13 budget. The hold back amount was 3.5 percent of the agency's budget, totaling \$8.1 million. The PDSC was able to absorb the entire 3.5 percent within the agency's operating budget (including both the appellate division and contract and business services division), by imposing furloughs, holding vacancies throughout the year, and curtailing agency expenses. The PDSC received limited restoration of funds for the professional services account, which funds contracted and hourly representation and associated expenses, and the legislature placed \$3.5 million in a special purpose appropriation dedicated to professional services account expenses. The Executive Director and CBS Division Director met with legislators again in preparation for the September 2012 emergency board. The Executive Director appeared before the emergency board in September 2012 to request restoration of funding for the professional services account. The legislature granted the PDSC's request for funding, allocating \$2 million from the \$3.5 million special purpose appropriation. The PDSC anticipates that it will need to make a request at the start the next regular legislative session, which starts in February 2013, for funds to cover professional service expenses through the end of this biennium.

The Executive Director participated in many policy work groups and advisory committees throughout the year, including one at the national level. In March, the Executive Director was appointed to the National Legal Aid and Defender Association (NLADA) Research, Data & Analysis Advisory Committee. She participated in teleconferences, and traveled to Washington DC for a two day meeting to discuss the use of data in the provision of criminal defense services and the degree to which data can be uniformly collected, analyzed, and used to support public defense funding. Though it is clear that there are dramatic differences in collection and data analysis in each state, and indeed most jurisdictions, due to the unique structures and needs of each, there is potential for using data to improve representation and funding.

The Executive Director's state level policy work included judicial, executive, and legislative branch work groups. The Governor's Public Safety Team meetings, staffed by the Governor's Deputy Legal Counsel, is held once each month for all public safety agency heads. This committee serves as a critical point of communication and planning for Oregon's public safety system, and includes representatives from all three branches. The Executive Director served as a member of the Judicial Department's Juvenile Court Improvement Program (JCIP) Advisory Committee, a federally funded program to improve the functioning and case outcomes in juvenile dependency cases. She also served as a contributing editor of the Juvenile Law Reader Editorial Board, a member of the Oregon Law Commission's Committee on Juvenile Records, and attended the Appellate Judicial Selection Committee (which was sometimes attended by the Chief Defender), as an interested party representing the Office of Public Defense Services. She also participated in a small inter-branch work group, chaired by former Attorney General Hardy Myers, convened to examine the issue of state representation at dependency shelter hearings across the state. The Executive Director worked with Michael Livingston, Juvenile Law Staff Counsel for the Judicial Department, to launch a survey that will be used by the Chief Justice's Task Force on Juvenile Representation. That Task Force will begin its work in 2013, once the survey results have been collected and analyzed. Finally, the Executive Director acted as Secretary of the Oregon State Bar's Judicial Administration Committee, which is working to develop a program for reaching out to business and community groups throughout the state to educate Oregon citizens about the

importance of the court system and of access to justice in criminal, juvenile, family and other case types. The Oregon State Bar remains committed to supporting funding for the courts, public defense, and legal aid, and sees this project as a helpful tool in its effort to build support around the state.

The Executive Director and her management team also worked with OPDS's volunteer advisory groups, and assisted in the planning of important continuing legal education seminars. The Contractor Advisory Group met several times during the year, and provided input on proposed changes and important policy decisions. The Executive Director spearheaded planning for the Juvenile Law Training Academy, and worked with OCDLA and the OPDS management team to plan the Public Defense Management Conference. Both conferences received positive reviews.

The OPDS management team met almost weekly during 2012, with meeting agendas and minutes created and maintained by the Executive Director. Through these meetings, the management team is able to ensure consistency in procedures and policies in the office, address questions that arise during the course of the week, reviews documents and other materials that impact the office, reviews Commission meeting agendas to ensure that each division has an opportunity to share critical information with the Commission, and ensure that the team is working toward the OPDS goals and strategies as outlined in the agency strategic plan.

Challenges for 2013

The 2013-15 budget

The 2013 Legislative session begins on February 4, 2013. Though the December 2012 revenue forecast was better than previous forecasts, it is expected that the limited economic gains will still be outstripped by the growing costs of providing state services. The PDSC will again be asking for general fund resources to cover constitutionally and statutorily required expenses, with only limited, if any, hope of being able to achieve desperately needed improvements that could be achieved through funding of the agency's requested policy option packages. Recognizing the limited funding available in the next biennium, the PDSC adopted a three biennia strategy to achieve its policy option package goals of increasing provider compensation and reaching parity for public defender attorneys at the trial

and appellate court levels, and reducing dependency caseloads statewide. Efforts to secure funding for the remainder of this biennium and for next biennium will be a major focus throughout the first half of the year.

The Executive Director has also been asked by the Commission to take time during 2013 to analyze its current structure to ensure that the agency is prepared to continue supporting its staff and the clients it serves. When the Office of Public Defense Services was formed in 2003, bringing the Public Defender Office and the Indigent Defense Services Division into one agency, it had just over 56 full time equivalent (FTE) positions. The office has grown by almost 20 positions during the last ten years, and now has 76 FTE. Nonetheless, the agency structure remains very lean. The agency is also experiencing the challenges that often come with succession planning, and will have to dedicate additional time and resources to the development of plans to support management and staff, and to preserve institutional knowledge, as the agency prepares for the years ahead.