

Members

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



Ex-Officio Member

Chief Justice Paul J. De Muniz

Executive Director

Ingrid Swenson

PUBLIC DEFENSE SERVICES COMMISSION

PUBLIC DEFENSE SERVICES COMMISSION MEETING

Thursday, April 10, 2008
9 a.m. to 1 p.m.
Jury Room
Jackson County Justice Building
100 S. Oakdale Ave.
Medford, Oregon 97501

AGENDA

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| 1. Action Item: Approval of the Minutes of PDSC's March 21, 2008 Meeting
<i>(Attachment 1)</i> | Barnes Ellis |
| 2. Presentations on Public Defense Delivery in Judicial Districts 1 and 14
<i>2 and 3)</i> | Invited guests and audience members <i>(Attachments</i> |
| 3. Key Performance Measures – review of Proposed New Measures | Kathryn Aylward |
| 4. OPDS's Monthly Report
<i>(Attachment 4)</i> | OPDS's Management Team |

Lunch will be provided at the end of the meeting for Commission members.

The next meeting of the Commission will be on May 8, 2008 from 9:00 a.m. to 1:00 p.m. at a location to be announced in Salem, Oregon.

Attachment 1

PUBLIC DEFENSE SERVICES COMMISSION

MEETING MINUTES

Friday, March 21, 2008
9 a.m. to 1 p.m.

First Floor Conference Room
Aldrich Kilbride & Tatone LLC
1011 Commercial St., NE
Salem, Oregon 97301

MEMBERS PRESENT: Barnes Ellis
Shaun McCrea
Mike Greenfield
John Potter
Hon. Elizabeth Welch
Chief Justice Paul De Muniz

STAFF PRESENT: Ingrid Swenson
Kathryn Aylward
Paul Levy
Becky Duncan
Billy Strehlow

[The meeting was called to order]

Agenda Item No. 1 Approval of Minutes of PDSC's February 14, 2008 Meeting

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

Agenda Item No. 2 Delivery of Services in Post Conviction Relief Cases – Commission Discussion

Ingrid Swenson summarized the testimony of the witnesses at the March 21, 2008 Commission meeting and the recommendations that were made for improving the delivery of public defense services in these cases. Speakers recommended that a special PCR unit be formed within the Office of Public Defense Services (OPDS), that performance standards be adopted for lawyers practicing in the area, that a change to the venue statute be considered that would permit more cases to be heard in the county of conviction, and that judges on the regular trial bench be assigned to post conviction cases. She also noted that Federal Defender Steven Wax had recommended that the pleading process be changed so that the petitioner would not be required to identify the claims before the appointment of counsel. Once appointed, counsel would have a reasonable time to identify the claims and submit affidavits and other documentary evidence in support of them. This would eliminate the need for the state to depose the petitioner regarding the claims. He recommended that the practice of simultaneous briefing be changed. He urged that the entire PCR "culture" be changed so that PCR cases are treated more like other civil cases.

Commissioners discussed the likelihood of the legislature approving a policy packaged to create a special PCR unit at OPDS, OPDS's efforts to provide coverage through private contractors, and the need for attorneys to have access to civil litigation experts.

Jim Hennings noted the importance of investigation in PCR litigation.

Staff was directed to follow up on the recommendations and to bring its proposed service plan to the Commission for further discussion and review at its June or July, 2008 meeting.

Agenda Item No. 3 Approval of Service Delivery Plan for Judicial District 15

Ingrid Swenson reviewed the testimony presented to the Commission at its August 2007 meeting in Coos bay and provided updates from both Coos and Curry Counties regarding funding for public defense contractors under their current contracts and changes that have occurred as a result of the additional funding.

Commission members concurred in the staff recommendation that structural changes were not needed in the public defense delivery system in this judicial district.

MOTION: (TAPE STARTED LATE) John Potter seconded the motion [to approve the Coos and Curry County report]; hearing no objection, the motion carried: **VOTE 4-0.**

Agenda Item No. 4 Contract Approval – Blue Mountain Defenders

Kathryn Aylward provided the commission with additional information about the Blue Mountain Defenders that she obtained from consortium members and from others involved in the local court system. That information indicates that the members are satisfied with the structure and operation of the consortium and that the community has seen a positive change in attitude and performance by the administrator. She recommended that the Commission approve the proposed contract.

MOTION: John Potter moved to approve the contract; Shaun McCrea seconded the motion; hearing no objection, the motion carried: **VOTE 5-0**

Agenda Item No. Executive Director's Work Plan for 2008

Ingrid Swenson provided the Commission with a status report regarding her work plan for 2008. The Commission approved the plan and advised her they would review it again at the end of the year.

Agenda Item No. 6 OPDS's Monthly Report

Rebecca Duncan presented a report on developments in the Appellate Division. She advised the Commission that a petition for certiorari had been granted by the United States Supreme Court in *State v. Ice* and described the office's plan for briefing and presenting the case. She noted that the Appellate Division now has monthly all-staff meetings and will be releasing its completely revised Attorney Manual at the next staff meeting. She discussed current vacancies and reported that two very experienced former Deputy II attorneys will be returning to the office in April. She also advised the Commission of the Court of Appeals's new briefing schedule and the Appellate Division's plan for meeting the new timelines.

Kathryn Aylward discussed the creation of the Juvenile Appellate Section and identified the three attorneys hired to staff the section. She discussed the state economist's outlook for the Oregon economy and the potential impact on the 2009-2011 budget. She noted that the legislature had not approved distribution of the "salary pot" at its February session and that it

would be considering what if any portion of the amount would be distributed to agencies after the June forecast. She discussed the changes that the Budget and Management Division is making in the budget process for the next session and changes to PDSC's key performance measures that will be presented to the Commission at its next meeting.

Commissioner Greenfield reminded the Commission of the funding required for schools, prisons and the Oregon Health Plan and anticipates that the legislature will have diminishing resources in upcoming sessions to fund other programs.

Paul Levy described the work of the Post Conviction Relief Task Force and the results of OPDS's statewide survey on the performance of its contractors.

Ingrid Swenson summarized the work of the small advisory group that was exploring the creation of a Commission sponsored loan repayment or forgiveness plan and explained that in view of new and pending federal legislation and obstacles to the creation of a program by PDSC, the group recommended that the Commission not fund such a plan at this time. She also discussed revisions to OPDS's organizational chart.

Kathryn Aylward noted that John Borden would be the new legislative fiscal officer assigned to PDSC and that the former fiscal officer, Robin La Monte would be assisting in the transition and would be available during the next legislative session.

Chair Ellis expressed appreciation for Ms. La Monte's attendance at PDSC meetings.

The meeting was adjourned.

PUBLIC DEFENSE SERVICES COMMISSION

UNOFFICIAL EDITED TRANSCRIPT

Friday, March 21, 2008
9 a.m. to 1 p.m.

First Floor Conference Room
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1011 Commercial St., NE
Salem, Oregon 97301

MEMBERS PRESENT: Barnes Ellis
Shaun McCrea
Mike Greenfield
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Hon. Elizabeth Welch
Chief Justice Paul De Muniz

STAFF PRESENT: Ingrid Swenson
Kathryn Aylward
Paul Levy
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Billy Strehlow

TAPE 1, SIDE A

[The meeting was called to order]

Agenda Item No. 1 Approval of Minutes of PDSC's February 14, 2008 Meeting

001 Chair Ellis The first item is approval of the minutes of the February 14 meeting where I failed to be present. Does John or any of those that were present have any additions or corrections to the minutes?
MOTION: Shaun McCrea moved to approve the minutes; John Potter seconded the motion; hearing no objection, the motion carried: **VOTE: 5-0.**

Agenda Item No. 2 Delivery of Services in Post Conviction Relief Cases – Commission Discussion

007 Chair Ellis Item No. 2 is the first cut at the PCR document. Again, I apologize for not being here at the meeting but I did read the transcript and I did read the document. I have to say that it sounded like a very productive meeting. Ingrid, do you want to kind of walk through the draft and then we can see where that takes us?

015 I. Swenson I can certainly do that, Mr. Chair. The draft report, and certainly much of the testimony that the Commission heard, focused on what the problems are but I am assuming everybody is pretty familiar with those. There are quality issues and apparently some system issues, and the question becomes, "What kinds of responses are appropriate and what can the Commission do to achieve those changes?" Among the recommendations that Commission members heard last month was continued support for the idea of a specialized office, probably

located at OPDS, which would include full-time state employees handling trial level post conviction relief. That had been recommended by the earlier task force. As you know, the Commission has supported a budget package to that effect on a couple of occasions, and many of the speakers who appeared last month also felt that that was a good direction to go. Certainly creation of performance standards is another thing that can and, in fact, is being pursued. The bar has convened a task force and, by the way, Sally La Joie from the Oregon State Bar is here today. She is our new liaison with the bar and has been helpful in putting together these kinds of projects in the past. Paul Levy is staffing that group. Many of the people who testified are serving on that work group. They will create performance standards for attorneys in PCR cases and they also see it as their obligation to make some additional recommendations beyond the performance standards, in terms of what would need to change in order to achieve higher quality representation. Chief, I don't want to summarize your ideas since you are here and can certainly do that, but, I had the opportunity to sit down with the Chief Justice after the last meeting and talk about some of the testimony that was presented and he suggested a couple of things. One was to look at the qualification standards again and decide whether in death penalty cases at least, we shouldn't raise the standard for the lawyers who do that kind of work. He was thinking specifically about requiring attorneys who handle death penalty post conviction cases to be experienced in the trial of death penalty cases as a precondition.

- 051 Chair Ellis Have we had instances where the handling of PCR at the state level caused a loss of access to the federal habeas that follows?
- 053 I. Swenson Mr. Chair, I can say with certainty that that is correct. I can't give you any numbers. If Steve Wax were here he could tell you how often that has occurred and I can ask him to do that, but yes, that is a frequent problem and one of the reasons that he continues to seek improvement in the state system.
- 058 Chair Ellis I knew it was a risk, but you are saying ...
- 059 I. Swenson It has occurred but I can't tell you how often. Maybe somebody here has some more direct information about that. The other thing that the Chief Justice talked about was providing additional training for attorneys. The Oregon Criminal Defense Lawyers Association had a half-day training on Friday of last week which was apparently well attended by PCR attorneys. It included a discussion of current case law and ways to provide high quality representation. I think, John, you ordinarily do that every two years, is that right? Aside from that there isn't a great deal available to these lawyers so there is certainly room for some additional training. The Chief suggested that it might be appropriate to have mandatory training in post conviction relief so that qualification standards themselves would set forth the kind of training that these attorneys needed to have in order to practice in that area. Some of the other things that you heard about last month were a proposal for a change to the venue statute so that more of these cases would be heard in the county of conviction as opposed to the county of imprisonment. Most of the speakers endorsed the idea that the more judges who hear these cases and who hear them as part of a whole spectrum of cases that they are hearing, the more likely they are to give good attention to these cases, to treat them like other civil cases instead of like a special category of cases.
- 083 Chair Ellis Currently, if I understood the report, the judge in the county of incarceration has discretion to transfer to a different venue?
- 085 I. Swenson That is correct.
- 085 Chair Ellis Is that done very much?
- 086 I. Swenson I can't answer that question and again, if somebody can, I am hoping for a volunteer.

- 088 S. Gorham Very, very little.
- 088 I. Swenson It would be done, I assume, when there are a significant number of witnesses or someone else who would be inconvenienced by having to come to that forum. But they present so much of the evidence by deposition and affidavit that witnesses rarely, actually attend but, of course, that is one of the problems. Maybe they should be present more often.
- 093 Chair Ellis What are you suggesting? That they have a change in the venue statute to always make it where the original trial took place? I could see that being just as arbitrary as always having it where the incarceration is.
- 098 I. Swenson I am not necessarily making any recommendation today. One of the speakers last month said that it was his belief that having these dedicated judges was a good thing. That they understood the cases and knew what they were doing with them so it is not a unanimous opinion. I think there would be some challenges to changing the venue statute. I think the Attorney General's Office finds it convenient to try them all from a central location, obviously. Since they are carrying the brunt of the workload in a lot of these cases I can understand that. The legislature has amended the PCR statutes on a couple of occasions. It is a fairly contentious area once you start talking about it. I don't know where the proposed amendments to those statutes would necessarily end up. It is not a process I think you should pursue unless a compelling case is made that venue is at the heart of the problem. It may be appropriate to await the recommendations of the task force. I think they will look at venue in that work group as one of the issues that need to be addressed by their recommendations and we can see how they feel about it. Another recommendation was that the procedure should be standardized. The judicial officer you heard from has created some rules for the two courts where he has been sitting in Umatilla and Malheur Counties. Not everybody was pleased with all of those rules. I think practitioners would want to be heard with respect to the content of any uniform set of rules, but it sounds like that might be another direction that the system could go. One of the documents I have put on the table this morning is an email that Shaun received from Steve Wax with some additional thoughts he had about directions for PCR cases. He described how the procedure should look. It would involve a very precise set of pleadings and some kind of law change that wouldn't require the petitioner to identify all of the issues. It would allow the attorney to file an amended petition in a reasonable time which addressed all of the issues. I think he was thinking four to six months. I believe the new rules in eastern Oregon set a 120 day maximum for the amended petition to be filed which may be too short a time frame in some people's judgment.
- 137 Chair Ellis Reading between the lines it struck me that the reason there are only six or seven hundred cases is the requirement that the prisoner prepare the petition, which is kind of cynical, but I can see the risk if you went the other route that says a lawyer gets appointed and gets six months to put together a petition, wouldn't every prisoner always seek PCR?
- 144 I. Swenson Mr. Chair, and some of your Commissioners can comment on this too, but I don't believe so. I think the situation now is that prisoners, certainly those in the state institutions, understand enough about the process just from talking to other prisoners that they know that all they have to do is get something on paper and it isn't going to be the final pleading in the case. But they are also aware from the federal defenders' input that they need to list everything they possibly can. So they do that. But they know that the petition is just the mechanism for getting the action started and that counsel will then be appointed for them and they will have the opportunity to amend the petition. But the tension arises, I think, between the client and the attorney when the attorney says, "You know I am supposed to sign this pleading and say that I think these are arguable claims, but I can't do that because you have put in this laundry list." And the prisoner says, "Well, I am required to do that in case one of those is valid and you leave it out then the courts down the line are going to say I have waived that claim." Maybe if lawyers had more time and more resources before they filed the amended petition they could do a more thorough job of getting to the heart of the matter. Mr. Wax also talked about one of

the issues that the Attorney General’s representatives raised too and that was that essentially the state is doing the work of the plaintiff in the case. It is not desirable from the petitioner’s point of view to have the state basically controlling all of the evidence and taking the deposition of the petitioner. But from their point of view they have to nail down these issues at some point and that is the way that they do it, by deposing the petitioner and saying, “Okay, now tell me is there anything else that you have to complain about? No. Good. Thank you.” And then they submit the deposition and it is often the only evidence in the case. Ideally, not ideally maybe, but appropriately, as Mr. Wax would say, it should be the petitioner whose is saying, “Here are my claims. I am submitting in connection with these claims, affidavits and other pieces of evidence that will support them,” so that the burden is not on the state to eliminate potential claims by deposing the petitioner. Then the other recommendation was the briefing. They do simultaneous briefing in these cases which seems like a waste of effort on all sides because again, the petitioner, like the plaintiff in an ordinary civil action, should outline his or her case and then there should be a response instead of these cross pleadings. There was a suggestion that there might be an accelerated process for average cases, but that there should also be a way to designate a complex case so that it could be handled differently and potentially under a different time frame. There was a suggestion that holding a status conference might facilitate better practice. On the quality front there was a recommendation that there be peer review of providers, that they receive increased resources and training and I think Steve Wax summarized it well when he said, as much as anything it is a cultural change that needs to take place among all those who are involved in this process. It may start with the petitioner and the petitioner’s attorney pursuing these cases more like ordinary civil lawsuits. I think that is where we are.

201 Chair Ellis

Chief?

201 Chief Justice
De Muniz

I think that Ingrid’s summary of our conversation was exactly accurate. I do believe that we ought to think about qualification for lawyers and really working our way through that. I think that is an important thing along with all the other resources we need to devote to that. I am in favor of a central panel that would do that. Interestingly enough, I explained to Ingrid in my first job as a public defender here in Salem, we actually did post conviction cases at the trial court level. We did felony appeals and post conviction trials.

212 Hon. Elizabeth
Welch

Question. Given our prior efforts of trying to pull together the needed resources, would the legislature support a highly professional single vendor?

215 I. Swenson

The legislature? Policy packages ordinarily fail in the legislature. Unfortunately it is very difficult to persuade them that there is something they should fund that they don’t have to fund. One mandatory budget component is the essential budget level. When they know that your essential budget level is X and then you say, “Oh by the way, I would like A, B, C and D as well.” They say, “Thank you.” It is uncommon for them to fund policy packages but perhaps we haven’t made as compelling a case as we need to.

223 Hon. Elizabeth
Welch

Is it really more expensive than what we do now?

226 I. Swenson

It is, Commissioner Welch, and I will ask Kathryn to tell you a little bit more about that.

226 K. Aylward

It would probably be about double the cost to use state employees.

231 Chair Ellis

I did understand we were doing something like this. We are concentrating the work at the contract level?

- 232 K. Aylward We are hoping to. We entered into contracts with a couple of attorneys, one of whom is Noel Grefenson. We approached him quite some time ago about putting together a unit where he would train, and have additional attorneys, and that there would be a sort of PCR central office. Although he was interested, he felt as if he wanted take a few cases from eastern Oregon himself before committing to something like this. We entered into a contract with Richard Cowan to do the same thing. They each now have a caseload of post conviction relief cases, a component of which are eastern Oregon cases as well as Marion County cases. I am hoping that we can work with them and say, "Get together, form a unit, bring in more people and do some training." My preference would be to have it in our office.
- 245 Chair Ellis I understand that. I thought, at least, the bandage approach we have been doing ...
- 246 K. Aylward It is an improvement.
- 246 Chair Ellis Shaun, you are the expert. You have been in active in this area for quite a while. What are your thoughts?
- 248 S. McCrea I think Ingrid succinctly summarized the issues we talked about.
- 251 S. Gorham One of the things that I think is important, and I am directing this to Chief Justice De Muniz, Judge Hargreaves's rules are going to make it hard - and they are going to go into effect - are going to make it extremely hard to, at least in my opinion and I think that of a lot of people who are practicing in this area, to go forward rather than backwards. His rules seem to go a little bit backwards. I think his rules would be somewhat the opposite of Steve Wax's point about giving the person their day in court or letting them feel that they have had their day in court. I am not sure what kind of influence this body or Chief Justice De Muniz can have on that, but I think those rules will have a negative impact. I have talked with several people from the valley who have done PCR cases in eastern Oregon. They are basically saying that, "I may not do them anymore over there." It is basically fighting the court.
- 269 J. Hennings Barnes? I was unable to be here at the meeting where this was talked about this. Some information I think needs to be remembered - the original State Public Defender's Office was founded around habeas corpus and post conviction. In fact, they cleaned the penitentiary out. I worked in that office as a law student and actually did investigation on some of the post convictions cases.
- 275 Chair Ellis This was Larry Ashenbrenner?
- 276 J. Hennings We investigated those. We would get a kite and we would go out and investigate. I remember I investigated a murder case from 1933 in Coos Bay in which we went down three different times to investigate that case and ultimately got a reversal on post conviction. The thing that has been lost in this state when the State Public Defender stopped doing it was the concept of investigation. Instead you just look at the paper record. You have to investigate where the case was tried. You basically have to start the case all over again and that is why it is very expensive. We looked at and actually made a proposal which was turned down by this group, simply because it was too expensive because I put a very strict limit on how many cases could be handled and a huge requirement in terms of investigation. The venue issue I think is very, very important because that is where you have to investigate, but you also have to have access to your client and it is very difficult in the present situation with clients scattered all over the state because that is where DOC puts them, but where do you put the attorney? Where do you put the investigator or do you even have an investigator? I think there is a good issue if no investigation has been done on a case; I think that is per se non-quality representation. You have to go out and you have to actually look as if you were going to try the case from the start. I think it will be expensive. I think it ought to be expensive.

- 299 Chair Ellis What you are really saying is even if we succeeded in getting a PCR unit it would need more than lawyers?
- 301 J. Hennings That is part of it because you know you can't put on a plaintiff's case without investigating the facts first. To ask it to do anything else, I think you would be better off not doing it at all. In retrospect, I think maybe the better solution would be to let the federal court handle all of these simply because we can't do it right in this state.
- 307 Chair Ellis Stay with that issue for a minute. I mentioned this earlier. It is very troubling to me if our insufficiencies in the PCR area are costing, particularly in the death penalty cases, access to the federal process. That is just the baseline that I think is intolerable. Where are we on that? What are we doing? Let's stick with the death penalty people. I would like to think we are not in jeopardy of (inaudible). Have we had that happen in the past?
- 318 I. Swenson Let's see, Mr. Chair, a couple of comments. The Federal Defender's Office has done a good job of communicating with prisoners, certainly death row prisoners and others, about the importance of preserving their ability to be heard in federal court. So that is a part of the conflict between the appointed state lawyers and the petitioners is that they are fairly well aware of their obligation to preserve these rights. We do have concerns about some of the attorneys who are doing death penalty PCR. It has been an extremely difficult area in which to find a sufficient number of qualified attorneys. I think Kathryn probably has at least two cases now awaiting appointment of counsel. That is because counsel who have been authorized or approved to handle these cases are busy with other matters. We do not currently have attorneys whom we consider qualified to handle the cases available. We are trying to make sure we wait until there is such an attorney instead of just finding any attorney who is willing to handle the matter. It is an issue and there are some cases currently in the system in which we have significant concerns about the quality of representation that is being received by clients on death row.
- 345 K. Aylward One of the things our office is doing is we are looking to our pool of death penalty contractors and trying to encourage some of them to accept post conviction relief death sentenced cases. Under the terms of their contract they are currently taking some non-death sentenced post conviction relief cases, so they can get some experience doing post conviction. We are also trying to team them up with some of our specialists such as Mark Sussman. He takes post conviction relief and does an excellent job. We really are trying to bring on a crop of attorneys willing and able to do this.
- 356 I. Swenson An RFP is scheduled to go out shortly.
- 357 K. Aylward I hope on Tuesday. We have to put out a request for proposals for death penalty cases partly because the Marion County contract used to include aggravated murder as a case type under its contract, and it no longer does, so that is sort of a hole in our provision of services. We are going to issue a request for proposals that covers not just trial level aggravated murder, but death sentence post conviction relief and appeals of death sentences. Hopefully, we can generate some interest and response.
- 366 Chair Ellis If I understand it the PCR appeals are fairly concentrated now.
- 369 K. Aylward I'm not sure I understand what you mean by fairly concentrated? Do you mean not very many of them?
- 369 Chair Ellis The consortium.
- 371 K. Aylward I'm sorry. I was thinking of death penalty. That is correct. Non-death penalty post conviction relief appeals are handled by the Oregon Appellate Consortium.

- 372 Chair Ellis That has been something that we are generally satisfied with?
- 375 K. Aylward I believe so. They have been successful actually and again I am not an attorney so I don't always understand the implications of all this, but I get phone calls that say, "We won. We had a group of cases and won on appeal and they are going back," so I don't have any complaints.
- 380 I. Swenson There is a bar complaint pending against one of the attorneys, a significant bar complaint with multiple cases involved. It is not without difficulties.
- 382 Chair Ellis A complaint on neglect?
- 384 I. Swenson Yes. Largely.
- 385 Chair Ellis I didn't understand what the thought was with respect to the AG taking these depositions. Steve Wax was recorded as saying that that shouldn't happen, but I am sitting here and thinking it is a civil proceeding. Why shouldn't it happen?
- 389 I. Swenson Mr. Chair, I don't think he was suggesting there was anything wrong with it and that they do need to do it under present circumstances. I think he is urging the petitioner's counsel to be more aggressive as plaintiff's lawyers and to identify the claims, submit supporting evidence for the claims, so that the client isn't the only source of information about what the claims are in the case. Steve, any further thoughts?
- 396 S. Gorham I think there are different philosophies in dealing with the deposition of your client in regard to those PCR claims. A lot of the claims are determined both by the good attorneys who are doing them and the client. The client doesn't necessarily understand the good claims and again, I think that is a philosophical thing. Do you put up the client who is going to be deposed and have him put his case on the line at the deposition rather than at the trial? The state obviously wants to put it on at the deposition rather than the trial.
- 407 Chair Ellis It did strike me as curious because in a normal civil practice it is very common for lawyers to object. "What is your complaint?" The lawyer will say, "Talk to me if you want to know what the complaint is. You can ask him the facts."
- 411 Chief Justice De Muniz Ask him the facts. You don't have to characterize your legal claim.
- 414 S. Gorham The deposition questions, frankly, are usually in terms of the claims, not the facts. In the ones I have had I have done what you just said, objected to it. You get into a very heated wrangle with the state's attorneys.
- 419 Chair Ellis What are the judges doing?
- 420 S. Gorham What happens is that the state's attorneys threaten to take it to the judge and then they never do. I am not sure what the judges would do. I think in all the post conviction cases I have had we went to the judge once and that was a while back.
- 426 Chair Ellis What do we provide by way of investigative resources?
- 428 K. Aylward The same standard - reasonable and necessary. But it is driven by the attorney who has to make those requests. If we get the request, and it is fundable, we fund it.
- 432 S. McCrea I think there is another issue that we need to consider which you have kind of touched on, Chief, and that is considering whether we need to partner the PCR lawyer with somebody

who is a civil lawyer. That has been one of the issues. Really good criminal defense lawyers don't know how to do civil practice.

438 Chair Ellis

I know the reverse is true.

439 S. McCrea

I don't know, I am not that good at civil practice. My legal experience in civil practice has been in handling civil forfeitures. After what you were just saying about objecting to the issues in the complaint versus the facts I went, "Oh, I am going to stick that one away." It seems kind of obvious now that it is out there. But if I don't know I am sure there are lots of other criminal practitioners who don't know. I think that is an area in which we should think about providing some kind of support. I am not sure how we do that. Is it a mentoring thing or would it be a consultation like having the PCR attorney consult a civil practitioner as an expert. I am sure that we are trainable. I am not doing PCR myself, but I am just saying I am sure that practitioners are trainable. They are different rules.

452 Chair Ellis

It would be easy to train the criminal lawyers how to use the civil rules.

454 S. McCrea

I am not judging on the other way around, but I think that would be really helpful. I didn't make it to the conference, John. I know that that was something that was touched on at the conference two years ago - hammering into people's heads, "This is the civil proceeding. The rules are different and you have different tools in the box and you can do different things." With the complexity of the cases, the press of time, the lack of investigation, all of those things - now I am sort of speculating - but I think they get a little overwhelmed. I think that would be someplace that we could help them and that is also part of what Steve Wax talked about - a change in the culture.

468 Chair Ellis

How should we proceed from here? I always hate these issues where we talk, we see a lot of ideas, we put them on a piece of paper, we go to the next subject and nothing happens. It does strike me that about half of what you talked about are structural issues that require either legislation or rule changes or something like that, and about half of what we talked about are issues that are more typically the kind we can deal with in terms of getting the right people doing it.

480 I. Swenson

Mr. Chair, a couple of thoughts. One would be that we schedule a time in the near future to come back to this issue. In the meantime, we will want to await the recommendations that the task force is going to make. I think they will be very useful and we will want to explore those. Kathryn is already working on our budget, of course, for the next biennium, and I am sure we will be recommending a budget package to you on post conviction relief again. It will be a matter of doing our best to present the critical need for it to the legislature and do some preliminary work on that. I think we continue to work on these other pieces as we can. This RFP is a good opportunity to do some more direct recruiting. I think - although we don't offer handsome pay, it should be enough to allow us to approach attorneys individually and inquire whether they would be interested and available. I like Shaun's idea of looking into providing civil practice expertise to lawyers in this area. I am not sure how we undertake that but it is certainly worth looking at. I am sure the task force could consider something like that as well. I guess I would propose, unless there is some further direction you would like to give us, that we postpone further discussion until maybe June or even July.

507 Chair Ellis

When I asked earlier, "Are we actually losing rights for people, particularly death penalty people", I realize we probably don't have that information here but I really would like to know that. I think if that is happening still, and Steve's office should be able to tell us, I would like to know it and I think we ought to do what we can to address it. I think that is a very compelling statement to the legislature. To me that is just horrible.

- 519 Hon. Elizabeth Welch I just hope we are not going to limit it to death penalty clients. Anything they can give us about the quality of representation.
- 523 Chair Ellis Chief Judge Reinquist wrote an opinion about 10 years ago that made it clear that you don't get access to the federal court if you didn't preserve the issue it in the state court.
- 527 Hon. Elizabeth Welch Right.
- 527 Chair Ellis One can argue whether that was a good decision or not, but it is out there and I think our first duty is to do no harm.
- 533 Hon. Elizabeth Welch I am a little hesitant to say this and should probably check with somebody before I do, but I am going to do it anyway. From a trial judge's standpoint this issue is very painful because it doesn't happen every day and I didn't do criminal work enough to talk about it. I did juvenile work. The issue of having good lawyers is the greatest frustration for a trial judge. "Oh my God, I actually had a trial today with two competent, aggressive lawyers." What a joy and I am not being facetious. It is a problem. There are a lot of lawyers out there in all parts of the practice of law. A trial judge can't always tell, particularly in a criminal type case and I use my juvenile experience as a basis for that, whether the lawyer has done a good job or not. It is hard to tell. You can tell sometimes. How many judges declare a mistrial because of their own perception that this person hasn't been adequately represented? We think about it. We talk about it among ourselves. It is an issue but it is mysterious, just like this whole process of having the defendant be the one to identify what was done wrong. The trial judge can't tell either. There aren't a lot of perfectionists. The other thing that I want to say on a different path is that the main thing I have learned from being on this Commission so far, and I have been wide-eyed - it has been a fabulous experience for me, very humbling to see what resources are available in the outlining parts of the state. It is breath stopping. What I heard from Judge Hargreaves and from other people last time was that the quality of representation that people are getting in eastern Oregon, in PCR, is terrible. That is what I heard. I don't know if you can start with an attorney who is doing a terrible job and give him a referral to a civil lawyer and have a competent lawyer on hand. I don't know any of these people and I am not bad mouthing anybody but it just seems like you can't fix a system where the lawyers are characterized that way with a bandage here or a bandage there or a referral. I am hoping, and I realize this is not going to be easy, but I am hoping that we can do a really good job this time around making clear to the legislature what is at stake here. That it is not just a bunch of guys who don't have anything better to do.
- 588 Chair Ellis What is the thinking on the venue issue? I hadn't realized there was a problem out there. Where do you see us going with that? I recognize the problem. It used to be that everybody worked in Marion County. The old venue statute had it where their incarceration was. For us to find lawyers in Umatilla County in sufficient numbers with the qualifications to do them is not easy, but I am also assuming that with current technology the courts are more able to have lawyers do it through video and not have a person appear. How is that playing out and what do we see as the answer?
- 605 I. Swenson Well, I can certainly give you my thoughts Mr. Chair. I think other people might have different ones and the task force will, as I say, provide a recommendation about where to go with that. Even assuming that this group decided that the venue statute needed changing, accomplishing that could be very difficult, especially if the state opposes it which they might based on their own fiscal needs.
- 615 Chair Ellis I think the AG would have the same issue.

- 617 I. Swenson I think they like the concentrated representation so that they can do their work in Salem, which is where all of their attorneys are located. They can do most of these cases by video.
- 621 Chair Ellis Do we prefer to have it all here in Marion County even though the prisoner is over in eastern Oregon?
- 621 I. Swenson We as a Commission?
- 624 S. McCrea I think the thought behind the venue issue is that if you are going to have witnesses, if we are going to make this a meaningful process, you have it in the place where the offense occurred, the county of conviction. Then you are going to have better access to the witnesses and to information contextually in that community and that is going to assist. I think the second part of that is that both the defendant and his attorney are at a disadvantage currently because of the video conferencing because the defendant is incarcerated somewhere. The attorney can be either with the defendant, which means that the attorney is not with the judge and the AG, or the attorney can be with the AG and the judge and not with the defendant. That is a disadvantage and then, third, is the question of the confidence the defendant is going to have in a proceeding where the judge and the AG and the attorney are all present, as opposed to being separated. I believe there is more satisfaction in the outcome no matter what it is if everyone is present in the same place. This is just me speaking. I would like to see a presumption that the venue would be in the county where the conviction occurred. Currently, it appears to me, it is the opposite. In my limited experience, from what I have seen, it is very, very difficult to get any kind of change of venue to anyplace else, if at all.
- 659 O. Thompson Having done relatively lots of post conviction, my understanding in talking to two of the trial judges in Marion County is the judges in the other counties, Lane and Klamath, don't want to handle post conviction. They do not want those things to transferred to them. I know at least one judge threatened to transfer one to the county of conviction because we were having problems getting anything from the court. All of sudden everything happened because the judge didn't want it. There are all kinds of counter values on all this process. One of the issues on the petitioner's side is that as an attorney I need to talk to my client face to face, wherever that person is. One thing is, if the venue gets changed to the county of conviction on the petitioner's side, who is going to get appointed to represent that person? Somebody from that county, where there may already be a conflict, or somebody out of Salem who has to travel to that county? Shaun has a very good point and that is biggest problem I have and why I am not going to practice in eastern Oregon. Because I can't be with the judge. The current rules say I have to either be with my client or I have to be somewhere else and I have to provide a secure phone line so I can talk to my client. I am prohibited from being with the judge.
- 693 S. McCrea And that is a disadvantage.
- 693 O. Thompson It is an incredible disadvantage. The other problem in eastern Oregon, which goes to the issue of, "Did I get a fair proceeding?" is that the judges in eastern Oregon hand the decision down at the end of the trial. Obviously, whatever was said or done at the trial didn't make any difference. At least in Marion County they take them under advisement. In part, that is because we have told the judges to take them under advisement. At least give the person the feeling that you paid attention to what they said.
- 706 Chair Ellis Steve.
- 706 S. Gorham I had a couple of things about the venue. I think it is a really complex issue. Having venue in Marion County may, in fact, be the best compromise. When you talk about only a few judges doing this, like one or two, like anybody else they get jaded. That was a problem in Marion County when we only had one judge doing it for a long time. That judge was very jaded and I don't know that anybody ever really wanted to be in front of that judge. Now, frankly, with

our present bench where we have 14 or 15 judges who are doing post conviction, that has expanded the field and that is very good. The problem I see in going back to the county of conviction, especially in a case that has any kind of notoriety, is that the pressure on that county would be extreme not to grant post conviction relief. You are basically accusing one of your fellow attorneys in that county of being ineffective. The judiciary may not pick up on it during the trial. The politics of it are extreme, both having only a few judges doing them and then going back to the county of conviction.

- 739 Chair Ellis If the trials continue to be essentially paper trials, and I don't hear a lot that says that is likely to change ...
- 742 S. McCrea I think that is one of the issues though, the paper trials, because we are not having the investigation and the work done on them that should be done. That is one of the concerns.
- 745 Chair Ellis Let me rephrase.
- 746 S. McCrea You may, Mr. Chair.
- 746 Chair Ellis So long as the trials are essentially paper trials, I don't understand the practicality of forcing venue either in eastern Oregon or the place of conviction. I could easily see thinking of this more like administrative law cases which all come to Marion County.
- 754 I. Swenson I doubt very much that Marion County would welcome more cases. As I recall, the discussion in the legislature around this issue when that change was made was that the county was hostile to that idea. Then there are the concerns of the prisons and the jails with where a person is housed and who transports them. It would open up a huge series of questions and I don't know where the discussion would end. The clear opinion that we heard from people last month was that there are advantages to the petitioner to holding it in the county of conviction, in terms of gathering evidence and, potentially, in terms of having a variety of judges hearing those matters rather than assigned judges, but how that would play out I don't know, Mr. Chair. I think it is okay to wait and see if the task force has a strong recommendation about that. We could explore with interested groups what their responses would be and then make a decision as to whether that is something to pursue.
- 785 S. McCrea Does the task force have a timeline or a meeting schedule?
- 787 I. Swenson Paul?
- 788 P. Levy No. We don't have a timeline except I think it is fair to say we feel some urgency. We do have another meeting scheduled in May. We are right now focusing our efforts on performance standards. We initially identified the need to also address systemic problems but, in fact, at the last meeting we decided to sort of do what you are doing here, we said, "Well, let's see what they say," as far as determining where we would go with our systemic look. But I think it is very much on our plate as something we are interested in doing.
- 812 I. Swenson There is a multi-disciplinary group which is ...
- 813 P. Levy Yes.
- 816 J. Hennings Barnes, I would urge you to remember that post conviction was a replacement for habeas corpus. Really it is a system on trial. One of the symptoms that we have is that it has become a paper trial. You can't try the system in a paper trial. It has defaulted to, "The lawyer must have done something bad and therefore we are going to hammer the lawyer." That is the culture that has to be changed. If it really is a replacement for habeas corpus, the question is did the system work in such a way, the entire system and not just the attorney, that a substantial constitutional right was violated. By allowing it to become a paper case, by

allowing it to only be tacked onto the quality of what the attorney did, we really miss the boat. To me that is a system that maybe we don't want. Maybe we shouldn't do this. Maybe the federal area is where it ought to be done. Either that or we have to have the resources. I go back and the first thing that has to be done is you have to investigate the cases. If you are not investigating the cases, if you are not putting a lot of resources into that, the best attorney in the whole world is not going to be able to identify where the system was really at fault.

847 Chair Ellis Any more discussion on this? It sounds to me like the next step is maybe we can do a draft of the last section based on this discussion and suggestions. Thank you.

Agenda Item No. 3 Approval of Service Delivery Plan for Judicial District 15

864 Chair Ellis The next subject is Attachment 3. Shaun, did you want to kick me in the knee yet or do you want to do Attachment 3 first?

868 S. McCrea Let's do Attachment 3 first.

869 Chair Ellis Okay. This is Coos and Curry. Ingrid, if you want to summarize where we are.

873 I. Swenson Thank you Mr. Chair. It has now been a little while since we were in Coos Bay. It was late summer last year just before the retreat in August. There certainly have been some developments since then. A lot of them are referred to in the updated draft. Paul Frasier, who addressed the Commission, was appointed the district attorney in Coos County as he was hoping and expected to be at the time he testified. Billy Strehlow is here. He is the analyst for that area. He participated in the site visit that John Potter and I did before the Commission visit and has given me some updated information about the caseload there. As we anticipated, in Coos County there was marked decrease for the last quarter of 2007 related to the fact that the district attorney was understaffed pretty significantly at that point. The observation that he makes now is that that caseload is coming back and we expect that it will continue to do so. They have filled in the staff at the district attorney's office there. I think we would say that the caseload in both Coos and Curry County is flat at this point. We don't expect to see significant additional loss of cases and also no growth in cases is anticipated. As far as the providers are concerned, one of the things that you heard in both counties was that they would like more lawyers, just more bodies to do the work, particularly in the juvenile cases when there are multiple parties. They have some difficulty providing counsel to all of them. I had actually forgotten this until I reviewed the report, but one of Judge Barron's comments was that one of the reasons he doesn't appoint attorneys for children is that he doesn't have enough lawyers to go around and he figures that of all the parties it is the children ... [end of tape]

TAPE 1; SIDE B

030 I. Swenson then of course the Public Defender's Office is a big component of that system. They are taking - is this still true, Billy? - as many cases as they can without conflict, so the only cases they don't take are the cases they can't take and the consortium takes those. Many of the consortium cases are juvenile cases because of the multiple parties. I think we can say that the priorities that the Commission established in August translated into some good benefits for the contractors in Coos and Curry. Of course their plight was pretty fresh in your minds at the time of the retreat, so maybe part of your attention was focused on the needs of these remote legal communities and what a problem it can be to get a sufficient supply of qualified lawyers there. With the public defender contract, their caseload was reduced and, in fact, it appears that it was appropriate to have reduced it because they are taking the maximum number of cases that they can. But they received an increase in compensation. It amounted to a 15 percent increase for them. As you will recall their board members and their director talked to you about the difficulty they had been having in recruiting and retaining lawyers there partly because the consortium is an attractive practice and lawyers who work for the

public defender often move over to the consortium when there is an opportunity. With the increased compensation they were able to attract an experienced lawyer to fill the vacancy they had. They were very pleased that they were able to do that. They don't think they could have done it without the increased compensation. The Coos County Consortium got an ...

055 Chair Ellis

Is that SWOPDS you are talking about?

056 I. Swenson

Right. The Coos County Consortium got a smaller increase. It was 6.57 percent but as they reported to you at the hearing, recruitment and retention were not problems for them; they were managing well in that regard. In Curry County there is a small consortium. I think there were just two members at the time you heard from John Spicer who is the administrator of that contract. They have added another attorney to the consortium and the two firms in the consortium continue to look for additional associates. They continue to have difficulty attracting lawyers to practice in the area. One of the difficulties is that these are often people with spouses and if there is employment for one there usually isn't employment for the other. From a structural standpoint I think this is probably the best possible combination of providers. I think we are fortunate to have a good public defender office down in that corner of the state doing the things that we want public defender offices to do in terms of providing training that ultimately works to the benefit of all the lawyers who practice in the area, providing good service to their clients and participation in the legal community at large, work groups and policy making groups, and so forth. That is a good thing. They are at their maximum size at this point and so a consortium is probably the best other provider to have in the region. For the most part the Coos consortium is doing good work. They have been responsive to some of the recommendations that were made to them in terms of forming a board and starting some quality control initiatives that would give them more control over who belongs to the consortium and would allow them to remove a consortium member who was not performing satisfactorily. The Curry County consortium's caseload is small. They have fewer than a 1,000 cases per year, so a consortium is probably the only provider that you can support in that area. You did inquire of the Coos County Public Defender's Office if they were interested in returning to Curry County. They reported that they were not interested in doing that. They had operated an office down there and it is very difficult to do. People didn't want to live there and commuting was simply impossible because of the distances, so they did not, and neither did anyone else, submit a response to our RFP, offering to form such an office. I think the Curry County Consortium is probably the best model there. They are also reporting that they are following up on recommendations for creating a board even though it is a very small group. They saw the benefit of doing that and of working on some other issues.

101 Chair Ellis

How does the DA staff its office in Curry County? I remember listening and realizing this really is a situation of a pocket of people that are in a position that is remote from almost any other place. It is an hour and a half from Coos to Curry. Three hours if you try to do it both ways. You have this small pocket of population so I assume that the Curry County DA is staffed somehow, why can't we kind of mirror that?

109 I. Swenson

In terms of a public defense provider?

110 Chair Ellis

Right, or a contract lawyer. To me it is probably an area that we are going to have to pay more than we would in a larger community, but we have got to staff it. It just strikes me that whatever the DA is doing we ought to be able to match that.

116 I. Swenson

In general, Mr. Chair, I believe the DA's office there is struggling significantly because of the loss of funding. Curry County is as hard hit as any county. They are at the top of the list of counties that have lost the biggest percentage of their income, their general fund revenue. When we spoke to the district attorney down there he had one other deputy, as I recall, and was recognizing that he was just not going to be able to pursue everything. I can't remember if Curry is the county that just sent child support cases back to the Attorney General's office

for prosecution. It might have been. Those are the kind of decisions that district attorneys in these counties are making right now, "I can no longer handle this part of the workload." I know there is some compensation for them if they do them but sometimes if they give it up they are in a better position to handle the balance of the cases in the county. They are struggling. But I think Kathryn and her staff viewed their principle goal in Curry County as helping to maintain the consortium. I don't know what the increase was there. I have lost track of that but Billy might know.

- 133 B. Strehlow Increase from the previous contract?
- 135 I. Swenson Yes, for Curry County. But the point is that at least we have these people. They are there and ready and able to do the job and we need to keep them there. We need to make it possible and so far.... Kathryn?
- 139 K. Aylward Eight percent.
- 140 I. Swenson Eight percent increase.
- 141 Chair Ellis The other thought I had was because the courts combine Coos and Curry we keep thinking Coos and Curry is the right place to think about, but my geography may be wrong but it is not that far from Medford over to Gold Beach. I am wondering if we are not happy with how we are staffed in this small community, maybe working something out with Southern Oregon is more prudent than pushing Coos County.
- 149 S. McCrea John knows the geography.
- 150 Chair Ellis It doesn't work? You can fly fish all the way down.
- 150 J. Potter The way to get to Gold Beach is through Coos Bay.
- 153 B. Strehlow A couple of months in the summer you can make that trek, but other than that it is doesn't work.
- 155 I. Swenson We can certainly continue to talk to the public defender in Coos.
- 156 Chair Ellis I knew there was a history and that they wanted out of it and I am not a believer in forcing them to do it. Any other thoughts or comments on Coos and Curry? I did think it was one of those areas that really appreciated our coming. They are remote. It is so easy for us to sort of forget about them, but I think it is wrong even if we don't do major structural change. I think it was a very good exercise.
- 166 Chief Justice De Muniz Our court did sit in Gold Beach in January and in Marshfield up in Coos County on a Monday and Tuesday. Every elected official in both counties attended those arguments along with over 600 high school students.
- 173 Chair Ellis They do appreciate it. Why don't we take about a 10-minute recess?

(Break)

MOTION: (TAPE STARTED LATE) John Potter seconded the motion [to approve the Coos and Curry County report]; hearing no objection, the motion carried: **VOTE 4-0.**

Agenda Item No. 4

Contract Approval – Blue Mountain Defenders

- 177 Chair Ellis The next item is Kathryn, Blue Mountain Defenders?

- 179 K. Aylward With Blue Mountain Defenders, because of the timing of the Commission’s November meeting in Pendleton it just made sense to me to delay negotiating the contract pending any decisions by the Commission. I didn’t want to commit to a contract and then have the Commission come back and say, “Here is our recommendation for service delivery,” so we agreed to a three-month extension. During that time I think we had reached the point where we just pretty much had to go ahead and move forward with a contract because in a consortium an administrator is asking his members to take cases not knowing what the rates for those cases will be, not knowing if there is actually going to be a contract. In discussions with Ingrid and also with further follow up, we decided it was a good idea to proceed with the contract with Blue Mountain Defenders. One of the issues that had come up in the November meeting was that perhaps this organization was sort of a fiefdom, so I spoke to all the peasants and they said, “Being free is not all its cracked up to be,” and the consensus was that they were happy to be members, they felt they were getting a fair shake in terms of distribution of cases. The types of cases were what they wanted, and it was working well. In addition, we got feedback from some of the system stake holders who, either through our survey or through direct contact had remarked on the change, the huge improvement. I believe one description was that someone was like an angel now, so I think calling attention to this - I think even the perception that you are difficult, or uncooperative, or unprofessional, whether it is true or not, that perception should not be there. I think tremendous efforts have been made, some fence-mending, more communication, so I am comfortable at this point in contracting with Blue Mountain Defenders. It is a significant increase. Probably the largest of all of the contracts.
- 211 Chair Ellis As a percentage?
- 211 K. Aylward As a percentage. Correct. However, there were still arguments and discussions in terms of why does the next county over get \$10 more for one case type. Even though it sounds like a huge increase it still wasn’t enough. I would recommend that the Commission approve Blue Mountain Defender’s contract.
- 217 J. Potter I’m sorry Kathryn, I missed what the increase is?
- 218 K. Aylward You didn’t miss it. I didn’t say it. It is 29.58 percent increase in values and a tiny, tiny decrease in cases, virtually flat. We also removed investigation from the contract, which was something we did with all of our contracts, unless you have an employee investigator. If you have a line item in your contract that says here is your budget for investigation and you can spend \$50,000 a year its puts an attorney in the very difficult position of saying, “Gee, if I buy some investigation then I have less money to operate my office.” We didn’t want there to be that tension, so we removed that component from the contract.
- 230 I. Swenson One comment I wanted to add to what Kathryn said is that not only was the administrator’s personal attitude toward other people reportedly improved, but the quality of representation that he was providing to children in juvenile cases was too. That was one of our principle concerns. We have heard from multiple parties that he was visiting his clients, representing them in court, and essentially doing what we had hoped.
- 236 K. Aylward The other issue was an issue of office sharing and that has now changed. I think it was Dan Stevens who had been sharing an office with the administrator, Craig Childress, and Dan has now opened his own office in Hermiston.
- 240 Chair Ellis You are pretty optimistic that this change of attitude will not go away when we approve the contract?
- 243 K. Aylward I am optimistic that this is our best choice for provision of services.

243 Chair Ellis Okay. Any further discussion?
MOTION: John Potter moved to approve the contract; Shaun McCrea seconded the motion; hearing no objection, the motion carried: **VOTE 5-0**

Agenda Item No. Executive Director's Work Plan for 2008

248 Chair Ellis Ingrid, Attachment 4, this is your work plan for the year responding to our very good session with you in December.

252 I. Swenson Mr. Chair, the only thing else I would update from the February 1 memo is that I listed this pilot project in juvenile representation and I have now met with the legislators on that. We met during the February session. They remain committed to pursuing that kind of a pilot so we will be working with them on it. We have been looking at potential sites and will be meeting again with the Department of Human Services as well as these legislators to formalize that selection. On the Quality Assurance Task Force, Jim Arneson, who chaired that from its onset back in 2004, decided that it was someone else's turn to do that and so he resigned as the chair of that task force. We certainly expressed our gratitude to him for his service. He was committed to it, involved in it, and I think very much responsible for the good process which was put in place by the task force for these site visits. Jack Morris has been selected to chair that group. We are pleased to have him there.

273 Chair Ellis Interesting how some of these really good players surface over and over again, both Arneson and Morris.

276 I. Swenson We rely on a lot of people. In terms of the work of the Commission and structural reviews, I summarized what our expectations are for 2008. We have identified each of the areas that we plan to review, including post conviction relief and drug courts, and then we have three geographic areas - Jackson and Josephine Counties next month, Grant, Baker, Harney and Malheur in the heat of the summer, and then Clackamas County in the fall, so we will be busy if we can accomplish all of those. I told you in my report that we had worked on a recruiting brochure and that little blue foldout you have is the brochure. It is not fancy, but I think it does the job, and we can produce it in-house which is helpful. I know Becky Duncan and others from the office have attended a lot of recruitment fairs and it is not helpful when other agencies come with big glossy materials and we have only our business card on the table. At least we now have a little brochure. We can work on it and we may decide to upgrade it at some point. It is useful at this point and provides information to people who are interested in working for our office or who at least want to be knowledgeable about what we do.

299 J. Potter Is it true that AD, Appellate Division, is really the new name now?

300 I. Swenson Yes. We are phasing in the use of that term and it is principally, as you know, in response to a legislative request. As we generate documents for this next legislative session that will be the term that we use. The only other thing to report is that I attended the Black Law Student Western Region Convention on the first of March and it was a very positive experience. We have so few Black law students within the state and there is significant competition for them among private law firms as well as public providers. A young woman at the University of Oregon Law School, Jimine Mode, put together a panel of lawyers from the northwest and said, "Let's get the word out to people about practicing in the northwest." There were five of us. There was a representative from Schwabe, Williamson in Portland; and then three folks from Seattle, Linda Walton with Perkins Coie, Maurine Mannix with the Washington Department of Justice, and Karen Russell with Davis, Wright, Tremaine in Seattle. We all talked about the glories of living and working in the northwest and tried to interest this group. I think there were about 25 students there from the California law schools primarily. They were a very engaged audience. Most of them had not thought about practicing in this area. I think we were able to interest them and some of them may come up and visit. One thing we decided among ourselves on the panel was what we really need to put together some material

so that when we go to these events we have some glossy photos of Puget Sound and Mt. Hood and the gorge, and cultural information about the cities and their composition and lifestyles and those types things so that people can take something away with them. It was positive. We haven't had any applicants yet. I think that brings things current.

335 Chair Ellis Any comments or suggestions? PCR didn't find its way into this but I assume that is on your agenda.

338 I. Swenson It is not there only because it is the subject of an ongoing structural review. Yes. It is a very big part of what I will be doing.

342 Chair Ellis You, I am sure know the penalty for writing a report like this in February, which is that next January we will pull it out. I thought it was realistic and we will see how we are doing a year from now. Any other comments or suggestions?

Agenda Item No. 6 OPDS's Monthly Report

351 Chair Ellis Okay. We are now to the OPDS Monthly Report.

351 I. Swenson I would like to ask Becky to start if she would. She has some things to report about the Appellate Division.

355 B. Duncan Good morning. I don't know how much of this you have already heard but our biggest piece of news from the appellate division is that next fall we will be going back to Washington, D.C. because the United States Supreme Court has granted certiorari in a case, *State v. Ice*, which is a case that we litigated through the Oregon system. The Supreme Court of Oregon found in our favor, so while we are happy to be litigating at the United States Supreme Court level, we would also have been happy if they had just left the opinion alone, but we are sure that they have taken the case to just affirm the Oregon Supreme Court and make it clear to the country that the Oregon Supreme Court ...

364 Chair Ellis Who will handle the argument?

366 B. Duncan Cert was allowed on Monday and Pete has been out of town and will be back this coming Monday. Up to this point the case has been Ernie Lannet's. He has had the case through the Oregon system and I expect that he will be doing the briefing and the argument, but a final decision hasn't been made on that yet, but I think it will be his case.

370 Chair Ellis That is pretty exciting. You guys have had – this is the third I believe?

371 B. Duncan This is the second. We had *Sanchez-Llamas* which was the international law case and that was in 2004. Before that it had been quite some time since we had been back there. It is exciting to have the opportunity to go back. This is the state's petition for certiorari and so we did prepare a brief in opposition and when we were doing that we already had a volunteer team of lawyers from our office working on the brief in opposition. We will be pulling together that team of lawyers and perhaps more within the office to work on the case. We are kind of fortunate because the briefing will be done in the next couple of months but arguments will not take place until the fall. It will either be in late October or early November. We will have plenty of time, a lot of time, to do moot courts. Ernie has already established connections with Jeff Fisher. Just as background, the *Ice* case relates to – it is kind of the next in a series of cases filed after *Blakely v. Washington*, which relates to what facts have to be found by a jury as opposed to a judge. The *Ice* case in particular relates to consecutive sentencing. Under Oregon law, facts relating to consecutive sentencing previously have been found by a judge and the Oregon Supreme Court held that under the Sixth Amendment those facts have to be found by the jury. That is a Sixth Amendment, federal question that will be before the Supreme Court. Jeff Fisher used to be an attorney in

private practice up in Washington. He is now at Stanford University's Law School and he runs their Supreme Court clinic. He litigated not only *Blakely*, the jury finding case, but he also litigated *Crawford v. Washington*. He is a very experienced and successful Supreme Court litigator.

- 400 Chair Ellis He is going to help with the moot courts?
- 400 B. Duncan He is going to help with the moot court. Ernie worked with him when we were doing the brief in opposition and so he will be working with us and helping us manage, collecting organizations or people who are going to file *amicus* briefs, managing all of that, kind of vetting it with other people who have volunteered to assist us on it. We have already arranged for a moot court at Georgetown, Georgetown's Supreme Court clinic. They moot about 90 percent of the cases that go before the Supreme Court. We will be going back there probably a week before the argument.
- 410 Chair Ellis Are there *amicus* briefs?
- 411 B. Duncan I am sure there will be *amicus* briefs and we will have an in-house coordinator to work on that and also work with Jeff Fisher in figuring out how to manage the case. The issue is whether consecutive sentence findings have to be found by a jury. That has actually been presented to the Supreme Court in several other petitions for cert but they haven't taken it yet. There are other people already involved in the issue. They have contacted us and we will be contacting them about *amicus* briefs.
- 421 Chair Ellis So I will say the obvious which is, on the one hand I think it is great from the standpoint of morale and people feeling like they have a chance to influence major issues. On the other hand I hope you don't devote the entire office to this one case.
- 426 B. Duncan No. We will have a team of people who will be working on it and it is definitely something that we got thanks and condolences about at the same time when people found out the Supreme Court had taken the case. That is how we feel about it. It is a significant undertaking and a lot of work.
- 432 Chair Ellis It is a great experience and I wish you well.
- 433 B. Duncan That is the latest big thing that has happened in the office. In terms of the regular functioning of the office, as you remember from last fall, one of things that has been important to the management team is to improve communication within OPDS and between Appellate Division Management and our staff. We are having monthly all-staff meetings. We started that in January. We have made efforts to improve the infrastructure in our office. As you also know we added two new managers to work with Pete and me. We have now come up with a division of labor so that certain categories of tasks fall to identified people which will help us be more organized and efficient. A month ago we announced those at our staff meeting, and at the upcoming staff we will be releasing our attorney manual which has been a project that we have been working on for quite a long time. It will still be a work in progress. It provides general policy and practice guidelines with some specific explanations of how to handle questions that come up regularly. I think the existing one was probably in the neighborhood of about 30 pages. This one is much more detailed and covers many more topics. Right now it is probably about 125 to 150 pages. We are trying to create something that will be useful desk reference for all of our attorney staff.
- 457 Chair Ellis Are all of the open positions filled?
- 458 B. Duncan Two are still vacant.
- 461 Chair Ellis In appellate or juvenile?

- 462 B. Duncan One is vacant in juvenile right now and then we have two in adult criminal appellate. One position is vacant now and we have an attorney who is moving back to Washington, D.C. and her position will be vacant in July. We have hired two attorneys to come to the office as Deputy IIs. Those attorneys are Ingrid MacFarlane and Mary Reese who you might know. They were with our office for many years, left about five years ago, and we are really excited to have them back. We are excited that they want to return to the office and think it is a good place to work and also because they are coming in with significant experience. These are people who have handled death penalty cases, people who have had extensive Oregon Supreme Court litigation experience, and they will come in and really help us out. They will come in ready to go as experienced appellate practitioners, so we are really, really, happy to be welcoming them back. They will be starting in April. That will fill two appellate positions. We have two more that we will be filling in the fall. We will be opening recruiting the end of this month and we will be filling positions probably in the fall. We will be interviewing people who are completing clerkships or just graduating.
- 488 Chair Ellis Does it still feel like a buyer's market?
- 489 B. Duncan We are really happy. As Ingrid was mentioning, we are really happy with the people who we are meeting at job fairs and we think that we will be able to draw from a really good, strong pool of applicants. We are pleased with the quality of folks that we are seeing.
- 493 Chair Ellis What is the status of the backlog?
- 493 B. Duncan The status of the backlog – there has actually been a new development on that front.
- 496 Chair Ellis I well remember Kathryn promised that it would all be gone soon.
- 497 K. Aylward It depends on how you define “all,” because it is a sliding scale given the Court of Appeals ...
- 498 B. Duncan What the Court of Appeals has done - as you will recall there is a point, an age, at which the Court of Appeals said the case is no further extensions or “NFE.” As of December last year that NFE date was 350 days. In January they moved it to 300. In the beginning of March they moved it 250. Our backlog has been defined as 210. What has happened is that the court's sliding back of their NFE date is absolutely forcing our backlog out because it is just simply going to be very, very difficult to go beyond – well, we won't be able to go beyond - 250 days at all in Court of Appeals, which is great. They are moving the same direction that we are moving.
- 511 Chair Ellis Two-fifty measures the date from transcript to opening brief?
- 513 B. Duncan To our opening brief and it is the same for the state. What has happened over time is that our filing age has gone down and the state's filing age has gone up, but we are both subject to the new 250 NFE date. The court expects to, and we don't have a time frame for this yet, but the court expects to move it to 180 at some point. It will go from 250 to their ultimate goal of 180 and our ultimate goal has always been to file before the NFE due date because we don't want to be filing against a drop dead due date. We don't think that is good for the quality of work, so we are aiming to be at 150. Our backlog status is being driven down due to internal and external forces. Right now we are in a position where we will not be taking extensions beyond 250. We did our caseload planning and we will not be requesting any extensions beyond 250 days, in compliance with the court's new rule, and we are squared away to do that. We have attorneys in our office who are adhering to our internal guidelines and so they are filing at 150 days, which is where we want to be.
- 539 Chair Ellis Any other questions or comments to Becky? Good luck on the Supreme Court. That is exciting.

In the juvenile appellate unit, as you have heard at prior Commission meetings, we have had some difficulty filling the positions. We reopened the recruitment and we have now hired Holly Telerant, a Stanford Law graduate, she started Monday and she is filling one of the Defender II positions. We have also hired Margie McWilliams. She is a Harvard Law graduate and she is starting this coming Monday also as a Defender II, and then out of the applicant pool we selected someone, Shannon Flowers, who doesn't have the experience to fill a Defender II position so we are under-filling that position as a Defender I. We realize it is going to take more training but it gives you a nicer range of people to move through in terms of experience. The Senior Defender position is unfilled, but Angela Sherbo, under contract, is providing the services that a senior defender would provide for us. Hopefully, after Angela has spent enough time it is possible that one of the existing employees would be able to move into the senior defender position. If not, we will open the recruitment again and try to find someone. It is going to be a huge amount of work, I think far more than we thought when we said, "Oh, we'll just hire some people and do it ourselves." We have no forms, no database, no structure and principally that is what Angela Sherbo and the new attorneys are going to be spending most of their time doing for the next few weeks. So no cases come in the door until we have everything in place. It is exciting and I am looking forward to working with them to get some of that infrastructure in place. Just to give you a heads up, there was a pot of \$125 million dollars that was held back by the legislature and referred to as the salary pot. That money was set aside for cost of living adjustments and additional top steps that were provided to state employees. The plan was that in the February session they would distribute that money. Our share of that, OPDS's share of that, is about \$483,000. Then they decided, given the revenue forecast, that perhaps they weren't going to actually distribute the funds just yet. They were going to hold off and wait and see the June forecast. If the June forecast is bleak, then perhaps that salary pot distribution wouldn't occur. They have asked us to prepare plans, the what ifs. What if you only got half the salary pot funding that you were allocated and what if you got none? What would you do? How would you make up the difference? Would you have cutbacks? Would you have lay offs? What would happen? I went to a meeting with the state economist a couple of weeks back and his description of where we are right now is that if nothing changes for the 09-11 biennium, we should be able to fund 95 percent of the essential budget levels, which basically means no policy packages, nothing extra, and not even just what you need, five percent less than that, so it is not looking particularly good at this point. I think in terms of our agency my favorite way to save money, the less painful way, is vacancy savings. When Becky is talking about filling attorney vacancies we are not exactly dragging our heels, but we are being very cautious. I would rather not hire someone and then have to lay someone off because we didn't have the money. We are balancing that. I do not believe it will come anywhere near the level of lay offs. I just put that out there so that you are aware that it is something we are keeping a close eye on. DAS is doing something a little bit different this time and I think it is a huge improvement on budget development. George Naughton, who is in charge of the Budget and Management Division, has great ideas and is doing an excellent job. One of the things that they determined is that instead of saying to an agency, "Put your whole budget together, your essential budget level and all of your policy packages and hand the whole thing over to us together with your key performance measures and whatever else we require; turn it all in on September and then we will run with it," what they decided is that it might be easier for agencies if they said, "How about first just tell us your essential budget level." For most state agencies it is a very mechanical calculation. The system does it for you. It looks at your employees. It sees what increase they should be getting. It adds a little bit for your services and supplies and it simply spits the number out. So the essential budget level will be required in June and I think it is June 30. The essential budget level will be first and then agencies can have a little more time over the summer to develop and flesh out their policy option packages. So that is good, but essential budget level for us is not that automatic no-brainer. For us it is really tricky and it is the heart and soul of the public defense program because what is included in essential budget level is what they call the "mandated caseload package." Mandated caseload is what we are all about and that is the point at which we have to say that

we know this is the work we must do. How much of it and how difficult is it going to be to do that stuff two years from now. It takes time for us to be able to pull those things together, so essential budget packages at the end of June, and key performance measures. September 1 is our final submit date. We are doing a lot of work on key performance measures. Basically, and again I give credit to DAS, they are really looking at the value of the work that they are asking agencies to do. It's like if they are making us do all this work and there is no benefit to it then why are we doing it? They are providing a lot of help with key performance measures and we are hoping to scale back our nine down to four really simple key performance measures and they are helping work out how we can present that graphically to the legislature. The whole point of it is to be able to clearly and simply convey an accurate picture to the legislature. That is due April 30. Maybe at the April meeting we should have that as an agenda item. I think that is it for CBS.

686 I. Swenson

Paul.

686 M. Greenfield

Before we go on, once again I would suggest that since 1980, with the addition of funding for schools, prisons, the Oregon Health Plan, all of which were added to the state's to do list with no tax increase associated with them, the State of Oregon is now in a structural deficit and the biennium that will have sufficient funding to continue programs will be the exception in the foreseeable future. A good strategic plan, I think, would have us recognize that we are going to have a diminishing amount of resources for the legislature to spend compared to the workload in the state. It is not in balance.

703 Chair Ellis

That is not what the Governor is telling (inaudible).

704 M. Greenfield

Well, I am not the Governor.

706 Chair Ellis

Paul.

706 P. Levy

Thanks, Mr. Chair. You have heard a little bit about the work we are doing on the PCR task force and the site process visit process.

709 Chair Ellis

Remind me who is running the task force?

710 P. Levy

The task force?

710 Chair Ellis

Yes.

711 P. Levy

It is a group that was appointed by the Oregon State Bar's Board of Governors. Sally La Joie is the staff liaison to the group. Our chair is Dennis Balske.

715 Chair Ellis

He is great.

715 P. Levy

He is a great PCR practitioner with wonderful death penalty experience. It is a very good group. What I wanted to share with you is a little bit about a project that has off and on consumed a good deal of my time as well as the rest of the staff. During the fall we developed a statewide survey in which we asked local criminal and juvenile officials in each county to give us feedback about our providers in each judicial district. We designed a survey using the online Survey Monkey tool with input from the Quality Assurance Task Force and the Contractor's Advisory Group. That survey was conducted over two weeks at the end of November, early December of last year. We found when the results came in that there were some limitations in terms of how we had designed the survey. But I think we got back some very interesting information. We prepared a document that we will share at some point with you and the provider community. But the immediate plan is for the contract analysts to speak with each of the contractors about the results of the survey. Analyzing and looking at the data from a treetop level, looking at all of the responses that we received to these 27 different

customized surveys, what we were told is that there is general satisfaction, statewide, with public defense services. That certainly leaves room for improvement. But we were also told is that there is significant concern that caseloads are impeding attorneys from providing to each client the level of service that ought to be provided. Probably the most useful part of the survey was the open ended questions where we asked local officials to comment on local barriers to providing excellent representation. Most of the comments dealt with caseloads and workload and the related issue of compensation. We received a lot of good information about issues and concerns and the contract analysts will follow up on those. It was a good experience and I think we will want to do this again. This will give us a baseline measure of the quality of services, system wide.

- 786 Chair Ellis The recipients of the survey were?
- 786 P. Levy Every judge in the state received a survey customized for each judicial district, so they were asked about the providers in that district. Every judge in each of the judicial districts received a survey as did the local district attorney, the head of the local juvenile department, local community corrections, the coordinator of the CRB, and where they were available, non-contract criminal defense attorneys.
- 801 Chair Ellis What percent responded?
- 802 P. Levy It was not a great response and it varied tremendously across category and respondent. We received 90 responses from judges.
- 807 Chair Ellis That is a pretty high number.
- 808 I. Swenson The Chief Justice sent a letter out urging the judges to complete it.
- 810 P. Levy Yes. He sent a very nice email to all judges endorsing the survey and asking for cooperation. Ninety judges, seven district attorneys. There was one judicial district where we received no responses from anybody and five or six where we just received one or two responses. We talk about this in the report that we will make available. One of the reasons for the low response rate is that we have been so aggressive in asking people what they think through the site visit process and the service delivery reviews that many people, I think, felt that they had already told us what they had to say. There were some other reasons I am sure. Useful information, especially the comments, and information to follow up on when we conduct another survey in a year or so.
- 833 M. Greenfield The fact that you were going to publish results might have had some effect on responses.
- 833 P. Levy Well, yes it could have. It is interesting because while the closed-ended multiple questions actually reflected general satisfaction, and that might even be phrased a little more positively, the comments sort of belied those views. They were very concerning comments. We have to view it all with a bit of caution since there were relatively few responses in many jurisdictions.
- 850 Chair Ellis Okay. It didn't hurt to ask.
- 851 P. Levy No. It didn't hurt to ask except it was a lot of work.
- 852 S. McCrea How many circuit judges are there in Oregon?
- 852 P. Levy There are 27 judicial districts. Sorry, did you say judges? A lot more than 90. We sent an email to every one of them. We got a lot bounce backs. I heard that some of those emails went into SPAM and we did everything we could to follow up on each one of those to make

sure that everyone had as much of an opportunity as possible. Some judicial districts had very good response rates - Marion County, Multnomah County.

- 871 S. McCrea Is it inappropriate to ask what judicial district we didn't have any responses from?
- 872 P. Levy No. It is not inappropriate and it is not surprising either. It is Tillamook.
- 876 K. Aylward It was Tillamook and they don't have any contractors and basically the survey said, "Please report on the quality of contractor A, B and C and then rank them," so I don't know what theirs would have said.
- 881 P. Levy We asked, just generally, about the non-contract providers. In other districts we were not asking about non-contract providers, just contractors.
- 885 K. Aylward It is not their fault.
- 885 P. Levy It is not their fault and one or two were counties where we had just been there either with a site visit or with service delivery.
- 890 B. Strehlow And now there is a contract there. [end of tape]

TAPE 2; SIDE A

- 001 P. Levy ... a key performance measure that is tied to the process. We have the criminal providers in Lane County to look at in June, both the public defender office and the panel there. The team is not entirely settled but Jim Hennings will be on the team. Peter Ozanne has agreed to be on the team and Ann Christian. This may be news to you, Greg, as you are hearing this.
- 012 G. Hazarabedian The first name wasn't. The rest are.
- 015 Chair Ellis You have a pretty high powered group.
- 015 P. Levy Yes and Steve Krasik. And then there are some people who are still checking their schedules. It will be a very good team to work with. In the fall we will be going to the 22nd Judicial District, Crook and Jefferson Counties, where we hope to attract team members who want to fish. We are hoping then in the winter to look at the juvenile consortium here in Marion County.
- 025 I. Swenson The only other thing I have to discuss unless you have things you would like to ask about, is loan repayment, loan forgiveness, the plan we talked about at the August Commission meeting. If you will recall at that meeting you asked us to explore the creation of a small loan program to assist with recruitment and retention, particularly in remote areas. This was a recommendation that came out the Affirmative Action Subcommittee. I suppose I should get to the bottom line first and that is that we are not recommending that you go forward on that, but I will tell you how we got there. In August you approved our exploration of the issue. We met with our Contractor Advisory Group in October and asked for people from that group who would be interested in working on this plan and we had three or four volunteers. Those lawyers met a number of times. Angel Lopez and Jim Hennings and Steve Gorham participated and we had a lawyer from the Juvenile Rights Project, Amy Miller. We met a number of times. We gathered as much data as we could about what is available and where the needs are. We surveyed some of our providers to find out how many attorneys might be affected, might stand to benefit from such a program. One of the important aspects of the whole issue is the status of the federal assistance programs. Congress passed the College Cost Reduction Act - I am trying to remember when it was, but they passed it last year and it is the biggest piece of this whole picture. It has two components, principally. One is for lawyers who work for non-profits. For them there is a potential for having the entire balance

of their student loans forgiven after 10 years. That piece is already in effect. It started, I think, in October of last year. The other component doesn't take effect until July of 2009. That is the piece which would lower monthly payments significantly from where they are. The amount of the payment is related to the individual's income and the total amount of the loan, so it is going to vary significantly from one person to another. It will provide the greatest benefit to low income borrowers with large loan amounts. The example they used in the materials that were provided to explain the act used the example of somebody who is making \$40,000 with a \$100,000 debt. For that individual the current payment under most programs is something like \$800 plus per month. This act would reduce the monthly payment to approximately \$250 a month. If you combine that reduction with the 10-year forgiveness piece it is a huge incentive for people to participate. The payment reduction piece is applicable to all lawyers and other professionals, anyone who has a qualifying education loan. But it is the forgiveness piece that applies only to the public interest employees. It is a long-term retention tool that should be extremely valuable once that second component is in place. Congress also appears to be ready to pass the John R. Justice Act. It has been proposed in a number of previous congressional sessions but the current proposal has passed both houses at this point. They are slightly different versions. We prefer the Senate version, so it will be decided in some kind of conference committee, which is not yet scheduled. That act is directed specifically at prosecutors and defenders. It would benefit only non-profit public defender offices not consortia of which we have so many. It would amount to a repayment subsidy of up to \$10,000 every year for three, and potentially up to six years. These are major programs that could have important benefits for people with significant educational debt. We talked about that and we reviewed the three Oregon Law school loan forgiveness plans and the State Bar's program which has benefited at least of couple of people, well at least one, Sally might know, at least one public defender. Then we considered what role a Commission program could play in this bigger context. One risk is that you render people ineligible for federal support if you raise their income to a level where they don't get the benefit of these programs, so it is one thing you have to be cautious about - not giving them \$500 more a month in income which than translates into ineligibility for one of these programs. That was one concern and another was: Is it public defenders that we wanted to benefit? Is it consortia because they are not going to have the benefit of these other programs? We looked at some of those issues. It is quite remarkable when you survey providers how many people would qualify. The numbers are just enormous so a minor fund wouldn't begin to address the need.

109 Chair Ellis

I think what we were talking about was the lowest.

110 I. Swenson

Right, exactly so. Of course a public defender office in, say Umatilla or Coos County, would be sort of logical places to direct that. Kathryn talked to a representative of the bar about the possibility of just participating in their program by adding some funding, and then using their loan system to extend loans to otherwise eligible people. They, of course, have their own eligibility requirements and would not focus on the same group of providers that we would. We found out from the law schools that these programs have to be structured as loan programs. Otherwise the subsidy is treated as income for tax purposes. PDSC would have to become a lending agency if it were to operate its own program. If we didn't, if you were to give that piece to the contractors, they would have to become lending agencies. Otherwise the benefits would be fully taxable. We were at about that stage when Kathryn talked with Robin La Monte at Legislative Fiscal and, at least her take on it was that in her view this is not something the Commission is authorized to do under the limitations imposed by the legislature. She would not say that her word is final all, but she expressed opinion that it might not be within the authority of the Commission to create some kind of loan program or even benefit program.

132 Chair Ellis

So does that same argument apply to Angel Lopez who has been urging us to do a minority subsidy program?

- 135 I. Swenson I believe it would. As you will recall, Mr. Chair, this loan repayment project was in response to his recommendation, and it was his recommendation that it be used for the purpose of benefiting younger attorneys, people in remote areas, and not be restricted to any cultural or racial group. Angel did serve on this group and the group's ultimate recommendation to this body was that it not pursue this program and use those funds in a more direct way to respond to needs for recruitment and retention among our providers. I think that is where we are and that is the recommendation that I am bringing you here today.
- 146 Chair Ellis Any comments or questions?
- 148 S. McCrea Well, it was well thought out. You brought us all the reasons and it is not depressing. There is progress in the federal program. That is a big step.
- 151 Hon. Elizabeth Welch As a person who has contact with a lot of young lawyers, what happens is they don't take these jobs because they can't afford to.
- 156 Chair Ellis Do you share Robin's view?
- 159 I. Swenson Mr. Chair, I think you might be able to structure some kind of plan in a way that was consistent with your legislative authority, but, as I say, if you look at it as anything but a loan program it comes with these characteristics that may make it undesirable. I didn't spend a lot of time trying to devise an alternative plan. I can certainly take another look at it and talk with other people about it.
- 167 Chair Ellis Essentially, you can increase compensation, but you can't end up in a lender role.
- 170 I. Swenson That would be part of it. The other thing I forgot to mention is that even with a benefit program, for offices like Jim Hennings's and Multnomah Defenders, because they have a collective bargaining agreement with their employees they don't know how they could implement such a plan within their organizations if they extended benefits to a few people but not to all similarly situated people. The difficulties probably just outweigh the value of the plan at this point. Interestingly, I was talking with the Governor's staff about the Commission proposal and the Governor is interested in retention problems for both district attorneys and public defenders. They will be exploring some kind of loan forgiveness program for both. I don't know where that will go, but that is one of the things on the list of proposals that came out of the Forest Payments Task Force that is looking at ways in which the state can assist the timber counties in addressing some of their funding issues. This would go to benefit, specifically, people in remote areas of the state.
- 189 Chair Ellis Any other questions?
- 191 I. Swenson One of the documents you have is our organizational chart. Our management team worked for a while trying to figure out what it should look like. This is not a supervision chart so it does not show who supervises whom within the office. It is structural only and it basically describes the management structure. It reflects the creation of an Assistant Chief Defender position. When the Appellate Division created the new Chief Deputy positions
- 200 Chair Ellis Now do I see the name Becky Duncan there?
- 200 I. Swenson That is what you see there. It was totally appropriate for her to have that position as opposed to one of three chief deputy positions.
- 203 Chair Ellis Just remember about the corrupting influence of power. Any other thoughts or comments?

- 207 K. Aylward One another topic, just for the Commission's information, we have found who our replacement legislative fiscal officer ...
- 210 Chair Ellis Robin's successor?
- 210 K. Aylward Robin's successor. Effective April 1, John Borden will be our legislative fiscal officer. I am pleased by that. I worked a lot last session on the fiscal impact statements. He's a really sharp guy and understands the programs, so that is good, plus Robin will be continuing to work one to two days a week helping with the transition so that John Borden can get up to speed with his agencies. When the legislature goes back into session Robin will go back to full-time, but doing fiscal impact statements only. We have a great new analyst who will do a wonderful job plus we have the benefit of Robin helping with the transition.
- 219 Chair Ellis One thing I always appreciated about Robin is she that came to a lot of our meetings.
- 221 K. Aylward We will probably see him in attendance as well. Maybe he is waiting until April 1. He is on our mailing list and he gets email notices of our meetings.
- 224 Chair Ellis Okay. We have an executive session but before we do that any other subjects or comments anyone wants to make generally?
- 228 J. Potter Maybe we should have Jim Hennings introduce his new head of the Washington County office.
- 230 J. Hennings Thank you. Greg Scholl is sitting behind me, Mr. Chair, and Greg is the next generation that is coming up in the leadership. He has been very active in OCDLA already. I had the pleasure of having three tremendous candidates that I could choose between. It was really sort of phenomenal to see the respect that Greg has in the community already. He has taken over and is doing a marvelous job. Greg, have you got anything to say? He also has one of the best blues collection of anybody I know.
- 240 G. Scholl It is a pleasure to have that job and it is a pleasure to come this meeting and learn more about what is happening.
- 242 Chair Ellis It has been a terrific office. It started about 30 years ago?
- 244 J. Hennings 1973.
- 244 Chair Ellis Thirty-five years ago. It has been a really high quality operation. Any other comments or questions? Ingrid give me some legal advise. Do we have to wait until 1:30 to start the retreat?
- 248 I. Swenson I don't believe so Mr. Chair because we noticed this meeting for either 1:00 or when this earlier meeting adjourned.
- 251 Chair Ellis Why don't we do this? I guess protocol says we need to meet in executive session to approve those minutes. Paul, are you our liaison for that.
- 256 P. Levy Yes I think I am.
- 256 Chair Ellis Why don't we do that, then have lunch and then start the retreat. Give us five minutes.

Attachment 2

**OPDS's Draft Report to the Public Defense Services
Commission on Service Delivery in Judicial District No. 1 – Jackson County
(April 2008)**

Introduction

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

Foremost among those strategies is PDSC's service delivery planning process, which is designed to evaluate and improve the operation of local public defense delivery systems. During 2004 to 2007, the Commission completed investigations of the local public defense systems in Benton, Clatsop, Coos, Curry, Lane, Lincoln, Linn, Multnomah, Marion, Klamath, Washington, Yamhill, Hood River, Wasco, Wheeler, Gilliam and Sherman Counties. It also developed Service Delivery Plans in each of those counties to improve the operation of their public defense systems and the quality of the legal services provided by those systems.

This report includes the results of the Office of Public Defense Services' (OPDS) preliminary investigation into the conditions of the public defense systems in Jackson County. Future drafts will include a summary of the testimony presented to PDSC at its April 10, 2008 meeting in Jackson County and recommendations regarding a service delivery plan for this county.

PDSC's Service Delivery Planning Process

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

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

Third, after considering OPDS's preliminary draft report and public comments during the Commission's meetings in a county or region, PDSC develops a "service delivery plan," which is set forth in the final version of OPDS's report. That plan may confirm the quality and cost-efficiency of the public defense delivery system and services in that region or propose changes to improve the delivery of the region's public defense services. In either event, the Commission's service delivery plans (a) take into account the local conditions, practices and resources unique to the region, (b) outline the structure and objectives of the region's delivery system and the roles and responsibilities of public defense contractors in the region, and (c) when appropriate, propose revisions in the terms and conditions of the region's public defense contracts.

Finally, under the direction of PDSC, contractors subject to the Commission's service delivery plans are urged to implement the strategies or changes proposed in the plans. Periodically, these contractors report back to PDSC on their progress in implementing the Commission's plans and in establishing other best practices in public defense management.

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

Background and Context to the Service Delivery Planning Process

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

PDSC is committed to undertaking strategies and initiatives to ensure the competency of those attorneys. In the Commission's view, however, ensuring the minimum competency of public defense attorneys is not enough. As stated in its mission statement, PDSC is also dedicated to ensuring the delivery of quality

public defense services in the most cost-efficient manner possible. The Commission has undertaken a range of strategies to accomplish this mission.

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

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

OPDS has also formed a Quality Assurance Task Force of contractors to develop an evaluation or assessment process for all public defense contractors. Beginning with the largest contractors in the state, this process is aimed at improving the internal operations and management practices of those offices and the quality of the legal services they provide. In 2004, site teams of volunteer public defense managers and lawyers have visited the largest contractors in Deschutes, Clackamas and Washington Counties and prepared reports assessing the quality of their operations and services and recommending changes and improvements. In 2005, the site teams visited contractors in Douglas, Jackson, Multnomah and Umatilla Counties. In 2006, teams visited all of the juvenile contractors in Multnomah and Lane Counties and criminal and juvenile contractors in Linn and Lincoln Counties. In 2007 site teams have visited the sole juvenile contractor in Clackamas County, the largest contract office in the state in Multnomah County and the sole juvenile and criminal providers in Benton County and Columbia County.

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

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

In 2007 PDSC undertook to review the delivery of public defense services in death penalty cases. A final plan for providing services in those cases was

approved by the Commission in June of 2007.

In February of 2008 the Commission began a review of the delivery of public defense services in post-conviction relief cases. That review is ongoing.

The Commission is also concerned about the “graying” of the public defense bar in Oregon and the potential shortage of new attorneys to replace retiring attorneys in the years ahead. More and more lawyers are spending their entire careers in public defense law practice and many are now approaching retirement. In most areas of the state, no formal process or strategy is in place to ensure that new attorneys will be available to replace retiring attorneys. The Commission has also found that the impact of such shortages is greatest in less populous areas of the state, where fewer lawyers reside and practice, but where the demands for public safety and functional justice systems with the requisite supply of criminal defense and juvenile attorneys are as pressing as in urban areas of the state. As a result, PDSC is exploring ways to attract and train younger lawyers in public defense practice across the state.

“Structure” versus “performance” in the delivery of public defense services.

Distinguishing between structure and performance in the delivery of public defense services is important in determining the appropriate roles for PDSC and OPDS in the Commission’s service delivery planning process. That process is aimed primarily at reviewing and improving the “structure” for delivering public defense services in Oregon by selecting the most effective kinds and combinations of organizations to provide those services. Experienced public defense managers and practitioners, as well as research into “best practices,” recognize that careful attention to the structure of service delivery systems contributes significantly to the ultimate quality and effectiveness of public defense services.¹ A public agency like PDSC, whose volunteer members are chosen for their variety and depth of experience and judgment, is best able to address systemic, overarching policy issues such as the appropriate structure for public defense delivery systems in Oregon.

Most of PDSC’s other strategies to promote quality and cost-efficiency in the delivery of public defense services described above focus on the “performance” of public defense contractors and attorneys in the course of delivering their services. Performance issues will also arise from time to time in the course of the Commission’s service delivery planning process. These issues usually involve individual lawyers and contractors and present specific operational and management problems that need to be addressed on an ongoing basis, as opposed to the broad policy issues that can be more effectively addressed

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

through the Commission's deliberative processes. OPDS, with advice and assistance from its Contractor Advisory Group and others, is usually in the best position to address performance issues.

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

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

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

On the other hand, PDSC is responsible for the wise expenditure of taxpayer dollars available for public defense services in Oregon. Accordingly, the Commission believes that it must engage in meaningful planning, rather than simply issuing requests for proposals (RFPs) and responding to those proposals. As the largest purchaser and administrator of legal services in the state, the Commission is committed to ensuring that both PDSC and the state's taxpayers are getting quality legal services at a fair price. Therefore, the Commission does not see its role as simply continuing to invest public funds in whatever local public defense delivery system happens to exist in a region but, instead, to seek the most cost-efficient means to provide quality services in each region of the state.

PDSC intends, first, to review the service delivery system in each county and develop service delivery plans with local conditions, resources and practices in mind. Second, in conducting reviews and developing plans that might change a local delivery system, the Commission is prepared to recognize the efficacy of the local organizations that have previously emerged to deliver public defense

services in a county and leave that county's organizational structure unchanged. Third, PDSC understands that the quality and cost-efficiency of public defense services depends primarily on the skills and commitment of the attorneys and staff who deliver those services, no matter what the size and shape of their organizations. The organizations that currently deliver public defense services in Oregon include: (a) not-for-profit public defender offices, (b) consortia of individual lawyers or law firms, (c) law firms that are not part of a consortium, (d) individual attorneys under contract, (e) individual attorneys on court-appointment lists and (f) some combination of the above. Finally, in the event PDSC concludes that a change in the structure of a county's or region's delivery system is called for, it will weigh the advantages and disadvantages and the strengths and weaknesses of each of the foregoing organizations in the course of considering any changes.

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

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

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

While some of Oregon's public defender offices operate in the most populous counties of the state, others are located in less populated regions. In either case, PDSC expects the administrator or executive director of these offices to manage their operations and personnel in a professional manner, administer specialized internal training and supervision programs for attorneys and staff, and ensure the delivery of

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

effective legal representation, including representation in specialized justice programs such as Drug Courts and Early Disposition Programs. As a result of the Commission's expectations, as well as the fact that they usually handle the largest caseloads in their counties, public defender offices tend to have more office "infrastructure" than other public defense organizations, including paralegals, investigators, automated office systems and formal personnel, recruitment and management processes.

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

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

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

Consortia offer the advantage of access to experienced attorneys, who

³ Id.

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

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

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

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

3. Law firms. Law firms also handle public defense caseloads across the state directly under contract with PDSC. In contrast to public defender offices and consortia, PDSC may be foreclosed from influencing the internal structure and organization of a law firm, since firms are usually

well-established, ongoing operations at the time they submit their proposals in response to RFPs. Furthermore, law firms generally lack features of accountability like a board of directors or the more arms-length relationships that exist among independent consortium members. Thus, PDSC may have to rely on its assessment of the skills and experience of individual law firm members to ensure the delivery of quality, cost-efficient legal services, along with the external methods of training, standards and certification outlined above.

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

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

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

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

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

for court appointments to verify attorneys' eligibility for such appointments, including requirements for relevant training and experience.

OPDS's Preliminary Investigation in Judicial District 1 – Jackson County

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

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

On February 19 Commissioner John Potter, OPDS public defense analyst Billy Strehlow and Executive Director Ingrid Swenson visited with stakeholders in Jackson County. In addition to meeting with PDSC's contractors in the district, they also talked with judges, the trial court administrator, the District Attorney, juvenile department staff, representatives of the Citizen Review Board. Written responses to questionnaires were also received from the three contractors in the district. Copies of these responses are attached as Exhibits A, B and C.

The preliminary draft of this report is intended to provide a framework to guide the Commission's discussions about the condition of Jackson County's public defense system and services, and the range of policy options available to the Commission – from concluding that no changes are needed in this county to significantly restructuring the delivery system.

In the final analysis, the level of engagement and the quality of the input from all of the stakeholders in Judicial District 1's justice systems could turn out to be the single most important factor contributing to the quality of the final version of OPDS's report to the Commission and its Service Delivery Plan for Jackson County.

OPDS's Preliminary Findings in Judicial District 1

Jackson County is the sixth largest county in Oregon with a current population of 198,615. The county has experienced an increase in population of approximately one and a half percent every year for the past ten years. Medford (pop. 73,960) and Ashland (pop. 21,430) are its two major cities. There are nine other incorporated communities.⁴

The largest employer in the county is government, which includes education, the Bureau of Land Management and forest services. Fifty-two percent of the land in the county is owned by the federal government. The largest private sector employer is the health care industry, followed by retail, tourism, agriculture, manufacturing and timber.⁵

Jackson County lost more than 30% of its general fund revenue when federal forest payments were terminated in September of 2006.⁶ Unlike other counties affected by the loss, Jackson County made the necessary cuts to its budget in 2006. Those cuts included cuts to public safety agencies, which included termination of jail contracts with other counties and a loss of 100 adult jail beds, the loss of five corrections deputies, an investigator and two clerical staff; elimination of almost all misdemeanor probation; a reduction of five adult probation officers, three community justice officers, one juvenile probation officer and three adult and juvenile community justice administrators. Cuts to other critical support services included the loss of 40 positions in health and human services; termination of a program targeting at-risk mothers of newborns; significant reductions in mental health clinical staff; loss of 12 medical and mental health services staff in the jail and the community justice system; closure of an alcohol and drug transition home and the residential substance abuse treatment program for youth; and significant reductions in alcohol and drug treatment services. Cuts in these services would have been even greater if the county had not closed fifteen branches of its library system and terminated 81 library employees.⁷ The county's potential responses to the loss of federal forest funds are limited. Permanent property tax rates in each county were fixed by Measure 50. Relying on timber revenue, the county had set its property tax rate at 2.01.⁸

⁴ This data was obtained from the county's website: <http://www.co.jackson.or.us>.

⁵ *Id.*

⁶ PL 106-393, the Secure Rural Schools and Community Self Determination Act of 2000, expired in September of 2006. A one-year extension was passed by Congress and signed by the president in May of 2007. That extension expired on September 30, 2007. Association of Oregon Counties, presentation to Governor's Forest Payments Taskforce on January 23, 2008.

⁷ Libraries have since been reopened on a very limited basis but may be permanently closed if stable funding is not forthcoming. Information regarding the impact of funding cuts was provided by Trial Court Administrator Jim Adams.

⁸ The lowest rate in Oregon is in Josephine County with a permanent rate of 0.5867, the highest permanent rate is in Sherman County at 8.7141.

The Circuit Court

Jackson County comprises the First Judicial District. There are nine circuit court judges. Mark Schiveley is the presiding judge. The Jackson County Circuit Court designates some judges as primarily civil judges and others as primarily criminal judges. The court maintains a master calendar for criminal cases but civil cases are assigned to individual judges. The four judges who handle criminal cases also handle the drug court, probate matters and domestic relations cases. There are two judges assigned to juvenile cases.

Criminal Court System

Attorneys appear with clients at all in and out-of-custody arraignments. Arraignments occur daily. Trial dates are not set at arraignment. Instead a pretrial conference is scheduled for two weeks after arraignment for in-custody defendants and four weeks for out-of-custody defendants. Set-overs are usually taken in Measure 11 cases. Cases set for trial are usually set within 90 days of the pretrial conference. There are status hearings on Mondays for all cases scheduled for trial during the week. Many cases are either continued or resolved at these hearings. Jury trials are generally held on Tuesdays through Thursdays and are assigned at docket call at 8:00 on Tuesdays. Some cases are resolved at docket call. Miscellaneous criminal hearings are scheduled on Fridays including court trials, contempt hearings, and probation violation proceedings. Sentencing proceedings are scheduled daily.

Community Family Court

Jackson County's Community Family Court was established by the presiding judge in 2006. It is funded principally by grants. The court is a combination family and drug court. There are approximately 50 families involved in the court. A family is referred to the court by DHS after adjudication on a dependency petition. The district attorney must also approve of the family's involvement. Participation on the part of the parents is voluntary. Lawyers for parents and children are generally involved only at the beginning of the process although participants have access to the attorneys who represented them in the underlying juvenile dependency case and who, in most instances, continue to represent them throughout the dependency proceeding. The program generally lasts 15 to 18 months. In the earliest phase the family appears before the court on a weekly basis. In the final phase appearances may occur as infrequently as once a month. Participants are required to waive many of their constitutional rights and may be jailed for non-compliance with court directives. The court can provide access to a variety of resources to help clients succeed. Cases are staffed on Mondays, and hearings are held on Tuesdays before each of the three judges assigned to the court. The court enjoys a high success rate greatly exceeding the state average for similar courts. DHS can be dismissed from the dependency

case if adequate progress has been made, even though the family remains engaged with the court.

Drug Court

The Jackson County drug court began accepting clients in March 2006. There are currently more than 50 clients in the program and several classes have already graduated. There were 22 clients in the most recent graduating class. To date none of those who completed the program have been rearrested. This court operates on a schedule similar to the Community Family Court schedule in terms of the length of the program and the frequency of appearance. Defense attorneys are present for hearings in this court, however. These clients must enter pleas of guilty and waive laboratory analysis of drug samples in order to be admitted to the program.

Other Specialty Courts

At this time there are no plans to create other specialty courts such as DUII, mental health, or domestic violence courts because the judges do not have adequate time to devote to such courts.

DUII Diversion Program

DUII cases comprise approximately 25% of the court's docket. It is estimated that 90% of DUII diversion participants successfully complete the program.

Juvenile Court System

Juvenile dependency matters are assigned to Judge Rebecca Orf. She conducts shelter hearings at 11:30 a.m. daily, and review hearings, permanency hearings and trials Tuesday through Friday. Termination of parental rights trials are assigned primarily to the civil bench. Judge Lorenzo Mejia handles all of the delinquency matters. He holds detention hearings daily as needed and hears other matters on Tuesdays and Wednesdays, and trials on Fridays.

In dependency matters it is the practice for parties to appear at shelter hearings without counsel. Despite efforts by the court and public defense attorneys to arrange for counsel to be present at these hearings, it has been determined that this cannot occur under present circumstances. Instead the court instructs the party for whom counsel has been appointed to contact the attorney after court and arrange to meet with the attorney before the next court date, which is the date set for the jurisdictional hearing. If there are urgent issues regarding removal or placement the attorney can request a second shelter hearing although these are normally not held for a month or so after the initial hearing. Attorneys are appointed for children in all cases in which parents receive

appointed counsel. Jackson County has an active Court Appointed Special Advocate (CASA) program.

In Delinquency cases, much of the prosecution function is performed by juvenile court counselors. They ordinarily file the petitions and negotiate resolution of the cases. The deputy district attorney assigned to juvenile court is available for consultation and to represent the state in the few cases that go to trial.

The county has a new 40-bed detention facility and currently uses 20 of those beds for detention and 20 for assessment and evaluation, and residential substance abuse treatment.⁹ The facility also provides suitable attorney-client meeting rooms.¹⁰

The court appoints counsel for approximately 95% of all youth. Attorneys are present for initial court appearances in delinquency cases.

Civil Commitment Proceedings

In addition to juvenile matters, the Jackson Juvenile Consortium handles all of the civil commitment cases in which counsel is appointed. In Jackson County it is the mental health investigator, instead of the county counsel or the district attorney, who presents the case to the court. Hearings are held at the hospital at 7:30 in the morning. Discovery is usually obtained by the attorney directly from the hospital two days prior to the hearing.

The District Attorney

Mark Huddleston is the District Attorney. He became the District Attorney of Jackson County in 1992 after serving as a deputy district attorney from 1980 to 1988 and the chief deputy from 1988 to 1992. Mr. Huddleston currently has nineteen deputies. The 2007 Legislative Assembly allocated funds for an additional half-time deputy to handle juvenile dependency cases. The county will fund the other half of that position. His office did not suffer any losses due to budget cuts and, unlike some district attorney offices, he has not been forced to limit prosecution in any category of offenses. He is able to pay a starting salary of more than \$54,000 per year so retention has not been a major issue for his office.

One deputy district attorney is assigned to handle all juvenile delinquency matters and to represent the state in contested dependency cases. An assistant attorney general is assigned to represent the state in termination of parental

⁹ These beds are funded by the Oregon Youth Authority. The county also has a 16 bed shelter which is used primarily for children and youth in the custody of the Department of Human Services.

¹⁰ In July of 2008, however, all 40 beds will be available for detention since the evaluation and treatment programs will be moving to other locations.

rights cases. Additional AAG assistance will be available as a result of funding received from the 2007 legislature to permit AAG review of each DHS case at five and eleven month intervals after initiation of the proceedings.

Jackson County has a “district attorney’s drug conditional discharge program” independent of the drug and family community courts. Conditions for participation are similar to those for the drug court and many of the requirements for completion are the same except that regular attendance at court hearings is not required.

Public Defense Providers

There are three public defense contractors in Jackson County.

1. Southern Oregon Public Defender

The Southern Oregon Public Defender (SOPD)¹¹ is a private non-profit corporation established in 1985. Bert Putney organized the office and continues to serve as its administrator. SOPD also has an office in Josephine County. There are currently fifteen attorneys in the Jackson County office, five investigators, two paralegals and nine other staff members including a polygrapher and an interpreter). This office currently receives appointments in approximately two thirds of the criminal cases and one fourth of the juvenile cases in the county. Until 2006 SOPD did not contract for any juvenile cases. It assigned two attorneys to juvenile matters in the 2006-2007 contract period and has added a third under the current contract. SOPD represents clients in drug court in Jackson County and receives an annual amount to staff that court.

SOPD occupies an office in downtown Medford, close to the courthouse, the jail, the juvenile department and other county offices. The office is businesslike, attractive and well furnished.¹²

SOPD has a five-member Board of Directors that reviews major actions by the director, makes decisions not appropriate for the administrator to make, and oversees the office’s functioning within the local criminal and juvenile justice systems. The office has a written policy manual which is distributed to all employees and which describes procedures for handling personnel matters. The office also provides attorneys with a manual outlining local procedures, forms and expectations. Although the office manager and the administrator oversee the work of the entire staff, training and supervision are principally provided by

¹¹ SOPD’s response to the OPDS questionnaire is attached as Exhibit A to this report.

¹² Mr. Putney indicates that he would have purchased the building had he been permitted to do so under the terms of his contract with PDSC. He believes that he could have saved a significant amount of money by owning rather than leasing the property.

the attorney or staff person who is assigned to supervise each new employee.

SOPD conducts monthly in-house CLEs, sponsors CLE sessions for local attorneys emphasizing issues of particular significance to local practitioners, and sends its attorneys and staff to OCDLA and other CLE trainings in areas of more general interest. SOPD uses an informal evaluation process for attorneys and staff that is based on open and regular communication and feedback. There are plans to initiate a formal evaluation process in the spring of 2008. Underperformance is addressed by consultation, mentoring, establishment of timelines, and, when necessary, termination. Excellence is most often rewarded by acknowledgment in the presence of co-workers.

Caseloads of individual attorneys are monitored weekly and monthly.

By its own policy, as well as PDSC's, SOPD requires that every in-custody client be seen within one working day. The initial visit is usually handled by a staff person rather than the assigned attorney who generally does not meet with the client until discovery is received.

SOPD has recently implemented a client feed-back process. Clients are given a form to complete at the conclusion of the case which is submitted to the court and then forwarded to SOPD.

Bert Putney and other SOPD attorneys and staff are active participants in the criminal and juvenile justice systems in the county, serving on numerous local public and private boards, committees and advisory groups. One attorney served on the City Council and another served as the president of OCDLA. The firm is a permanent member of the Local Public Safety Coordinating Council. Mr. Putney is regarded as a problem solver who works to make the whole system function better.

SOPD received a 13.48% rate increase for the 2008-2009 contract period. Recruitment and retention of attorneys has been a challenge for this office where attorneys' starting salaries have been significantly lower than the starting salaries of their counterparts in the district attorney's office. Under the new contract the entry level salaries were increased to \$45,000. Vacancies can now be filled in a more reasonable time. In the past it was not unusual for it to take two to three months to fill a vacancy. Mr. Putney believes that it was equally important to increase salaries for mid-range attorneys in order to increase retention of attorneys with two to four years of experience. After receiving training and experience at this office, attorneys often find better paying jobs in other areas. All of the members of the local criminal consortium, Los Abogados, came from the public defender's office.

2. Los Abogados

Los Abogados¹³ was originally formed to handle only those cases in which SOPD had a conflict. Since 2002 the consortium has contracted with PDSC to handle a specified caseload which is not significantly greater than, but is not limited to, the cases in which SOPD has a conflict. There are currently seven attorneys (3.03FTE) who provide representation under this contract. The percentage of professional time devoted to public defense cases varies among the member attorneys from 10% to 75%. Some consortium members are also members of the juvenile consortium. Los Abogados contracts to handle only criminal cases. Each of the consortium attorneys has an office located in downtown Medford within a short walking distance from the courthouse, the jail and other county offices. Each of the attorneys has staff support compensated under the contract with PDSC.

The consortium does not have a board of directors or written bylaws or operating rules. The organization has two co-administrators. When the consortium needs to add a new member the existing members discuss who might be appropriate and extend an invitation. Cases are distributed evenly among members except that some members do not handle Measure 11 cases. Lawyers are notified by the consortium administrator of their appointment to a case before 5:00 p.m. on the day the appointment notice is received. In general, the consortium reports that lawyers meet with their clients in the time frames required by the PDSC contract. Members confer with each other informally and as needed. There are no formal mechanisms for regular communication. There is no system in place for evaluating members and the consortium relies on judges and their own observations to make them aware of any problems that might arise. The consortium reports that it has not yet had to deal with an underperforming member but would approach a member attorney directly if a problem were encountered.

3. Jackson Juvenile Consortium

The Jackson Juvenile Consortium¹⁴ includes four attorneys (2.82 FTE) who handle both juvenile and civil commitment cases under their contract with PDSC. Each of the attorneys has a practice outside of the consortium, handling either private cases or other public defense cases. Each member also has office staff who devote a percentage of their time to consortium cases.

The consortium has a board of directors which includes a retired circuit court judge, the former county counsel, and the former administrator of a Medford School District. It meets only sporadically, however, and plays a limited role.

¹³ Los Abogados's response to OPDS's questionnaire is attached as Exhibit B.

¹⁴ The juvenile consortium's response to the OPDS questionnaire is attached as Exhibit C.

The consortium has an operating agreement between members. Each of the four members owns a 25% interest in the business (organized as a limited liability company). The agreement provides that income will be allocated among members in proportion to the number of appointments they receive “which shall be aligned as close as reasonably possible to membership percentages.” It does not provide a protocol for handling performance issues except to provide that an attorney may be required to withdraw from membership if the member becomes “disabled or incompetent.”

Caseloads

The total public defense caseload in Jackson County for FYE 2006 was 7,559 cases¹⁵. For FYE 2007 it was 8,189, an 8.33% increase. Increases were in felonies and juvenile dependencies.

SOPD received credits for a total of 4,714 cases in FYE 2007 which included 775 juvenile cases and 3940 criminal cases. Los Abogados received 1,147 criminal case credits, and JJC received 98 civil commitment and 2,227 juvenile case credits.

OPDS expects the caseload in Jackson County to remain stable through the biennium assuming the court continues to conduct regular review hearings in juvenile dependency cases.¹⁶

Comments provided to OPDS Staff during February interviews:

Functioning of the criminal court system. The criminal system is functioning well. The court runs smoothly and handles cases efficiently. The distribution of cases between SOPD and Los Abogados is appropriate, with the consortium filling in the blanks “nicely” and providing excellent representation. In general, the quality of defense in criminal cases is good. SOPD has had a lot of turnover but is able to get new lawyers “up to speed” very quickly.¹⁷

Role of contractors in the community. Bert Putney has been a major participant in the shaping of the county’s justice system. His organizational skills are legendary. Despite the difficulty of attracting and retaining high quality lawyers to work at rates significantly below market levels, and other obstacles to long term financial stability such as the past prohibition on purchasing an office site, he has maintained a well structured office with a highly professional group of lawyers.

¹⁵ A “case” is a unit for which OPDS awards a case credit and does not necessarily correspond to a case as defined by the court and other justice system agencies.

¹⁶ Approximately 66% of all juvenile case credits for JJC were for dependency review hearings.

¹⁷ It should be noted that the district attorney’s office in Jackson County is reported to be open to plea negotiation and reasonable dispositions, even in Measure 11 cases. That may account for the relatively low trial rates in the county. For the calendar year 2007 the statewide average of cases that went to trial were 4.5% of felonies and 4.4% of misdemeanors. In Jackson County 2.7% of felonies and 2.4% of misdemeanors were tried.

Both criminal contractors participate regularly in justice system planning meetings.

Representation in juvenile delinquency cases. Some attorneys provide excellent representation to youth in delinquency cases. Attorneys for both sides are not openly adversarial. Motion practice is minimal and not many cases go to trial although sex abuse cases are tried more often than other types of cases. There are no alternative treatment options available in these cases in Jackson County. It is rare for an attorney to challenge a youth's competence even though some of the youth who come through the court have intelligence quotients in the fifties. One especially able defense attorney recently left the area to work in another county. There is a need for additional attorneys in these cases.

Representation in juvenile dependency cases. In juvenile dependency cases the need for additional attorneys is even greater.¹⁸ The scheduling of trials and other hearings has been difficult for some time. After the public defender's office began accepting appointment in juvenile cases an additional attorney became available for appointment in each case but scheduling remains a major problem. Lack of attorney availability has also made it difficult to implement new initiatives such as settlement conferences in termination of parental rights cases. Court officials believe that the number of juvenile dependency matters will continue to increase.¹⁹ A subcommittee of the local Juvenile Court Advisory Committee is attempting to address the scheduling issue. Despite recent efforts led by the court to have counsel present at initial hearings in dependency cases, the parties still appear without counsel and the effort has been abandoned. There has been improvement in the quality of representation in dependency cases in the last couple of years, at least in part as the result of the interest and attention that Judge Orf has brought to these cases. Two commentators said that in 2005 the juvenile consortium "was not working" but has now turned things around. The change was attributed in part to the fact that the public defender's office now represents clients in some of these cases. Two attorneys, one with the consortium and one with the public defender's office, were singled out as having "raised the bar" for all of the other attorneys, especially in the representation of child clients.²⁰

¹⁸ This comment was endorsed by all of the juvenile system representatives interviewed

¹⁹ In addition, the practice of accepting admissions from unrepresented parents at shelter hearings that was reported to a Quality Assurance Task Force site team in 2005 has apparently ended and attorneys are now being appointed for parents and children in most cases.

²⁰ Another consortium attorney was singled out, on the other hand, for generating a high number of complaints from clients and for being inaccessible to clients and the court.

**OPDS's Recommendations for Further inquiry at PDSC's
April 10, 2008 Meeting in Medford**

In light of the information which came to its attention during interviews with representatives of the juvenile and criminal justice systems in Judicial District No. 1, OPDS recommends that the commission focus its inquiries and discussion at the April 10, 2008 meeting in Medford on the following topics.

Structural Issues

Although the public defense structure in Jackson County is the same for both juvenile and criminal cases – a combination of a public defender office and a consortium, it appears to be working well in the criminal area but not as well in the juvenile area.

In criminal cases both the public defender's office and the consortium fulfill their roles to the benefit of the community as a whole. Despite recruitment and retention problems at the public defender's office, the quality of representation provided by both contractors also appears to be good.

The same structural model has not proven sufficiently flexible to meet the needs of the juvenile system, however. There is an insufficient number of attorneys to handle the caseload. While the Commission has received reports in other communities such as Clatsop, Coos and Curry about the difficulty of recruiting attorneys to practice in some geographic areas, the problem in those counties was deemed to be principally a recruitment issue rather than a structural issue.

There is certainly a recruitment issue in Jackson County for both criminal and juvenile lawyers. But when caseloads reach levels that are four times higher than recommended by national standards,²¹ it is appropriate to consider whether the problem may lie with the particular provider or with the model itself.

²¹ The current contract with Jackson Juvenile Consortium (JJC) provides for appointment in 2,376 cases per year (which includes 96 civil commitments). The agreement indicates that four consortium attorneys will devote 2.82 attorney FTEs to this contract. That amounts to 842 cases per FTE attorney per year. National standards recommend appointment in no more than 200 juvenile cases per FTE per year. The standard recommended in the PDSC RFP is 250 juvenile cases per year, adjusted from the national standard to reflect the fact that additional case credits are awarded for review hearings in Oregon. Approximately 66% of JJC's case credits in FYE 2007 were for review hearings. The percentage was artificially high because when the public defender's office began taking juvenile cases, they received appointment in a greater percentage of delinquency cases and new dependency cases since JJC had already been appointed in the dependency cases that were in review status. SOPD's two attorney FTEs assigned to handle juvenile cases received 775 case credits, or 388 credits per FTE, 38% of which were for review hearings.

The following table compares the annual caseload per attorney per year for all contractors who handle exclusively, or primarily, juvenile cases.²²

	2007 Caseload	Attorney FTEs	Attorneys	Cases per FTE	Cases per attorney	Review percentage
Jackson Juvenile	2,298	2.82	4	815	575	66%
Linn Juvenile	2,672	4.1	6	652	445	56%
JAC	8,195	13.6	18	603	455	73%
Lane Juvenile	5,405	10.8	13	500	416	73%
IDI	2,779	6.28	11	443	253	61%
MJDC	5,392	14	15	385	359	71%
JRP	4,089	13.4	18	305	227	74%
NAPOLS	756	2.8	3	270	252	89%
Average	31,586	67.8	88	466	359	

JJC is not currently seeking to add attorneys to the consortium and when asked how representation could be improved in the county, the consortium’s response was that, “More efficient use of court time through better scheduling would allow members to deliver better quality representation.”

While PDSC must recognize the need of consortium attorneys to receive an income from public defense cases that, combined with income from other sources, is adequate to permit them to continue representing public defense clients, should PDSC contract with providers for caseloads that significantly exceed accepted standards even though contractors represent that they are able to provide quality representation?

As noted below, while some concerns were expressed about the quality of representation in dependency cases, the principle concern is that such high caseloads simply preclude high quality representation in at least some cases.

Alternative Models and Providers

It would probably not be feasible for OPDS to impose a strict limit on the number of FTE attorneys who would be required to provide representation under a consortium contract since there are many circumstances that might arise that would cause a consortium to exceed such limits, at least on a temporary basis. For example, if a current member withdrew or became inactive for a period of time and a replacement attorney could not be found despite earnest effort, would that amount to a contract violation?

²² SOPD is not included in the table but in FYE 2007 the two FTE attorneys at SOPD who were assigned to the juvenile caseload handled 388 cases per FTE attorney, or less than half the number assigned to each JJC attorney FTE.

Assuming that in future contracts the Jackson Juvenile Consortium was unwilling to commit to adding FTE attorneys to its contract, or that even if such a commitment were made that OPDS would be unable to enforce it, are there other options that the Commission could direct OPDS to pursue?

As indicated in the discussion at the beginning of this report OPDS realizes significant benefits by contracting with consortia rather than a multitude of individuals and law firms.²³ But in a county the size of Jackson County, contracting with individual attorneys and law firms might be a reasonable approach.

A second public defender office, possibly handling only juvenile cases, would be another option. The need for a second public defender office in this particular community is questionable in view of the cost that would be involved in establishing such an office and the role that SOPD already plays there.

A third possibility would be for OPDS to explore with Los Abogados and its members whether there are attorneys currently handling only criminal cases under that contract who might be willing to handle juvenile cases as well. Two Los Abogados attorneys are already members of JJC but their participation has not solved the problem of excessive caseloads. Expansion of this contract would carry some of the same risks as contracting with the juvenile consortium except that the overall quality of representation provided by this consortium is reported to be very good.

Quality Issues

In addition to the comments included above about the quality of representation provided by public defense contractors in Jackson County, OPDS has tabulated the results of its December, 2007 statewide survey on public defense performance. There was only one respondent who provided information about representation in criminal cases so that information is not included here. Four respondents provided information about JJC. Those respondents indicated that although consortium lawyers possess the legal knowledge, skill and training needed for effective representation, only “sometimes” do the attorneys appear to devote adequate time and resources to each of their clients. Three of the four respondents reported that the contractor did not appear willing to receive and act upon complaints about attorney performance. Specific comments about consortium lawyers singled out one member for doing consistently excellent work, but said that others members have too many cases, are unable to schedule matters in a timely way, and have insufficient contact with their clients.

²³ Some of the benefits are that the administrative function is built-in to a consortium, attorneys are available to provide back-up for each other when needed, and conflicts can be reassigned without additional cost to OPDS.

While there was some indication in interviews that the consortium was taking steps to improve its performance, the concerns expressed in the survey responses and in the interviews conducted in February of 2008 confirm that extraordinarily high caseloads are impacting the quality of representation and the functioning of the court. It is difficult to imagine that they would not. If an attorney handled 815 cases a year, assuming 20 working days a month for 12 months, that attorney would have to handle more than three cases every day from beginning to end, which in a dependency case would include receiving and processing the new case, arranging for an interview with the client, reviewing discovery, meeting with the client, conducting an investigation, retaining an expert if necessary, conferring with the expert, communicating with the other attorneys and parties in the case, informing and advising the client of what the attorney had learned, appearing in court on at least one occasion, and closing the file. A multi-day trial or other hearing would mean that the attorney would be required to process even more cases on other days.

The quality issues appear to be directly related to the caseload, rather than the knowledge and skills of the attorneys and would probably be resolved by a significant decrease in the caseload of each JJC FTE attorney.

Testimony Received at PDSC's April 10, 2008 Meeting in Jackson County

[This portion of the report will be completed after the April 10, 2008 meeting.]

A service Delivery Plan for Jackson County

[This portion of the report will be completed after the PDSC has developed its service delivery plan for this county.]

Exhibit A

ADMINISTRATORS' RESPONSES TO QUESTIONNAIRE
SOUTHERN OREGON PUBLIC DEFENDER, INC.

Board of Directors

1. Do you have a board of directors of other body overseeing the operation of the office?

Our office has a Board of Directors consisting of five (5) directors.

2. Who serves on your board of directors?

Presently, the Board consists of Richard Stark (President), who is a Medford attorney in private practice since 1969 and one of the patriarchs of the local Bar. Wayne Crutchfield (Secretary), former Under-Sheriff with the Jackson County Sheriff's Department and an employer of SOPD from its origination in 1985 until 2000 as an investigator and polygraph operator. He is presently retired. Kelly Rasmussen, who is a local business person and travel agency owner. Herbert Putney (Administrator), an attorney since 1970 and Administrator of SOPD since its origin in 1985. There is a Board vacancy because of the death of Peter Naumes.

3. How are board member selected and how long do they serve?

Prospective Board members are selected by existing Board members and Board members serve a two (2) year term on a staggered basis.

4. How often does the board meet?

The Board of Directors meets quarterly plus other appropriate times (i.e. during the budget crisis in 2002-2003).

5. What are the functions of the Board?

Our Board has three (3) main functions:

- A. To review and approve or disapprove major actions by the Administrator;
- B. To review with other members of the "Criminal Justice System" the role SOPD plays and to make any decisions, suggestions or observations appropriate.
- C. To make decisions in matters that it is not appropriate for the

Administrator to make unilateral decisions.

6. Does the board have written policies and procedures?

Each Board member has a "Board of Directors Manual" which sets forth procedures and policies.

Personnel

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

We have a written policy manual which we distribute to all employees. Employees then sign an acknowledgement that they have read the manual and agree to abide by its conditions. Within the manual, procedures for handling personnel matters are described.

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

We do not have written job descriptions. The categories of employees are as follows:

- a. Administrator
 - i. Contract administration
 - ii. Budgeting
 - iii. Human resources manager including hiring, firing, benefits management, etc.
 - iv. Staff attorney duties
 - v. Court and Community liaison
- b. Office Manager
 - i. Assistant to the Administrator
 - ii. Maintain personnel records, financial accounts
 - iii. Supervise secretarial staff
- c. Staff Attorney
 - i. Full responsibility for all legal aspects on assigned cases
 - ii. Cases assigned based on level of experience
- d. Investigator
- e. Polygrapher
- f. Paralegal
- g. Secretary

- h. Receptionist
- i. Interpreter
- j. Training Coordinator

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

We do not have written policies regarding supervision of attorneys and staff. Instead, upon hiring a new employee, they are assigned either a supervising attorney, or supervising staff member (depending on assigned duties). The supervisor is then charged with monitoring and advising of the new employee, with regular feedback to the Office Manager and Administrator.

4. What is your staff evaluation process?

We intend to initiate a formal evaluation process in Spring 2008.

5. How do you address issues of underperformance?

Issues of underperformance are addressed on a case by case basis. Intervention is attempted at the earliest opportunity. Various techniques are employed such as consulting with the individual, arranging for mentoring with other employees, setting of timelines for improved performance, and as a last resort, termination of employment.

6. How do you acknowledge and reward excellence?

Excellence is rewarded on a daily basis by acknowledging that performance in the presence of co-workers.

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

Every attempt is made to keep salary levels as close to comparative salaries in the District Attorney's office as possible. However, because of budget constraints, our salaries range from 20% to 35% below salaries in the District Attorney's Office.

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

New Attorneys are added to the firm as openings develop, either by resignation of current staff, or in the event of case load increases. Generally, open positions are filled as entry level to allow advancement of current employees.

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

Every effort is made to maintain an open door policy with all staff at all levels. This allows for a continual opportunity and a high degree of comfort for all employees to express opinions about the office working environment. Suggestions and criticisms are encouraged and acted upon when deemed valid and appropriate. Office meetings are held on a regular basis.

Competence

1. What standards do you use for the hiring, monitoring and management of the professional competence of staff involved in public defense cases?

Generally, all attorney position openings are filled as entry level positions. Therefore, the review of qualifications are based on educational background, prior experience, both legal and otherwise, recommendations, and personal interviews. From there, it is relatively easy to watch the progression of professional growth of the individual. This is done through information peer review, and monitoring by the Administrator and supervising attorneys. Feed-back is also solicited from the local judiciary and court staff. Issues are dealt with as they arise, and when necessary, further training is offered. Additionally, with our in-hour program of CLE, area specific sessions can be developed to address problem areas.

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

Casework is reviewed by constant observation, and periodically, physical review of files. That review is shared with staff, when necessary, through meetings and conversation, on a fairly informal basis.

3. Do you have a complaint process for use by staff, clients, others? How is it used?

Complaints by staff are accepted cheerfully at all levels. Staff are encouraged to bring any and all issues to the attention of either the Office Manager or Administrator, or both. Complaints by clients are referred to the Administrator, as are any complaints from anyone outside of the organization. Complaints about the Administrator can be directed to the Board of Directors.

4. Do you have a procedure in place to obtain regular feed-back from public

defense clients regarding the representation they received from your office? Please describe.

We have just implemented a client feed-back form. Clients are given the form at the conclusion of the case and give it to the court clerk to be forwarded to our office.

5. Have any post-conviction relief petitions been granted against attorneys in your office? What were the circumstances?

There has been one post-conviction relief petition granted against an attorney from this office. It dealt with obligations of the attorney to determine a defendant's immigration status.

6. Have any attorneys in your office been disciplined by the Oregon State Bar for violation of the Rules of Professional Conduct or the former Disciplinary Rules? What were the circumstances.

One attorney received a private reprimand because it was felt that he revealed a client confidence in open court.

Cultural Competence

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

We provide, in house, a minimum of one CLE diversity credit per year. We employ people of various races, gender and sexual orientation. We encourage attendance and participation in any and all CLE's that deal with cultural diversity issues.

Training

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

New staff are provided with the employee manual and paired with a supervisor. There is also a manual for new attorneys which provides a whole range of information about the local procedures, forms and expectations.

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

Attorneys are expected to periodically review the Rules of Professional

Conduct. Additionally, we provide sufficient funding to allow all attorneys to maintain required levels of CLE training, including ethics credits. We also provide in-house ethics CLE's.

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

We provide a monthly OSB approved one hour in-house CLE for all our attorneys. When appropriate, these CLE sessions are open to the local legal community. These CLE's cover the whole range of general, practical and ethics requirements. All attorneys are encouraged to observe each other during court proceedings and give each other constructive feedback.

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

We encourage participation by staff to participate in professional development training outside the office by paying for it when appropriate, and by allowing time for their participation in these programs as part of their work hours. Employees do not have to use personal time or vacation time to participate in these opportunities.

Case Management

1. What is your case file protocol for public defense cases?

When the office is appointed to represent a defendant, a file is opened on the case or cases assigned that day. Typically, if multiple cases or credits are received, they are all contained in the single file, so each file represents a single days assignment. Each credit, however, is given a separate and distinct SOPD case number. These case numbers are assigned sequentially and include the case type code. The file includes a log sheet and closing form, OJIN printout of the case, and any received discovery. At the time the file is opened, it is assigned to an attorney. The assigned attorney handles all cases pending on nay particular defendant. The file is kept in the office of the assigned attorney. The case log is maintained by the attorney and any other staff member who has any interaction on the case, include investigators, secretaries, etc. All events are logged. When any particular case is concluded, the attorney completes the closing form and the case is closed and filed. All closed cases are retained for the required retention period.

2. What is your case assignment process in public defense cases?

Cases are generally assigned by a front office staff person who has been designated by the Administrator to perform that role. That person is familiar with the competency levels of each attorney and the types of cases appropriate for each attorney, and the number of cases per month that each attorney is supposed to take. Those differences are determined by experience and seniority. Measure 11 cases are separately reviewed by the Administrator and assigned by the Administrator.

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

Case assignments are monitored daily to insure that the distribution is fair. Our computer system prints out a daily report showing how many cases and which type have been assigned to each attorney per month. Based on that, new assignments are made. Projected monthly case-loads are modified monthly based on actual assignments of the previous month. Additionally, over all caseloads for each attorney are monitored weekly, and if necessary, adjustments are made based on that.

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

Case relief is done on an as needed basis. Attorneys are expected to talk with the Administrator if they feel that some relief is necessary. Based on the situation, adjustments can be made, either in the reduction of newly assigned cases, or the transferring of cases to other attorneys. Additionally, by ongoing monitoring of caseloads, potential problems can be identified and inquires made by the Administrator, or other supervising attorneys.

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

Our computer case management system includes a conflict checking component. As individuals are identified as being associated with a case, their personal information is entered into the computer as part of that case' information. Upon entering the information, the computer then indicates any other cases that that individual is associated with. Generally, it is the secretaries' responsibility to enter the information into the computer database. The secretary then informs the assigned attorney of identified potential conflicts. The attorney then conducts a further review of see whether a conflict actually exists. Then, all conflicts are reviewed by the Administrator prior to filing a motion to withdraw with the court.

Availability

1. Under what circumstances are attorneys in your office made available To indigent members of the public seeking information about criminal And juvenile matters?

Attorneys may only give advice on cases that this office has been appointed on. When appropriate, attorneys may field questions from the public about general criminal procedures, or occasionally on issues which are public record. This may include inquires from family members of clients, from the general public, from other agencies, from the news media, and from the local schools. All of our attorneys are encouraged to participate in any and all activities that are an outreach to the general public. This includes volunteering for speaking engagements, mock trial competitions, and legal forums.

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

An SOPD attorney is available to a person immediately upon this office being appointed.

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

An SOPD attorney is present at all arraignments, both in custody and out of custody, felony and misdemeanor.

4. Do you have a policy requiring contact with in-custody and out-of-custody public defense clients within a specified period of time? What is the policy? How is the policy generally followed?

SOPD's policy is that every in-custody clients is seen within one working day. Out-of-custody clients are notified by mail to contact their attorney immediately to set an appointment. We have an assigned person to do the initial contacts with in-custody clients, and log notes are always entered regarding that contact. The client's attorney can then monitor that the contact was made. Out-of-custody clients are expected to initiate the personal contact. That is generally monitored on a complaint basis. Complaint about lack of contact are fielded by the secretarial staff and forwarded on to the assigned attorney and to the Administrator for follow-up. Generally, these policies are followed very closely.

Appeal

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

Generally, clients are advised of their appeal rights at the time of sentencing. Additionally, the plea petitions that are submitted to the court include a recitation of appeal rights and clients are required to sign that portion, acknowledging that they have read and understand those rights. The client gets copies of these documents.

In cases where issues have arisen which have generated appeal issues, the attorneys review them with the client at the time they arise, and the attorney is responsible for initiating the appeal with the Office of Public Defense Services, Legal Services Division. This is done immediately upon completing the case at the local level.

Community Education

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

Every attempt is made to insure that SOPD is an integral part in all parts of the local community. We are a permanent member of the Jackson County LPSCC, and all ad-hoc criminal justice committees. Our attorneys are encouraged to participate in all levels of local government. Often our attorneys serve on various boards, both government and non-profit. At times, some of our attorneys have served in elected positions, such as City Council. They have also served on local bar committees and advisory groups. We allow attorneys to participate in these activities without having to use personal or vacation time.

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

We are often called on by outside groups to make presentations, provide expertise and training, or participate in discussion groups. This has run the gamut of school presentations, service clubs, mock trial competitions, CLE's, local television broadcasts, etc. Generally, it is on criminal justice related issues, but may also involve areas of particular interest or training of specific attorneys.

3. If not described in response to items 1 and 2, how does your office participate in efforts to improve the local public safety system?

In addition to items mentioned above, our staff has participated in efforts to pass local law enforcement levies, city and county budget meetings, and ad-hoc groups focused on review of various procedures within the criminal justice system, e.g. implementing electronic notices, electronic judgments, etc.

Zeal

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

We provide regular training. We publicly acknowledge success or hard work. We make it clear that we expect nothing less than zealous representation and respect for our clients.. Perhaps unfairly, we aren't hesitant to gossip about any poor representation we see from other practitioners at the courthouse. This may be elitist, but it raises a certain expectation in the office that unless an attorney cares about their clients and knows what they are doing, they don't belong here. We hire good people. We acknowledge that it is really not paranoia when they are really out to get us. We try to make the office a fun and exciting place to work and we are very quick to support each other. We may rely on black humor and cynicism for stress relief, but I think we are able to maintain a positive attitude nonetheless.

In addition, we are trying to bring prominent speakers to our continuing legal education programs such as the one that we are presenting on April 11, 2008, which will include: Gina Raney, D.O.C. Operations and Policy Manager, Salem, Oregon; Rita De-Hann Sullivan, Ph.D, OnTrack, Inc., Medford, Oregon; Sr. Trooper Ken Snook, Sgt. Tim Plummer, Oregon State Police; and Jesse W. Barton, Attorney at Law, Salem, Oregon.

Conclusions

1. In what areas do you believe SOPD excels?

SOPD excels at maintaining a high level of competency and cost effective administration of justice, insuring that the interests of the individual defendant are protected and respected. We steadfastly provide excellent legal representations to indigent clients. We are highly respected within our community. We provide ongoing continuing legal education second to none. We provide excellent attorney support through our staff of Investigators, Paralegals, Polygraphers, etc.

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

SOPD could benefit with some technological improvements. We have not availed ourselves enough with advanced methods of trial presentations, e.g. computer generated demonstrations and power point presentations. Also, general use of computers in the courtroom. Some of this is funding issues related to acquisition of equipment, and some of it is training of staff in the technologies. We plan on organizing additional CLE's in this area, and consultations with experts in these fields, and attempting to budget additional money to increase our capabilities.

In addition, we have worked very hard with young attorneys to help them keep case loads down by analyzing their cases as early on as possible so if they are resolvable they can be resolved quickly so that the attorney will have more time to handle the complex cases that need "real lawyering".

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

SOPD could benefit from more training on the uses of technological improvements such as computer generated demonstrations and power point presentations. In addition, we need to continue to work on setting up more formal processes such as evaluations.

Exhibit B

Questionnaire for Administrator of Consortium

1. Does your consortium have formal by-laws and a set of written operating policies and procedures? If so, please provide.

A: No.

2. Does the consortium have a board of directors? If so describe the role that your board plays. Who are the members? How often does it meet? What kinds of issues are directed to the board? Are there limits on how long a board member can serve or how long one member can chair the board? Are there seats designated for "lay" or "community" board members?

A: No.

3. How is the administrator of your consortium selected? Compensated? Evaluated? Are there formal qualifications to be the administrator? Does the consortium or its board of directors have a "plan for succession" to insure an orderly transition from one administrator to the next?

A: Los Abogados has co-administrators, who were selected by default when the previous administrator left the consortium. Each administrator is paid \$400 per month to offset the cost of the work done by our secretary on Los Abogados business. We have no process to evaluate the administrators, and the only qualifications are a willingness to do the job and an employee who is capable of doing it. There is no "plan for succession".

4. What percentage of the administrator's overall workload is related to consortium matters? Is there a formal limit to the percentage?

A: The amount of time devoted to administrator business is minimal, since most of the work is done by our employee.

5. How are administrative problems and demands met when the administrator is in trial or otherwise unavailable? Is there a formal or informal back-up administrator?

A: With two administrators, one of us is almost always available if problems come up.

6. What are the requirements for membership in the consortium?

A: For a long time, the only requirements for membership in the consortium were a willingness to join and a feeling among the existing members that the person was competent for the work. In the past 18 months or so, we have had no need for more members, and in fact, we don't often reach our contracted-for number of cases.

7. What is the process for applying for membership?

A: There's no formal process. In the past, when we have needed another lawyer, the existing members discuss who might be available and who might be acceptable to all of us. We then make a phone call and see if that person is interested after hearing what the job entails.

8. How long has each of the attorneys been a part of the consortium?

A:	Doug Engle -	1994
	Vance Waliser -	1997
	Bob Abel -	1998
	Dave Orf -	1999
	Christine Herbert -	2003
	Larry Parker -	2005
	Don Scales -	2006

9. To what extent do consortium attorneys specialize in criminal/juvenile defense, representation of the allegedly mentally ill? In public defense? Is there a limit on the percentage of an attorney's practice that can be consortium related?

A: Every lawyer in our consortium specializes in criminal defense, although some of us do other work, as well. There's no limit on the percentage of a lawyer's practice that can be consortium related.

10. How do you insure that new attorneys can become part of the consortium?

A: Los Abogados does not insure that new attorneys can become part of the consortium. We have had no reason to expand for the past three years.

11. What materials and orientation are provided to new consortium members?

A: Verbal orientation only, no written materials beyond a copy of the Los Abogados contract.

12. Is there a procedure for insuring that less experienced attorneys have access to more experienced attorneys when they need advice? Do you have a formal mentoring system? Please describe your system.

A: There is no formal procedure. Our members simply pick up the phone and call.

13. How are cases distributed among attorneys? Do you have a process for assigning cases based on the seriousness and complexity of the case? If so, how do attorneys progress from handling less serious and complex cases to handling more serious and complex cases?

A: Cases are distributed by the administrators' secretary on an even basis, with no consideration given to the seriousness or complexity of the case. The only exception is that some of our lawyers prefer to receive Measure 11 cases and some prefer not to receive Measure 11 cases. All of our lawyers, except one, is approved to handle all cases, including murders, so there is no issue of progressing to handle more serious cases.

14. How soon are attorneys notified of appointment to a case? Do attorneys routinely meet with clients within the timeframes set forth in the contract with PDSC?

A: Lawyers are notified of appointments before 5:00 p.m. on the date that the appointment is received. We believe that in general, our lawyers do meet with clients within the timeframes set forth in the contract.

15. Does your system provide continuity of representation when possible? If a client has been represented by a consortium member in the past are future cases involving that client generally assigned to the same attorney?

A: Our system provides that if a lawyer has an existing client, and that client is charged with new crimes, that lawyer will be assigned the new cases for their existing client. However, if a consortium member has no open files with a client, then the client's new cases will not necessarily be assigned to that same consortium member, just because that lawyer represented the client in the past.

16. Does your organization have a standardized procedure for identifying conflicts or does each attorney or law firm have its own procedure? When are conflict checks conducted? How soon is a case reassigned after a conflict is identified?

A: Each individual lawyer is responsible for identifying conflicts as soon as possible upon receiving the case assignment. In the event of a conflict, the case is

reassigned immediately to another lawyer. The lawyer who conflicts off a case gets no credit for that case, so the incentive is to discover conflicts early.

17. Do consortium members meet regularly as a group? If so, how frequently?

A: No.

18. Is there a mechanism for regular communication among consortium members such as a newsletter, e-mail list, website, regular mailing?

A: Our members' communication is informal, in person or by telephone on an as-needed basis.

19. Is there a mechanism for sharing research or forms?

A: Same as 18 above.

20. What system do you use to monitor the volume of cases assigned to each attorney or law firm? How do you ensure that attorneys are not handling too many cases?

A: Our system involves assigning a certain percentage of our cases to each lawyer. The only way we insure that lawyers are not handling too many cases is that every once in awhile we assign cases to our "overflow" lawyer, who does not receive any cases in most months.

21. How do you ensure that attorneys are providing quality representation? Are there regular evaluations of attorneys? If so, how and by whom are they performed? Are there other mechanisms in place to ensure that consortium attorneys are providing quality representation.

A: In our area of practice, all of our consortium members come into regular contact with each other in court, so we are all able to observe the performance of every other lawyer in our consortium. In addition, we rely on the local judges to notify us about any problems. There are no regular evaluations.

22. How do you address problems of underperformance by attorneys?

A: We haven't had to address this issue, but if we did, it would be by personal contact with the underperforming lawyer.

23. Do you provide training or access to training for consortium lawyers? Please describe. Do you require a minimum number of criminal/juvenile/civil commitment law or trial practice-related CLE credits per year?

A: Los Abogados provides no training to consortium lawyers. We rely on the MCLE system.

24. Are attorneys required to report disciplinary action by the bar? How many consortium attorneys have been disciplined by the bar? What were the circumstances?

A: We have no formal requirement to report disciplinary action by the bar. To my knowledge, no consortium lawyers have been disciplined by the bar.

25. What is the consortium's process for handling complaints from judges? Clients? Others? Is there a designated contact person for complaints? Is that person's identity generally known in the criminal/juvenile justice community?

A: Complaints are directed to co-administrator Doug Engle. His identity is generally known in the criminal justice community.

26. What steps have you taken to address issues related to cultural competence such as the need for interpreters, training regarding cultural biases, culturally appropriate staffing, awareness of immigration consequences?

A: Consortium lawyers are responsible for arranging their own interpreters, who are paid directly by the state.

27. Do you have a system in place that allows clients to evaluate the quality of services received from consortium attorneys?

A: No.

28. Are consortium attorneys and the administrator active participants in policy-making bodies of your criminal/juvenile justice systems?

A: Yes, Los Abogados participates whenever local meetings are called to address particular subjects.

29. What are some of the things your consortium does especially well? Please describe.

A: Our consortium provides quality legal representation by committed lawyers who are working with substantial experience in the field. All of our members have worked in the Southern Oregon Public Defender's Office prior to becoming consortium members. All of us cooperate with each other, the Public Defender's Office, and the court system.

30. Are there any areas in which you think improvement is needed? Please describe.

A: Every individual lawyer has room for improvement. As far as the organization of the consortium, to the extent that it is important to have formal by-laws, written operating policies and procedures, a Board of Director, and other rules and regulations, Los Abogados could use improvement, since it has none of those things currently in place.

Exhibit C

Response to Questionnaire for Jackson Juvenile Consortium

1. I have provided herewith a copy of the JJC Operating Agreement.
2. JJC has a Board of Directors which plays a limited role and meets sporadically. The Board members are a retired circuit judge, former Jackson County Counsel, and former administrator of Medford School District 549C. We have not developed guidelines for service on the Board.
3. Our current Administrator more or less took the position by default when our former administrator encountered professional and personal problems. The Administrator is neither compensated nor are there any formal qualifications. There is no plan of succession.
4. The Administrator spends little time on consortium matters and is not limited in this regard.
5. This has not occurred.
6. An OSB license and significant experience in dependency, delinquency and mental commitment law.
7. We have no formal process.
8. From four to 20+ years.
9. This remains with the member. Two members do exclusively criminal/juvenile defense and mental health law. Jim Mueller also practices a significant amount of family law. Mark Burkhalter also practices real estate/land use law. There is no limit as to consortium related work.
10. Medford is a small enough community that communication among local attorneys is quite informal.
11. None
12. There is no formal mentoring system.

13. Cases are assigned on a regular basis. Seriousness and complexity is not considered as all members are experienced attorneys.
14. Usually within 2-3 days. Monitoring client contact is an area we could improve in. The Administrator has contacted the PLF for assistance in improving initial and continuing client contact.
15. We strive to provide continuity of representation whenever possible.
16. We have purchased and installed a conflict check program which checks conflicts at the time of initial appointments. The program appears to be working quite well.
17. JJC meets as a group at least monthly,
18. No
19. No
20. We attempt to assign an equal number of cases to each attorney.
21. We have no internal mechanism for attorney evaluations.
22. Problems – or incipient problems – are discussed during our regular meetings.
23. "No" to both questions.
24. One attorney has been disciplined by the bar while a member, but he is no longer a member of the consortium.
25. We have no formal complaint process. Judges are free to contact members individually.
26. None other than to attend CLE's addressing such issues.
27. No
28. Yes.

29. JJC's members are well-integrated into the juvenile justice system and have good working relations with the majority of caseworkers, probation officers and court staff. This makes for efficient and compassionate delivery of defense services.
30. Improvement is always needed. More efficient use of court time through better scheduling would allow members to deliver better quality representation.

Questionnaire for Administrator of Consortium

1. Does your consortium have formal by-laws and a set of written operating policies and procedures? If so, please provide.
2. Does the consortium have a board of directors? If so describe the role that your board plays. Who are the members? How often does it meet? What kinds of issues are directed to the board? Are there limits on how long a board member can serve or how long one member can chair the board? Are there seats designated for "lay" or "community" board members?
3. How is the administrator of your consortium selected? Compensated? Evaluated? Are there formal qualifications to be the administrator? Does the consortium or its board of directors have a "plan for succession" to insure an orderly transition from one administrator to the next?
4. What percentage of the administrator's overall workload is related to consortium matters? Is there a formal limit to the percentage?
5. How are administrative problems and demands met when the administrator is in trial or otherwise unavailable? Is there a formal or informal back-up administrator?
6. What are the requirements for membership in the consortium?
7. What is the process for applying for membership?
8. How long has each of the attorneys been a part of the consortium?
9. To what extent do consortium attorneys specialize in criminal/juvenile defense, representation of the allegedly mentally ill? In public defense? Is there a limit on the percentage of an attorney's practice that can be consortium related?
10. How do you insure that new attorneys can become part of the consortium?
11. What materials and orientation are provided to new consortium members?
12. Is there a procedure for insuring that less experienced attorneys have access to more experienced attorneys when they need advice? Do you have a formal mentoring system? Please describe your system.
13. How are cases distributed among attorneys? Do you have a process for assigning cases based on the seriousness and complexity of the case? If so, how do attorneys progress from handling less serious and complex cases to handling more serious and complex cases?

14. How soon are attorneys notified of appointment to a case? Do attorneys routinely meet with clients within the timeframes set forth in the contract with PDSC?
15. Does your system provide continuity of representation when possible? If a client has been represented by a consortium member in the past are future cases involving that client generally assigned to the same attorney?
16. Does your organization have a standardized procedure for identifying conflicts or does each attorney or law firm have its own procedure? When are conflict checks conducted? How soon is a case reassigned after a conflict is identified?
17. Do consortium members meet regularly as a group? If so, how frequently?
18. Is there a mechanism for regular communication among consortium members such as a newsletter, e-mail list, website, regular mailing?
19. Is there a mechanism for sharing research or forms?
20. What system do you use to monitor the volume of cases assigned to each attorney or law firm? How do you ensure that attorneys are not handling too many cases?
21. How do you ensure that attorneys are providing quality representation? Are there regular evaluations of attorneys? If so, how and by whom are they performed? Are there other mechanisms in place to ensure that consortium attorneys are providing quality representation.
22. How do you address problems of underperformance by attorneys?
23. Do you provide training or access to training for consortium lawyers? Please describe. Do you require a minimum number of criminal/juvenile/civil commitment law or trial practice-related CLE credits per year?
24. Are attorneys required to report disciplinary action by the bar? How many consortium attorneys have been disciplined by the bar? What were the circumstances?
25. What is the consortium's process for handling complaints from judges? Clients? Others? Is there a designated contact person for complaints? Is that person's identity generally known in the criminal/juvenile justice community?
26. What steps have you taken to address issues related to cultural competence such as the need for interpreters, training regarding cultural biases, culturally appropriate staffing, awareness of immigration consequences?
27. Do you have a system in place that allows clients to evaluate the quality of services received from consortium attorneys?

28. Are consortium attorneys and the administrator active participants in policy-making bodies of your criminal/juvenile justice systems?
29. What are some of the things your consortium does especially well? Please describe.
30. Are there any areas in which you think improvement is needed? Please describe.

Attachment 3

**OPDS's Draft Report to the Public Defense Services Commission
Report on Service Delivery in Judicial District No. 14 – Josephine County
(April 2008)**

Introduction

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

Foremost among those strategies is PDSC's service delivery planning process, which is designed to evaluate and improve the operation of local public defense delivery systems. During 2004 to 2007, the Commission completed investigations of the local public defense systems in Benton, Clatsop, Coos, Curry, Lane, Lincoln, Linn, Multnomah, Marion, Klamath, Washington, Yamhill, Hood River, Wasco, Wheeler, Gilliam and Sherman Counties. It also developed Service Delivery Plans in each of those counties to improve the operation of their public defense systems and the quality of the legal services provided by those systems.

This report includes the results of the Office of Public Defense Services' (OPDS) preliminary investigation into the conditions of the public defense systems in Josephine County. Future drafts will include a summary of the testimony presented to PDSC at its April 10, 2008 meeting in Medford and recommendations regarding a service delivery plan for this county.

PDSC's Service Delivery Planning Process

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

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

Third, after considering OPDS's preliminary draft report and public comments during the Commission's meetings in a county or region, PDSC develops a "service delivery plan," which is set forth in the final version of OPDS's report. That plan may confirm the quality and cost-efficiency of the public defense delivery system and services in that region or propose changes to improve the delivery of the region's public defense services. In either event, the Commission's service delivery plans (a) take into account the local conditions, practices and resources unique to the region, (b) outline the structure and objectives of the region's delivery system and the roles and responsibilities of public defense contractors in the region, and (c) when appropriate, propose revisions in the terms and conditions of the region's public defense contracts.

Finally, under the direction of PDSC, contractors subject to the Commission's service delivery plans are urged to implement the strategies or changes proposed in the plans. Periodically, these contractors report back to PDSC on their progress in implementing the Commission's plans and in establishing other best practices in public defense management.

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

Background and Context to the Service Delivery Planning Process

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

PDSC is committed to undertaking strategies and initiatives to ensure the competency of those attorneys. In the Commission's view, however, ensuring the minimum competency of public defense attorneys is not enough. As stated in its mission statement, PDSC is also dedicated to ensuring the delivery of quality

public defense services in the most cost-efficient manner possible. The Commission has undertaken a range of strategies to accomplish this mission.

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

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

OPDS has also formed a Quality Assurance Task Force of contractors to develop an evaluation or assessment process for all public defense contractors. Beginning with the largest contractors in the state, this process is aimed at improving the internal operations and management practices of those offices and the quality of the legal services they provide. In 2004, site teams of volunteer public defense managers and lawyers have visited the largest contractors in Deschutes, Clackamas and Washington Counties and prepared reports assessing the quality of their operations and services and recommending changes and improvements. In 2005, the site teams visited contractors in Douglas, Jackson, Multnomah and Umatilla Counties. In 2006, teams visited all of the juvenile contractors in Multnomah and Lane Counties and criminal and juvenile contractors in Linn and Lincoln Counties. In 2007 site teams have visited the sole juvenile contractor in Clackamas County, the largest contract office in the state in Multnomah County and the sole juvenile and criminal providers in Benton County and Columbia County.

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

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

In 2007 PDSC undertook to review the delivery of public defense services in death penalty cases. A final plan for providing services in those cases was

approved by the Commission in June of 2007.

In February of 2008 the Commission began a review of the delivery of public defense services in post-conviction relief cases. That review is ongoing.

The Commission is also concerned about the “graying” of the public defense bar in Oregon and the potential shortage of new attorneys to replace retiring attorneys in the years ahead. More and more lawyers are spending their entire careers in public defense law practice and many are now approaching retirement. In most areas of the state, no formal process or strategy is in place to ensure that new attorneys will be available to replace retiring attorneys. The Commission has also found that the impact of such shortages is greatest in less populous areas of the state, where fewer lawyers reside and practice, but where the demands for public safety and functional justice systems with the requisite supply of criminal defense and juvenile attorneys are as pressing as in urban areas of the state. As a result, PDSC is exploring ways to attract and train younger lawyers in public defense practice across the state.

“Structure” versus “performance” in the delivery of public defense services.

Distinguishing between structure and performance in the delivery of public defense services is important in determining the appropriate roles for PDSC and OPDS in the Commission’s service delivery planning process. That process is aimed primarily at reviewing and improving the “structure” for delivering public defense services in Oregon by selecting the most effective kinds and combinations of organizations to provide those services. Experienced public defense managers and practitioners, as well as research into “best practices,” recognize that careful attention to the structure of service delivery systems contributes significantly to the ultimate quality and effectiveness of public defense services.¹ A public agency like PDSC, whose volunteer members are chosen for their variety and depth of experience and judgment, is best able to address systemic, overarching policy issues such as the appropriate structure for public defense delivery systems in Oregon.

Most of PDSC’s other strategies to promote quality and cost-efficiency in the delivery of public defense services described above focus on the “performance” of public defense contractors and attorneys in the course of delivering their services. Performance issues will also arise from time to time in the course of the Commission’s service delivery planning process. These issues usually involve individual lawyers and contractors and present specific operational and management problems that need to be addressed on an ongoing basis, as opposed to the broad policy issues that can be more effectively addressed

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

through the Commission's deliberative processes. OPDS, with advice and assistance from its Contractor Advisory Group and others, is usually in the best position to address performance issues.

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

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

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

On the other hand, PDSC is responsible for the wise expenditure of taxpayer dollars available for public defense services in Oregon. Accordingly, the Commission believes that it must engage in meaningful planning, rather than simply issuing requests for proposals (RFPs) and responding to those proposals. As the largest purchaser and administrator of legal services in the state, the Commission is committed to ensuring that both PDSC and the state's taxpayers are getting quality legal services at a fair price. Therefore, the Commission does not see its role as simply continuing to invest public funds in whatever local public defense delivery system happens to exist in a region but, instead, to seek the most cost-efficient means to provide quality services in each region of the state.

PDSC intends, first, to review the service delivery system in each county and develop service delivery plans with local conditions, resources and practices in mind. Second, in conducting reviews and developing plans that might change a local delivery system, the Commission is prepared to recognize the efficacy of the local organizations that have previously emerged to deliver public defense

services in a county and leave that county's organizational structure unchanged. Third, PDSC understands that the quality and cost-efficiency of public defense services depends primarily on the skills and commitment of the attorneys and staff who deliver those services, no matter what the size and shape of their organizations. The organizations that currently deliver public defense services in Oregon include: (a) not-for-profit public defender offices, (b) consortia of individual lawyers or law firms, (c) law firms that are not part of a consortium, (d) individual attorneys under contract, (e) individual attorneys on court-appointment lists and (f) some combination of the above. Finally, in the event PDSC concludes that a change in the structure of a county's or region's delivery system is called for, it will weigh the advantages and disadvantages and the strengths and weaknesses of each of the foregoing organizations in the course of considering any changes.

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

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

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

While some of Oregon's public defender offices operate in the most populous counties of the state, others are located in less populated regions. In either case, PDSC expects the administrator or executive director of these offices to manage their operations and personnel in a professional manner, administer specialized internal training and supervision programs for attorneys and staff, and ensure the delivery of

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

effective legal representation, including representation in specialized justice programs such as Drug Courts and Early Disposition Programs. As a result of the Commission's expectations, as well as the fact that they usually handle the largest caseloads in their counties, public defender offices tend to have more office "infrastructure" than other public defense organizations, including paralegals, investigators, automated office systems and formal personnel, recruitment and management processes.

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

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

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

Consortia offer the advantage of access to experienced attorneys, who

³ Id.

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

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

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

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

3. Law firms. Law firms also handle public defense caseloads across the state directly under contract with PDSC. In contrast to public defender offices and consortia, PDSC may be foreclosed from influencing the internal structure and organization of a law firm, since firms are usually

well-established, ongoing operations at the time they submit their proposals in response to RFPs. Furthermore, law firms generally lack features of accountability like a board of directors or the more arms-length relationships that exist among independent consortium members. Thus, PDSC may have to rely on its assessment of the skills and experience of individual law firm members to ensure the delivery of quality, cost-efficient legal services, along with the external methods of training, standards and certification outlined above.

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

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

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

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

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

for court appointments to verify attorneys' eligibility for such appointments, including requirements for relevant training and experience.

OPDS's Preliminary Investigation in Judicial District 14 – Josephine County

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

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

On February 20 Commissioner John Potter, OPDS public defense analyst Billy Strehlow and Executive Director Ingrid Swenson visited with stakeholders in Josephine County. In addition to meeting with PDSC's contractors in the district, they also talked with judges, the trial court administrator, the District Attorney, juvenile department staff, representatives of the Citizen Review Board, the Department of Human Services and the Court Appointed Special Advocates. Written responses to questionnaires were also received from the two contractors in the district. Copies of these responses are attached as Exhibits A and B.

The preliminary draft of this report is intended to provide a framework to guide the Commission's discussions about the condition of Josephine County's public defense system and services, and the range of policy options available to the Commission – from concluding that no changes are needed in this county to significantly restructuring the delivery system.

In the final analysis, the level of engagement and the quality of the input from all of the stakeholders in Judicial District 14's justice systems could turn out to be the single most important factor contributing to the quality of the final version of

OPDS's report to the Commission and its Service Delivery Plan for Josephine County.

OPDS's Preliminary Findings in Josephine County

The population of Josephine County is 82,390⁴. Grants Pass is the county seat and the largest city in the county. Since 62.4 percent of the land in the county is owned by the federal government the county has relied for seventy years on O&C funds to offset the lack of local tax revenue from this land.⁵ When federal O&C funds were terminated the county lost \$12 million, or more than 60% of its general fund dollars. After a Criminal Justice Systems Local Option Levy failed in May of 2007 Congress extended O&C funding for an additional year. Unlike Jackson County, which did not restore cut services when O&C funding was restored, Josephine County did restore public safety services. No local option levy has been placed on the May, 2008 ballot and it appears unlikely that O&C funding will be extended again. If additional funds are not forthcoming before July 1, 2008 it may again be necessary for the county to make significant cuts in its public safety budget. Among the proposals that came to OPDS's attention were closing the juvenile detention facility and limiting prosecution to major crimes.

The Circuit Court

There are four circuit court judges in Josephine County and a part time pro tem judge. Judge Lindi Baker is the presiding judge. Most of the judges and the trial court administrator are relatively new to their positions. The court uses a central docketing system for scheduling all matters except for criminal arraignments.⁶

Criminal Court Proceedings

Criminal arraignments are held daily at 1:00 p.m. for both in and out-of-custody defendants. In-custody arraignments are conducted by video. Attorneys from the public defender's office are present at arraignments. Status hearings are scheduled for Monday three weeks after arraignment for in-custody cases and four for out-of-custody cases. If cases are resolved at the status hearing they are then scheduled at a later date for sentencing.⁷ Matters that are not resolved at the status hearing are either set for trial or continued. Trials for out-of-custody matters are set for three to four months later.

⁴ Source: Portland State University, 12/15/07 as reported by the Association of Oregon Counties.

⁵ The county's permanent property tax rate as fixed by Measure 50 is .5867%, the lowest in the state.

⁶ District Attorney Stephen Campbell credits the central docketing system with eliminating a previous backlog of cases.

⁷ One interviewee noted that it is inefficient for the court to set these cases over for sentencing. Court staff indicated that without judicial assistants to prepare the appropriate documents sentencing cannot occur at the time of the plea. There is a bench/bar committee that meets quarterly where these kinds of issues can be discussed.

Trials are generally scheduled for Tuesdays through Thursdays. Docket call for all matters scheduled for trial the following week is held on Wednesday. Two judges are generally assigned to handle trials. Multiple trials are often scheduled for the same time since many are settled on the day of trial. The other two judges hear motions, arraignments and other matters. Status hearings and sentencings occur on Mondays, except for in-custody sentencings, which occur on Wednesdays. Although in-custody arraignments are conducted by video, in-custody sentencings are held in a courtroom in the jail. Jury trials may continue into Friday. In addition the drug court and court trials are scheduled for Fridays.

Josephine County Drug Court Program

Josephine County has a well-established drug court program⁸ that had graduated 203 clients as of January 1, 2007. The program lasts a minimum of one year, but graduation often does not occur until 15 to 17 months after enrollment. The court recently added a new family treatment component called the PRO team which is directed at families with children and which provides resources such as mentoring, parenting classes, family activities, education and counseling to participants. This new component is funded with a 2006 Byrne Grant and an Enhancement Grant from the Oregon Criminal Justice Commission. Josephine County's presiding judge serves as the drug court judge.

Mental Health Court

A mental health court is currently in the planning stage. Judge Pat Wolke is overseeing planning for the court and an SOPD attorney and staff member are also involved. At this stage, it was reported that the District Attorney is not a participant in planning meetings.

Juvenile Court System

Both juvenile and domestic relations cases are heard in the Jackson County juvenile court. Judge Michael Newman is the designated juvenile court judge. Shelter hearings in in-custody juvenile delinquency matters and in dependency cases are held at 11:30 every day. Attorneys are not present for these initial hearings. Youth who are detained appear with counsel on the Monday morning following their shelter hearings. Our-of-custody youth make their initial appearance on Mondays as well. "Admit or deny" hearings in dependency cases are set within 30 days after the shelter hearing and trials within 60 days, with a status call hearing before the trial date. Review hearings are generally heard at 9:00 am and are scheduled with the individual attorney. The court staff has

⁸ Although Jackson County is nearly three times the size of Josephine County and at least some Josephine County officials look to the Jackson County court system as a model, it was the Josephine County drug court which served as a model for the more recently created Jackson County drug court.

available the vacation and court schedules for each attorney and contacts them by email when there are scheduling choices.⁹

There is an active CASA program in the county.¹⁰

The county detention center has a capacity of 14 but only six or seven of the beds are usually occupied. The facility does not provide an appropriate meeting space for attorneys and clients. There is a small room with no table that is available.

District Attorney

Stephen Campbell is the District Attorney for Josephine County. Prior to becoming the county's district attorney he served as a deputy district attorney in both Coos and Josephine Counties for more than twenty years. He currently has eight deputies but has found it difficult to retain experienced lawyers, requiring the regular training of new deputies. One deputy district attorney recently resigned to accept other employment in the area. Currently one deputy is assigned to the juvenile court. The office stopped filing misdemeanors in May of 2007 for a period of two weeks when it appeared that funding cuts were imminent. It is not clear what the staffing level will be after June 30, 2008. One option being considered is for the City of Grants Pass to fund a prosecutor position in the district attorneys' office since a high percentage of the cases processed arise within the city and are investigated by the Grants Pass Police Department.

Public Defense Providers

1. Josephine County Defense Lawyers, Inc. (JC DL)¹¹

This nine member consortium handles criminal, juvenile and civil commitment cases. Holly Preslar is the president of the board and the administrator of the consortium. The consortium's board of directors is comprised exclusively of member attorneys. The board meets often to talk about issues such as attorney performance, attorney compensation, case assignment, caseloads and continuing legal education.

⁹ Court staff indicate that this scheduling system is working well. Attorneys are very responsive to email communications, often responding on the weekends.

¹⁰ OPDS was advised of friction between some CASA volunteers and some consortium attorneys. The CASA volunteers may need additional training in the role of attorneys but some of the attorneys may act unprofessionally towards CASAs who disagree with the attorney's position. Attorneys don't always return phone calls from CASA volunteers but CASAs are learning that it is best to leave detailed voice messages for attorneys rather than requests for return phone calls. One veteran CASA indicated that most of the attorneys do a good job representing their clients.

¹¹ The consortium's response to OPDS's questionnaire about consortium structure and practices is attached as Exhibit A.

Quality assurance is dealt with both in the members' participation agreement and in the bylaws of the corporation. Attorneys agree to provide legal services under the agreement "with the same care as would be provided if the client had been able to privately retain Attorney." The organization's bylaws permit suspension or termination if a member's conduct is not in the best interests of the corporation.

The length of time that each of the members has been part of the consortium ranges from more than twenty years for three members to only two months for the most recently admitted member. All of the members except one currently devote approximately 40-50% of their time to consortium cases. One member handles only public defense cases. Cases are distributed evenly among member attorneys, although the bylaws permit an attorney to deduce their participation under certain circumstances. The consortium provides continuity of representation to clients by assigning a client's new cases to the attorney who has already been appointed to represent the client on another matter or who has represented the client in the past.

Consortium members meet regularly and communicate frequently by email. The consortium maintains a library of CLE materials and state bar publications. It also provides Westlaw to all its members.

Consortium members participate in many committees, including the Bench-Bar Committee, the Juvenile Agency Committee, the Model Juvenile Court Committee, and the Mental Health Court Committee.

Comments regarding JCDL:

Comments received about the consortium from the persons interviewed indicated that in the past the consortium was not always responsive to complaints and concerns about the conduct of some members, reminding those who complained that each attorney was an independent contractor. Recently, however, the consortium has had to deal with some difficult personnel issues and appears to have managed them successfully, if not as promptly as some would have liked.

Some consortium attorneys were singled out as providing excellent representation and the group on average was said to provide good quality services. In juvenile cases, consortium attorneys were credited with providing very "active" representation and were said to be better at maintaining contact with clients than their Jackson

County counterparts. Although attorneys do not attend shelter hearings they contact clients promptly, especially in delinquency cases.¹² The juvenile system is said to be working smoothly. Attorneys do particularly good work on behalf of parents and youth, but somewhat less good work for children in juvenile dependency cases. Although they provide zealous representation for children, only a couple attorneys are said to meet often with their child clients. Others meet with them and their foster parents only rarely. Indian Child Welfare Act cases arise with some frequency and a DHS representative observed that in a recent case the attorney did an excellent job of holding the agency's "feet to the fire."

2. Southern Oregon Public Defender (SOPD) dba Josephine County Public Defender¹³

SOPD is a private non-profit corporation established in Jackson County in 1985. Bert Putney organized the office and continues to serve as its administrator. Gary Berlant is the senior attorney and manager of the Josephine County office of SOPD. The office has seven attorney positions and five staff positions, including investigators, paralegals, a polygraph operator and a drug court coordinator who staffs the drug court. SOPD handles only criminal cases in Josephine County.

SOPD has a five-member Board of Directors that reviews major actions by the director, makes decisions not appropriate for the administrator to make, and oversees the office's functioning within the local criminal justice system. The office has a written policy manual which is distributed to all employees and which describes procedures for handling personnel matters. The office also provides attorneys with a manual outlining local procedures, forms and expectations. Although the office manager and the administrator oversee the work of the entire staff, training and supervision are principally provided by the attorney or staff person who is assigned to supervise each new employee.

SOPD conducts monthly in-house CLEs, sponsors CLE sessions for local attorneys emphasizing issues of particular significance to local practitioners, and sends its attorneys and staff to OCDLA and other

¹² One juvenile department representative said that attorneys do not challenge youths' ability to aid and assist even when they have well documented cognitive deficits. OPDS was told these youth need someone to fight for them. It was also said that attorneys may not meet with their clients until the day of their court hearing or the day before. It appears that lawyers for youth do provide the same kind of representation to juvenile clients as they do to criminal clients, however, not substituting their own judgment about what is in the youth's best interest, which has been an issue in some jurisdictions.

¹³ A copy of SOPD's response to OPDS's questionnaire for public defender office administrators is attached as Exhibit B.

CLE trainings in areas of more general interest. SOPD uses an informal evaluation process for attorneys and staff that is based on open and regular communication and feedback. There are plans to initiate a formal evaluation process in the spring of 2008. Underperformance is addressed by consultation, mentoring, establishment of timelines, and when necessary, termination. Excellence is most often rewarded by acknowledgment in the presence of co-workers.

Caseloads of individual attorneys are monitored weekly and monthly.

By its own policy, as well as PDSC's SOPD requires that every in-custody client be seen within one working day.

SOPD has recently implemented a client feed-back process. Clients are given a form to complete at the conclusion of the case which is submitted to the court and then forwarded to SOPD.

SOPD received a 13.48% increase for the 2008-2009 contract period. Recruitment and retention of attorneys has been a challenge for this office where attorney's starting salaries have been significantly lower than the starting salaries of their counterparts in the district attorney's office.¹⁴ Under the new contract the entry level salaries were increased to \$45,000. Vacancies can now be filled in a more reasonable time although it has been more difficult to fill vacancies in the Josephine County office than in the Jackson County office. In the past it was not unusual for it to take two to three months to fill a vacancy in either office. Mr. Putney believes that it was equally important to increase salaries for mid-range attorneys in order to increase retention of attorneys with two to four years of experience.

Comments regarding SOPD: Specific comments about the public defender office were that the senior attorneys do really good work and that entry level attorneys get good if they stay. The staff person assigned to the drug court is rated as "fantastic" for her work in the court and for providing trainings to the whole legal community.

Caseloads

In FYE 2006 there were a total of 4,079 public defense cases¹⁵ in Josephine County. In FYE 2007 there were 4018 cases, which represented a 1.5%

¹⁴ The current starting salary in the Josephine County District Attorney's Office is \$50,004.

¹⁵ A "case" is a unit for which OPDS awards a case credit and does not necessarily correspond to a case as defined by the court and other justice system agencies.

decrease. JCDL received a total of 1,778 case credits in FYE 2007, 914 of which were in juvenile cases and the balance, or 864, in civil commitment, criminal or quasi criminal cases. SOPD received 2,210 case credits, all for criminal or quasi-criminal cases. In the 2008-2009 contract, JCDL attorneys have agreed to handle an average of 367 cases per FTE attorney per year. SOPD's seven FTE attorneys have contracted for a caseload of 321 cases each.

OPDS's Recommendations for Further Inquiry at PDSC's April 10, 2008 Meeting in Medford

The public defense delivery system in Josephine County appears to be working well. Although it is a small county is has an established public defender office which is performing the role such an office is expected to perform. While recruitment and retention remain a challenge, experienced attorneys in the office are well regarded and provide mentoring and training to newer attorneys. In addition, the county has a well-established consortium with many very experienced attorneys. After encountering some significant performance issues, in one case due to serious illness, the consortium appears to have developed appropriate mechanisms for addressing such issues in the future.

Although OPDS was informed by more than one interviewee that the relationships within the court system are, and always have been, contentious and adversarial, OPDS did not observe any evidence of unusually adversarial relationships. The two contract offices appear to work effectively together and cases get resolved between the state and the defense.¹⁶ It may be that the adversarial relationships are more often displayed in the courtroom.

The overall quality of representation appears to be very good. There were six Josephine County respondents to OPDS's 2007 statewide survey. In criminal case both contractors were rated overall as providing "very good" representation. Consortium attorneys were described as "always" possessing the legal knowledge, skill and training necessary for effective representation and SOPD was described as possessing such attributes "most of the time." Caseload levels were not seen as preventing adequate representation by consortium attorneys and were seen as only "sometimes" preventing such representation by SOPD attorneys. In juvenile cases the consortium's representation was again rated as "very good" and lawyers were said to possess the legal knowledge, skill and training necessary for effective representation "most of the time" and for having adequate time, despite their caseloads, to devote appropriate time and resources to each of their clients "in most cases." A number of the specific comments noted that the caseloads are high and the pay low and that attorneys cannot afford to work in public defense.

¹⁶ The trial rate in Josephine County is only slightly above average for both misdemeanor and felony cases.

Testimony Received at PDSC's April 10, 2008 Meeting in Medford

[This portion of the report will be completed after the April 20, 2008 meeting.]

A Service Delivery Plan for Josephine County

[This portion of the report will be completed after the PDSC has developed its service delivery plan for this county.]

Exhibit A

Questionnaire for Administrator of Consortium

1. Does your consortium have formal by-laws and a set of written operating policies and procedures? If so, please provide. YES AS TO BY-LAWS (SENDING VIA EMAIL -- SEPARATE ATTACHMENT)

2. Does the consortium have a board of directors? YES. If so describe the role that your board plays. SEE BY-LAWS ALSO. BOARD MEMBERS ARE ELECTED BY JCDL MEMBERSHIP FROM THE MEMBERS. PRESIDENT ACTS AS CONTRACT ADMINISTRATOR, TROUBLESHOTS ISSUES WITH ATTORNEYS/OPDS/COURTS/AGENCIES/COMMUNITY PARTNERS Who are the members? SEE ABOVE. How often does it meet? BOARD MEETS MINIMALLY ONE TIME PER YEAR AND THEN ON AN AS NEEDED BASIS (TYPICALLY 4-6 TIMES PER YEAR) What kinds of issues are directed to the board? ISSUES RELATED TO ATTORNEY PERFORMANCE, FISCAL RESPONSIBILITY, ATTORNEY MEMBER PAY, DIRECTING OF ADMINISTRATIVE ASSISTANT, ATTORNEY CASE ASSIGNMENT/CASE LOAD ISSUES, ONGOING CONTINUING EDUCATION ISSUES, AND OTHER ISSUES AS NEEDED. Are there limits on how long a board member can serve or how long one member can chair the board? NO. Are there seats designated for "lay" or "community" board members? NO, ALTHOUGH HAS BEEN PART OF ONGOING DISCUSSION WITH MEMBERS, AND HAVE HAD COMMUNICATIONS WITH NON-PARTICIPATING MEMBERS AS TO POSSIBILITY OF ADDING THEM TO THE BOARD (AND AMENDING BY-LAWS)

3. How is the administrator of your consortium selected? (SEE BYLAWS) BY FULL MEMBERSHIP VOTE TO THE BOARD, AND THEN BY BOARD AS TO WHO IS PRESIDENT. Compensated? VIA A REDUCTION IN CASELOAD PER MONTH COMPARED WITH OTHER JCDL MEMBERS Evaluated? BY VOTE OF THE MEMBERSHIP EVERY YEAR.

Are there formal qualifications to be the administrator? ONLY THAT THEY MUST BE MEMBER OF JCDL. Does the consortium or its board of directors have a "plan for succession" to insure an orderly transition from one administrator to the next? YES, SEE BYLAWS. FURTHER, LAST TIME NEW PRESIDENT IN PLACE ACTING AS ADMINISTRATOR, THAT INDIVIDUAL CONTINUED ON THE BOARD TO TRAIN OTHER BOARD MEMBERS, AND SAME IS DONE AT THIS POINT IN TIME.

4. What percentage of the administrator's overall workload is related to consortium matters? AT LEAST 40-50%. Is there a formal limit to the percentage? NO.

5. How are administrative problems and demands met when the administrator is in trial or otherwise unavailable? VICE PRESIDENT AND/OR SECRETARY/TREASURER (OTHER BOARD MEMBERS) ACT IN PLACE OF PRESIDENT/ADMINISTRATOR. Is there a formal or informal back-up administrator? FORMAL PER BY-LAWS.

6. What are the requirements for membership in the consortium? SEE BYLAWS; HISTORICALLY ATTORNEY APPLYING FOR MEMBERSHIP MUST BE ABLE TO TAKE ALL CASE TYPES CONSORTIUM IS CONTRACTED TO HANDLE; MUST HAVE PRACTICE/OFFICE IN JOSEPHINE COUNTY; MUST BE MEMBER OF OSB AND IN GOOD STANDING; MUST BE VOTED ON BY ALL CONSORTIUM MEMBERS.

7. What is the process for applying for membership? MUST SUBMIT LETTER REQUESTING MEMBERSHIP INTO CONSORTIUM, ALONG WITH RESUME AND/OR LETTERS OF REFERENCE. THEN THEY ARE GIVEN FORM AS TO QUALIFICATIONS, STANDARDS TO FILL OUT AND RETURN PRIOR TO VOTE BY CONSORTIUM MEMBERS.

8. How long has each of the attorneys been a part of the consortium? Robert Graham (2 months); Mary Landers (3 years); Robert Bain (9 years combined; most recently 6 months) ; Deborah Cumming (6.4 years); Rebecca Peterson (4.3 years); Dan Simcoe (20+ years); Claudia Browne (20+ years); Chris Mecca (20+ years); Holly Preslar (14 years)

9. To what extent do consortium attorneys specialize in criminal/juvenile defense, representation of the allegedly mentally ill? ALL ATTORNEYS HANDLE ALL CASE TYPES. In public defense? ABOUT 40-50% of each attorney's practice is public defense, although one attorney currently limits his entire practice to public defense. Is there a limit on the percentage of an attorney's practice that can be consortium related?
No

10. How do you insure that new attorneys can become part of the consortium? We actively recruit members of the legal community on a regular and ongoing basis.

11. What materials and orientation are provided to new consortium members? All OPDS guidelines/rules; Copy of by-laws and participation agreement; And all new members sit down with contract administrator and administrative assistant to go over general local issues and contract requirements.

12. Is there a procedure for insuring that less experienced attorneys have access to more experienced attorneys when they need advice? ALL PARTICIPATING MEMBERS AGREE TO ASSIST NEW MEMBERS AT ANY TIME WITH CASES (and in fact have tried cases with new members when needed and/or requested) Do you have a formal mentoring system? NOTHING FORMAL. Please describe your system. SEE ABOVE, BUT ALSO RECOGNIZE THAT WE DO NOT ALLOW NEW MEMBERS UNLESS THEY CERTIFY THEY ARE QUALIFIED UNDER INDIGENT DEFENSE POLICIES AND GUIDELINES TO HANDLE ALL CASE TYPES WE CONTRACT TO TAKE WITH OPDS.

13. How are cases distributed among attorneys? ON AN EQUAL BASIS BY OUR ADMINISTRATIVE ASSISTANT. Do you have a process for assigning cases based on

the seriousness and complexity of the case? NO --- SEE ABOVE. If so, how do attorneys progress from handling less serious and complex cases to handling more serious and complex cases?

14. How soon are attorneys notified of appointment to a case? ATTORNEYS ARE GENERALLY NOTIFIED SAME DAY AS THE JCDL ADMINISTRATIVE ASSISTANT RECEIVES THE APPOINTMENT. Do attorneys routinely meet with clients within the timeframes set forth in the contract with PDSC? YES---WE STRIVE FOR THAT!

15. Does your system provide continuity of representation when possible? YES. IN FACT, PREVIOUS CLIENTS ARE GENERALLY ASSIGNED TO THE SAME ATTORNEY WHEN AVAILABLE, AND IF AN ATTORNEY HAS AN OPEN CASE, ALL NEW CASES ARE ASSIGNED TO THE SAME ATTORNEY AS WELL. If a client has been represented by a consortium member in the past are future cases involving that client generally assigned to the same attorney? YES, IN MOST SITUATIONS AND WHEN ATTORNEY IS AVAILABLE.

16. Does your organization have a standardized procedure for identifying conflicts or does each attorney or law firm have its own procedure? FIRST, JCDL ADMIN. ASST. CHECKS HER DATA BASE TO DO INITIAL CASE CONFLICT CHECK WHERE INFORMATION IS KNOWN. THEN, EACH ATTORNEY AND/OR LAW FIRM HAS ITS OWN CONFLICT CHECK SYSTEM, SINCE THEY ARE IN PRIVATE PRACTICE AND MUST HAVE THE SAME FOR THEIR PRIVATE CASES AS WELL. When are conflict checks conducted? CONFLICT CHECKS ARE DONE IMMEDIATELY IN NEARLY EVERY CASE BEFORE CASE IS ASSIGNED; HOWEVER, SOME TIMES WITNESS INFORMATION IS NOT READILY AVAILABLE, AND CREATES CONFLICTS AFTER DISCOVERY IS RECEIVED. How soon is a case reassigned after a conflict is identified? ASAP...GENERALLY WITHIN 24-48 HOURS OF DISCOVERY OF CONFLICT.

17. Do consortium members meet regularly as a group? REQUIRED BY BY-LAWS TO MEET ANNUALLY. ALSO, WHEN NEEDED. AND, WE TRY TO HAVE "CRIMINAL DEFENSE BAR" MEETINGS TO DISCUSS RELEVANT ISSUES WITH PRACTICE MATTERS, CONTINUING EDUCATION, ETC. If so, how frequently? SEE ABOVE.

18. Is there a mechanism for regular communication among consortium members such as a newsletter, e-mail list, website, regular mailing? WE COMMUNICATE VIA EMAIL NEARLY ONCE PER WEEK, OR AS NEEDED.

19. Is there a mechanism for sharing research or forms? JCDL MAINTAINS A LAW LIBRARY OF CLE MATERIALS, ETC; WE ALSO PROVIDE WESTLAW TO ALL MEMBERS AND OSB BAR BOOKS AS WELL. WE ALSO ROUTINELY SHARE FORMS, AND SEND EMAILS WHEN NEW ISSUES ARISE.

20. What system do you use to monitor the volume of cases assigned to each attorney or law firm? OUR ADMIN. ASST. MONITORS CASE ASSIGNMENT TO EACH ATTORNEY BASED ON A LIST FORMAT. How do you ensure that attorneys are not handling too many cases? EACH ATTORNEY SELF-MONITORS....AND WE ENCOURAGE AND ROUTINELY ASK FOR INPUT FROM MEMBERS (THEY GO OFF ROTATION, REDUCE CASELOAD PER BY-LAWS, WHEN THEY NEED TO REDUCE THE SAME)

21. How do you ensure that attorneys are providing quality representation? VIA PARTICIPATION ON A NUMBER OF COURT AND COMMUNITY PARTNER COMMITTEES (Bench-Bar Committee, Juvenile Agency Committee, Model Juvenile Court Committee, Mental Health Court Committee) AND THROUGH MEETINGS WITH PRESIDING JUDGE AND TRIAL COURT ADMINISTRATOR. Are there regular evaluations of attorneys? NOT OF ANY FORMAL TYPE. If so, how and by whom are they performed? Are there other mechanisms in place to ensure that consortium attorneys are providing quality representation. SEE ABOVE.

22. How do you address problems of underperformance by attorneys? SEE BYLAWS; WHEN ISSUES FROM CLIENTS COME TO CONTRACT ADMIN., THEY ARE FIRST ADDRESSED WITH OTHER BOARD MEMBERS, AND THEN GENERALLY DIRECTLY VIA CONVERSATION WITH THAT ATTORNEY. LESS FORMALLY SOMETIMES JUST DIRECT CONERSATION WITH SAID ATTORNEY IS ALL THAT IS NEEDED. IF MATTER DOES NOT RESOLVE, OR IS CONTINUING COMPLAINT FROM CLIENTS, COURTS, OR COMMUNITY PARTNERS, SOMETIMES FORMAL INVESTIGATION IS LAUNCHED AFTER GIVING MEMBER OPPORTUNITY TO RESPOND AND THEN BOARD REVIEWS, AND MAY REFER TO ENTIRE MEMBERSHIP IF ACTION IS NEEDED. ADDITIONALLY, PER BYLAWS, MEMBER MAY BE SUSPENDED AND/OR TERMINATED FOR A VARIETY OF REASONS (and in fact have been in recent past).

23. Do you provide training or access to training for consortium lawyers? SEE ABOVE #17, 18 & 19. Please describe. Do you require a minimum number of criminal/juvenile/civil commitment law or trial practice-related CLE credits per year? NOT FORMALLY, BUT ALL MEMBERS HAVE ACCESS TO CLE MATERIALS PURCHASED BY JCDL AND ARE INFORMED OF THE SAME.

24. Are attorneys required to report disciplinary action by the bar? YES, BUT SOMETIMES NOT KNOWN UNFORTUNATELY. How many consortium attorneys have been disciplined by the bar? IF YOU INCLUDE ADMONISHMENTS, I BELIEVE 4 MEMBERS. What were the circumstances? One member was disciplined by public reprimand for private retained civil case for neglect of legal matters; two members admonished for conflict of interest issues (on retained private matters), and one for ex parte contact with court (admonished).

25. What is the consortium's process for handling complaints from judges? SEE ANSWER TO #22. GENERALLY CONTRACT ADMINSTRATOR SPEAKS TO

JUDGE, THEN TO ATTORNEY, BUT ALSO ENCOURAGES JUDGE TO SPEAK DIRECTLY TO THE LAWYER IN QUESTION IF POSSIBLE. Clients? SAME ANSWER AS TO JUDGES COMPLAINTS. Others? SAME ANSWER. Is there a designated contact person for complaints? YES, CONTRACT ADMINISTRATOR. Is that person's identity generally known in the criminal/juvenile justice community? ABSOLUTELY!!!!!!!!!!!!!!

26. What steps have you taken to address issues related to cultural competence such as the need for interpreters, training regarding cultural biases, culturally appropriate staffing, awareness of immigration consequences? ALL ATTORNEYS HAVE ATTENDED TRAINING, AND ROUTINELY INFORMATION IS PASSED ON TO ALL ATTORNEYS VIA EMAIL, CLE INFO, ETC.

27. Do you have a system in place that allows clients to evaluate the quality of services received from consortium attorneys? NO. HAVE TRIED IN THE PAST VIA FORMS GIVEN OUT AT END OF CASE, AND RESPONSE HAS BEEN LESS THAN 1%.

28. Are consortium attorneys and the administrator active participants in policy-making bodies of your criminal/juvenile justice systems? YES.

29. What are some of the things your consortium does especially well? Please describe. WE WORK VERY HARD FOR CLIENTS, WE STAY WELL CONNECTED TO THE COURTS AND EACH OTHER FOR INFORMATION SHARING, WE HAVE LAWYERS WITH MANY YEARS OF EXPERIENCE, WE ARE NOT AFRAID TO CHALLENGE THE "SYSTEM" WHEN NEEDED AND NECESSARY

30. Are there any areas in which you think improvement is needed? I WOULD SAY IMPROVEMENT BY WAY OF ADDING NEW MEMBERS TO LOWER CASE LOAD, AND TO COMPEL ATTORNEYS TO ACTIVELY PARTICIPATE IN CLE'S BASED UPON OUR AREAS OF PRACTICE AS CONSORTIUM MEMBERS.

Exhibit B

ADMINISTRATORS' RESPONSES TO QUESTIONNAIRE
SOUTHERN OREGON PUBLIC DEFENDER, INC.

Board of Directors

1. Do you have a board of directors of other body overseeing the operation of the office?

Our office has a Board of Directors consisting of five (5) directors.

2. Who serves on your board of directors?

Presently, the Board consists of Richard Stark (President), who is a Medford attorney in private practice since 1969 and one of the patriarchs of the local Bar. Wayne Crutchfield (Secretary), former Under-Sheriff with the Jackson County Sheriff's Department and an employer of SOPD from its origination in 1985 until 2000 as an investigator and polygraph operator. He is presently retired. Kelly Rasmussen, who is a local business person and travel agency owner. Herbert Putney (Administrator), an attorney since 1970 and Administrator of SOPD since its origin in 1985. There is a Board vacancy because of the death of Peter Naumes.

3. How are board member selected and how long do they serve?

Prospective Board members are selected by existing Board members and Board members serve a two (2) year term on a staggered basis.

4. How often does the board meet?

The Board of Directors meets quarterly plus other appropriate times (i.e. during the budget crisis in 2002-2003).

5. What are the functions of the Board?

Our Board has three (3) main functions:

- A. To review and approve or disapprove major actions by the Administrator;
- B. To review with other members of the "Criminal Justice System" the role SOPD plays and to make any decisions, suggestions or observations appropriate.
- C. To make decisions in matters that it is not appropriate for the

Administrator to make unilateral decisions.

6. Does the board have written policies and procedures?

Each Board member has a "Board of Directors Manual" which sets forth procedures and policies.

Personnel

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

We have a written policy manual which we distribute to all employees. Employees then sign an acknowledgement that they have read the manual and agree to abide by its conditions. Within the manual, procedures for handling personnel matters are described.

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

We do not have written job descriptions. The categories of employees are as follows:

- a. Administrator
 - i. Contract administration
 - ii. Budgeting
 - iii. Human resources manager including hiring, firing, benefits management, etc.
 - iv. Staff attorney duties
 - v. Court and Community liaison
- b. Office Manager
 - i. Assistant to the Administrator
 - ii. Maintain personnel records, financial accounts
 - iii. Supervise secretarial staff
- c. Staff Attorney
 - i. Full responsibility for all legal aspects on assigned cases
 - ii. Cases assigned based on level of experience
- d. Investigator
- e. Polygrapher
- f. Paralegal
- g. Secretary

- h. Receptionist
- i. Interpreter
- j. Training Coordinator

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

We do not have written policies regarding supervision of attorneys and staff. Instead, upon hiring a new employee, they are assigned either a supervising attorney, or supervising staff member (depending on assigned duties). The supervisor is then charged with monitoring and advising of the new employee, with regular feedback to the Office Manager and Administrator.

4. What is your staff evaluation process?

We intend to initiate a formal evaluation process in Spring 2008.

5. How do you address issues of underperformance?

Issues of underperformance are addressed on a case by case basis. Intervention is attempted at the earliest opportunity. Various techniques are employed such a consulting with the individual, arranging for mentoring with other employees, setting of timelines for improved performance, and as a last resort, termination of employment.

6. How do you acknowledge and reward excellence?

Excellence is rewarded on a daily basis by acknowledging that performance in the presence of co-workers.

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

Every attempt is made to keep salary levels as close to comparative salaries in the District Attorney's office as possible. However, because of budget constraints, our salaries range from 20% to 35% below salaries in the District Attorney's Office.

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

New Attorneys are added to the firm as openings develop, either by resignation of current staff, or in the event of case load increases. Generally, open positions are filled as entry level to allow advancement of current employees.

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

Every effort is made to maintain an open door policy with all staff at all levels. This allows for a continual opportunity and a high degree of comfort for all employees to express opinions about the office working environment. Suggestions and criticisms are encouraged and acted upon when deemed valid and appropriate. Office meetings are held on a regular basis.

Competence

1. What standards do you use for the hiring, monitoring and management of the professional competence of staff involved in public defense cases?

Generally, all attorney position openings are filled as entry level positions. Therefore, the review of qualifications are based on educational background, prior experience, both legal and otherwise, recommendations, and personal interviews. From there, it is relatively easy to watch the progression of professional growth of the individual. This is done through information peer review, and monitoring by the Administrator and supervising attorneys. Feed-back is also solicited from the local judiciary and court staff. Issues are dealt with as they arise, and when necessary, further training is offered. Additionally, with our in-hour program of CLE, area specific sessions can be developed to address problem areas.

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

Casework is reviewed by constant observation, and periodically, physical review of files. That review is shared with staff, when necessary, through meetings and conversation, on a fairly informal basis.

3. Do you have a complaint process for use by staff, clients, others? How is it used?

Complaints by staff are accepted cheerfully at all levels. Staff are encouraged to bring any and all issues to the attention of either the Office Manager or Administrator, or both. Complaints by clients are referred to the Administrator, as are any complaints from anyone outside of the organization. Complaints about the Administrator can be directed to the Board of Directors.

4. Do you have a procedure in place to obtain regular feed-back from public

defense clients regarding the representation they received from your office? Please describe.

We have just implemented a client feed-back form. Clients are given the form at the conclusion of the case and give it to the court clerk to be forwarded to our office.

5. Have any post-conviction relief petitions been granted against attorneys in your office? What were the circumstances?

There has been one post-conviction relief petition granted against an attorney from this office. It dealt with obligations of the attorney to determine a defendant's immigration status.

6. Have any attorneys in your office been disciplined by the Oregon State Bar for violation of the Rules of Professional Conduct or the former Disciplinary Rules? What were the circumstances.

One attorney received a private reprimand because it was felt that he revealed a client confidence in open court.

Cultural Competence

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

We provide, in house, a minimum of one CLE diversity credit per year. We employ people of various races, gender and sexual orientation. We encourage attendance and participation in any and all CLE's that deal with cultural diversity issues.

Training

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

New staff are provided with the employee manual and paired with a supervisor. There is also a manual for new attorneys which provides a whole range of information about the local procedures, forms and expectations.

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

Attorneys are expected to periodically review the Rules of Professional

Conduct. Additionally, we provide sufficient funding to allow all attorneys to maintain required levels of CLE training, including ethics credits. We also provide in-house ethics CLE's.

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

We provide a monthly OSB approved one hour in-house CLE for all our attorneys. When appropriate, these CLE sessions are open to the local legal community. These CLE's cover the whole range of general, practical and ethics requirements. All attorneys are encouraged to observe each other during court proceedings and give each other constructive feedback.

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

We encourage participation by staff to participate in professional development training outside the office by paying for it when appropriate, and by allowing time for their participation in these programs as part of their work hours. Employees do not have to use personal time or vacation time to participate in these opportunities.

Case Management

1. What is your case file protocol for public defense cases?

When the office is appointed to represent a defendant, a file is opened on the case or cases assigned that day. Typically, if multiple cases or credits are received, they are all contained in the single file, so each file represents a single days assignment. Each credit, however, is given a separate and distinct SOPD case number. These case numbers are assigned sequentially and include the case type code. The file includes a log sheet and closing form, OJIN printout of the case, and any received discovery. At the time the file is opened, it is assigned to an attorney. The assigned attorney handles all cases pending on nay particular defendant. The file is kept in the office of the assigned attorney. The case log is maintained by the attorney and any other staff member who has any interaction on the case, include investigators, secretaries, etc. All events are logged. When any particular case is concluded, the attorney completes the closing form and the case is closed and filed. All closed cases are retained for the required retention period.

2. What is your case assignment process in public defense cases?

Cases are generally assigned by a front office staff person who has been designated by the Administrator to perform that role. That person is familiar with the competency levels of each attorney and the types of cases appropriate for each attorney, and the number of cases per month that each attorney is supposed to take. Those differences are determined by experience and seniority. Measure 11 cases are separately reviewed by the Administrator and assigned by the Administrator.

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

Case assignments are monitored daily to insure that the distribution is fair. Our computer system prints out a daily report showing how many cases and which type have been assigned to each attorney per month. Based on that, new assignments are made. Projected monthly case-loads are modified monthly based on actual assignments of the previous month. Additionally, over all caseloads for each attorney are monitored weekly, and if necessary, adjustments are made based on that.

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

Case relief is done on an as needed basis. Attorneys are expected to talk with the Administrator if they feel that some relief is necessary. Based on the situation, adjustments can be made, either in the reduction of newly assigned cases, or the transferring of cases to other attorneys. Additionally, by ongoing monitoring of caseloads, potential problems can be identified and inquires made by the Administrator, or other supervising attorneys.

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

Our computer case management system includes a conflict checking component. As individuals are identified as being associated with a case, their personal information is entered into the computer as part of that case' information. Upon entering the information, the computer then indicates any other cases that that individual is associated with. Generally, it is the secretaries' responsibility to enter the information into the computer database. The secretary then informs the assigned attorney of identified potential conflicts. The attorney then conducts a further review of see whether a conflict actually exists. Then, all conflicts are reviewed by the Administrator prior to filing a motion to withdraw with the court.

Availability

1. Under what circumstances are attorneys in your office made available To indigent members of the public seeking information about criminal And juvenile matters?

Attorneys may only give advice on cases that this office has been appointed on. When appropriate, attorneys may field questions from the public about general criminal procedures, or occasionally on issues which are public record. This may include inquires from family members of clients, from the general public, from other agencies, from the news media, and from the local schools. All of our attorneys are encouraged to participate in any and all activities that are an outreach to the general public. This includes volunteering for speaking engagements, mock trial competitions, and legal forums.

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

An SOPD attorney is available to a person immediately upon this office being appointed.

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

An SOPD attorney is present at all arraignments, both in custody and out of custody, felony and misdemeanor.

4. Do you have a policy requiring contact with in-custody and out-of-custody public defense clients within a specified period of time? What is the policy? How is the policy generally followed?

SOPD's policy is that every in-custody clients is seen within one working day. Out-of-custody clients are notified by mail to contact their attorney immediately to set an appointment. We have an assigned person to do the initial contacts with in-custody clients, and log notes are always entered regarding that contact. The client's attorney can then monitor that the contact was made. Out-of-custody clients are expected to initiate the personal contact. That is generally monitored on a complaint basis. Complaint about lack of contact are fielded by the secretarial staff and forwarded on to the assigned attorney and to the Administrator for follow-up. Generally, these policies are followed very closely.

Appeal

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

Generally, clients are advised of their appeal rights at the time of sentencing. Additionally, the plea petitions that are submitted to the court include a recitation of appeal rights and clients are required to sign that portion, acknowledging that they have read and understand those rights. The client gets copies of these documents.

In cases where issues have arisen which have generated appeal issues, the attorneys review them with the client at the time they arise, and the attorney is responsible for initiating the appeal with the Office of Public Defense Services, Legal Services Division. This is done immediately upon completing the case at the local level.

Community Education

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

Every attempt is made to insure that SOPD is an integral part in all parts of the local community. We are a permanent member of the Jackson County LPSCC, and all ad-hoc criminal justice committees. Our attorneys are encouraged to participate in all levels of local government. Often our attorneys serve on various boards, both government and non-profit. At times, some of our attorneys have served in elected positions, such as City Council. They have also served on local bar committees and advisory groups. We allow attorneys to participate in these activities without having to use personal or vacation time.

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

We are often called on by outside groups to make presentations, provide expertise and training, or participate in discussion groups. This has run the gamut of school presentations, service clubs, mock trial competitions, CLE's, local television broadcasts, etc. Generally, it is on criminal justice related issues, but may also involve areas of particular interest or training of specific attorneys.

3. If not described in response to items 1 and 2, how does your office participate in efforts to improve the local public safety system?

In addition to items mentioned above, our staff has participated in efforts to pass local law enforcement levies, city and county budget meetings, and ad-hoc groups focused on review of various procedures within the criminal justice system, e.g. implementing electronic notices, electronic judgments, etc.

Zeal

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

We provide regular training. We publicly acknowledge success or hard work. We make it clear that we expect nothing less than zealous representation and respect for our clients.. Perhaps unfairly, we aren't hesitant to gossip about any poor representation we see from other practitioners at the courthouse. This may be elitist, but it raises a certain expectation in the office that unless an attorney cares about their clients and knows what they are doing, they don't belong here. We hire good people. We acknowledge that it is really not paranoia when they are really out to get us. We try to make the office a fun and exciting place to work and we are very quick to support each other. We may rely on black humor and cynicism for stress relief, but I think we are able to maintain a positive attitude nonetheless.

In addition, we are trying to bring prominent speakers to our continuing legal education programs such as the one that we are presenting on April 11, 2008, which will include: Gina Raney, D.O.C. Operations and Policy Manager, Salem, Oregon; Rita De-Hann Sullivan, Ph.D, OnTrack, Inc., Medford, Oregon; Sr. Trooper Ken Snook, Sgt. Tim Plummer, Oregon State Police; and Jesse W. Barton, Attorney at Law, Salem, Oregon.

Conclusions

1. In what areas do you believe SOPD excels?

SOPD excels at maintaining a high level of competency and cost effective administration of justice, insuring that the interests of the individual defendant are protected and respected. We steadfastly provide excellent legal representations to indigent clients. We are highly respected within our community. We provide ongoing continuing legal education second to none. We provide excellent attorney support through our staff of Investigators, Paralegals, Polygraphers, etc.

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

SOPD could benefit with some technological improvements. We have not availed ourselves enough with advanced methods of trial presentations, e.g. computer generated demonstrations and power point presentations. Also, general use of computers in the courtroom. Some of this is funding issues related to acquisition of equipment, and some of it is training of staff in the technologies. We plan on organizing additional CLE's in this area, and consultations with experts in these fields, and attempting to budget additional money to increase our capabilities.

In addition, we have worked very hard with young attorneys to help them keep case loads down by analyzing their cases as early on as possible so if they are resolvable they can be resolved quickly so that the attorney will have more time to handle the complex cases that need "real lawyering".

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

SOPD could benefit from more training on the uses of technological improvements such as computer generated demonstrations and power point presentations. In addition, we need to continue to work on setting up more formal processes such as evaluations.

Attachment 4

Report on the First Statewide Survey on the Quality of Public Defense Services Conducted by the Office of Public Defense Services

In 2007 the Office of Public Defense Services (OPDS) conducted its first statewide survey on the quality of public defense services. The survey asked officials in each of Oregon's 27 judicial districts to evaluate the performance of local public defense providers on their work in both adult criminal cases and in juvenile proceedings. The survey sought to establish a baseline measure of quality from which changes in the delivery of public defense services might be measured. The survey also asked for information about specific concerns or issues in each judicial district, and for particular recommendations regarding attorneys who handle death penalty cases.

The survey responses showed general satisfaction with the quality of representation provided by those law firms, consortia and non-profit public defender offices that have contracts with OPDS. But survey results also showed significant concern that caseload assignments may prevent attorneys from devoting appropriate time and resources to each client. Specific comments highlighted the concerns with caseloads in most judicial districts. Other comments focused on concerns with attorney compensation, the availability of attorneys in rural areas, and with attorney training and supervision.

This report will describe in further detail the design and conduct of the survey, and the results of the survey.

Conduct of survey

OPDS staff designed the survey, using the online survey tool available from www.surveymonkey.com, with input from the Executive Director's Contractor Advisory Group, which includes administrators from approximately ten major public defense providers. The Executive Director's Quality Assurance Task Force also provided input for the survey. Separate surveys were developed for each judicial district to inquire about the local public defense contractors. The survey did not ask about non-contract attorneys who may be court-appointed on an hourly basis. Statewide, the surveys asked about a total of 61 providers of adult criminal representation, and 58 providers of juvenile representation. Links to the online survey were emailed to every judge in each judicial district, and to the local district attorney, the director of the local juvenile department, the coordinator of the local Citizens Review Board, the local director of community corrections, and to local non-contract criminal defense attorneys (when possible). A sample of the survey sent to respondents in the Fourth Judicial District (Multnomah County) is attached as an exhibit.

The survey was launched on November 26, 2007, and closed two weeks later on December 10, 2007. Several days prior to the launch, Chief Justice Paul De Muniz sent an email to every circuit court judge in the state in which he endorsed the survey and urged cooperation in completing it.

Response to the survey

The response rate to the survey varied by jurisdiction and category of respondent. For one judicial district there were no responses, and for several others there were only one or two responses. For 16 judicial districts, there were five or fewer responses.

Overall, there were a total of 153 responses to the survey. This total reflects responses from those who identified themselves as follows: 90 judges, 7 district attorneys, 5 community corrections, 17 juvenile court counselors, 16 citizens review board, 7 non-contract criminal defense attorneys, 11 other.

A number of factors may have affected the response rate to the survey. Many of the survey recipients had already expressed their views, and some quite recently, on the quality of public defense service through regional hearings on “public defense service delivery reviews” conducted by the Public Defense Services Commission, and through the peer review evaluations conducted by the Quality Assurance Task Force. Also, recipients did not receive reminders to complete the survey prior to the closing date. Some recipients reported technical problems with completion of the survey, although efforts were made to address each such issue and to correct every “bounce back” of the email that distributed the survey.

Data received

It would not be practical to provide a summary of the responses to every question on each of the 27 different surveys. A separate document with totals for each survey and a compendium of comments is 313 pages in length. Summarized below, however, are the average scores for total responses received regarding all contractors on the main survey questions regarding quality of representation:

Rate your overall impression of the quality of representation.					Category	Average score
Excellent 5	Very Good 4	Good 3	Fair 2	Poor 1	Criminal	3.5
					Juvenile	3.4
Has the quality of representation changed within the last two years?						
					Category	Average score
Improved significantly 5	Improved somewhat 4	Remained the same 3	Worsened somewhat 2	Worsened significantly 1	Criminal	3.1
					Juvenile	3.3
Do the attorneys possess sufficient knowledge, skills and training?						
					Category	Average score
Always 5	In most cases 4	Sometimes 3	Rarely 2	Never 1	Criminal	4.1
					Juvenile	4.1

Do caseloads allow attorneys to devote appropriate time to each client?					Category	Average score
Always	In most cases	Sometimes	Rarely	Never	Criminal	3.7
5	4	3	2	1	Juvenile	3.6
Do contractors appear to be willing to receive and act upon complaints?					Category	“Yes”
Yes/No					Criminal	79%
					Juvenile	79%

Comments received

As indicated above, some of the most useful information from the survey is contained in comments made in response to open-ended questions inquiring about local conditions. The great majority of those comments concerned workload, and related concerns regarding compensation and the amount of client contact.¹

The following are a representative sample of the comments concerning workload and compensation:

“Too many cases for too few attorneys who often have other matters in other courts.”

“Too many cases not enough time.”

“Lower caseloads (more attorneys available).”

“[I] believe that the vast majority of attorneys working for contractors are extremely dedicated to their clients and their efforts are exceptional. However, the individual caseload is overwhelming and is impossible to expect the kind of performance of which they are capable under such circumstances.”

“In general I find contractors are spending less and less time with their clients. I get more and more complaints about defendants never seeing their attorneys and not knowing what’s going on.”

“The caseloads are too high to form adequate relationships with the clients.”

“Too much work for too few lawyers.”

“Caseloads are too high and fundamentally unworkable.”

“Overworked and underpaid.”

¹ Other comments focused on concerns about the management of contractor firms and consortia, particularly the oversight and supervision of attorneys, and the training of attorneys. A number of comments related to specific individuals or to issues within a particular provider or jurisdiction.

“Due to their caseload, [contractor] attorneys seem to always be scrambling to handle things at the last minute, be it trial preparation or plea negotiations.”

“Excessive caseload is a problem in allowing sufficient time on specific cases.”

“More money per case so the attorneys don’t have to have such a heavy caseload to make a living.”

“The rate of compensation is such that it appears that in order to make a living the attorneys are required to handle more cases than they can adequately handle effectively.”

“It appears that juvenile matters get pushed to the back of the priority list with the exception of dependency cases which have strict timelines on them. Delinquency cases on the other hand get continued several times most often due to defense stating that they have not had time to meet with their clients.... I do not believe that youth are always getting the best representation that they can again because their case is not a priority. I think that much of this is exacerbated by caseloads that are much too large.”

“Delinquency cases are fine. Where the attorneys are unprepared and overwhelmed are in dependency matters.”

“The caseloads of the attorneys appear to hamper their ability to spend time with each client. Recently, a youth spent three weeks in detention and then after finally meeting with his attorney face to face decided to admit so that disposition could be completed. The youth became hostile toward the system because of the lack of communication.”

“I think there is often a shortage of attorneys and because of the pay verses [sic] workload for public defenders, the turnover rate is high.”

“Provide more money, especially to the large contractors, so they can hire more attorneys so that each attorney can then handle a reasonable caseload.”

“The pay is still too low to bring in private attorneys with experience to do the criminal cases. No one can afford to work in the public defense field.”

“Raise the level of compensation to an adequate level to attract enough lawyers to do the cases in a competent way that won’t up the post conviction relief cases.”

“Frankly I think the best thing to help would be to pay the attorneys better. Good people would have more of an incentive and not feel that they can’t afford to do criminal defense. That’s not the only issue (since even at these ridiculous rates there ARE good attorneys who take these cases) but it’s the one single thing that would be most likely to create an overall improvement.”

“Its pretty simple...unless and until there is a significant pay increase for this work, we will continue to find ourselves with an inadequate pool of people willing to do the work.”

“Make the position of ‘public defender’ more attractive to experienced practitioners in terms of salary and other benefits.”

“I am very concerned...that there is an insufficient number of attorneys to do the required work.”

Death Penalty contractors

Locating attorneys who are qualified to provide representation in death penalty cases continues to be a challenge to OPDS, which has the responsibility to assign counsel in such cases. The survey sought recommendations from those knowledgeable about death penalty cases about specific attorneys who should or should not be appointed as counsel in these cases. The information from the survey will assist OPDS in both establishing contracts for representation in death penalty cases and in locating non-contract providers when the occasion arises.

Use of the survey

The four contract analysts at OPDS will be sharing the specific survey results with each public defense contractor in the state. OPDS will address with contractors and others particular concerns or issues that have been identified in the survey. It is hoped that contractors will be able to use some of the data from the survey to consider what changes in their practice might be appropriate.

OPDS intends to conduct a similar survey in the future as one measure, among others, of various quality assurance initiatives undertaken by the agency. It is also expected that future surveys will continue to provide useful information about local concerns and issues.

Conclusion

As indicated above, the survey appears to show general satisfaction with the quality of public defense services in Oregon. This conclusion is belied somewhat by many of the comments expressing serious concern with excessive workload and other issues. These comments suggest that the specific multiple-choice questions and responses offered in the survey may not have allowed respondents to identify the nature and gravity of their concerns.

There are, nonetheless, certain conclusions that may be drawn from the data. First, as noted, there is general satisfaction with the quality of representation provided in both criminal and juvenile cases by contractors. Statewide, on average, representation is said to fall between “good” and “very good.” There remains, however, significant room for

improvement. A detailed review of each survey identifies specific concerns that will need to be addressed in particular jurisdictions.

Second, the data for both adult criminal and juvenile representation indicate serious concerns in most judicial districts that attorneys are not able to devote appropriate time and resources to each client in every case because of unreasonably large caseloads, and that some public defense clients are therefore not receiving the level of representation to which they are constitutionally and ethically entitled.²

Beyond these basic conclusions it is difficult to confidently draw further inferences from the data. But even with its limitations, the recent survey provides information that can assist both the contractor community and OPDS to work toward improved quality of representation.

² In this regard, it is important to note that the “average” score of 3.7 (criminal) or 3.6 (juvenile) on the summaries above concerning caseloads do not equate to the generally favorable rating those numbers would represent on questions concerning overall quality.

Introduction

Thank you for assisting the Office of Public Defense Services (OPDS) in conducting a statewide survey of the quality of public defense representation provided in adult criminal and juvenile court cases. The questions in this survey concern the public defense contractors in your judicial district. Completion of this survey should take LESS THAN 10 MINUTES.

Your responses are received ANONYMOUSLY unless you choose to provide your name at the end of this survey. The information obtained from all survey responses will be used by OPDS to establish a baseline from which to measure changes in the quality of representation by current public defense providers.

At the end of this survey, you will have the opportunity to add any additional comments. Where appropriate, OPDS will address areas of specific concern regarding particular public defense providers.

You must click "Done" at the end of this survey to register your responses.

1. First, please tell us your role in your county's justice system.

Judge

Prosecutor

Community Corrections

Juvenile Court Counselor

Citizen Review Board

Non-contract criminal defense attorney

Other

Please specify

2. Are you able to comment on the quality of representation in adult criminal cases (non-death penalty) in your judicial district?

Yes

No (the survey will skip questions related to these cases)

Questions concerning non-death penalty criminal representation

3. Please rate your overall impression of the quality of representation provided by the following contractors in adult criminal cases and probation violations:

	Excellent	Very Good	Good	Fair	Poor	Not enough information to respond
Lopez and Liebowitz, Inc.	jñ	jñ	jñ	jñ	jñ	jñ
Metropolitan Public Defender	jñ	jñ	jñ	jñ	jñ	jñ
Multnomah Defenders, Inc.	jñ	jñ	jñ	jñ	jñ	jñ
Portland Defense Consortium	jñ	jñ	jñ	jñ	jñ	jñ
Rose City Defense Consortium	jñ	jñ	jñ	jñ	jñ	jñ

4. Within the past two years, has the quality of representation provided by these contractors changed?

	Improved significantly	Improved somewhat	Remained about the same	Worsened somewhat	Worsened significantly	Not enough information to respond
Lopez and Liebowitz, Inc.	jñ	jñ	jñ	jñ	jñ	jñ
Metropolitan Public Defender	jñ	jñ	jñ	jñ	jñ	jñ
Multnomah Defenders, Inc.	jñ	jñ	jñ	jñ	jñ	jñ
Portland Defense Consortium	jñ	jñ	jñ	jñ	jñ	jñ
Rose City Defense Consortium	jñ	jñ	jñ	jñ	jñ	jñ

5. Do the attorneys working with the contractors listed below possess the legal knowledge, skill, and training necessary for effective representation of their clients?

	Always	In most cases	Sometimes	Rarely	Never	Not enough information to respond
Lopez and Liebowitz, Inc.	jñ	jñ	jñ	jñ	jñ	jñ
Metropolitan Public Defender	jñ	jñ	jñ	jñ	jñ	jñ
Multnomah Defenders, Inc.	jñ	jñ	jñ	jñ	jñ	jñ
Portland Defense Consortium	jñ	jñ	jñ	jñ	jñ	jñ
Rose City Defense Consortium	jñ	jñ	jñ	jñ	jñ	jñ

6. Do the assigned caseloads of attorneys working with the contractors listed below appear to allow them to devote appropriate time and resources to each of their clients?

	Always	In most cases	Sometimes	Rarely	Never	Not enough information to respond
Lopez and Liebowitz, Inc.	jñ	jñ	jñ	jñ	jñ	jñ
Metropolitan Public Defender	jñ	jñ	jñ	jñ	jñ	jñ
Multnomah Defenders, Inc.	jñ	jñ	jñ	jñ	jñ	jñ
Portland Defense Consortium	jñ	jñ	jñ	jñ	jñ	jñ
Rose City Defense Consortium	jñ	jñ	jñ	jñ	jñ	jñ

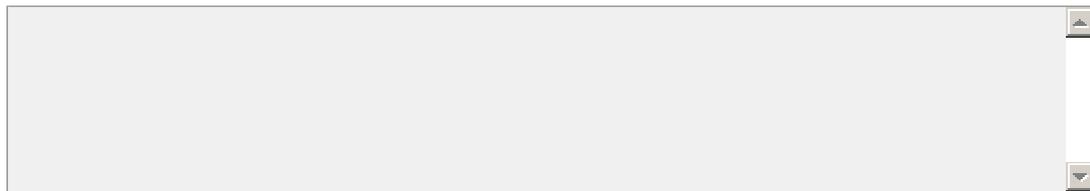
7. Do each of the contractors listed below appear willing to receive and act upon complaints about the performance of their attorneys?

	Yes	No	Not enough information to respond
Lopez and Liebowitz, Inc.	jñ	jñ	jñ
Metropolitan Public Defender	jñ	jñ	jñ
Multnomah Defenders, Inc.	jñ	jñ	jñ
Portland Defense Consortium	jñ	jñ	jñ
Rose City Defense Consortium	jñ	jñ	jñ

8. Please provide any comments you may have about the quality of representation provided by any of the contractors listed above.

9. Please provide any recommendations or suggestions you may have for improving the quality of representation in adult criminal (non-death penalty) cases.

10. Please describe any barriers that may exist in your jurisdiction that prevent public defense providers from achieving excellence in their work in criminal cases:

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Questions concerning death penalty representation

We are interested in your candid assessment of the quality of representation provided to public defense clients in death penalty cases. We ask that you identify particular attorneys, with whom you are familiar, whom you would recommend to continue this type of work, and those you believe should no longer be handling these cases. In making this assessment, we ask that you consider whether an attorney has demonstrated the following: (a) commitment to high quality representation in the defense of capital cases; (b) substantial knowledge and understanding of relevant state, federal and international law governing capital cases; (c) skill in the management and conduct of complex negotiations and litigation; (d) skill in legal research, analysis and drafting of litigation documents; (e) skill in oral advocacy; (f) skill in the use of expert witnesses and familiarity with forensic investigation, including fingerprints, ballistics, forensic pathology, and DNA evidence; (g) skill in the investigation, preparation, and presentation of mental status evidence; (h) skill in the investigation, preparation, and presentation of mitigation evidence; and (i) skill in the elements of trial advocacy, including jury selection, direct and cross-examination of witnesses, evidentiary objections, and opening and closing statements.

11. Do you have experience with death penalty cases?

No (a "no" answer will take you to the next set of questions)

Yes, in 1 to 3 cases

Yes, in 3 or more cases

Questions concerning death penalty representation

12. Please list below attorneys you recommend for this work.

1.
2.
3.
4.
5.

13. Are there any comments that you can provide about the attorneys you list above?

14. Please list below any attorneys you recommend should no longer be representing clients facing the death penalty?

1.
2.
3.
4.
5.

15. Are there any comments that you can provide about any attorneys you recommend should no longer be doing this work?

16. Please provide any recommendations or suggestions you may have for improving the quality of representation in death penalty cases.

Questions concerning juvenile representation

Juvenile representation requires both specialized skills and familiarity with a variety of complex statutes, procedures and standards concerning representation of both children and parents. Both the current qualification standards for court-appointed counsel in juvenile cases and the Oregon State Bar standards for representation in juvenile cases are available on the OPDS website at www.opds.state.or.us. You may wish to consider whether contractors are adhering to the expectations established by these standards in responding to the questions in the following section.

17. Are you able to comment on the quality of representation of attorneys practicing juvenile law in your county?

Yes

No (if you answer "no," the survey will skip questions concerning juvenile practice)

Questions concerning juvenile representation

18. Please rate your overall impression of the quality of representation provided by the following contractors in juvenile cases:

	Excellent	Very Good	Good	Fair	Poor	Not enough information to respond
Brindle, McCaslin and Lee, P.C.	jn	jn	jn	jn	jn	jn
Juvenile Rights Project	jn	jn	jn	jn	jn	jn
Metropolitan Public Defender	jn	jn	jn	jn	jn	jn
Multnomah Defenders, Inc.	jn	jn	jn	jn	jn	jn
Multnomah Juvenile Defense Consortium	jn	jn	jn	jn	jn	jn
Native American Program, Legal Aid Services	jn	jn	jn	jn	jn	jn

19. Within the past two years, has the quality of representation provided by these contractors changed?

	Improved significantly	Improved somewhat	Remained about the same	Worsened somewhat	Worsened significantly	Not enough information to responde
Brindle, McCaslin and Lee, P.C.	jn	jn	jn	jn	jn	jn
Juvenile Rights Project	jn	jn	jn	jn	jn	jn
Metropolitan Public Defender	jn	jn	jn	jn	jn	jn
Multnomah Defenders, Inc.	jn	jn	jn	jn	jn	jn
Multnomah Juvenile Defense Consortium	jn	jn	jn	jn	jn	jn
Native American Program, Legal Aid Services	jn	jn	jn	jn	jn	jn

20. Do the attorneys working with the contractors listed below possess the legal knowledge, skill, and training necessary for effective representation of their clients?

	Always	In most cases	Sometimes	Rarely	Never	Not enough information to respond
Brindle, McCaslin and Lee, P.C.	jn	jn	jn	jn	jn	jn
Juvenile Rights Project	jn	jn	jn	jn	jn	jn
Metropolitan Public Defender	jn	jn	jn	jn	jn	jn
Multnomah Defenders, Inc.	jn	jn	jn	jn	jn	jn
Multnomah Juvenile Defense Consortium	jn	jn	jn	jn	jn	jn
Native American Program, Legal Aid Services	jn	jn	jn	jn	jn	jn

21. Do the assigned caseloads of attorneys working with the contractors listed below appear to allow them to devote appropriate time and resources to each of their clients?

	Always	In most cases	Sometimes	Rarely	Never	Not enough information to respond
Brindle, McCaslin and Lee, P.C.	jñ	jñ	jñ	jñ	jñ	jñ
Juvenile Rights Project	jñ	jñ	jñ	jñ	jñ	jñ
Metropolitan Public Defender	jñ	jñ	jñ	jñ	jñ	jñ
Multnomah Defenders, Inc.	jñ	jñ	jñ	jñ	jñ	jñ
Multnomah Juvenile Defense Consortium	jñ	jñ	jñ	jñ	jñ	jñ
Native American Program, Legal Aid Services	jñ	jñ	jñ	jñ	jñ	jñ

22. Do each of the contractors listed below appear willing to receive and act upon complaints about the performance of its attorneys?

	Yes	No	Not enough information to respond
Brindle, McCaslin and Lee, P.C.	jñ	jñ	jñ
Juvenile Rights Project	jñ	jñ	jñ
Metropolitan Public Defender	jñ	jñ	jñ
Multnomah Defenders, Inc.	jñ	jñ	jñ
Multnomah Juvenile Defense Consortium	jñ	jñ	jñ
Native American Program, Legal Aid Services	jñ	jñ	jñ

23. Please provide any comments you may have about the quality of representation provided by any of the contractors listed above.

24. Please provide any recommendations or suggestions you may have for improving the quality of representation in juvenile delinquency and dependency cases.

25. Please describe any barriers that may exist in your jurisdiction that prevent public defense providers from achieving excellence in their work in juvenile cases:

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Additional comments

Thank you for taking the time to complete this questionnaire.

26. Please add any additional comments concerning the quality of representation provided to public defense clients.

27. Your name (optional):