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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, May 8, 2008
9 a.m. to 1 p.m.
1320 Capitol St., NE
Salem, Oregon

AGENDA

- 1. **Action Item:** Approval of the Minutes of PDSC's April 10, 2008 Meeting Barnes Ellis
(Attachment 1)
- 2. **Action Item:** Approval of the Minutes of PDSC's March 21, 2008 Retreat
(Attachment 2)
- 3. Commission Discussion of Service Delivery Plan for Judicial Districts 1 (Jackson County) and 14 (Josephine County) Barnes Ellis
Commissioners
OPDS Staff *(Attachments 3 and 4)*
- 4. **Action Item:** Approval of Service Delivery Plan for Judicial Districts 6 (Umatilla and Morrow Counties) and 10 (Union and Wallowa Counties) Ingrid Swenson
(Attachments 5 and 6)
- 5. Update on Clatsop County Service Delivery Plan Implementation Ingrid Swenson *(Handout)*
- 6. OPDS's Monthly Report OPDS's Management
Team

Lunch will be provided at noon for Commission members.

The next meeting of the Commission will be held on June 12, 2008 from 9 a.m. to 1 p.m. in Bend at the Inn of the Seventh Mountain in conjunction with the annual conference of the Oregon Criminal Defense Lawyers Association.

Attachment 1

PUBLIC DEFENSE SERVICES COMMISSION

MEETING MINUTES

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

MEMBERS PRESENT: Barnes Ellis
Shaun McCrea
John Potter
Hon. Elizabeth Welch

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

[The meeting was called to order]

Agenda Item No. 2 Presentations on Public Defense Delivery in Judicial Districts 1 and 14

Chair Barnes Ellis informed members of the audience that the purpose of the Commission's visit was to obtain information about the needs of the local legal community in order to create a service delivery plan that assures the delivery of quality legal representation in public defense cases.

Bert Putney, the administrator of the Southern Oregon Public Defender office (SOPD), testified about the founding of SOPD, the changes it has undergone and the staff currently assigned to its offices in Jackson and Josephine Counties. He reported significant turnover in attorney staff during the past four years and attributed it to inadequate compensation and the fact that many people prefer to live in other parts of the state.

Mr. Putney described the court system in Jackson County as very effective, the system in Josephine County as less so. He said SOPD is receiving almost all of the criminal cases they can handle without conflicts in Jackson County but that they could handle additional juvenile cases there. Mr. Putney identified the members of the board of directors of SOPD and described the role of the board.

He recommended that PDSC explore the creation of a multi-county public defender office to provide services in Douglas, Coos, Curry, Josephine, Jackson, Klamath and Lake Counties. The potential benefits would include administrative efficiency and the ability to move attorneys between offices as needed.

Mr. Putney discussed his method of dealing with performance issues and described a recent set of circumstances that resulted in the temporary suspension of a one attorney. He said he speaks frequently with judges about the performance of SOPD lawyers.

Josephine County Presiding Circuit Court Judge Lindi Baker thanked the Commission for the defense services being provided in the county. She said the court had been very pleased with the work of both the public defender's office and the Josephine County Defense Lawyers consortium. She said that district attorneys and defense lawyers seem to work well together, rarely letting personal issues affect their professional conduct.

She described the financial crisis currently faced by Josephine County and said that if new funding sources were not identified there might well be cuts to the district attorney's staff and to the sheriff's patrol and that it might be necessary to close the jail.

Judge Baker said that the Josephine County Circuit Court had operated a drug court program for 13 years and would soon be graduating its 230th client. The public defender's office has been a major contributor to the success of the program, which has significantly reduced the three year recidivism rates for graduates.

Judge Raymond White, one of the principal criminal trial judges in Jackson county testified that he is pleased with the quality of services provided by the two public defense contractors in that county, that they seem to be trying the right cases, although the district attorney sometimes pursues cases that he might have treated differently as a deputy district attorney. He believes that the most successful defense lawyers are the ones who are persistent in seeking better offers from the district attorney, who do not take the state's initial offer as a final offer.

Dan Simcoe testified on behalf of the Josephine County Defense Lawyers consortium. He described the members of the consortium and the percentage of their practices that are devoted to public defense cases. He said that one member had recently resigned for health reasons and another had been removed for unsatisfactory performance. He said that even though the public defender's office might want a higher percentage of the cases, he believes the system is working well under the current distribution plan.

Doug Engle, one of the co-administrators of the Los Abogados consortium in Jackson County, said that the consortium has five experienced attorneys. The consortium does not have a board and does not currently see the need for one. He described the case assignment process among members.

Jim Mueller testified on behalf of the Jackson Juvenile Consortium and indicated that he did not believe the caseload per attorney was excessive. He reported that the consortium had added another attorney to provide additional coverage and reduce the number of cases per attorney.

Christine Herbert testified that, as a member of the juvenile consortium as well as Los Abogados, she works hard but does not believe the workload to be excessive. She believes she provides quality representation.

Commission McCrea noted that the Commission is aware that the attorneys in the consortium are very experienced and capable but that it may be unfair for PDSC to contract for caseloads that require attorneys to devote a significant of their personal time to their cases.

Jim Mueller said that the consortium had also taken steps to address quality concerns raised in the report.

Commissioner Welch noted that comparing workloads in different counties is very difficult, like comparing apples and oranges since every system is unique.

Judge Rebecca Orf, the Jackson County Circuit Court judge who handles most of the juvenile dependency cases, said that the court has difficulty scheduling hearings since there is only one court day a week available for these cases and the attorneys are busy with criminal and other matters as well as their juvenile court cases. She has encouraged attorneys to visit with their child clients and to have better contact with foster parents.

Jackson County District Attorney Mark Huddleston testified that the Commission is getting its money's worth with its public defense contractors in the county. Although their caseloads are high they are doing good work.

Vance Waliser testified that he is a member of both the criminal and juvenile consortia in Jackson County. He is concerned that adding more attorneys would cause lawyers to spend less of their time on juvenile cases since they would have to take in additional criminal or other cases to maintain their practices. He believes that parents and children receive superior representation in Jackson County.

Agenda Item No. 1 Approval of the Minutes of PDSC's March 21, 2008 Meeting

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

Agenda Item No. 3 Key Performance Measures – review of Proposed New Measures

Kathryn Aylward described proposed changes to PDSC's key performance measures that would eliminate some of the existing measures, modify others and add new measures. These changes are the result of an effort by OPDS in conjunction with the Legislative Fiscal Office and the Budget and Management Division of the Department of Administrative Services to identify more meaningful performance measures for the agency.

Agenda Item No. 4 OPDS's Management Team Report

Peter Gartlan provided the Commission with an update on the *State v. Ice* litigation in the United State Supreme Court and the training of the three new attorneys in the Juvenile Section. He also reported that revisions to the attorney manual have been completed and that the division's website is now being updated monthly.

Paul Levy provided Commissioners with the written report on OPDS's recent statewide survey regarding the quality of representation provided by its contractors. He also provided commissioners with a copy of the guide for public officials recently published by the Government Ethics Commission.

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

PUBLIC DEFENSE SERVICES COMMISSION

UNOFFICIAL EDITED TRANSCRIPT

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

MEMBERS PRESENT: Barnes Ellis
Shaun McCrea
John Potter
Hon. Elizabeth Welch

STAFF PRESENT: Ingrid Swenson
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Peter Gartlan
Paul Levy
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TAPE 1, SIDE A

[The meeting was called to order]

Agenda Item No. 2 Presentations on Public Defense Delivery in Judicial Districts 1 and 14

001 Chair Ellis

It is particularly nice to be in Jackson County. There are fond memories for many of us. This is probably the eighth or ninth regional meeting of the Commission. We, starting three or four years ago, thought it important to go to where the action is, meet the people in the justice system in various communities, and do a good job of listening to be sure that we are doing our job as well as we could given the resources that we have. A couple of other preliminary comments and then we look forward to talking with the people here. We have followed a policy that says this is a very diverse state. It is diverse in its geography. It is diverse in its population concentration. It is diverse in its cultures. We have not been inclined to impose a one size fits all delivery mode for defense services. At the same time, we believe that one reason the legislature formed the Commission several years ago was to have the provision of defense services and the planning for defense services become a more proactive process, and as the agency has matured to get away from the notion that we'll lob an RFP over the wall and if something comes back we will be so grateful we will just do it. We are trying to help each of the regions shape their own system for delivery of defense services, but using the benefit of what we hope is some experience and some judgment that we and others in the provider community have gained elsewhere. A lot of what we are listening for is do we have the right providers in place; do we have the right types of providers in place, the mix between community-based public defender agencies, consortia, juvenile, individual lawyers, whatever the mix may be. Do we have the right mix to get the quality defense services that the legislation that creates us demands? That is a lot of what we are listening for. Beyond that we are listening for suggestions how we can do a better job of staying in touch, knowing what is happening in a particular region and responding to those needs. With that background I

believe the first presenter this morning is Bert Putney who is well known to us and Bert if you would come forward we would be very interested in your report on Southern Oregon Public Defenders and what your thoughts and suggestions are. Bert, you may have noticed in the report, was described as “legendary” which is something of an understatement.

- 048 B. Putney I thought that was almost insulting since in 2005 the word used was “icon.”
- 049 Chair Ellis I knew there would be a problem.
- 051 B. Putney I don’t know whether you want to ask questions or whether you want me to –
- 052 Chair Ellis Why don’t you start by kind of giving us a little of the history of SOPD and where you are currently and where you see SOPD going and then we will double back.
- 055 B. Putney SOPD started in 1985 and it was started by myself, Bob Warren, a retired – not a retired – but he had been a judge for about 10 or 12 years and he just got sick of it, and Frank DeSimone. Both of them have died since then, early deaths, so I in effect inherited the operation. We started with I think a total of five attorneys. The reason we started it is we saw that indigent defense was costing Jackson County \$2,000,000 a biennium and we were able to do it for about \$1,200,000 per biennium. I think that was the deciding factor in why we did get the contract.
- 065 Chair Ellis Was it started before or after state funding?
- 066 B. Putney State funding was in 1981.
- 066 Chair Ellis Right.
- 067 B. Putney So we were four years after and there was a consortium of about 40 attorneys. They were making pretty decent money out of it and any time you have 40 people you are going to have the good, the bad, and the in between. That was exactly what was happening at the time. The court system here was not overwhelmed with what was going on. We have gradually grown since then and in 1991 we received a contract to open an office in Grants Pass for Josephine County. I don’t think the next big change came until 2006 when we commenced doing juvenile work in Jackson County. At the present time we have 23 attorneys, seven of whom are in the Grants Pass office and 16 of whom are in the Medford office for Jackson County. Only on rare occasions, having to do with perhaps murder, does an attorney in one county ever work in another county. It just wouldn’t work because of schedules. Right now I have a Jackson County attorney doing a murder in Josephine County because we had too many pending murders.
- 082 Chair Ellis Are there economies of scale? You do get like training and you can move attorneys from one office to the other as needs arise?
- 084 B. Putney I have upon occasion but I don’t very often because I don’t want to encourage – of the seven Grants Pass attorneys, I would bet you dollars to donuts that five of them would come over here in a second, because this is a more desirable place to live than Grants Pass is - so I don’t encourage that sort of thing although I have done it a couple of times.
- 090 Chair Ellis The other PD that has dual offices is MPD with Multnomah and Washington. I know you know that organization yourself reasonably well. How would you compare how you manage the two office structure compared to how they do it?
- 094 B. Putney Well, I think up there in effect it is a dictatorship while down here it is more of a benevolent dictatorship.

- 097 S. McCrea Is that like being “legendary” or “iconic?”
- 098 Chair Ellis Jim isn’t here so you are safe.
- 099 B. Putney We don’t have a corporate hallway, for one. By and large, other than things that our board should decide, by and large I decide things myself. I consult with a lot of people beforehand, but I am the one that has to make the decisions. I think it may be more of a joint type situation up there.
- 104 Chair Ellis They do have kind of a management group. I think it is perhaps less of a dictatorship than you are describing.
- 107 B. Putney Well, with recent things that I have seen I am not sure that is true but whatever, that is beside the point.
- 107 J. Potter Bert, one of the differences is that in Washington County they have a director and in Multnomah County they have a director and then Jim Hennings is the overall director. In your situation you have got a director in Josephine County, but do you have a director in Jackson County or are you it?
- 110 B. Putney No. We are not big enough – that is too many layers for our size. We just don’t need that.
- 112 Chair Ellis So go back to the economies of scale question. Do you find benefit from the two offices either for training ...
- 114 B. Putney There is no question, the example being the brochure that I gave some of you. That is a CLE that we are putting on tomorrow. Most of the work is done by Casey Black who is our Drug Court Coordinator and CLE person and she is in Grants Pass. She does all of the CLEs for both offices. We have a CLE once a month all year long about half of which are open to the public. Then once a year we try to put on a regional one like this is. These pamphlets were sent to Coos, Curry, Douglas, Josephine, Jackson, Klamath and Lake Counties. That sort of thing she does for both offices. Beyond that, probably the biggest single savings is the administration. All of the administrative things are done out of the Medford office. Beyond that, by economy of scale, it helps only in that when I have got four or five pending murder cases in Josephine County I can take a Jackson County attorney over there and a couple of times it has been vice-a-versa. I have eight murder qualified attorneys at this time and I don’t want any single attorney to have more than one murder going at a time.
- 135 Chair Ellis What has your experience been in terms of retention? How long do your lawyers stay? How much turnover are you experiencing?
- 136 B. Putney I can tell you from 2004 until about – I think I tabulated this September of ’07 - between those times 25 attorneys left. We only have 23 positions so that is more than 100 percent.
- 142 Chair Ellis Driven by compensation problems?
- 143 B. Putney That is the single biggest thing. I don’t know if I have mentioned this to the Commission but my observation is that there is kind of a pecking order in the State of Oregon. The first place people want to live is Portland and close under Portland is Eugene. Then probably the third place they want to live is Bend and we are kind of hanging out, in Jackson County, about the fourth place people want to live. I am happy to say that I don’t have to deal with getting people to live in Pendleton, or Coos Bay, or Roseburg. That is really difficult, so that is part of it. We have also had relationship problems. For example, I have an attorney leaving this next Friday that I hired last May. She is married and has two children. She lived in Portland and she had just passed the bar and her husband was going to move down here. Plus, the husband’s parents. He was raised here and his parents still live here, so I think that is a real

connection; that is somebody who is going to stay. She comes down in May and they are waiting for school to get out to move the kids down, husband gets a promotion in his job. He won't move down now and she has been commuting all this time and she can't do it anymore which I understand perfectly, so there are relationship problems. I have had attorneys that go up to Eugene for the weekend and meet somebody.

- 163 Chair Ellis And never come back.
- 163 B. Putney Basically, yes, so we are down in the pecking order some. Thankfully, we are not in the bottom.
- 166 Chair Ellis Is the turnover at the younger lawyer level? Do you have a core of experienced lawyers?
- 166 B. Putney I have a core of experienced lawyers. We have either seven or eight murder qualified. There are three attorneys in Grants Pass. The shortest duration person started in 1996, I want to say. There is a real core of experienced attorneys there - Gary Berlant, Joe Maier and Pete Smith. In Medford we have Lisa Greif, who is legendary for what she has done in juvenile.
- 174 Chair Ellis Is she "iconic" also?
- 174 B. Putney Semi. She has a couple of years to go. We have Paul Beneke who is here today. We have Andy Vandergaw, who was a DA for eight years and has been with us since '96. Rebecca Rosenstein is a younger attorney who has just had unbelievable trial success recently. Who am I missing? Kelly Ravassipour is one of the senior attorneys also, so they have been with us a while, but we have been losing people at the two to three year level.
- 185 Chair Ellis Have some of those stayed in the community and practiced defense law through the consortium.
- 186 B. Putney Everybody in the consortium is from my office.
- 187 Chair Ellis I saw that. Is that still recurring that lawyers leave you and go there?
- 188 B. Putney Not really because they haven't added an attorney in years. I can't remember the last time they added an attorney to the consortium.
- 191 Chair Ellis So the ones that leave you tend to leave the community?
- 192 B. Putney Yes. That is correct. Although we have had more people hired by firms like Frohnmayer, Deatherage. We have had two people there. We have had more people hired by "the big firms" than anybody else around.
- 198 Chair Ellis They let you do the training and then they pick them off.
- 198 B. Putney That's right.
- 198 Chair Ellis I know historically there has been a chronic, and more pronounced than I ever recall seeing elsewhere in the state, disparity between the DA comp level and SOPD comp level. Hopefully this year that has been ameliorated, but has that been a big factor in both recruitment and retention?
- 203 B. Putney I don't think my attorneys say, "Hey, I want to be paid the same as the district attorney." What they are looking at is their own existence and when you have got \$100,000 to \$130,000 in loans, you have a house payment before you even get a house, and so they are looking at their own existence. That is a factor to some extent, although I see no indication that Joe Blow was offered a job by me and the DA and chose the DA because of money. I have not

seen that occur. I think we have been able to do what we have done because I think people, if they had a choice, would like the atmosphere in our office versus the atmosphere in the district attorney's office.

- 215 Chair Ellis I don't know how, what the timetable is, but did the federal legislation this year help on that with the eligibility for loan forgiveness?
- 219 B. Putney Well, I have some people who are starting to apply for that sort of thing, but I can't give you an answer now. I'm sure it will be a big help if they do qualify because I think it is up to \$10,000 or \$6,000 a year.
- 222 I. Swenson That particular piece isn't in effect yet. The one that is, the College Cost Reduction Act, at this point the part that is in effect says that all the payments you make for the next 10 years beginning July of '07 can make you eligible for forgiveness of the balance after 10 years of public service. Then next year, I believe it is in July of '09, the other piece of that goes into effect which allows borrowers to reduce their payments significantly for the period of time they are making ...
- 230 Chair Ellis If they are full-time PD's?
- 230 I. Swenson No. Anyone. You don't have to work in public service you just have to be a collage loan recipient.
- 232 Chair Ellis But I thought full-time PDs were to get significant relief?
- 233 I. Swenson They get the forgiveness piece which doesn't apply to people who work for other than non-profit or public agencies, and then the John R. Justice Act has not yet been passed. It has passed both Houses and it is in conference committee, or headed toward conference committee, but it has not yet passed and that would benefit just prosecutors and full-time defense lawyers like Bert's.
- 240 Chair Ellis Where do you go to recruit? Do you go the law schools up in the valley?
- 241 B. Putney We do that. We have done it with the bar before. We do it with OCDLA and in addition I have put ads in The Oregonian, the Eugene and Salem newspapers where the law schools are.
- 244 Chair Ellis But it is still a difficult market for you?
- 246 B. Putney That is up and down. We had between, I want to say April and September of '07 we had a big turnover. I think we lost seven people, maybe eight, and luckily that came at a time that we were trying to fill them right after the bar results came out, so there are some hungry people out there. This last time it was not as difficult as it has been sometimes to fill the positions. When it happens trying to find somebody in May or June it is very difficult.
- 255 Chair Ellis Talk to us a little bit how the components of the justice system either do or don't work together, Jackson and Josephine.
- 258 B. Putney Okay. Well that is two different stories. In Jackson County I think we are lucky. We have some amazing people. Jim Adams, the trial court administrator, is an amazing person. I can't imagine a better TCA anywhere and Mike Schiveley, the presiding judge, has the wisdom to not micromanage like happens in some areas, so they work great together. In Jackson County I think all of the components will listen and will cooperate to the extent it is not detrimental to their position. All the contractors talk, which is not always the case. I work with Los Abogados which is the consortium for adult criminal. I talk with them about where their caseload is and whether they need to pick up a day here or there. Again, I would suggest that

Billy has never had to get involved between us and Los Abogados. We always work things out so that everybody fulfills their contract. In Jackson County it works together very well.

275 Chair Ellis

Sounds like the contrast is coming?

277 B. Putney

The contrast is coming. In Josephine County the biggest single problem that I see is that the court system is antiquated. I was told by the Jackson County TCA that it would cost between \$750,000 and a million dollars just to get their computer systems current and updated. There is a presiding judge that is a micromanager. They have a TCA who was, I think, with DHS before he went to work in the court system, knew a minimal amount and is not allowed to grab the bull by the horns and get things squared away. The court system is what I see as the single biggest problem in Josephine County. An example is, by and large, you plead somebody to a driving while suspended in which the DA is recommending 10 days in jail. You go in and plead guilty and he sets the sentencing a month later. That is crazy. That is just one more court appearance. That is a real problem. In addition, Josephine County has a long history of being very litigious. One of the reasons being is that they didn't have the icons that I had as I was growing up. The Frohnmayers, the Brophys, people who insisted that things be done right in the legal community. Josephine County had none of that. Over my 38 years I remember numerous incidents in which attorneys went after each other, ethics complaints, that sort of thing, and it became very personnel. All of the society in Josephine County is very litigious. Jim Adams has the best explanation and it even goes back to Cave Junction with the hippy movement there clashing with the right to bear arms people, which there were a lot of over there, and that is all part of the mix. Insofar as the relationship between SOPD and consortium, I think it is reasonably good.

312 Chair Ellis

Does the consortium operate in both counties?

323 B. Putney

No. Separate consortiums.

315 Chair Ellis

I don't want to get personal here, but were you at the meeting we had in Hood River a couple of years ago where Jack Morris was grilled about his succession planning? I want to ask you because you have been a very strong player for a long time. We are very grateful for what you have done, but there will come a time that maybe you are going to want to do something else. What do you see as, if not succession planning, the viability of your organization when you no longer are running it?

325 B. Putney

Okay. Let me tell you about three months, four months ago, I talked with one of my attorneys saying, "I think you are the person who ought to lead this place." He basically requested that I not leave quickly. That he has a lot to learn and we are in the midst of him doing that and that is why Paul is here today. Obviously it will be up to the board, but I think you all know that the board is probably going to rely 80 to 90 percent on what I recommend to that board.

333 Chair Ellis

To be honest, that is a very substantive answer. I appreciate it.

334 B. Putney

One of the things you need to keep in mind is my reputation in the community will still be on the line when I am gone. I am going to make damn sure that it is in good shape when I leave.

336 Chair Ellis

Well, the mark of a truly great leader is the leader who can move on and the organization continues to do well. How do you feel about the size of SOPD relative to the overall caseload? My question is are you maxed out in terms of what you can do without bumping into conflicts too often?

343 B. Putney

Are you trying to pit me against Kathryn now?

343 Chair Ellis

I am just opening a subject and trying to get your thoughts on it.

- 344 B. Putney I don't think we are doing enough work in Grants Pass. I think we were doing 200 cases a month. We got cut back to about 182. I think we should be back at the 200 plus I think we should have, and I intend next contract to propose this, to do some juvenile over there.
- 349 Chair Ellis So your juvenile is just in Jackson County?
- 350 B. Putney Just in Jackson County. In Jackson County, insofar as adult criminal, I think it is exactly where it ought to be. Insofar as juvenile, I find myself in a difficult – well somewhat of a problem. We started doing juvenile in January of '06 and it takes a while to build up juvenile and we had a real shortage of cases until late '06 in which Billy changed how cases were being assigned. We were supposed to take, I think, 712 cases each year in juvenile. The first year we got about 500 so we tried to make it up in the second year. I think we took about 775. In the second year I assumed it could be done with two attorneys. It probably could have been if they hadn't been un-busy the first year, but in the second, trying to make it up, they were working two hours a night at home. They were absolutely killing themselves. I figured out that the caseload was about 2.3 FTE. It is always difficult to get part-time attorneys and it is hard to have an attorney working both adult and juvenile because of scheduling conflicts. This year in contracting they raised it up to somewhat over to 900, 908, something like that. The basic increase was in post-dispositional proceedings which are not near as time consuming as the other types of credits. Right now we are about 2.6 or 7 FTE and I have three attorneys doing it. We could do another 150 cases in juvenile, probably.
- 382 Chair Ellis Without bumping up against conflicts too often?
- 383 B. Putney I don't think we would with that. I don't know what Kathryn ...
- 383 K. Aylward I agree with you.
- 383 B. Putney I don't think we would.
- 384 J. Potter Without adding any more staff?
- 385 B. Putney Without adding any more staff. Right now the three attorneys have a seven hour a day job, so to speak. Last year I bet Lisa Greif was working like she was in an insurance defense firm, putting in 60 hours a week, which is just crazy.
- 392 Chair Ellis Tell me a little bit about your board. It is a five-person board and the appointing authority for the board is what?
- 393 B. Putney The board.
- 393 Chair Ellis So it is a self-perpetuating board?
- 394 B. Putney Yes.
- 394 Chair Ellis Give me a sense of the mix of people that are on the board?
- 395 B. Putney One of the members recently died, it was Pete Naumes, of the Naumes family. They are remittance people. You want to know what a remittance person is? Families that were in the east at the turn of the 19th century going to Ivy League schools, being very liberal, and their conservative parents wanted them the hell out of there so they gave them a million dollars and said, "Go west." Many of them came to this valley and built orchards and became very wealthy in their own right. At any rate, Pete Naumes died. Then we also have Kelly Rasmussen, who is a business person who owns a travel agency and has some brokerage type businesses, Wayne Crutchfield, who was an investigator in my office for many years, a former undersheriff here and he retired from my office in 2000, and Dick Stark, who is one of

the true gentlemen of the bar. He has a son who was a professional tennis player, played with Martina Navratilova, won Wimbledon with her. He is real prominent in the legal community. I suspect the fifth member will be one of Pete Naumes's brothers. We had a board meeting about a month ago and the president of the board, Dick Stark, was going to contact and see if they would become a member.

- 419 Chair Ellis How often does the board meet?
- 420 B. Putney At least quarterly. In 2003, during the BRAC, they met in a two month period probably five times deciding who to sue and who not to sue.
- 423 Chair Ellis I get the sense the board doesn't have a lot of turnover except for death?
- 426 B. Putney No. The board has existed for about five years now with the same people.
- 427 Chair Ellis Which can be okay if they are engaged, and focused, and active. I am sensing that that is a fair description?
- 429 B. Putney They are fairly active. They are kept apprised of things like my recent problem with the pot smoking lawyer. I kept them apprised of that because it was all over the newspaper, T.V; they made a huge deal out of it.
- 436 Chair Ellis Is there much minority populations here?
- 437 B. Putney It is estimated somewhere between 15 and 18 percent of Jackson County population is Hispanic.
- 439 Chair Ellis Do you have Spanish fluent lawyers?
- 439 B. Putney No lawyers at this time. I have one who is real close to being fluent and that is Ben Anderson, but no, I don't have any that are fluent.
- 443 Chair Ellis Do you have access to translators that are?
- 443 B. Putney Yeah. Sure. Our receptionist is bilingual and she does all the bilingual intake and she shows up with the attorneys and interprets during conferences and in addition, one of the legal assistants in Grants Pass is bilingual.
- 448 Chair Ellis I was surprised reading the report that you have a staff polygrapher. Maybe I am just out of touch but I suspect that is unusual.
- 450 B. Putney I don't know of anybody else who has ever had one and I have always had one.
- 452 Chair Ellis How do you use them?
- 453 B. Putney The one thing that I like about it is, number one, I don't have to go to Kathryn for money and the second thing I like about it is we can do a polygraph, and if we don't like it, nobody knows we did it. That I really like. It also is a time, especially in sex cases, in which after failing a polygraph they somehow get through all of their denial with the polygraph operator. That then allows us to try to negotiate versus this, "We are going to trial no matter what." If we can get the client to accept some responsibility that is helpful in that regard too.
- 467 Chair Ellis Do you use it with most of your clients?
- 468 B. Putney Of the 7,000 cases we do a year I think Ingrid does 120 polygraphs, 10 to 12 a month.

471 Chair Ellis Does she do dual functions?

471 B. Putney Yes. She is our chief investigator. Wayne Crutchfield, who is on our board, he left in 2000, he was a licensed polygraph operator and so she went to school before he left so that she could become licensed to do it.

477 Chair Ellis Is this something that you would recommend to other offices around the state?

478 B. Putney Highly recommend it.

478 Chair Ellis It is unique to my experience.

479 B. Putney Highly recommend it.

482 Chair Ellis You have started a juvenile unit fairly recently. How is that going?

484 B. Putney Well, I think it is going excellent. We have had some turnover in the position that does the delinquency. One of them Greg stole, as he does every two or three years. But insofar as the dependencies, I am personally convinced that the bar has risen, been raised substantially since Lisa Greif took over. I don't think anybody doing dependency is hurting for people.

493 Chair Ellis The report had some pretty stark numbers about the caseload in juvenile in this area as being considerably higher per lawyer.

497 B. Putney I don't think that had to do with my office though.

498 Chair Ellis I understood that, but my question is this, that the report has several options, which I am sure we will hear about as the day unfolds, but one option not included was expanding your office's juvenile and my question is, is that an option we should be thinking about or is there a reason that was not included?

505 B. Putney Well, as I mentioned I think we could handle another 150 cases, but much more than that we are going to get into conflicts problems. I think Kathryn and Billy would probably agree with that. We are getting to that border where it could be risky. Say I took on another 400 cases, it is risky whether we could fulfill the contract because of conflicts.

514 Chair Ellis Okay. One issue we have heard in some other communities is difficulty in recognizing conflicts at the very outset. You get started down the track either in a juvenile or a criminal case, incur time and effort, and then it turns out a key witness is a former client or something of that kind. It isn't an obvious conflict at the start but it surfaces. Then you have the problem of substitution and that is an expensive proposition and a place that we have been trying to do what we can to avoid those costs. How would you describe your conflict identification ability here? What is your experience on substitution issues?

529 B. Putney Well, we have a program and on every case that we get, as soon as we get it, we input into the computer the name of co-defendants and all witnesses. The next case we get we will check the computer when we are opening the file. I think we catch a large portion of them right there. Down the line, conflicts do arise. The classic way is when there is a confidential, reliable informant, especially in drug cases, that is unidentified and two months after we have gotten a bunch of drug cases the person is identified and low and behold is a client. Then we have to dump all these cases and they have to go elsewhere. That is the most common reason for late identification of conflicts. Then insofar as another cause of duplicating fees by reappointments is simply when a client says, "I don't like this attorney and I don't want a public defender." Judges, at least some of them, can be too quick to say, "Okay, we'll send this to Los Abogados." One of our judges, our senior criminal judge here, a client really has a

difficult task to change attorneys unless that judge can find a substantive reason as to why it should be done. Some of the judges are too quick to reappoint in those circumstances.

- 560 Chair Ellis Do you feel, in at least as far as you are able to control the events in both identifying conflicts and substitution, you are doing what you can?
- 564 B. Putney I don't know what more we could do. I think we are doing everything we can.
- 565 Chair Ellis What advice do you have for us? Here is your opportunity. This only happens rarely. What could we do to do a better job?
- 571 B. Putney It is no different now than it has been for 20 years. It is one word.
- 572 Chair Ellis More money.
- 572 B. Putney Yeah.
- 572 Chair Ellis But you got some.
- 572 B. Putney Well that is a yes and no. Look at Kathryn cringe. I think she said we got a 12 ...
- 575 Chair Ellis I thought it was 13 something.
- 575 B. Putney Whatever that figure is and that is true.
- 577 Chair Ellis 13.48.
- 577 B. Putney That is true if you really look at it but you have got to remember that because of the increase in caseload I was forced to hire another attorney. There is \$75,000 gone right there of the sum we got. That brings it down to 10 percent. I am not complaining. I think Kathryn and Billy were very fair insofar as the overall distribution of money. I don't think they could have done any better of a job, but the simple fact is if we want real quality we can't offer some kid who owes a \$100,000 to \$120,000 bucks, \$45,000 to \$47,000 to start work when in Portland, at the big firms, they are starting at, I am going to guess, over a \$100,000. Back east they are starting at \$250,000 and so on. It has got to become more reasonable. I don't have any complaints because I know everybody did everything they could this time. The money is limited and I understand.
- 598 Chair Ellis In terms of your communication with OPDS staff and your sense that they understand your issues, even if they aren't able to come up with as much money as you would like, do you feel good about that?
- 603 B. Putney Yeah. I haven't always trusted the people I have dealt with, but in the last probably 10 years I have come to trust. I trust Kathryn and Billy because I think they are straight shooters. They may tell me to go to hell. That's fine.
- 608 Chair Ellis That is a straight shot.
- 609 B. Putney In the past I felt I had gotten less than the truth, but I don't feel that with Kathryn or Billy.
- 612 Chair Ellis Any other advice for us? Hearing none, we will move on.
- 614 B. Putney You know there is one. I am thinking you ought to give some consideration to regional organizations.
- 619 Chair Ellis Spell that out.

620 B. Putney Boy, I did a map once of different colors.

621 J. Potter I have a copy of it.

621 B. Putney Why isn't one organization doing Douglas, Coos, Curry, Josephine, Jackson, Klamath, and Lake County.

624 Chair Ellis So one big PD?

625 B. Putney Yeah. There are some logical other divisions too throughout the state.

630 Chair Ellis Wouldn't we be viewed as a conspiracy to bring an FTE system to the state.

632 B. Putney I don't see that happening. That is just so expensive. You mean state employees?

633 Chair Ellis Right.

633 B. Putney That would be so expensive for the state I just don't see it happening, but somebody might think that was the case.

636 S. McCrea What do you see as a benefit of that? I tend to agree with you. You have Josephine and Jackson and, in my experience, litigating both places is very, very different. It seems the more areas that you would add in, the more counties, the more a regional organization would have to be able to respond, react, and be immersed in the community and the particular issues in each one of those counties. I am curious what you think the advantages would be?

645 B. Putney Administrative, for one. Number two, shifting people as may be needed to do individual cases to cover things. I think it would cut down on costs some.

652 S. McCrea Mostly administrative?

652 B. Putney Yeah, mostly administrative. It might also improve quality assuming you have the right people doing it.

658 Chair Ellis I don't need to hear the details of the issue that you referenced, but I am interested how you handle quality control and in particular if you have a problem lawyer how you handle that.

663 B. Putney With a problem lawyer that is just - I guess there are two types of problems. About a year ago I had a substance abuse issue with an attorney. It was prescription abuse. It was basically a confrontation in which, "You want to do treatment or you are gone." They sign a contract as to how they'll conduct themselves and what treatment they will or won't do. Another incident happened recently, and I mentioned before it was all over the newspapers here. An anonymous packet was sent to myself, all three T.V. stations and the newspaper with a bunch of information and a letter saying, "How do you get hired as a public defender in Medford, Oregon when you have felony drug charges pending in Kentucky?" Basically, I got it in the mail about 11:00 in the morning. At 11:30 the T.V. stations are calling me. I looked through it and it is real clear that these things were sent by somebody who had police reports, search warrants, everything, real clear it was sent by somebody who has access to that sort of thing during a pending case and that is not an outsider. It is a police officer. It is a DA or somebody, but at any rate I went and simply asked the young man, "How many felonies do you have pending in Kentucky?" He was shocked. He had been advised by his attorney in Kentucky not to tell anyone out here. They thought it was going to go away. At any rate I suspended him at that time. Then I started answering T.V. stations and newspaper and I was able to tell them he has been suspended as a result of this. He got the matter resolved, plead guilty to a misdemeanor possession of marijuana, and he is back working. He is a young man

who is doing a very good job. It would have been a violation in Oregon because he had possession of less than an ounce. They have no such thing in Kentucky. I had to decide should I cut off his head for having some pot? I just said I am not going to do it. It is not fair to him.

- 722 Chair Ellis Did you ever figure out who the source was?
- 723 B. Putney No, but I understand the Chief of Police of the arresting agency, or sheriff, whoever it was, I have forgotten, in talking to the newspaper related he was extremely concerned and was going to investigate how this might have happened in his office.
- 732 Chair Ellis It sounds like you occupy a role that you are able to take appropriate steps, whatever they may be with ...
- 736 B. Putney I think so.
- 736 Chair Ellis Any other thoughts or questions?
- 737 Hon. Elizabeth Welch I think there was a second category though, was there not, about your quality control?
- 739 B. Putney No. There was the first one in which it was a substance abuse problem. The second one was frankly the crime. The biggest crime for me in the second case out of Kentucky was that he didn't tell me. That was - in my mind I had to get by that before I let him come back.
- 747 Hon. Elizabeth Welch I have a question about quality control. I read the report that was sent and I think there was reference to when judges complain you look into it. Do you have an opinion about the relative merits of waiting for judges to complain or going and asking judges, on an annual basis, "How are my lawyers doing? Talk to me. Tell me what is going on."
- 759 B. Putney No. I go to the judges all the time. The presiding judge is my former partner. The senior criminal judge spends four hours with me at least twice a week. I have known Judge Crane for years. I feel free to go to them. We are kind of contemporaries and we have been around a long time. If there is a specific incident they see they will come to me. I can't remember the last time someone came to me about something negative. They have come to me about, "Hey, let's change this so that such and such will have..." Insofar as negative it has been a substantial period of time since they have had to come to me. That is another reason why I think we got the contract in 1985. The judges here - judges are renowned for not wanting personal confrontation. They don't want to call an attorney in and say, "You are bad." What they want is to call someone else in and say, "That person is bad. You correct the problem."
- 787 Chair Ellis Any other questions for Bert?
- 787 J. Potter Flip to Kentucky for a second. When you were debating this in your mind did you go to your board at all?
- 789 B. Putney I kept them informed of what was going on. They basically said, "Look, this an administrative thing, Bert. That is why you are there." But I kept them informed.
- 793 J. Potter It is possible for you to use your board if you had to as a shield of sorts. You could go and say to the press that the board and I have decided on this action, or the board has decided, if you needed some cover. This case didn't warrant that?
- 801 B. Putney In retrospect John, I didn't think of approaching it that way. That might have been something that I perhaps should have done; instead I used "the board and I."

808 Chair Ellis Bert, thank you very much. It was very helpful and you lived up to your legendary icon.

811 B. Putney You don't know how much it cost me to get those words put in.

814 Chair Ellis Judge Baker.

816 Judge Baker Good morning.

819 Chair Ellis Thank you for joining us.

820 Judge Baker Thank you for inviting me.

821 Chair Ellis You drove over from Grants Pass this morning?

821 Judge Baker I did and I appreciate the opportunity to have just a few minutes to speak with you a little bit. I will certainly be happy to answer any questions that you might have about Josephine County.

825 Chair Ellis Okay. Go for it.

827 Judge Baker First of all, I am sorry that I didn't get an opportunity to meet with Ingrid and talk with her specifically about our district. However, I do understand that when she visited our court she was able to speak with Judge Newman, who is our family court judge, and I believe Judge Wolke, who is one of our other judges who handles a lot of criminal cases. I did receive a copy of her report and I have had a chance to review that. I would like to maybe expand a bit on some of the areas in her report, particularly our drug court program and also a little update on our mental health court as well. Before I do that I just wanted to express our appreciation for the defense services that we receive in Josephine County. Josephine County is obviously a rural county. We have a lot of indigent defendants in our system. I am sorry that I can't quote you the exact percentage but perhaps you even already have it, but it is in the high 90's in terms of the eligibility percentage for those defendants who come through our courts who are eligible for indigent services. Practically speaking, almost all the defendants that we see in our courts are represented by either our JCDL consortium or a public defender.

863 Chair Ellis I don't have data but that figure doesn't shock me. I think that may be fairly consistent around the state.

867 Judge Baker Okay. Well, then that paints the picture. We see your attorneys on a daily basis. They certainly are the most frequent legal counsel in our courthouse. We have had the opportunity to see them work on a day by day basis. Our experiences have been very positive with both groups. We have found that one group is obviously more experienced - the consortium group has more experienced lawyers in it and they are able to bring that to their cases. However, the public defender's group, perhaps younger and less experienced in terms of some of the attorneys, they bring a lot of energy and commitment and that attitude into their representation. The groups are very different but I think overall I can frankly say that the defendants coming through our court are getting quality legal services.

896 Chair Ellis How are the appointments made? In other words, how does a case end up at the consortium versus the public defender?

897 Judge Baker After a defendant appears at arraignment and indicates that he or she wants to have representation, we actually have a defense attorney in the courtroom to specially appear with them at that time. For the arraignment appearance, one attorney from one of those two groups will actually be there to make that appearance for arraignment and then the defendant must go

to our IDO and fill out the paperwork for qualification. Again, as you know, basically everyone qualifies. Then the appointment is done immediately after that first appearance.

- 916 Chair Ellis That appointment won't necessarily be for the lawyer that was handling the arraignment?
- 917 Judge Baker Well not necessarily. They send a representative. This is a fairly new procedure. We have been doing this for the last couple of years. What we were finding is that we had a fairly large number of defendants who were appearing at arraignments who wished to have attorneys but would not get them until after the arraignment and then that would require another appearance by the attorney to come back and just ask for the next proceeding, which typically would be a status hearing or a preliminary hearing.
- 931 Chair Ellis So the time for SOPD to check conflicts is when? When that second appointment is made then they have a window to check conflicts before they start investing
- 938 Judge Baker Before they would accept it I would assume. You would have to speak them directly about that. I would assume that would be the period of time. They would make the special appearance at arraignments, the person would go and fill out the paperwork, and then the assignment would be made and the defense unit would make that determination.
- 947 Chair Ellis I know you came in part way. I can't remember whether you came in when we asked these questions of Bert. One area of cost saving for us is to avoid substitution either for conflict or incompatibility issues. How is that handled in Josephine?
- 955 Judge Baker Well the way we are seeing that handled is if an attorney has already been appointed, so attorney A in the public defender's office has taken on this case and then a conflict develops either through further research they understand or find out that there is a conflict or maybe another case is filed or something comes to light, then they do file a motion and a substitution is made. Obviously if it cannot be kept in that unit, the public defender's unit, then it will be moved into the JCDL group. [end of tape]

TAPE A; SIDE B

- 007 Chair Ellis What happens when the client says I don't like my lawyer?
- 008 Judge Baker That does happen from time to time where we will get a defendant who wishes to appear before the judge and basically request a different attorney. We do hear those; however, I wouldn't say it happens very often and when it does happen I know for myself it is a pretty high bar that people have to reach in order to get another attorney. Usually they don't like what the first attorney has told them. I think they have been frank with them.
- 017 Chair Ellis They want to shoot the messenger.
- 018 Judge Baker That is what happens and so we have that talk. If it turns out that it truly is, there really is a very serious problem, then the court will allow a different attorney. That doesn't happen very often. I would 90 percent of the time it is just that they want to shoot the messenger.
- 021 Chair Ellis I think it is one of those things that if the court lowers that bar the incidence of requests picks up significantly.
- 022 Judge Baker Particularly if the defendant is in jail. I have seen that happen, not just for those requests, but other requests, particular requests. If a defendant is in custody then we do see kind of a resurgence of those types of requests.

- 027 Chair Ellis Do you feel that the lawyers, both the PD lawyers and the consortium lawyers, do a good job of being there for appointments, showing up on time, staying in touch? We have had some areas of the state where that has not been satisfactory under our standards.
- 031 Judge Baker I think that we have a very good group on both sides in our county and, of course, there are always unknown circumstances where someone has a problem or we have had some times in the past where there have been some illnesses that have caused some inability to
- 035 Chair Ellis But not a chronic issue?
- 036 Judge Baker Not a chronic issue, no. I think we have very good, responsible attorneys.
- 037 Chair Ellis Is your own field criminal, or juvenile, or do you do both?
- 038 Judge Baker I did family court previously. Now I am just doing the general caseloads so it is everything.
- 040 Chair Ellis In terms of the quality of lawyer you are seeing, you made a comment on this, but you feel generally pretty good about that.
- 041 Judge Baker I do. Again, I must note that on the public defender's side there are younger, less experienced lawyers who are learning their way. But also in Josephine County in that same office there are some very experienced lawyers, so they do have the mentors and the leadership to help them along and you see that happening. They seem to be a very close group where they feel, apparently feel, very comfortable in looking to the more experienced lawyers within that group.
- 049 Chair Ellis If you have a concern about a lawyer I am sure on the PD side you know Bert. You know how to find him and he is your contact person. On the consortium side do you have a place to go?
- 051 Judge Baker Holly Preslar is the chair of that group. She would be our contact. She would be the one that we would contact if there are issues.
- 055 Chair Ellis Sometimes we hear judges say they really don't know who they would call.
- 055 Judge Baker No. It is very clear in our county that Holly Preslar is the formal leader and I know she has her committee as well within that group, but she would be our contact.
- 058 Chair Ellis How do you feel about the communication between different components of the criminal justice system within your county? In other words, courts, corrections, enforcement, defense, are they talking to each other? Are they getting along in a professional way or is there something we can do better there?
- 062 Judge Baker Well, my experience has been that there has been communication and I think maybe there was something in the report, and I am not sure if that was the issue your were addressing, Ingrid, or not, but naturally between the district attorney's office and the defense bar it is their jobs to be advocates to their respective sides. I would suggest that there perhaps may be certain personalities within those two groups that may be at odds. However, I would say in most cases when they get to the courtroom they are able to set that aside. I have had at least one incident where I needed to speak with both sides to caution them about behavior in the courtroom that went beyond that, beyond the professionalism or perhaps that is not the right word to say. I dealt with that directly. My experience has been, watching our system work, we have a lot of cases in our small county and we only have four judges. My experience has been that generally speaking the defense bar and the prosecution seem to work together and I think it seems to me that they are working a little bit better now than they have in the past in terms of resolutions that are appropriate in the cases. In other words, the district attorney's

office is not always digging their heels in the ground saying, "We are not going to do this," and the defense is not going to say, "Oh yes you are." That is not happening as much as I believe it has in the past. I think that we are getting the appropriate results because of that. Obviously if both sides dug their heels into the ground every case filed would be going to trial and that is not realistic. I do see reasonableness on both sides where they are able to look at a case, analyze it, and assess really what the appropriate disposition would be and then to meet in some middle ground. Of course there are always exceptions where one side or the other would take exception to that, but generally speaking I do see that they are working together appropriately.

- 097 Chair Ellis Thank you. Any other questions?
- 098 J. Potter From the report and it is no secret that Josephine County may be facing some difficult economic times.
- 099 Judge Baker Yes.
- 099 J. Potter Can you give us any insight from your position as to what might happen in the justice system how it might affect us as defense providers?
- 100 Judge Baker Sure. That is a good question. We are getting a little bit used to this because every year about this time, in recent times, we are faced with this same issue and I think you are aware of the cause of it so I won't go into that. We do not know yet, our county does not yet know, whether or not there will be any federal funding that we have relied on for decades. Last year when Josephine County received its federal funding it was a decreased amount but yet the Commissioners took that money, they cut it in half, and they socked away half for future planning, i.e. this year, and then used the rest of it. They have already cut positions. They have cut programs. They have cleaned house. They have done all those things. The county has been working at reduced resources for some time. This year if we do not receive our funding I think we will be basically coasting from that one-half that was saved from last year. It is my understanding under those numbers that the district attorney's office may not need to reduce its number of deputy DAs this year, but next year would be a totally different story. There is always the possibility that there might be continued federal funding, A, or, B, another funding source which obviously the county leaders are working to address that. We are anticipating, in terms of the long term, that if the funding is not sorted out and even if it is sorted out it takes time for those funds to actually be put into use. Even if there was some sort of a tax base implemented or that type of funding base, it would take time to implement all of that. We are looking at, probably in any event, sheriff's patrol depleted to virtually nothing. Our sheriff has already instituted the reduction in the cap of our jail and has a plan in place to ramp that number down. The ultimate result could actually be closing our jail and transporting our in-custody defendants out to other jails around the state and paying a per diem basis. That could be a worst case scenario. So, the answer to your question is we don't know yet, but there are a lot of people who are meeting and working on this and everyone knows that we are in it together and we in the court will certainly be working with law enforcement and the district attorney's office and other affected county offices. Corrections, not so much because they receive a lot of state funding.
- 140 I. Swenson Mr. Chair, I think Judge Baker was going to expand a little bit on the drug court.
- 141 Judge Baker Yes. Thank you. I just wanted to take a couple of minutes to let you know about our public defenders' involvement in our drug court program. I happen to be the drug court judge and we have had a very successful program for 13 years. We will be graduating our 230th graduate this month. We have had a tremendous amount of success not in any small part due to the participation from the public defender's office in Josephine County. They have been a huge partner from the very beginning of this program, from its inception. They provide an attorney who meets with us every week to staff all of the cases. The attorney appears in court

and then represents every client in the drug court program. We can average around 30 to 35 drug court clients so that particular attorney will represent all of them with respect to the drug court cases and takes over all of these cases even if the case started out as a JCDL then it would be transferred to the public defender for representation. It is a huge time commitment. Obviously it a commitment that is taken very seriously because there is a great excitement about drug court and the successes that we have had. The drug court coordinator also works within the public defender's office. She is a non-attorney, her name is Casey Black. She does a fabulous, fabulous job and is right on top of all of the latest developments and techniques in drug courts.

- 166 Chair Ellis What is your failure rate?
- 168 Judge Baker I'll tell you what, we just had a study done from our corrections department and they looked at all of the drug court participants who were on probation. We missed some of them because not everyone is on probation, but most of them are. They looked at a three year recidivism rate for our drug court graduates and the recidivism rate is 9.7 percent which is very, very low and that is three years out. Most studies are just one year out. This is three years. The three-year recidivism rate for the State of Oregon, just the non-drug court, would be 38 percent, so 38 compared to 9.7. The three-year recidivism rate for Josephine County non-drug court is 47 percent. That kind of gives you a picture of what I think we are doing in our local drug court program. We are very, very excited about it and think that is a great bargain for the justice dollars spent on that. We have a great partnership through our district attorney's office, our public defender's office, and our community corrections, and then obviously our treatment people to make that happen, and the courts.
- 185 Chair Ellis Congratulations.
- 186 Judge Baker Thank you. We are very proud of that.
- 187 Chair Ellis Thank you.
- 187 Judge Baker Alright. Anything else I can answer for you please do not hesitate to call me.
- 188 Chair Ellis Judge White, come on up. We appreciate you coming.
- 193 Judge White My pleasure.
- 195 Chair Ellis Do you have some thoughts you want to share with us before we begin the cross-examination.
- 196 Judge White I have read through your document and it is interesting. Some of the things that I am not that familiar with I didn't understand some of that. Maybe a little bit of an idea that there were some issues in juvenile court, but I don't do juvenile very often and it was interesting. I think the public defense services have been very good in this county. I share some of Lindi's comments about the cooperation. Nobody is cozy, cozy with anybody I don't think in that regard. It is just an understanding that we are all in this system. We are trying to make it work as well as we can. I think we do get quite a bit of cooperation that way. There is just a couple of comments on page 12, on the criminal court system, it says, "pretrial conference is scheduled for two weeks after arraignment for in-custody defendants." That is right but "set-overs are usually taken in Measure 11 cases. Cases set for trial are usually set within 90 days of the pretrial conference." We have a local court rule that they have to be set within eight weeks of the pretrial date unless they have the court's consent to set it out further. What we do is if there is one set out that is beyond that period of time then the docketing clerk sends it up to me and I review the reasons they have given. Hopefully, if they haven't given reasons, I deny it and say, "Give me the reasons," and if they say, "Attorney unavailability," I sort of say, "Why? And what are the issues?" I think that has really helped us in getting cases resolved. Not being draconian about it but just being ...

- 228 Chair Ellis Keep the pressure on.
- 228 Judge White Keep the pressure on. You can't just say, "Oh, because," so that has kind of kept the pressure on the attorneys and made them think about, "Well, can I justify this and how do I justify this?" Obviously on the Measure 11 cases and serious cases we understand that the case has been set out three times already and now they are asking for something that is four months out, then I am not going to be very accommodating in that regard. The other thing that I noticed talking about other specialty courts and the comment on page 13 is, "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." That is only part of the issue. I think a lot of the times we could have a judge available but it is really attorney availability, because you run into the conflicts with the people that are doing juvenile and they are doing criminal and just trying to get an attorney who can be assigned or available for the specialty courts. We have legislators that can express interest in mental health courts and they are all great ideas but it does take time. Judge Crane does the drug court so that basically means that she does that Thursday afternoons, that means on Wednesday she can't take a two-day trial and on Thursday she can't take any trial unless it is a non-jury or something that we know is going to be over before noon. Although there are advantages to these special courts and in a perfect world it would be nice, but just all of the coordination and it takes a lot of staff coordination too. It is not just you get the judge and the attorneys and the clients. There are lots of people who end up having to get involved in this, but I think they do have some definite value if we were in the perfect world and had a lot of money to do it. Those are the only notes - oh, the other thing I just want to point out on page 16 they talk about the monthly in-house CLEs that the public defender's office has. Those are great. They are really good for people practicing criminal law and I go to all that I can. And Casey, I think, runs that. I try to encourage the district attorney's office to come too. The defense bar will usually come to them but there will be things on driver's license suspension or just things that we deal with, parole and probation, Interstate Compact, it is just good for the ...
- 277 Chair Ellis Are you going to the one tomorrow?
- 277 Judge White We are having our annual judge's retreat tomorrow. They will have one a month in this room and it is really valuable. That is all the notes I had.
- 284 Chair Ellis Do you feel good about the quality of lawyers that you are seeing, both the public defender and the consortium?
- 284 Judge White Yes. I feel good about it. Of course I am always - maybe I should look around and see who is in the room.
- 288 B. Putney I'm here.
- 288 Judge White Well, what happens is when somebody says, "Well, I don't want a public defender I want to hire my own attorney," and they will hire an attorney and then when they hire the attorney you will say, "Oh, man."
- 294 Chair Ellis What you are saying, I think, is there isn't much criminal practice here that isn't the PD or the consortium...
- 295 Judge White There is not a lot.
- 295 Chair Ellis so that somebody who says they will go hire somebody private ...

- 296 Judge White Well, they will hire some of the folks that do the criminal law but they would be better off if they got a public defender because they have expertise, they have the support staff, not all of the criminal defense bar is that way.
- 302 S. McCrea Thank you.
- 302 Judge White Present company excluded.
- 303 Chair Ellis You don't need to look behind you.
- 305 Judge White At least I can see if she is taking notes.
- 305 Chair Ellis Let me ask you a question we asked some other judges around the state. I know this is a difficult question to answer and you may sidestep this. Do you think that there cases being tried that really shouldn't be tried? Do you think that there are pleas being entered where you are not sure that adequate thought was given? How do you feel about that?
- 312 Judge White I feel that there are cases being tried that shouldn't be tried but not necessarily – occasionally on the defense bar side - but it is mostly the district attorney's office. Having been a district attorney for eight years I see them try cases that I say, "There is no way." When I was in the district attorney's office my boss, Justin Smith, said, "You do what you think is right and if you are not convinced beyond a reasonable doubt yourself that this person is guilty back off." Here it is just sort of a knee jerk reaction of we'll go to trial.
- 324 Chair Ellis Once it gets started they don't know how to stop it.
- 325 Judge White They will try cases, and these are basically minor cases I'm talking about, not major cases. They just waste time, I think, on minor cases, instead of focusing on the people that are really dangerous. There is a kind of case where you tell a person they did a bad thing, slap them on the hand and on the way they go. Other than that, there are times when I think, and I think it is client driven, when they will go trial and I think the defendant should be probably trying to reach a negotiated resolution, but I think the client is saying, "No. I want to go to trial," and then it ends up being adverse. I don't really see cases, I'm sure I do, but not anything that I am concerned about at all where I think they are pleading guilty when they probably should have gone to trial. One of the things that I have had complaints about with some of the court appointed attorneys is I think what happens when some of the good criminal defense attorneys will go to the district attorney's office and the district attorney's office will send out this offer or plea. The public defender just says, "Oh, I took it to my client and he says no so I guess we are going to trial." The good defense attorneys go back and back and back and kind of keep ...
- 356 S. McCrea Keep wearing them down.
- 356 Judge White keep wearing them down. When I was in the district attorney's office and Ginny Feinberg would come in and I would finally just say, "Okay, okay. If you will get out of my office I will do what you want." It is really a process of working at it and negotiating and trying to really point out why and the reason for doing this.
- 363 S. McCrea Kind of a function of investigation. If the defense can come forward and say, "Okay, yeah. Your witness says this but I have got this for you, and I have got this for you, and I have got this for you," then it creates a different scenario that the prosecution has to think about.
- 368 Judge White Right. The other thing too is when a district attorney looks at the police report and just says, "Oh, man. This is a bad person and this is a bad deal," well then you find out that they aren't such a bad person. They aren't really Jack the Ripper. There are people out there in the community that are really supporting this person and they have family members. That makes

a lot of difference to a judge. If you see family support, or community support, that people believe in this person, that makes you more inclined to see things in a different light. It works the same way with the district attorney's office. I think that they just look at these things in the police report that may or may not be completely accurate and take a position. I think that that is one of the weaknesses I will see occasionally. That is one of the things I think they should do more is work on the district attorney's office instead of just saying, "Here is there plea offer and that is that. That is the end of it and I guess we go to trial."

- 388 Chair Ellis Any other questions for the judge.
- 388 S. McCrea I have a question and I hope I am not putting you on the spot here. It almost seems to me, and I am curious if this is your experience too, that there has been a sort of philosophical change between the defense and the prosecution, given the financial issues that have come up in the past few years on both sides. Is there the development of a sort of a global understanding that we are all in this together? The defense can't do it without the prosecution and the prosecution can't do it without the defense. Do you see that at all?
- 398 Judge White I'm not real sure I understand.
- 399 Chair Ellis During the BRAC experience in '03 we thought we felt things changing in at least the political relationships between the components of the system and frankly we were very gratified. A number of DAs spoke in favor of defense services. It was remarkable.
- 405 Judge White I think that is true to a large extent. What you see sometimes with the individual attorneys will be a prosecutor who thinks they are a bad person because they are representing ...
- 409 S. McCrea The knee jerk reaction is, "You are the adversary."
- 410 Judge White You know, "You support crime." But I think at the higher level and with more senior staff you don't see that. You can get somebody right out of law school that grew up in Lake Oswego and the parents live in nice Republican neighborhood and then ...
- 417 Chair Ellis You had better be careful.
- 417 Judge White Well, I'm close. I grew up on a farm in a conservative background but after a while you see that everybody has their job. That is their job. That is defense counsel's job to do the best job they can do for that person regardless of their personal opinion, what that person could do for themselves if they knew how to do it. I think that institutionally there is an understanding of that.
- 428 S. McCrea Okay. My other question is on pretrial conferences I know that for me as an out-of-town lawyer that I submit mine in writing but isn't that true for everybody? There doesn't have to be a personal appearance.? That is such a great practice as opposed to Lane County where everybody has to traipse into the courtroom and spend all afternoon sitting there, having the case called and it is frankly a waste of time. The pretrial conference documents here say, "Is discovery complete? How many days is the trial going to take?" and provides all of the information that the court needs in order to set the case.
- 436 Judge White Of course it is all lies.
- 439 S. McCrea Well of course I tend to file continuances because discovery isn't complete.
- 440 Judge White Is used to be that the only people that showed up in pretrial conferences in our court were either attorneys that didn't know what they were doing or attorneys that just wanted to bill their clients for an appearance. What the district attorney's office has done in an attempt to try and settle cases is that they will make offers that will expire after the pretrial, so we do get

a lot of continuances and more appearances and pleas at the pretrial conferences, but it is good. I tell people, "You don't have to come back from Hermiston to make this appearance. You can file a pretrial report and just let us know the trial date." One problem we have run into there is we let the attorneys try and set the trial date within the parameters of the court, but sometimes it ends up being unbalanced. Last week we had hardly anything on Tuesday and Wednesday and on Thursday we had 12 trials. I think by allowing them to set the trial dates they have less ability - it is good for them because they can pick out the trial dates and we don't have to have staff calling the district attorney's office and calling the defense attorney and trying to coordinate. That works pretty well for us but I threaten every once in a while that if you guys can't control this maybe we will have to take it back over and set the trial dates.

- 470 Chair Ellis Now that you have a resident Article III judge.
- 472 Judge White Right.
- 472 Chair Ellis Thank you very much. Why don't we take about a 10 minutes break?
- Break
- 475 Chair Ellis Dan Simcoe? You are with the Josephine County Defense Lawyers, Inc. Consortium?
- 479 D. Simcoe Correct. Holly is our leader. I have read the report and it describes our organization. In terms of the preliminary findings concerning Josephine County, I know on page 11 you say that, "Attorneys from the public defender's office are present at arraignments." That is a shared responsibility.
- 487 Chair Ellis I understood that from Judge Baker.
- 487 D. Simcoe Okay. They take it until they have received a quota of cases for the month and then our consortium will handle arraignments for the rest of the month.
- 490 Chair Ellis Tell me a little about the members of your consortium. It is a nine member group.
- 491 D. Simcoe Nine member group with various levels of experience. We are open to new members. We lost two members last year. We are talking to ...
- 496 Chair Ellis Lost because they retired from law? They left the community?
- 497 D. Simcoe One of them retired from law. He should have quit probably some time ago. There were some issues that came up and he decided to resign. The other one we had problems with so we removed her from our group and she also quit practicing law. It was sort of an internal cleanup. Both of them were issues for the consortium so we had to deal with them. Gene Farmer should have retired. He was not appearing in court as frequently as he should have and so we suspended him and he eventually resigned in the process of being suspended.
- 509 Chair Ellis I am actually interested in this because some consortium around the state don't have a very good way of dealing with lawyers that have issues.
- 513 D. Simcoe We have a participation agreement that each lawyer signs and we have bylaws that require each lawyer to perform, and if they fall below the standard that is required of them, then we have the option to suspend them immediately.
- 518 Chair Ellis And the "we" is your board?

- 519 D. Simcoe The board or the membership at a membership meeting, but the board can meet and suspend them and then request a meeting of the group to determine if that suspension should be continued or if they should be terminated from the group. The only issue that comes up with that is when cases are assigned to the consortium they are assigned to particular attorneys. The attorney is the attorney of record for the client. We don't have any control over how the attorney performs his services other than to suspend them if issues come up. That has come up before with our judges because when these members were having problems they expected us to just jump right back in and take the cases back. We said, "Well, you are going to have to deal with that attorney." You touched on that earlier in talking with a couple of the judges. I don't think the judges like to go to the attorney and say, "You are not doing an adequate job."
- 535 Chair Ellis They like to go to a third person.
- 535 D. Simcoe They were calling us and telling us to take care of this. Take the case back and assign it to another one of your consortia members. We had to encourage the judges to deal with it, but eventually we did take all those cases back and assign them out.
- 541 Chair Ellis I think I am sensing this passage on page 14 where it talks about recently you had some difficult personnel issues.
- 544 D. Simcoe Correct.
- 544 Chair Ellis Do you have an administrator of the consortium?
- 546 D. Simcoe That would be Holly Preslar who is the president and a member of the board. She has a reduced caseload to handle the affairs and the corporation.
- 550 Chair Ellis You are incorporated?
- 550 D. Simcoe Yes.
- 552 Chair Ellis And still can avoid the unit rule?
- 552 D. Simcoe Yes. All the corporation does is just to assign the cases to the various member attorneys.
- 558 Chair Ellis What is your process for filling the vacancies that you now have?
- 561 D. Simcoe We attempted and tried to recruit new members to the organization. We now have a deputy district attorney who is leaving the DA's office and has applied to our organization. We have contacted attorneys in the community, some of the younger attorneys, to see if they are interested in joining the organization. We are open to new members applying. If we add this district attorney we will have 10 members. I think ideally we have had 10 to 12 members for a good long time.
- 571 Chair Ellis Of your members what percent of their practice is indigent defense?
- 573 D. Simcoe I think it runs about 40 to 50 percent of their practice. We have one attorney who had a civil practice, stopped practicing law, became a teacher, decided to practice law again and he has just been added back to the group. He is doing indigent defense strictly. Other than that it is about 40 to 50 percent.
- 580 Chair Ellis It is an interesting question for us because one virtue from our point of view of consortia is that they can be more flexible in terms of caseload either up or down depending on what the conditions are, but we don't want such a low percentage of practice in defense work that we

don't get the benefit of the experience and specialization. Do you feel like you have a pretty good balance?

- 589 D. Simcoe I think so. At 40 to 50 percent a lot of the non-indigent practice I do is retained criminal work. My total criminal percentage would be higher. I know that is true for some of the other attorneys also.
- 595 Chair Ellis This is that other 10 percent of the caseload that is not indigent in the county?
- 598 D. Simcoe Right. I heard Judge Baker say that 90 percent do qualify. We still get hired by people who do get a court appointed attorney and decide they don't want a court appointed attorney.
- 602 Chair Ellis Friends and family. Your board consists of all members?
- 603 D. Simcoe Yes.
- 603 Chair Ellis It is a nine person consortium and how many on the board?
- 605 D. Simcoe Three are on the board.
- 607 Chair Ellis Have you ever given thought to having an outsider on the board?
- 608 D. Simcoe Yes. We have discussed it over the last couple of years to add an outsider on the board. We have talked to some people. We haven't changed our bylaws to allow that.
- 611 Chair Ellis But you are open to it?
- 612 D. Simcoe We are open to it. Absolutely.
- 614 Chair Ellis What do you do, and I think "training" probably isn't the right word because you bring in more experienced lawyers to begin with, but with CLEs and staying current on issues?
- 618 D. Simcoe There is a monthly meeting in one of the board member's office to discuss legal issues that relate to criminal defense and issues regarding the bench and bar. Judge Baker wanted me to tell you that there is an active Bench/Bar Committee in Josephine County that has members of JCDL on it as well as the public defender's office. She feels that has been very effective in terms of maintaining communication. That is it, monthly meetings. We attend meetings that are put on by the public defender's office, but other than that, just the regular CLE requirements of attorneys who are encouraged to make some criminal CLEs a part of their regular CLE reporting requirements.
- 634 Chair Ellis How would you describe your relationship with OPDS staff? Are you feeling like the communications are good?
- 637 D. Simcoe Absolutely. I know Holly, and once again she is the one who interfaces, if there is an issue she is talking to someone directly, immediately, and the board will meet informally once a month or two, whenever an issue comes up, because she is right on it talking to someone, even with things that have not come up her attitude is, "Let's just call up there and tell them what is going on before it becomes a problem and they find out down the road." She is very open to calling and talking to people and talking to the judges and anybody who has issues regarding anything having to do with us.
- 652 Chair Ellis Any suggestions how we can do our job better?
- 653 D. Simcoe I don't. Holly might have an idea or two. She didn't pass any on to me. I heard mentioned that Bert said he would like more cases. I know back before '84 when I was doing indigent

defense under the old system, when the public defender's office first came into town, JDCL was doing all of the indigent defense in Josephine County, even then when he got his chunk Bert said, "Dan you just need to whittle your group down to three or four attorneys because I am going to be doing 90 percent of Josephine, so he has always wanted to have more cases. I have always felt very good about the fact that our group has had the percentage of cases that we have had. I think it is a very good mix for Josephine. We have experienced attorneys. Frankly I think we all enjoy doing that work and I would hate to see it cut back. That is the only thing I would say to you is I think things are going well the way they are.

- 675 Chair Ellis Any other questions for Dan? Thank you Dan. Thank you for coming. Is Doug Engle here? So what does Abogados mean?
- 683 D. Engle The lawyers.
- 685 Chair Ellis The advocate?
- 685 D. Engle Abogados means lawyer in Spanish. When they started I think all four of them spoke Spanish and they called themselves that.
- 687 Chair Ellis Anybody speak Spanish today?
- 688 D. Engle Just one.
- 689 Chair Ellis Tell us a little about your consortium in Jackson County.
- 690 D. Engle Well, we have five lawyers that do probably 95 percent of the work. We have one lawyer who only wants Measure 11 cases. Sometimes he gets three or four and sometimes he can go two or three months without getting any. Then we have one lawyer who almost never gets any cases but he is there for backup. We had a period where we were very busy and so we brought him in to take some of the overflow. We haven't been busy for quite a while. We are running about 75 percent of our contract. We did make our contract last year but only because Bert went out of his way to give us additional cases.
- 708 Chair Ellis What is the experience mix in your group?
- 709 D. Engle The lawyer that only does Measure 11s, Bob Abel, he has been around for a long time. He is probably mid-sixties?
- 713 B. Putney Around 37 years.
- 713 D. Engle All of us are qualified to do murder cases except for one. I think we have all been employees of the public defender's office except for Mr. Abel. Probably the youngest member we have is mid-forties. We have all been around for quite a while.
- 722 Chair Ellis What percent of the practice of your lawyers is criminal, indigent criminal, or other?
- 725 D. Engle Bob Abel does only criminal. We have two lawyers that do only criminal or juvenile dependency. I have a minimal civil practice. I am the city attorney for Central Point which is a small town here. Dave Orf does only criminal and Don Scales, who almost never gets any cases from us, I don't know if he does any civil. I think he is mostly criminal too. We are almost exclusively criminal lawyers.
- 739 Chair Ellis What is the reason for having two co-administrators? What is the history there?
- 742 D. Engle Frankly what happened was the last person that ran Los Abogados for years, and years, and years, took the county counsel job, so he is out and the only reasonable alternative was to

have it come to my office because I had the most competent secretary. They had a practice where they paid the administrator \$800 a month for all these years. We just continued that and rather than have it come all to me we just split it \$400/\$400 with another guy who is in my office that is also a member of Los Abogados because I didn't want me to get more than him.

- 760 Chair Ellis It is not an issue of people couldn't agree.
- 762 D. Engle Oh no.
- 763 Chair Ellis It is more by design than accident?
- 765 D. Engle The reality is that I do 95 percent of it, but whenever we make decisions I run it by Vance. We are the ones that make the decisions.
- 768 Chair Ellis Now you have no board?
- 768 D. Engle Correct.
- 769 Chair Ellis Have you given thought to adding a little more structure?
- 771 D. Engle I have thought about it because I knew you were going to get on me about it.
- 773 Chair Ellis I was pretty gentle. I just sort of raised the issue.
- 774 D. Engle If I could be convinced that there was an advantage to doing that I wouldn't have a problem with it. We haven't seen the need.
- 778 Chair Ellis Let me ask this. Have you had quality issues that someone has had to deal with?
- 780 D. Engle We haven't, which doesn't mean we won't in the future.
- 782 Chair Ellis So how would you deal with it?
- 783 D. Engle We would talk about it and say, "We got this complaint. Is that true? How do you see it?"
- 784 Chair Ellis The "we" is who at that point?
- 786 D. Engle All of us. Well probably me first. It would probably be me or Vance Waliser and me.
- 789 Chair Ellis So what happens on case assignments? That is an area that some consortia have issues with and really need an administrator and a board to be a mechanism to solve that.
- 794 D. Engle We don't have that problem. We don't differentiate between minor misdemeanors, major felonies; we have a rotation for murders. We haven't gotten a murder for years, but whoever's name is up next. The cases are all assigned randomly. Everybody gets probation violations, or A felonies, Measure 11s, it just doesn't matter. We don't have a real variance in experience so that is not an issue. It is all equal.
- 807 Chair Ellis I gather since you are not getting as much caseload as you liked you are not in the business of recruiting?
- 810 D. Engle We haven't had to recruit for three years maybe. We were jammed up pretty badly for a while and then we added, in kind of short order, two more members and we haven't had a problem since then.

819 Chair Ellis How is your relationship with staff at OPDS?

820 D. Engle Very good. Actually, the only contact that we usually have is between my secretary, Laurie, and your office. As far as I know it runs like clockwork.

826 Chair Ellis Sounds like she is the key here?

826 D. Engle She is.

826 Chair Ellis So why are we talking to you?

828 S. McCrea Somebody would try to steal her away.

830 D. Engle They have. About the only thing that I see from up north is that every once in a while she will hand me a printout and it has a little sticky on it that says, "These case counts match what I show." That is it. She has already worked it out.

839 Chair Ellis Any suggestions how we can do our job better?

840 D. Engle No. As a matter of fact I think everything from our end is real easy. We just kind of follow Bert's lead. He plows the field and we just kind of go along behind him and he keeps us involved. He makes sure that we get as many cases as we can without him being hurt too badly.

849 Chair Ellis So you follow the legendary icon?

850 D. Engle Right. I started laughing when I read that but it is really true. Bert is kind of a legend. I don't know what is going to happen when he leaves, but it could be different if it wasn't for Bert. There could be conflict but there isn't. We all worked with Bert so we all know each other. He is on the leading edge with issues that come up with the judges because I think they call him first and then we are brought in later.

862 Chair Ellis Okay. Any other questions for Doug?

864 I. Swenson I do have one comment since we referred to Bert as the legendary figure in the community, I do have to remind you of some information that we found in 2005 and that was that Los Abogados lawyers are considered the "A" team by the local legal community.

870 B. Putney They are all excellent. They are not good attorneys they are excellent attorneys.

873 Chair Ellis And you say that will all the modesty because you trained them all.

874 B. Putney I didn't train Doug he was a prosecutor and has been an excellent attorney since he came to town. I want all of you to know that there is a synonym for icon and legendary and that synonym is old.

881 Hon. Elizabeth Welch Why don't you have enough cases?

883 D. Engle We were just kind of talking about that and it seems to me that there are a lot less forgery, identity theft types of cases. We used to be just buried with those. Also, there are no meth labs anymore. Whatever they did has really worked.

892 Chair Ellis It is just terrible when crime goes down.

- 893 D. Engle That is what we say when we are always complaining about things. Without these guys we wouldn't have jobs.
- 896 S. McCrea You would be doing something else.
- 897 Hon. Elizabeth Welch So it isn't some functional problem in the system. Your icon also says he could take more cases too so, basically there aren't that many cases.
- 902 D. Engle Yeah. I don't know if the police are shirking their duties or what.
- 904 S. McCrea Some of them go federal too.
- 905 D. Engle Not very many. It takes a pretty big drug case down here. If it is a career criminal.
- 906 Chair Ellis Thank you very much.
- 906 D. Engle Thank you. [end of tape]

TAPE 2; SIDE A

- 002 I. Swenson We could do some other business while we are waiting for the people who are arriving a bit later.

Agenda Item No. 1 Approval of the Minutes of PDSC's March 21, 2008 Meeting

- 003 Chair Ellis The one item of business we can do is the minutes from the last meeting. Are there any additions or corrections?
- 004 J. Potter Mr. Chair, I was going to ask if anybody remembered who made the motion that the tape didn't pick up on page 2. Under Agenda Item No. 3 there was a motion and the tape started late.
- 008 Chair Ellis I believe that was you.
- 008 S. McCrea It is usually me.
- 008 Chair Ellis Let's put Shaun in there.
- 009 S. McCrea I'll take responsibility.
- 010 J. Potter If that is the case I'm willing to move to approve.

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

Agenda Item No. 3 Key Performance Measures – review of Proposed New Measures

- 011 Chair Ellis Kathryn, do you want to talk to us about KPMs? For those of you who are not bureaucrats that is Key Performance Measures.
- 014 J. Potter Ingrid, there were people walking by carrying bowls. Would that be food?
- 015 I. Swenson Good idea to find out.

We met several times with staff from Legislative Fiscal Office and Budget and Management Division of Department of Administrative Services to discuss our key performance measures. I think a lot of agencies are taking another look at their key performance measures. Budget and Management (BAM) now has somebody really great in there that understands this stuff and loves it and is helping agencies have more meaningful key performance measures. On the handout that I have left on the table is – these are our current key performance measures. The first one, the appellate case backlog, that seemed like a good measure when you had a closed system, when you had a steady stream of cases coming in and a fixed number of attorneys and then whittling down your backlog does show more productivity in your attorneys. The problem is that as the caseload goes up then suddenly your backlog is bigger and you become less productive as you have more of a backlog. What we wanted to do was sort of convert this. We hope it will still be a measure of productivity for the Legal Services Division, but to actually measure the median number of days from record settlement to filing the opening brief. I think we will probably not include death penalty, post conviction relief, I'm sorry, parole appeals, state's appeals, we will sort of eliminate the odd ball cases and hopefully if our mandated caseload package accurately projects an increase in cases coming in the door, then we will have said to the legislature that we think there are going to be X number of cases more therefore we need two more attorneys and we get them, then the assumption is that we are proportionately staffed correctly with attorneys for the caseload. That eliminates those two components that can fluctuate. Then we should be able to reduce the number of days to filing the opening brief. The second one, the fee statements, obviously we can only reduce fee statements that are incorrect if we get incorrect ones. As our providers are getting better trained they are not making so many mistakes. We would like to eliminate that one completely. Processing fee statements is still important. It is important to our providers. The food is not good but there is plenty of it kind of thing. We don't pay well but at least we pay quickly. Reviewing expense requests, we still want to keep that as a performance measure. Number five, expense complaints, as you know from the annual performance progress report I think we had one complaint. It is very difficult to statistically analyze one. Six is best practices. This is where the site review visits different contractors and says, "Here are our best practices. We want you to implement them," and then a year later there is a response that comes back saying, "Have you implemented any of these?" The problem with that is that some of our best practices aren't always applicable. If you have a consortium of three attorneys and a best practice is that you have a board, and you know they are never going to end up having a board, then you end up somehow underrating them because a particular best practice doesn't fit them. We took those best practices, with the help of the Quality Assurance Task Force group, and broke them down. They all break down into one of these categories: skill, knowledge and experience, zealous advocacy (including community involvement, efficient delivery with appropriate technology and staffing levels), and manageable caseloads. We said you have to have those four things to be able to do a good job. You could have the skill and knowledge but be burned out so you score low on zeal. The weightings in parenthesis were estimates by the Quality Assurance Task Force of the relative impact. We might take a look at that again when we actually start scoring contractors. Well, maybe since we are talking about that I should explain this chart. This chart is purposely cryptic and unlabeled because it is not real. It is an example provided by Budget and Management Division of how a performance measure such as this would be tracked. For example, with these categories you have a possible 70 points. Let's assume that everybody has lots of skill and knowledge. They are totally zealous. They have got the computer systems and the staff, but their caseload is killing them, so you get a 45 by doing A, B, and C, but with the unmanageable caseload maybe you only got a 10. That is why this chart shows everybody starting out at 55. Then you do a presentation that says, "If you do nothing, if you keep funding at current levels, here is what we expect to see." It is the light colored bar. Over time that score will fall because what is happening is you are getting the more experienced attorneys moving out of the system and the younger ones that have the student loans are moving in. They require more funding just to do the same job. If you keep funding static you should see that ability to perform quality work dropping. The next example is if you increase funding by 20 percent you will see an increase, things will

improve, but then if you leave it there it will continue to drop down again, and likewise with the last set of bars. If there is a 10 percent reduction in funding here is where it would end up. It is a different way of presenting things to the legislature than they have seen before. Several other agencies are doing it this way. It then becomes a reporting measure. You don't set a target for yourself you simply say, "Here is what we expect to have happen." Number seven we didn't have enough complaints to have this be a valid measure. Number eight is the new one, customer service, new for us, which all state agencies have and we have decided to use as the sample population the ...

- 107 Chair Ellis Who is the customer?
- 107 K. Aylward The sample population in this case is the providers, so we have a database and we have over 600 of our attorneys that request approvals sent to them by email. For us that is a big list of email addresses that we can use. We are assuming that among those same people there is overlap. The people who request the expense sometimes are the people who are getting paid. To get feedback from that group of people in terms of timeliness, helpfulness, courtesy, the information you receive from our office, I think, will be good. We all talked about this a lot to sort of say, "Well, but you don't want the customer service for the Legal Services Division and that is their clients and don't you want the customers here," and the Budget and Management staff said, "No." You pick the one thing that is the biggest part of what you do. You don't have to go into an agency and say, "Well, is this unit satisfying its customers and this unit satisfying theirs." You take the big one and make it something that you can actually get a meaningful result from. Because this isn't a large number of providers it makes sense. We will get reasonable data. We may not measure everything the agency does, but we measure a big part of what we do and it is doable. Number nine you talked about at the last Commission meeting, the best practices, so the efficiency one is going to be a composite measure of the ...
- 127 Chair Ellis The three items.
- 127 K. Aylward Yeah, the backlog, the fee statements and the expense requests and we will figure out a way to weight those. They don't necessarily have to be weighted equally and number two is the rating that the Quality Assurance Task Force and the site review teams will make based on contractors they have already visited and then the other two. I am not asking the Commission to approve or vote on these. They become a part of our budget package that is presented to the legislature and you will vote to approve the budget that is being presented. I just wanted to have time at this point in case you want some input.
- 136 Chair Ellis This makes a lot more sense to me. I will confess that I have sort of felt that there was an element of Mickey Mouse in this whole KPM process.
- 139 J. Potter You said Mickey Mouse?
- 139 S. McCrea He did.
- 139 Chair Ellis That you would pick things that you could quantify but what were they really measuring? I feel a lot better with what you are proposing here. It has an element of rationality to it that I wasn't sure I understood before.
- 144 K. Aylward Good.
- 145 Chair Ellis Thank you.
- 145 I. Swenson Mr. Chair, lunch has arrived so if it convenient, while waiting for our next speakers the Commission could have lunch next door in the jury deliberation room.

147 Chair Ellis Should we do the staff report now?

147 I. Swenson We can.

147 Chair Ellis Let's do that and then we will have lunch and then we will just finish up.

Agenda Item No. 4 OPDS's Monthly Report

149 I. Swenson A couple of items, Pete Gartlan is here today and I would like him to update you a little bit on the website, and the attorney manual, and the juvenile section, whatever else he wants to report and then Paul Levy has some follow up on the statewide survey.

155 Chair Ellis Welcome.

155 P. Gartlan Thank you, Mr. Chair and members of the Commission. It is a pleasure to be here in this iconic chair. As Ingrid mentioned I just wanted to update the Commission on a few developments at the office. I think Becky did a nice job of informing everyone of the *Ice* developments. Right now the state has moved for an extension. The state's brief on the merits will be due on June 2. That will put our response due the first week of July. I think Becky mentioned at the last meeting that she thought Ernie Lannet would be doing the oral argument and, yes, he will be doing the argument. Ernie is a senior deputy with the office. He has been with the office about seven years. He came from Oregon Supreme Court where he was a clerk. He is a graduate of Willamette University and I have no doubt that he is going to do an excellent job.

168 Chair Ellis I told you privately, and I would like to say it publicly, I think it is really first-class that you are letting someone else do this argument. There are some places around the country, I know, that the chief office holder, whether on the AG's side or the defender's side, would feel an important need to always do Supreme Court arguments. I think it is a sign of a very strong office that you share that.

175 P. Gartlan Thank you. I think our role, my role, is to develop people and this is part of the development and Ernie has worked really hard and deserves this experience.

177 Chair Ellis There is no question that in terms of feeling an incentive and a sense of significance of the work and all that that you have gotten a second Supreme Court case in three years. That is awesome and I think you are using it in a very good way.

181 P. Gartlan Thank you. It is really exciting and our staff is really excited by it. They deserve to be because they have been doing a terrific job for the last few years. All reports we get back from the courts is consistent with that. The second item, the juvenile attorneys, we have hired three juvenile attorneys.

187 Chair Ellis Out of the total of four?

187 P. Gartlan The fourth right now is being filled by Angela Sherbo, who is a recognized juvenile expert, and she is acting as a consultant and she is providing the substantive knowledge of that law. She will be helping us create the forms that we need and instructing the three juvenile attorneys on juvenile law. For the past couple of weeks she has been taking the juvenile attorneys around to different courtrooms, observing juvenile proceedings, and giving them assignments with respect to developing some sort of knowledge, expertise in juvenile law. Each attorney is currently working on at least one criminal case. We wanted to introduce them to appellate law through a practice that is known to us. They are each doing one criminal case and one is doing two, so we are introducing them to appellate practice through criminal law and then we can transfer them over into juvenile law, substantive juvenile law. The third item is the attorney manual. I am really happy about this. This has been in process

for a while. We have drafted a new attorney manual and we expect it is going to be really useful for the attorneys in the office. It is kind of a practices and procedures manual. It describes the office, describes everyone's function, identifies typical issues that come up during the work day, and will hopefully be a primary source of information for the attorneys so that there is less transfer of information by word of mouth, or at least when there is some sort of transfer of information there will be some foundation.

- 212 Chair Ellis It may be the same information.
- 212 P. Gartlan It may be the same information. Sometimes people like to hear it orally as well as read it. We think it will enhance our efficiency tremendously and give people a source of security that these are the practices and this is how procedures are done in our office. That is pretty much it.
- 218 Chair Ellis Thank you.
- 218 S. McCrea What about the website?
- 219 P. Gartlan The website is up and running.
- 221 S. McCrea But there is something new isn't there?
- 221 P. Gartlan It is modified and updated every month.
- 222 S. McCrea Yeah but I got an email from Robin with - I thought there was new stuff. I thought it was being updated more often or there were practice tips or something.
- 225 P. Gartlan She updates it every month and she makes more memos and briefs available on the website. It is on a monthly basis and there are new articles every month. What I think are really useful are the links to other law sources. It has been developed. It is up and running and continues to change.
- 232 S. McCrea It is a great resource.
- 232 P. Gartlan We hope to make it better and better.
- 235 P. Levy I want to talk just very briefly about the follow up on the statewide survey that we did and then a follow up on a bit of the discussion we had about the public ethics law. At the last meeting I summarized the report that we had written at that time about the survey. That report is now included in your materials. I don't think I need to go over this because I told you essentially what the report said. Since that meeting the analysts have begun speaking to - I don't know if they have finished yet - all of the providers about the data and the comments that we received in the survey. I think it is in the comments that we really have some of the most useful information. Unless you have any questions about that I will talk briefly on the public ethics law. When we talked about this at the last meeting I said that the Public Ethics Commission, the Government Ethics Commission, had still under construction their guide for public officials. They have completed it and I have given you each a copy of it. It was revised just this month. It is really a very readable, useful document. If you do take the time to look at this you will see that Commissioner Lazenby was right and I was wrong about a category of expense that is not a gift and that I'm sure is of interest to some Commissioners. This is food, lodging and travel expenses associated with something other than a trade mission or an official fact-finding mission. You will read this and still scratch your head and say, "Well, what exactly does this cover?" It covers expenses for a public official who makes a presentation, or participates on a panel, or represents a government agency. If they are paid by another government agency, Indian tribe, a not for profit organization, that probably does not describe OCDLA or by a membership organization to which the government agency pays

membership dues. That is an intriguing category that may or may not include OCDLA. One would hope it does. That just leads to the second point I would like to make about this. You will see here, and Ingrid mentioned this at the last meeting, that the Commission has this sort of escalating level of assistance that will provide anything from a quick telephone call, to a staff opinion, to a Commission opinion, and we can craft questions and scenarios for either a staff or Commission level opinion if Commissioners feel it would be helpful for us to do that. If you get an opinion from the Commission that is protection, immunity against prosecution. Below that it is just going to help mitigate the punishment.

- 290 S. McCrea I was feeling better for a minute.
- 291 P. Levy I want you to feel better. I definitely want you to feel better. One thing you have seen in the news, no doubt, are the resignations of mainly planning commissions and some small city councils across the state because they are required to file quarterly statements of financial interests. Once again, both Chip and I were correct that you do not have to do that. We can craft questions and get answers. You may not like the answers which is the downside to that.
- 298 Chair Ellis I would encourage, but you are much more sensitized to this than probably most of us are, you are going to know what is happening. If you see anything that you think we need to be a little bit more alert to feel free to initiate help. I would much rather avoid it than end up having to explain it.
- 304 P. Levy We can work on some scenarios that we might to ask the Ethics Commission of their staff for guidance on. We can also try to provide some red flags for you all. That is all I have.
- 310 Chair Ellis Thank you. Should we recess for lunch?
- 321 I. Swenson I think that would be a good idea and as soon as you are ready to resume, our 12:00 and later witnesses are here.
- 322 Chair Ellis Let's hold the lunch period down because we do want get to the presentations and some us have a flight to catch after that. Let me just mention, and I wouldn't change anything, but I am currently scheduled to be in trial on May 8, so there is a risk that if that doesn't resolve, Shaun I hope you are available?
- 328 S. McCrea I am not in trial on May 8, so I would be happy to take over if you are not available Mr. Chair.
- 330 Chair Ellis Thank you.
- 331 I. Swenson So you are not suggesting that we try to move it?
- 331 Chair Ellis I wouldn't. This is a three week trial and if it goes it is going to be that long.
- 333 S. McCrea It will settle.
- 333 Chair Ellis I don't think so.
- 334 S. McCrea Well then I will take over.
- 334 Chair Ellis Okay. We will adjourn for 20 minutes for lunch and come back.
- 20 minute lunch break
- 337 J. Mueller Beginning in January, 2006, the juvenile court caseload was divided, with Mr. Putney's group handling a share of the dependency cases and a share of the delinquency cases and with our group handling the rest of them. There is actually a reference, I think, in the draft of the

report that refers to Mr. Putney's group getting one-fourth and us three-fourths. I am not sure that is totally accurate. My understanding is that it was more like a third and two-thirds, but I could be wrong. I have never seen SOPD's numbers on their contract but that is our general understanding. We formed an LLC a couple of years ago. We have regular meetings of our group probably at least once a month, at the longest once every two months, to discuss any issues that need to be addressed. We all have been attending CLEs relating to juvenile court matters. Vance and Christine are also doing some cases on criminal appointments through Los Abogados. I know Vance, in talking with him the other day, has reduced his caseload through Los Abogados to something like 40 percent of whatever a full share would be. I am not sure what else you would like to know.

- 365 Chair Ellis Do you have the report there?
- 366 J. Mueller I do.
- 366 Chair Ellis Could you turn to page 21.
- 366 J. Mueller Sure. I will tell you when we were sitting down the other day and going over this, we found that our pages didn't match up so. I am on my page 21.
- 370 Chair Ellis Is that the one that has the table of caseload?
- 371 J. Mueller It is.
- 371 Chair Ellis That is a significant attention grabber for us.
- 372 J. Mueller It certainly is.
- 372 Chair Ellis I am looking at cases per FTE. Your group seems to be magnitudes larger than comparable groups around the state.
- 376 J. Mueller That is correct and what I will tell you is this. Our position is that that chart really is not an accurate representation of this situation. First of all, it lists four attorneys, and these are 2007 numbers. In 2007 of the 2,298 cases, Charles Kochlas had 303 and he is not one of those four attorneys, so there really were five. I will also tell you that Charles stopped taking new appointments a little over two years ago. He is now back on board and taking a full caseload of new appointments, so there are five.
- 391 Chair Ellis I am not as good at math as I need to be to translate all the numbers. Are you still at the high end of caseload per FTE?
- 394 J. Mueller We would probably be somewhere in the – well I brought a calculator figuring numbers would be an issue. If you take 2,298 cases and divide it by five it is 459 cases per attorney.
- 403 Chair Ellis Which puts you down somewhere in the middle.
- 403 J. Mueller Well, there is a column about cases per attorney. It is the second to the last column. With regard to FTE what I would say is this that shows an average of approximately .7 FTE per attorney. If we assume 3.5 with the addition of Mr. Kochlas that puts us at 6.56 so we are right there about where Linn County is.
- 415 Chair Ellis You probably picked up on the way the report phrased this issue. This was should we contract with providers where their caseloads are significantly above standards? It is kind of a curious role we play because an agency that was only looking for low costs would say, "Great, we have providers here that are doing double what everybody else is," but that is not our only charge. Our most significant charge is quality commensurate with national

standards. You tell us. Do you feel the caseloads are pushing the envelope on your ability to maintain quality or are you comfortable?

428 J. Mueller

We believe that with Mr. Kochlas back on board it is really not a problem. Let me address the national standard since you mentioned it. Footnote 21 makes reference to national standards recommending appointment in no more than 200 juvenile cases per FTE per year. Now one issue with that footnote – and then it goes on to say that the standard recommended here in Oregon was increased to 250 adjusted to reflect the fact that additional case credits are rewarded for review hearings. I think one of the things that is important for the board to understand is that looking back at the chart, of the 2,298 cases that are listed as far as the caseload, only about 20 percent of those are new cases and the rest court hearings, review hearings, permanency hearings, citizen review board hearings, or existing clients with whom we are already familiar and know their cases. The vast majority of that number is not new cases. One of the things, at the end of the report on page 22 it says, “It is difficult to imagine the high caseload would not impact the quality of representation.” We don’t quarrel with the concept that high caseloads would impact the quality of representation. What we quarrel with in this report is the way the numbers are being presented and interpreted. This goes on to describe, “If an attorney handled 815 cases a year,” which is clearly a reference to us because when you look at the chart that is the number that you see in the chart for cases per FTE. It goes on to describe in the dependency case a variety of tasks and work to be done. There is no question those are all things that are to be done when we receive a new appointment on a new client. We have to set up a file. We have to give the initial discovery much of which is done by staff as far as opening files and that sort of thing, but for the vast majority of 2,298 number, if you want to use that number, all this isn’t involved. Citizen review board hearings and permanency hearings do not involve as extensive a time commitment. I think that the fact that the contract provides for lower compensation for those is some reflection of that. There is a time commitment and there is responsibility without question, but I think it is inappropriate to take that national standard and say, “We have got 2,298 cases under that national standard. When we asked for information about that footnote and that national standard we were referred to a report, and Billy Strehlow was kind enough to email this to us, a report from the American Council of Chief Defender Statement on Caseloads and Workloads. In the opening recommendation it says caseloads should not exceed the NAC recommended level of 200 juvenile court cases per year. That report talks in great detail about criminal cases in adult court. There is one short section about juvenile court cases and there is a passage in there that actually says the NAC standards did not address representation in dependency cases, so I have not seen national standards on dependency cases. That passage in that same report where it says that the NAC standards did not address representation in dependency goes on to say, “These cases involve significant family history issues and frequent court hearings that can last for years.” Let me just give you an example. Yesterday I had a hearing with Judge Orf on a dependency case where I have represented this child since 1998. We have hearings like this. One of the things I did after reading the report was we printed out, in alphabetical order, all of the court appointments we had in 2007 for our consortium. I started with the letter A and I went through the letter D. There is a significant percentage of those cases where during that one calendar year there are multiple hearings which count toward that 2,298 for the very same client. After going A through D, I stopped because I think the point was made. There were as many as nine appointments in 2007 for one client. All nine of those are reflected in 2,298 figure. I guess to put it simply; we recognize that an overburden certainly affects quality of representation. We have taken steps to address that this point with Mr. Kochlas coming back on board. He is experienced. He had done this for several years and he is back doing it now. There is no training required, no apprenticeship, no mentoring required for him in this situation. One of the reasons our numbers are the way they are is because we don’t have turnover to speak of. That is one of the things that has been a foundation and an important principle is continuity of representation.

537 Chair Ellis

So there are four in your consortium that have been there how long?

537 J. Mueller Well, I have been there over 20 years. Mr. Burkhalter has been there six or eight years. Ms. Herbert has been four.

540 M. Burkhalter I think it has been 11.

540 J. Mueller Time flies when you are having fun. Ms. Herbert has been there now for four years. At that point I think we added. Mr. Waliser has been doing it now since 2005. We have an experienced group. We know the law. We know how things work within this system and we feel that we are able to provide appropriate service. If the board feels that more attorneys are necessary we are certainly open to suggestions on how many you think are necessary.

555 Chair Ellis What percentage of each of your practice is indigent juvenile work?

557 J. Mueller I will let everybody answer for themselves on that because I don't know the numbers right off the top of my head. Mine has grown to the point where it is probably 75 to 80 percent. I think it is a higher percentage than what was reflected in the contract. The other thing to consider is the chart talks about attorney FTEs. FTE is a concept that came from the public sector and it assumes a 40 hour work week. That is not reality.

567 Chair Ellis You haven't seen that in a long time?

567 J. Mueller I can tell you that in the last three weeks Monday of this week was the only day I left the office at 5:00 and that was to go watch the NCAA championship basketball game.

570 Chair Ellis I hope you had Kansas.

573 J. Mueller No, but I was rooting for them.

573 C. Herbert I have probably the highest caseload in our group because I am on both Los Abogados and the consortium contract and take retained cases as well. I read the report and my initial response was, "Is the quality of my representation poor?" I have never heard that. I heard it a few years back from Judge Orf on a termination case, but she and I would probably always disagree about what happened there, but in terms of quality of representation I can tell you that I have never heard a complaint.

587 Chair Ellis You would be the first to know.

587 C. Herbert I would be the first to know. I would hear from judges, from other attorneys, from my clients I would hear that. I too work very hard and certainly more than 40 hours a week, but this is something I enjoy doing. I don't feel particularly squeezed.

594 S. McCrea Let's stop right there. Let's leave the quality issue aside and let's deal with the time that you put in because you are all very experienced, very capable attorneys. You are not feeling squeezed because you have this dedication to what you are doing. Let's try to put it in terms of the rest of the world and I think one of the questions for us as Commissioners is is it fair what we are asking you to do. How much of your personal time are we taking away from you so that you can fulfill the requirements of this contract? Would it be more appropriate for you to have fewer cases so you can leave the office at 5:00, at least from time to time, or for there to be more attorneys so the cases get spread out more, or are you telling us, "No, Shaun. I am really happy with the way things are. It is fine the way it is." That is what I want to know.

613 C. Herbert I can't speak to what happens with other people. All I know is I just work my cases and I take weekends. Very often I will go to the jail on Sunday and spend probably two hours there. I do that because I can get in and out of there.

- 620 Chair Ellis This is on your Los Abogados contract?
- 621 C. Herbert Right. If the cases are reduced I would still work my cases diligently. I would probably still do the same things that I am doing now. I don't really see a big change except I would probably have more time on my hands.
- 627 S. McCrea That may be a good thing or a bad thing.
- 628 C. Herbert I go home at night at a reasonable hour. I spend time with my family and I do things on the weekend and I am also doing community activity things as well. I don't know. I guess I would be in my office on the phone a lot more.
- 633 S. McCrea Let me also approach it for you in the terms that the Commission looks at it. One of our obligations is to go to the legislature and to ask for appropriate funding for the programs, for the contracts that we have. If we are talking to people like we are talking with you all today, if we are talking with people and they are telling us, "Yes, I am doing the best I can. I am doing a good job on my cases. I am diligent," which I know you are, "but yeah this is taking a toll because I am going to work on Sunday for a couple of hours a day because I can get in and out of the jail quickly, but yeah that is taking away from my personal time." That is the kind of thing that we want to know because it helps us to be able to let the legislature know what we are requiring from our contractors just based on the way the structure is set up. I don't want you to be too forgiving or accepting of the way things are. This is not to make any kind of a comment or judgment on the quality of the work being done. My concern is the personal toll that it takes on the individual lawyers that I, as a criminal defense lawyer, believe that we tend to accept because we tend to be true believers in what we are doing for our clients and the people who are accused if that is of any help
- 663 Chair Ellis Let me ask you to look at a passage on page 22, and to all of you, we are not here to cross-examine. We are here to get a better understanding of how things are working. Near the bottom of the page it says, "Three of the four respondents reported that the contractor" and I believe that is reference to you, "did not appear willing to receive and act upon complaints about attorney performance." I don't want to get into episodes but I do want to get an idea how you are structured if you have complaints and how you deal with those?
- 679 J. Mueller Let me say this, there is a footnote Number 20 back a few pages. We discussed this within our group and we understand and interpret it to be a reference to Mr. Burkhalter, who is one of our group. We have had several meetings to discuss that issue. He is here and he can respond to that and let you know what we have done about that and what he is doing about that. We don't have a formal structure that says like three strikes and you are out. Maybe we should have something that says if there is an issue, and it is brought up and you have chance to fix it and you don't then you are on probation. Then if you don't fix it you are out. Perhaps a formal structure like that would be a good idea. The impression I get is there aren't many consortia that have that kind of formality but maybe it would be a good idea. I can tell you that, and I don't know if the passage you read is a reference to him or not, but Mr. Burkhalter is certainly taking some steps to address the issue that is mentioned here. I don't know if that is what it alludes to. We have not seen the name of these four respondents. In fact, I don't know if it is possible to preserve anonymity on the responses but let us see them so we can see what particular things they are. Otherwise, it is like we are punching in the dark. We don't know what the issues are that someone is complaining about.
- 717 Chair Ellis Other questions?
- 718 J. Potter I would like a quick question for the staff. Maybe this is you, Kathryn? On the statistics are we confident that those numbers that are there with the other contractors are being counted the same way? That it is consistent all the way through?

- 724 K. Aylward Yes. Those numbers are the juvenile caseloads as reported to our office. The attorney FTEs came from contract documents. Where I have a little bit of a problem is in preparing a contract document, and they list the attorney, and they will say, "Oh, he is half-time, half-time, half-time, but as work fluctuates maybe it is not really half-time. We are taking this information from the contracts. If we are talking about an issue of should OPDS contract at caseloads that match up with FTEs, that is what this is looking at. I can't verify the accuracy of the FTEs.
- 740 Chair Ellis What is your observation, Kathryn, on the distinction Jim drew between new cases and hearings on cases that have been in the system for a while?
- 745 K. Aylward He is correct and that is why we included a column in that chart that shows the percentage of that caseload that are review hearings because it is a big factor. Some counties have more review hearings; others have fewer, so that helps you gauge their cases per FTE. You would expect that when you have a higher percentage of review hearings you could handle more cases per FTE.
- 753 Chair Ellis But their percentage of review hearings looks pretty much in line.
- 756 K. Aylward Yes.
- 756 G. Harazabedian Thank you Mr. Chair. What was it, maybe two years ago, when the Quality Assurance Task Force, I believe, was asking large juvenile contractors how many cases they were handling? There was a lot of confusion over what a case meant. There was an extensive discussion between numerous contractors with emails flying back and forth from various places including Eugene to Salem and back to try to clear that up. The staff may be very confident that that has been cleared.
- 770 K. Aylward This is cases as reported under the contract.
- 771 G. Harazabedian So this is a different analysis than the one I am referring to.
- 773 I. Swenson Let me just clarify what Greg is talking about. We were trying to get an accurate count of the number of open cases per attorney on two given dates. It was a spot check so that we could have some idea of when this caseload is measured in that way, on a particular day, how many people do you represent? That was because so much of the current caseload discussion is in these terms in juvenile cases. These cases, regardless of their status at any given time, involve representation of a person who is in the system and needs legal representation, and support, and services; and so, for example in Washington State in the pilot project they created there, 80 clients at any given time is considered an appropriate maximum. In fact they reduced it from 90 to 80 because 90 was too many, so we took this little spot survey of our contractors just to see where they were in that spectrum. Only a couple of contractors were slightly over a 100. We had some that on a given day had 300 or 350 clients. When you come back and revisit this I will talk more about national standards in other states and what those numbers mean.
- 806 Hon. Elizabeth Welch I don't know that we can belabor this much further. This is not apples and oranges. This is an entire bowl of different fruits in my opinion, just guessing. One of the things I have a lot of trouble with is counting delinquency and dependency as the same thing. For purposes of caseload tracking it does not make sense in my opinion. It depends on what you are counting for and what you are trying to accomplish, but delinquency cases and adult criminal cases are kind of similar but there is another issue too and this is a very court culture geographically specific issue and that is how many of the kids that come into the juvenile court in a particular county, I'll look at the judge, are handled informally? Are they given lawyers anyway? Then it starts being a few vegetables that are thrown with the apples and oranges. It is just a mish

mosh of different components. Multnomah County doesn't handle a lot of cases informally. Other counties still do. I don't know what the case is here but that could change. In other words, if you are appointed on every kid that comes through the door just as an example, but you are able to get juvenile court counselors - I notice in at least one of the two counties in this district the DA doesn't even issue the cases they are issued by the juvenile department in Jackson County. My guess is that you all can do a pretty good of getting rid of a lot of cases because you are dealing with the juvenile court counselor rather than a DA. That can vary also from place to place. We get so many issues here concerning the parallels of these numbers to draw a lot of conclusions about, but looking at it and assuming we are all talking about all the same things, and we are not. NAPOLS doesn't do delinquency cases as far as I know. JRP does both. I don't know what some of these initials stand for, but if we need to have a good system for determining caseload we probably need to take another really hard look at what the ingredients of this are and how many cases are handled informally and a lot of other things to get them to be fair.

J. Mueller

I certainly appreciate what you are saying and one of my thoughts on delinquency versus dependency is delinquency cases are of such a nature that they tend to be much more finite in terms of beginning and end. Dependency cases have a great potential to live on for a long, long time. That is one of the issues. I had wanted to ask someone, and I frankly just did not get a chance, how they calculated 66 percent as the review percentage because I cannot come up with that number. I don't know what was included within review hearings, but I can tell you that JDEP, JDEC, which are review hearings and permanency hearings - excuse me, which are the newly filed dependency cases for parents and children, JUDM, which are the newly filed misdemeanor charges and JUDF which are newly filed felony charges. We had a total of 499 of those in 2007 which only represents a little over 20 percent of this number that we are talking about. I am not sure exactly how that percentage was calculated because we don't know what definitions were applied.

902 Chair Ellis

Anything else for the consortium? Thank you both for sharing your thoughts with us. We have two more witnesses and I don't know which of you may have the tighter schedule.

TAPE 2; SIDE B

038 Chair Ellis

Do you want to share with us your thoughts and observations about either the report or quality of defense services you are seeing. Any observations about how we could do our job better.

040 Judge Orf

I did meet with the previous group that came down and gave comments to them and I presume that you have those.

043 Chair Ellis

We don't get them in the raw form. We get them as they find their way into the draft report.

044 Judge Orf

We have struggled, and are still struggling, with scheduling dependency cases and I need to tell you that I have primarily been the dependency judge for the last approximately two years while Judge Mejia has been the primary delinquency judge. I really can only honestly and currently address the dependency issue. One of the things I showed the group that was here before, that I didn't bring with me, but it is available if you want it - we have asked the attorney, we were having a really hard time with scheduling because of conflicts and other cases they were handling and their being unavailable, and what we had been doing we had been doing the initial appearance and when parents asked for attorneys then we were calling and trying to set dates according to the attorney's availability. We quit that and we basically started a system where I set the date for the adjudication and the pretrial at the shelter hearing, or at the initial appearance, and then we give that information to the consortium and it is up to them to figure out who is available for the date that the court has set. That has helped tremendously for our scheduling purposes because before then my lead clerk was overwhelmed with motions to continue that were just taking too much time, so that has helped. We do ask the attorneys to notify us if they are unavailable on a court day. We have

a calendar that tracks that and I showed it to the folks when they came down before. I am happy to give that to you but the bottom line is that there are many, many dates where various attorneys are not available so that we cannot schedule things. Like I said on the initial appointment it is somewhat resolved by our new process, but, of course, once we have an attorney on a case they are going to continue on the case so we are still dealing with that problem.

- 070 Chair Ellis Is that more pronounced at either the PD or the consortium or is it about the same?
- 071 Judge Orf It is more pronounced with the consortium because the PD has dedicated full-time to the dependency caseload. An attorney from the PD's office is always available unless, of course, - we do let our attorneys take vacation and I honor that. There are always sick leave issues or family issues, but it has been more of a problem with the consortium than with the public defender's office because none of the consortium attorneys that I am aware of, does juvenile work full-time. They have other cases and caseloads that they are dealing with. We have had meetings about scheduling ad nauseum, and the bottom line every time in those meetings is there is no answer to our scheduling issue other than having more attorneys who are doing this work. I will say we are doing really good on our stats, on our ASFA guidelines, and I am very proud of that. You might say, "Gee, you are doing it. What is your problem?" It is just that it is a real push and it requires an inordinate amount of staff time in my estimate to be able to meet ASFA guidelines and still accommodate the schedules of the attorneys.
- 090 Chair Ellis Do you view this scheduling issue as kind of proxy for excess caseload?
- 091 Judge Orf Yes, proxy, if I understand your question right. For instance, we would increase our court time because right now the main day that I have the attorneys available to handle dependency matters is Thursday. Pardon my French, Thursdays are hell. I often go through the lunch hour. By the mid-afternoon I am often approaching being brain dead. We have people come and sit forever, and forever, and forever. As a judge I find it very stressful to have a whole room of caseworkers, attorneys, police officers, therapists, etc., sitting, waiting their turn while I am trying to deal with other cases. The pressure there for me, because I don't like that, is huge.
- 108 Chair Ellis Do you think that is exacerbated by
- 108 Judge Orf Because we only have really one full day, Thursdays, to set all of our juvenile dependency matters. We are just slammed on Thursdays by that. We have recently carved out, and it is not a matter of my schedule, I am willing to be there and put this time in, it is a matter of the attorneys' schedules. What also compounds this tremendously is termination of parental rights cases and we have the same attorneys, of course, that are following their clients through to the TPRs. We try to always have this date. We start those on Tuesday and the civil judges are handling those not myself right now. They start them on Tuesdays hoping we will get done by Wednesday afternoon so we can do some other cases on Thursdays so we don't blow the whole week. We just recently had a situation where the TPR went into Thursday and we canceled much of the calendar for Thursday, and actually it caused us to miss ASFA guidelines on a couple of those cases. That is a huge problem that we have such a limited pool of attorneys that are handling the TPRs and the dependencies and it is really affecting, in my opinion, the court's ability to do as good a job as we could be doing. That is basically what I would have to tell you.
- 127 Chair Ellis Mark, let's give you a shot here. How long have you been DA?
- 128 M. Huddleston Forever. I have been in the office since 1980. I have been the elected DA since 1991. I appreciate the opportunity to address the Commission. I did participate in the survey that Ms. Swenson and Mr. Potter were part of, and others, and you got some input from my office that way. I didn't come with any prepared remarks but what I would tell you is I think the state is

getting a great bang for its buck with the lawyers that we have defending and dealing with the kids and adults in juvenile court. I think caseloads are high. That is true throughout the system.

- 137 Chair Ellis So that is both on the criminal side and ...
- 137 M. Huddleston Yeah. I think they are high. Everybody is busy. Everybody, I think, if they had more time would do more on a particular case and you prioritize what you can do is my sense of what is going on. I know that the public defender's office has had a fair amount of turnover and I don't know if that is attributable to salaries in part, but I would suspect that it is. I know that their salaries are significantly less than we are able to offer in the district attorney's office.
- 144 Chair Ellis You actually seem to be doing pretty well.
- 145 M. Huddleston The starting salaries got set about four or five years ago and they were set higher than I thought they needed to be, whereas our more senior attorneys were set lower than I thought they should be. There actually have been some changes now in the senior deputy and the chief as well, the highest levels that I have. But the chief deputy has moved up some.
- 150 Chair Ellis Do you have the same kind of turnover in your office that Bert does in his?
- 151 M. Huddleston Well, we have turnover but I don't think it is quite as much the PD's office. We do have turnover. We have 19 deputy district attorneys now so you are bound to have some turnover in that, but we have got people who have been with us 10 or 15 years or more and likely will be career prosecutors.
- 155 Chair Ellis Except for those he can pick up and move over to the defense side?
- 157 M. Huddleston That happens and I just recruited one that was in Bert's office for a while. We trade off.
- 159 Chair Ellis I am always very interested in each community and kind of ask a system level, not a case level, but a system level question. Do you feel you are getting good communication and coordination issues in the criminal justice system?
- 152 M. Huddleston I think so. I think we do a good job. Our Public Safety Coordinating Council is fairly active here. That tends to be even more broad than the issues that you are dealing with. When there are issues we try to address them. We haven't done it for a while but we were meeting on a fairly regular basis just with the court and the defense bar and just for the sake of meeting and talk about particular issues. I think we have pretty good communication.
- 169 Chair Ellis You are in a unique perspective to evaluate the quality of your adversaries, at least your deputies' adversaries. Do you feel good about the quality of defense services?
- 172 M. Huddleston Absolutely. No question about it.
- 174 Judge Orf I hate to do this to you, Mark, but when was the last time you were in juvenile court?
- 174 M. Huddleston Well, I don't go to court.
- 174 Judge Orf I wonder how you can assess that if you are not there observing.
- 174 M. Huddleston My assessment is based on what I hear.
- 175 Chair Ellis He is probably going to hear it from a source that is probably better than we will ever get, which are his deputies talking about it.

- 177 M. Huddleston Realistically, I don't carry a caseload anymore. I am in adult court some but not a lot, frankly. But my assessment based on what I hear talking to my staff primarily is that it is great representation. The consortium, as you heard from Mr. Wheeler, has lawyers that have been around for many years who know what they are doing, who know the rules, and that is true in the public defender's office as well. It is harder when you bring in new lawyers and there is turnover, but you get good really quick when you are specializing in criminal law.
- 185 Chair Ellis If you have got good mentors. People that help you.
- 185 M. Huddleston Yes and I think Bert has done a good job there too. I have no problems saying that I think that the representation that is given to adult and juvenile cases is excellent in this county.
- 189 Chair Ellis Any other questions for either Judge Orf or District Attorney Huddleston?
- 192 Hon. Elizabeth Welch I just wonder what your opinion is, and I don't think you have addressed that particular question of ...
- 193 Judge Orf Well, it may be my comment, to some extent, was going to address this because I thought about this before I came today. There is a disclosure I need to make in my testimony. I am leaving the bench at the end of this year and I am not retiring. I don't know what I am going to be doing but I can tell you that my first priority is to find work that is meaningful to me in which I can hopefully still make a positive difference. Working with kids and foster kids is right at the top of my heart list. I have mulled a lot of things. I am in the process of going through those books where you list what your interests are, but something that keeps sort of twirling around in the back of my mind, and a thought I had, quite frankly, even before I decided to leave the bench, I miss sometimes being an advocate. I have mulled around and actually had a few discussions with folks about what this area really needs is the equivalent of a Juvenile Rights Project here in Southern Oregon. I have to say it has crossed my mind before sitting on the bench, "I wish I was the attorney on this case. I could present some things that aren't being presented."
- 211 Chair Ellis I see a deal waiting to happen.
- 213 Judge Orf I want to disclose that because if I decided to go that route and stay involved as a lawyer I don't want you to think that I didn't tell you. That I had thoughts along those lines as possibly trying to be involved in establishing an organization similar to the Juvenile Rights Project and actually bidding for a contract. I just want to lay that out there. Part of the reason I have had those thoughts has been sometimes my distress over seeing perhaps things not being, as not seeing the level of advocacy that – it sounds pretty conceited - but maybe thinking that I could do a better job.
- 224 Chair Ellis Don't be shy.
- 225 Judge Orf So and like I have said, that has come from my observations. We have had a huge problem in the past with the attorneys for the children not seeing their clients at all. That is one of the things I have really emphasized with the attorneys. I think they are doing better, but I think it is still occurring. In fact, I talked with the Foster Parent's Association just this week and I got quite an earful about, "What is the attorney for the client supposed to do? Are they supposed to call us? Are they supposed to talk to us?" I can just tell you that causes me great concern when I hear that attorneys are not having contact with their clients. My personal opinion is that even if it is an infant that you should at least eyeball your client. Maybe that is an unreasonable expectation, but I don't think, so because it makes a huge difference if you actually hold a baby and look at it as to how you might represent that child versus not ever having met them and just read about them in pieces of paper. I guess that is my answer.

- 242 Hon. Elizabeth Welch And my answer to your answer is that I agree with everything that you have said and I would only add to it that a lawyer who represents a child who is not in connect with the foster parents is not doing their job period.
- 246 Judge Orf I actually said to the foster parents – I always ask in court and give the foster parents a chance to be heard, they do have a right now under law to be heard. I did get some comments at this meeting of a fear of expressing things to me because of fear of retribution or lack of cooperation in the future. Now I do tell you it was primarily based, that fear of retribution, on caseworkers, not the attorneys, but there was a little bit of that in there too.
- 254 Chair Ellis Thank you both.
- 255 Judge Orf Thank you.
- 256 Chair Ellis Anyone else wish to share any thoughts?
- 257 V. Waliser I have a few comments to make. I am Vance Waliser and I started practicing law down here in 1988. I worked for Bert for eight years as a criminal defense lawyer in the public defender’s office. About 1996 I went into private practice and I have specialized, until recently, in criminal defense. When I went into private practice I became a member of the criminal consortium, Los Abogados, and I have been taking cases within that consortium since 1996. I became a member of the Juvenile Law Consortium in October of ‘05. That occurred about the same time that Mr. Kochlas had decided not to take new cases. I don’t know whether they approached me or I approached them, but I was kind of excited about the prospects of doing juvenile work. Since ‘05 I have made that my priority. I have experience. I am a member of the federal bench. I have tried complex criminal cases in federal court. Because of my commitment to the consortium I withdrew from the panel in ‘05 and haven’t taken any new federal cases since ‘05 because of the time commitment that is necessary to do the juvenile work. As I have gotten a feel for what needs to be done and the time commitment I have scaled back my defense practice as well. I take a very select number of retained cases now so the majority of my work is court appointments. At this point ...
- 279 Chair Ellis How does that split between the criminal and the ...
- 280 V. Waliser At this point I would say about 80 percent of my efforts are doing juvenile work.
- 282 Chair Ellis Both delinquency and dependency?
- 283 V. Waliser Yes. We didn’t take many delinquency cases in ‘07. In fact, the majority of the cases, I don’t know what the percentage would be, you have got the number, probably over 70, 75, 80 percent of the cases were taken by the public defender’s office. The flip side of that issue is that we were taking a larger percentage of new dependency cases which is something that maybe needs to be considered.
- 289 Chair Ellis Do you want to address Judge Orf’s concern about what she described as “Thursday hell?”
- 290 Judge Orf Can I just say, you saw the comments that two attorneys were pointed out for having raised the bar for the practice of law in dependency court. This is one of them. I just thought I should say that before we proceed because I have no issue whatsoever with Vance’s representation. He is quite passionate on behalf of his clients.
- 297 Chair Ellis Thank you. You might want to stop now.
- 298 V. Waliser Actually it is my belief the more attorneys we have on the consortium the more watered down the caseload is. I probably do about 20 percent criminal and I have done that to accommodate

juvenile court. At this point, criminal trials occur on Tuesdays, Wednesdays, and Thursdays. Because of my commitment to the juvenile court I am only able to set trials on Tuesdays; otherwise I will have recurring conflicts. Ms. Herbert is in the same position and therefore, as far as Los Abogados' appointments, I take approximately a one-third share of those, if that. I cannot take more because of my commitment to juvenile court. If we have more lawyers and substantially more lawyers what is going to happen is my juvenile court case numbers will drop, my compensation will drop, but I will still be required to be in court Wednesdays, Thursdays, and Fridays. I will be in court basically for the same amount of time for less money. Consequently, I will have to go back and increase my criminal law caseload which will create more conflicts. I disagree with Judge Orf on this premise that we need more lawyers. What the lawyers here have done is we have tried to specialize, almost, in juvenile work.

317 Chair Ellis

You are saying few lawyers but a higher percentage of their work.

320 V. Waliser

That is what we are doing. We are trying to meet that fine balance. We are sensitive to the Commission's concerns about the caseload. I think that parents and children in this county have received superior representation from the consortium. That is what I believe. My point is that if in fact we are adding more lawyers, I am in private practice and I have a business to run. The FTE concept I am not familiar with because I am in private practice. I can tell you that as my compensation for doing the juvenile work on the consortium decreases I will have to make up for that. I will do that by doing what I do best, and what I have been doing for 20 years, that is criminal defense. It will create more scheduling conflicts. There is a value to having this balance, this limited number of juvenile law attorneys because it creates fewer conflicts. I think the numbers speak for themselves. I didn't go through the numbers thoroughly, but my guess is that our compliance with the guidelines is superior. I would hazard to guess, for our caseload the number of new petitions filed, we are doing as well as anybody in the state. I think those numbers speak for themselves. These cases are being processed in a timely fashion and I believe our clients are getting superior representation. Jim Mueller has been an attorney, I believe, in excess of 30 years as Mr. Burkhalter has been. I have been an attorney over 20 years and Ms. Herbert has been around for 12 to 15 years. Mr. Kochlas has been around for 20 years as well. There is a very high level of representation. That concludes my comments.

347 Judge Orf

I should clarify that talking to the foster parents and about the lack of contact with their clients, that is not across the board with the attorneys. It is with some attorneys and not others. I should say, as long as I am being public about this, the other attorney who has raised the bar for the practice is the attorney who is with the public defender's office.

354 Chair Ellis

Thank you. I think I speak for the whole Commission. This has been very valuable for us to get a sense of defense services in these counties. We appreciate the input. Any other business that anybody wants to bring? If not, I would entertain a motion to adjourn.

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

Attachment 2

Minutes of PDSC retreat, March 21, 2008

Commissioners attending: Barnes Ellis, Chair; Shaun McCrea, Vice-Chair; Chip Lazenby; Mike Greenfield; Elizabeth Welch

OPDS staff attending: Ingrid Swenson, Kathryn Aylward, Rebecca Duncan, Paul Levy, Billy Strehlow, Amy Jackson

Others attending: John Connors, Steve Gorham, Jim Hennings, Greg Hazarabedian, Steve Houze, Greg Scholl, Olcott Thompson

Introduction

Chair Ellis convened the retreat at 12:00 p.m. Commissioners began by describing their professional histories and their reasons for serving on the Commission. Chair Ellis outlined the history of the Public Defense Services Commission.

Key Performance Measures for Boards and Commissions

The agency's Key Performance Measure No. 9 regarding best practices for boards and commissions was reviewed along with the self-assessment checklist developed by the Department of Administrative Services. A copy of the checklist is attached as Exhibit A. After completion of the presentation discussed below on ethical rules for public officials, commissioners determined that the Commission meets all fifteen of the best practices criteria. With respect to Item 9 (review of key financial information and audit findings) Commissioner Potter suggested that OPDS provide the Commission with quarterly updates on budget expenditures. Regarding Item 10 (appropriately accounting for resources) Kathryn Aylward advised the Commission that OPDS staff has received the State Controller's Gold Star award for excellence in financial reporting for the past four years.

Commission/staff responsibilities

Commissioners then discussed the respective roles of the Commission and OPDS staff in decision-making for the agency and completed the worksheet included in the Board and Commission Member Training materials prepared by the Department of Administrative Services. A copy of the completed worksheet is attached as Exhibit B.

Contract oversight

The Commission then had an extended discussion of its role in the contract approval process and how OPDS should approach its contracting function.

Commissioner Greenfield said that the process needs to be transparent; that there needs to be a level playing field for contract applicants; and that with such a process in place the role of the Commission should be limited.

Chair Ellis, after noting that Oregon is a diverse state, that the Commission assumed its role after the public defense system was already in place, that the agency may not have the resources to use a standard competitive bidding process, and that PDSC is contracting for personal services, not fungible goods, said that the process appeared to have worked fairly well in the last contract cycle. The commission worked hard to identify its priorities at the retreat in August of 2007 and the contractors who participated provided very positive input. OPDS then applied those priorities, although some contractors took issue with how they were applied. One solution may be to have the commission establish its priorities and review their application earlier in the process.

Commissioner Welch asked whether PDSC knows whether OPDS actually applied the priorities established by the Commission for the 2008-2009 contracts.

Commissioner Lazenby responded that PDSC approved staff's plan and that the Commission should review particular decisions only if they are clearly against its priorities.

Commissioner Greenfield said that the question for commissioners should be, "Does the contract reflect the priorities and was the process followed?"

Jim Hennings said that the process for the most recent contract cycle had not been transparent, that OPDS needs to show PDSC that its policies were applied. Steve Houze, in his capacity as chair of the Metropolitan Public Defender, Inc. board, discussed the role of public defenders and the importance of their work.

Commissioner Greenfield suggested that the Commission consider issuing separate requests for proposals in each geographic area of the state, possibly convening a "bidder's conference" in each region and leaving the decision-making up to OPDS's director based on the priorities established by the Commission.

Commissioner Lazenby said that a regional process would tend to pit one region against another and that since the budget is finite, each region would argue that the commission's priorities were not properly applied.

Commissioner McCrea said that since we don't start with a level playing field, in part because of the different needs in different areas, maybe the Commission should take the approach of simply determining what the needs are and telling the legislature what the cost will be.

Chair Ellis suggested starting the process in May of odd-numbered years and requiring OPDS not to contract by region, but at least to report to the commission in a paragraph or two how its priorities were applied in each region. A three to four hour hearing might be needed for reviewing this report. Starting earlier would give OPDS the opportunity to bring issues of potentially conflicting priorities to the Commission for consideration.

Staff noted that due to priorities established by the Commission in earlier budget cycles the agency had been moving towards uniform case rates statewide, with variations based solely on articulated Commission priorities, including the need to ensure case coverage in all regions of the state.

Commissioner Greenfield reiterated that the process needs to be more transparent, predictable and bureaucratic and that OPDS should identify all of the factors that it will consider, including base rates and the numerous other selection criteria that will be applied. One factor that should be identified is the information received from any structural review performed by the Commission in a particular region.

The Commission adopted the following schedule for PDSC review of the contracting process in future budget cycles.

- June PDSC meeting in even numbered years – Commission to receive input from contractors regarding funding needs to be included in PDSC budget request
- May PDSC meeting in odd numbered years – Commission to establish budget allocation priorities with or without a final budget amount
- July or August – OPDS to issue RFP in accordance with PDSC priorities
- September – Three to four hour meeting for PDSC to review OPDS's proposed statewide distribution plan
- September – December – OPDS to negotiate final proposed agreements
- December – PDSC contract approval and possible review of individual contract proposals

Ethical rule changes for public officials

Commissioners were provided with a summary of the changes made by the 2007 Legislature to the ethics laws relating to public officials. PDSC General Counsel Paul Levy and Commissioner Lazenby discussed the changes and their impact on members of commissions like PDSC. Commissioners raised additional questions and the discussion of these issues was postponed until the next regular meeting of the Commission when the guide to the new rules was expected to be available.

Addressing issues not within PDSC authority that are identified in structural reviews

Commissioners then discussed what processes might be used to bring issues coming to PDSC's attention during structural reviews that are outside the scope of its statutory responsibilities, to the attention of the appropriate individual or agency. One such issue that arose at the PDSC meeting in Pendleton was the lack of an adequate number of interpreters in Union and Wallowa Counties. Commissioner Greenfield suggested three steps be taken to address such issues. (1) staff should determine whether the report received is accurate; (2) staff should inquire of others what steps might already have been taken; and (3) PDSC should decide what amount, if any, of its own resources should be devoted to a solution.

Preserving the independence of contractors

Commissioners discussed PDSC's role in overseeing the quality of representation provided by its independent contractors and Jim Hennings urged the Commission to include caseload limits in its RFPs. They also discussed the effect of "shining a light" on problems and whether OPDS should exercise control over individual line items within a contractor's proposed budget.

Right to Counsel in Protective Proceedings

Commissioner Welch discussed the consequences for a "protected person" of having a guardian or conservator appointed. A copy of the materials she provided is attached as Exhibit C. Although the court is required to appoint a "court visitor" to investigate an individual's need for protection, courts in only a few counties are able to appoint counsel for an individual who wishes to contest the proceedings. Commissioner Welch is working with a task force that is examining the need for court-appointed counsel in these cases and will keep PDSC informed of recommendations made by this task force.

The retreat was adjourned at 4:10 p.m.

Exhibit A

Exhibit B

RELATIONSHIP WITH STAFF

WHO'S RESPONSIBLE FOR WHAT

1. Review the checklist below. Identify which items are primarily the responsibility of the board/commission members, which are primarily the responsibility of staff, and where responsibility is shared.

	BOARD	STAFF	SHARED
• Appeal of Board actions (PDSC decision final)			
• Strategic planning			X
• Performance reviews of staff (other than Exec. Director)		X	
• Budget preparation			X
• Implementing policy		X	
• Approving expenditures (routine)		X	
• Public relations/media relations			X
• Legislative testimony			X
• Setting/establishing policy (with staff input)	X		
• Budget execution		X	
• Asking the Attorney General for legal advice		X	
• Authorizing travel expenses		X	
• Personnel administration (PDSC approves comp plan)			X
• Responding to complaints about Board actions			X
• Enforcing rules		X	
• Identifying mission and values of the Board	X		
• Compliance with state accounting, purchasing and contracting rules (with Commission oversight)		X	

2. What is the role of the Executive Director? Established by statute
3. What is the role of the Board member? Established by statute
4. How does the Board evaluate the Executive Director? Annual performance review

Exhibit C

The Right to Counsel in Protective Proceedings

The only right to counsel Proposed Protected Persons(hereinafter ppp) have is the right to get their own under the present state of Oregon law.

The practical consequences of having a Guardian appointed are considerably more invasive and certainly more long lasting than is a Civil Commitment. A Guardian has the authority to place an individual in a locked facility for the rest of that individual's life. A Conservator, after appointment, has complete control of the individual's money. A Guardian has no duty to confer with the pp or to get their consent to anything.

Current System Safeguards

Upon the filing of a Petition for the establishment of a Guardianship, the Court is required to appoint a Court Visitor. The responsibility of the Court Visitor is to determine through direct contact with the PP and with family members, care providers, etc. the actual circumstances of the pp and to advise the court whether the allegations in the petition are true, whether a protective proceeding is indeed the least restrictive alternative and whether the proposed fiduciary is appropriate.

At least in most metro courts, the Visitors are highly qualified professionals.

The Court Visitor is a critical part of the process and is the primary safeguard against over reaching by family members or other persons who may undertake such a proceeding for improper purposes.

In Multnomah, Washington and Lane counties, the Probate Judges appoint attorneys for ppps when the pp formally objects to the proceeding and requests representation, and/or when the Court Visitor so recommends to the Court.

In those courts the lawyers are on a list maintained by the court which is referred to as the Bailout List. Attorneys ask to be on the Bailout List. From that list successor fiduciaries are appointed when the Court removes a PR or other fiduciary and there is no appropriate person to be appointed from the family. So these lawyers are often very well

compensated for their service and also do pro bono work for pps. Such a system fills the gap.

When the ppp is served with the Petition for the Appointment of a Guardian or Conservator, they are provided with a one page, blue Objection form, which they can make a couple of xs in boxes and indicate their objection to the process.

In the period January –November 2007, 20 attorneys were appointed for Respondents in protective proceedings in Multnomah County. From these appointments 6 hearings occurred and 5 matters remained pending as of January 08.

Attachment 3

**OPDS's Draft Report to the Public Defense Services
Commission on Service Delivery in Judicial District No. 1 – Jackson County
(May 8, 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 and a summary of the testimony presented to the PDSC at its April 10, 2008 meeting in Jackson County. The final report will include 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. By local court rule, cases are set for trial within eight weeks after the pretrial conference but may be continued for good cause. 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 of scheduling difficulties for both the judges and the attorneys.

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

Bert Putney, the Administrator of Southern Oregon Public Defender, Inc. testified that SOPD was founded in 1985; that it currently has 23 attorneys in two offices, 16 of whom work in Medford. There are administrative efficiencies that result from operation of multiple offices. In addition CLE events and the like can be organized for both offices (as well as for other providers in all southern Oregon counties) and attorneys can be sent from one office to the other to assist in case coverage. Recruitment and retention have been a problem for SOPD. Between 2004 and 2007 approximately 25 lawyers left the office, which is a turnover rate of more than 100%. Inadequate compensation is the main reason people leave but the area is also less attractive as a place to live than other areas of the state. There is a core of experienced attorneys in both offices, but it is the people with two to three years of experience who seem to leave. All of the members but one of the Los Abogados consortium came from SOPD but most of the lawyers trained by SOPD seem to go to other parts of the state. There is a significant difference in compensation levels between SOPD and the Jackson County District Attorney's office.

Mr. Putney believes that the Jackson County justice system functions very effectively. He believes that SOPD is currently handling approximately the maximum percentage of the adult criminal caseload it is capable of handling. His office, which first began handling juvenile cases in January of 2006, could, however, handle additional juvenile matters.

SOPD has an active board of directors with a very stable membership. Mr. Putney keeps the board informed about developments in the office at meetings that occur at least quarterly.

Mr. Putney has an investigator who is trained to administer polygraph examinations. He would recommend that other offices consider having a staff polygrapher as well.

Mr. Putney also recommended that the Commission consider having a single organization provide services in all of the southwestern counties in the state in order to create administrative efficiencies and improve quality. He described some recent quality control issues in the Medford office and how they were handled and said that he solicits information from the judges about the work of his attorneys on a routine basis.

Judge Raymond White said that public defense services have been very good in Jackson County. Attorneys appear to be trying the right cases although, as a former deputy district attorney, he is not sure that the district attorney's office always chooses to pursue the right cases. He would encourage defenders to be more persistent in the pursuit of plea agreements that would benefit their clients. The more persistent defenders get better offers. He noted some errors in the draft report regarding the timing of criminal trials and the reasons that additional specialty courts are not under consideration at the present time.

Doug Engle testified on behalf of the Los Abogados consortium. He said that there are five lawyers who do approximately 95 percent of the work, one who handles only Measure 11 cases, and one who is available only as a backup when needed. All of the lawyers are very experienced. Currently the consortium is receiving only about 75% of the cases contracted for in this biennium. Mr. Engle and another consortium member share the administrative duties. The members have not yet experienced a situation that would require them to have more structure in their organization. Other than the attorney who handles only Measure 11 cases, case distribution is based on rotation without distinguishing between case types except for murder cases which are on an independent rotation schedule. The consortium has not needed to add members for the past three years.

Jim Mueller testified about the work of the Jackson Juvenile Consortium. He said that the attorneys in the consortium are all very experienced. They know the law and the juvenile court system and work hard, often working more than an eight-hour day. He discussed a number of factors which he believed made the caseloads handled by consortium members appear greater than they are. He noted that an attorney who had left the consortium approximately two years ago is now returning and will be handling a portion of the cases. He also believes that the number of new cases is less than the percentage indicated in the table on page 21. Mr. Mueller questioned the applicability of national caseload

standards which refer to juvenile delinquency cases only. Mr. Mueller also informed the Commission that consortium members had met to discuss reported quality of representation issues on the part of one member and that the member is now taking steps to address the issues.

Christine Herbert said that she handles cases for both the juvenile consortium and Los Abogados and that she has not received complaints about her work. She works hard and sometimes on weekends and evenings but she enjoys her work and believes her workload is manageable. Commissioner McCrea told her that the Commission was not questioning the competence of the attorneys but inquiring whether as a matter of policy the Commission should be contracting for caseloads of this magnitude.

Commissioner Welch said that comparing caseloads from one judicial district to another is like comparing apples and oranges since cases are handled so differently from one district to another.

Judge Rebecca Orf said that it is a struggle to schedule juvenile cases in Jackson County because of the consortium lawyers' busy schedules. There was a time when attorneys were not visiting with child clients. They are doing better in that regard although she spoke at a meeting of the foster parents' association recently and was asked whether attorneys were supposed to call foster parents or have contact with them or their child clients. Some attorneys do better than others. There is one consortium attorney and one public defender office attorney who have really raised the bar for other lawyers.

Mark Huddleston, the Jackson County District Attorney, said that although caseloads are high in Jackson County, as they are around the state, the Commission is getting its money's worth with the public defense lawyers in Jackson County. He said there is an active Public Safety Coordinating Council in the county and that the district attorneys and the defense lawyers meet with the court on a regular basis and maintain good communication.

Vance Walliser said he had worked at SOPD for eight years as a criminal defense lawyer and then went into private practice, specializing initially in criminal defense as a member of Los Abogados. In 2005 he began taking juvenile cases as a member of the Jackson Juvenile Consortium and now devotes the majority of his time to juvenile matters. He believes that it is beneficial to have lawyers who handle mainly juvenile matters and if the consortium is forced to add new members he and others may find it necessary to take on other kinds of cases, limiting their ability to specialize. He believes that parents and children in the county receive superior representation.

Additional Information Provided after April 10, 2008

In an effort to clarify information received during the meetings with juvenile court system representatives in February and the testimony provided at the April Commission meeting, OPDS staff interviewed additional representatives of DHS and the state as well as members of the Jackson Juvenile Consortium and obtained the following information.

It appears that, despite the fact that lawyers do not appear at initial shelter hearings, representation in the early stages of dependency proceedings is generally good. Specifically, OPDS was informed that attorneys are in good contact with DHS at this stage, seek second shelter hearings in some cases, and resolve cases in a timely way. At the initial disposition attorneys have obtained and reviewed DHS file materials and the proposed plan before the hearing and are prepared to comment on the plan and argue for or against particular services.

A CRB review is the next event in most cases and for the last year or so attorneys have been appearing at and participating in these hearings.

It is at this stage, however, after the initial CRB review when attorney engagement appears to end. One consortium attorney said that cases in review status require no attention unless a client calls and asks for specific advice or information. It was reported that lawyers “rarely” attend family meetings even though much of the planning for families occurs at these meetings. It is a relatively new practice for attorneys to visit with child clients but even though they are now visiting, they never seem to develop a relationship with even the adolescent clients because they tend to see them, if at all, just prior to a court hearing.

DHS rarely hears from attorneys between court proceedings. DHS continues to send discovery to the attorneys, including evaluation reports and the like and notifies them if there are significant changes in the client’s circumstances. One representative explained that if the attorney does not review this information as it comes in, he or she does not have a feel for what is going on in the case and can’t take appropriate measures to protect the client’s interest, such as getting an independent evaluation or advocating for more appropriate treatment options. If discovery indicates a client is giving positive urinalysis test results, attorneys should be meeting with clients and talking about the implications of these test results. Twice a year DHS sends the client a list of expectations as part of the agency’s mandate to make reasonable efforts to reunify families. These documents can be complicated and should be explained by the attorney. A representative of the state who works in multiple counties said that the attorneys in Jackson County are among the best in the region in terms of ability but the caseload in Jackson County prevents attorneys from providing services to clients between hearings and from attending family decision meetings much less often than their colleagues in Douglas and Josephine Counties. He noted that in

dependency cases, involvement of the attorney through the life of the case often has a direct impact on the likelihood of a child being returned to the parents.

After a termination petition is filed, attorneys again participate actively in the preparation and presentation of the case. Lawyers for children are said to be very involved in these trials, unlike their colleagues in some counties who are said to act more like spectators than advocates in these cases.

PDSC is grateful for the cooperation and hospitality extended to its staff and its members during its visit to Jackson County and the initial investigations made in preparation for that visit. PDSC expresses its sincere appreciation to all the members of the Jackson County criminal and juvenile justice communities for their assistance in informing the commission and helping to guide the creation of a service delivery plan for the County.

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 4

**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 and a summary of the testimony presented to PDSC at its April 10, 2008 meeting in Medford. The final report will include 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. An attorney from either the public defender's office or the consortium is 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 Thursdays. 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. There is a large group of interested individuals and agencies who participate in the Oversight Committee. Representatives of both public defense contractors are involved in committees which will be designing and overseeing the work of the new court. It was reported that the District Attorney is not a participant in planning meetings at this stage.

Juvenile Court System

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 within a day or two following the initial appearance. Out-of-custody youth make their initial appearance on Mondays. "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 available the vacation and court

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.

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 provides Westlaw to all its members as well as access to the Oregon State Bar's "BarBooks."

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

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.

practitioners, and sends it 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.

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

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

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% 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 it 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

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

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.

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

Bert Putney is the Administrator of Southern Oregon Public Defender, Inc. SOPD was founded in 1985 in Jackson County and began providing services in Josephine County in 1991. Seven attorneys are currently assigned to the Josephine County office. SOPD provides representation only in criminal cases in the county. Mr. Putney believes that the office is able to achieve administrative efficiencies by providing services in more than one county. Currently a Jackson County attorney is handling a murder case in Josephine County because there are too many murder cases for the Josephine County lawyers to handle. There is a core group of three experienced attorneys in the Josephine County office. It has been difficult to recruit and retain additional attorneys there.

Mr. Putney said that the court system in Josephine County is antiquated, that a costly computer update is needed, and that the trial court administrator has not been given the necessary authority to put the system in order. There has been a history of conflict in relationships between members of the bar in the county and the county’s population is generally more litigious.

SOPD has an active board of directors with a very stable membership. Mr. Putney keeps the board informed about developments in the office at meetings that occur at least quarterly.

Mr. Putney has an investigator who is trained to administer polygraph examinations. He would recommend that other offices consider having a staff polygrapher as well.

Mr. Putney also recommended that the Commission consider having a single organization provide services in all of the southwestern counties in the state in order to create administrative efficiencies and improve quality. He described some recent quality control issues in the Medford office and how they were handled and said that he solicits information from the judges about the work of his attorneys on a routine basis.

Presiding Circuit Court Judge Lindi Baker testified that she and the other judges see the public defense attorneys in court regularly and their experience with both defender groups has been very positive. The consortium attorneys are more experienced but the public defender group, although younger and less experienced, brings a lot of energy and commitment into their representation. In addition, the public defender office has some very experienced lawyers who act

as mentors and leaders to help the newer attorneys. If judges had a concern about an attorney they would know to whom to go to with that concern. Holly Preslar would be the contact for the consortium. She believes there is good communication between the parties in criminal cases. Generally speaking the defense bar and the prosecution seem to work together and they are resolving more cases than they did in the past. Despite the uncertainties in county revenue, the district attorney may not need to reduce the number of deputies this year. But, in the long term, if funding issues are not resolved it could be a very different story. The sheriff's patrol might have to be discontinued and it might be necessary to close the jail. Judge Baker described the Josephine County Drug Court, which has been operating for 13 years and is expecting to have its 230th graduate in the near future. She noted that the public defender's office had been a partner in the program since its inception and that a member of the public defender's staff is the coordinator for the court. The three year recidivism rate for graduates is 9.7 percent. Statewide, the recidivism rate for non-drug court clients is 38% and for non-drug court clients in Josephine County, 47%.

Dan Simcoe testified on behalf of the Josephine County Defense Lawyers, Inc. He said the consortium currently has nine members. One attorney recently resigned and another was removed from the group. The group is open to accepting new members and would like to have a total of ten to 12. Consortium members, on average, devote approximately 40-50% of their practice to public defense cases. He explained how the consortium manages performance issues. There is a participation agreement that permits the consortium to suspend and remove members for non-compliance with expectations. The organization has a board of directors comprised of consortium members but may consider adding outside members in the future. Consortium members as well as attorneys with the public defender's office participate in monthly bench/bar meetings. Although the public defender's office may believe it should receive a higher percentage of the cases, Mr. Simcoe thinks the current distribution is working well.

PDSC is grateful for the cooperation and hospitality extended to its staff and its members during its visit to Josephine County and the initial investigations made in preparation for that visit. PDSC expresses its sincere appreciation to all the members of the Josephine County criminal and juvenile justice communities for their assistance in informing the commission and helping to guide the creation of this service delivery plan for the County.

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, TROUBLESHOOTS 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 5

**OPDS's Draft Report to the Public Defense Services Commission
on Service Delivery in Judicial District No. 6
Umatilla and Morrow Counties
(May 8, 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, Lane, Lincoln, Linn, Multnomah, Marion, Klamath, Yamhill, Hood River, Washington, 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 Umatilla and Morrow Counties' public defense system undertaken in preparation for the PDSC's public meeting in Pendleton on November 7, 2007 and a summary of the testimony provided at that hearing. The final version of this report will contain PDSC's service delivery plan for Judicial District No. 6.

PDSC's Service Delivery Planning Process

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

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

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

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

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

Background and Context to the Service Delivery Planning Process

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

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

its mission statement, PDSC is also dedicated to ensuring the delivery of quality public defense services in the most cost-efficient manner possible. The Commission has undertaken a range of strategies to accomplish this mission.

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

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

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

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

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

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

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

“Structure” versus “Performance” in the Delivery of Public Defense Services

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

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

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 task of addressing performance issues with operational implications.

Organizations Currently Operating within the Structure of Oregon's Public Defense Delivery Systems

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

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

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

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

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

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

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

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

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

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

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

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

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

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

³ Id.

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

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

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

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

3. Law firms. Law firms also handle public defense caseloads across the state directly under contract with PDSC. In contrast to public defender offices and consortia, PDSC may be foreclosed from influencing the

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

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

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

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

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

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

significant one, is a rigorous, carefully administered qualification process for court appointments to verify attorneys' eligibility for such appointments, including requirements for relevant training and experience.

OPDS's Preliminary Investigation in Judicial District No. 6

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 November 7, 2007 from 9:00 a.m. to 1:00 p.m., PDSC held a public meeting in Room 316 of the Umatilla County Courthouse in Pendleton, Oregon. The purpose of that meeting will be to (a) consider the results of OPDS's investigation in the district as reported in the preliminary draft report, (b) receive testimony and comments from judges, the Commission's local contractors, prosecutors and other justice officials and interested citizens regarding the quality of the county's public defense system and services, and (c) identify and analyze the issues that should be addressed in the Commission's Service Delivery Plan for Judicial District No. 6.

This draft report is intended to provide a framework to guide the Commission's discussions about the condition of the public defense system and services in the district, and the range of policy options available to the Commission – from concluding that no changes are needed to significantly restructuring the district's delivery system. The initial draft was intended to offer guidance to PDSC's invited guests at its November 7, 2007 meeting, as well as the Commission's contractors, public officials, justice professionals and other citizens who might be interested in this planning process, about the kind of information and comments that would assist the Commission in improving Judicial District No. 6's public defense delivery system.

In the final analysis, the level of engagement and the quality of the input from all of the stakeholders in the justice systems in these two counties is 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 Judicial District No. 6.

OPDS's Findings in Judicial District No. 6

Judicial District No. 6 is comprised of Umatilla and Morrow Counties. There are three courthouses in the district, two in Umatilla County (Pendleton and Hermiston) and one in Morrow County (Heppner).

There are five judicial positions in the district, increased from four in 2006.⁴ Judge Garry Reynolds is the presiding Judge. He and Judge Jeffrey Wallace are assigned to the courthouse in Hermiston.

Judge Daniel Hill and former District Attorney and now Judge Christopher Brauer are assigned to Pendleton, as is the family court judge, Judge Ronald Pahl, who also serves as the drug court judge in Pendleton. (Judge Reynolds serves as the drug court judge in Hermiston.)

The judges are assigned to cover the court in Heppner on a rotating basis.

Hermiston is approximately thirty miles from Pendleton and Heppner is approximately seventy. A map of the region is included as Exhibit A.

The Umatilla County Jail houses prisoners from both counties.

Umatilla County

The population of Umatilla County in 2006 was 72,190. Funding for county services has been relatively stable in recent years. The county is served by twelve separate law enforcement agencies.

Since the completion of a new courthouse in Hermiston all categories of cases, including murder cases, are being assigned to the Hermiston court if they arise in the western area of the county. Because this is the area in which most of the growth in the county is occurring it is expected that the caseload handled by the Hermiston court will continue to grow.

⁴ In an effort to describe the workload in the district, it was reported by the Judicial Department that there were 1,516.8 cases of all types including violations filed per each judicial position during the period of January 1 to June 30, 2007. There were 697.8 cases per judicial position if violations are excluded. The statewide average without violations for this period was 1,008. During the same period one felony and 4 misdemeanors were tried in Morrow County and 27 felonies and 41 misdemeanors in Umatilla.)

Procedure in criminal cases

In criminal cases, each judge maintains his own docket and whichever judge presides over the arraignment schedules all future appearances for his own courtroom. Attorneys are present for arraignments. (Both the attorney and the defendant are at the jail during in-custody arraignments, while the judge and the district attorney are in the courtroom; all are in the courtroom for out-of-custody arraignments.)

A pretrial conference is scheduled in every case for approximately six to eight weeks after arraignment in order to track progress in the case, determine whether discovery has been provided, schedule motions, etc. Except for custody cases, a trial date is set only if the attorneys indicate that the case will be going to trial. A trial readiness appearance is calendared three to five days before trial.

With respect to the quality of representation being provided in criminal matters by PDSC's two contractors in the area Judge Reynolds said that the attorneys for both contractors work hard at what they are doing and, despite having to cover cases in multiple courts, they are providing good services.

The District Attorney

Dean Gushwa is the District Attorney of Umatilla County. He currently has five deputies but is recruiting for several more. His office must staff both the Hermiston and Pendleton Courts five days a week. Despite short staffing, this office continues to prosecute some types of offenses, such as failures to appear and drug residue cases, which some district attorneys have chosen not to pursue when resources are scarce. In addition, Mr. Gushwa said that his office pursues the death penalty in every case in which the grounds for charging aggravated murder are present and does not decide whether it will actually seek a death sentence until all the evidence has been presented in court.⁵ As of October 30, 2007, there were 7 aggravated murder cases pending in Umatilla County (out of a total of 48 statewide).

Drug court

Umatilla County operates a drug court in both Hermiston and Pendleton. Each meets once a week. The first graduation ceremony occurred in the late summer of 2007. As of September, 2007, the program had 44 participants, half of whom were women. The program has a maximum capacity of sixty. The program works with medium and high risk offenders, including those charged as repeat property offenders, and provides extensive support for participants, including

⁵ This approach can be very costly for PDSC since every client must be provided full ABA-compliant representation throughout the pretrial and trial proceedings even though the state may ultimately determine that it will not be asking for a death sentence.

anger management counseling and job skills training, as well as drug treatment. The drug court reportedly has very few Hispanic clients. Staff believes this is because many of the Hispanic defendants are one-time offenders and conditional discharge is often a better option for them.⁶

The program just received a Bureau of Justice Assistance grant to expand coverage to clients in the Milton Freewater area, to add an on site GED program and a mental health treatment component, and to fund research to assess the impact of the program.

The District Attorney believes the drug court is working and attributes the declining number of misdemeanor offenses to the intervention of the drug court.

Doug Fischer, the administrator of the Intermountain Public Defender Office, has been an active participant in the development and operation of the court and sits on its steering committee. One attorney is assigned to staff the court and represent all of the clients who participate.

Attached as Exhibit B is a document describing the court and its operation.

Some attorneys with the Blue Mountain Defender consortium are reported to discourage clients from participating in drug court. The consortium administrator, Craig Childress, explained that, although the program might be appropriate for some clients it is not appropriate for clients who are likely to fail since applicants are required to plead guilty to all outstanding charges as a condition for admission to the program,⁷ and may not withdraw their pleas even if found ineligible for the program.

While program rules require applicants to waive indictment and stipulate to laboratory reports, clients are not required to plead guilty to any charges until they are accepted into the program. They are then required to plead to all counts in the information. Other pending charges may be brought into drug court, but if the client wants them included, he or she must also plead guilty to all charges in those cases. If the client successfully completes drug court, all of the charges are dismissed. If the client does not successfully complete the program, the court proceeds to sentencing on all counts. If an applicant is not accepted for drug court, he or she is still entitled to a trial on the charges alleged in the

⁶ For non-citizen clients, even a conditional discharge may be treated as a “conviction” of a drug offense by the federal government, which can lead to exclusion and/or deportation from the United States. District attorney diversions, on the other hand, may not be considered convictions for this purpose.

⁷ The Umatilla County drug court model may be unusual in this regard. Attorneys in other counties report that plea discussion and negotiation is often part of the process of admission to drug court. If a guilty plea is required, in some counties it may be to a single charge. In counties that do not require guilty pleas, the defendant is instead generally required to stipulate to the admission of certain evidence.

information but is bound by the stipulation relating to the laboratory findings.⁸ Program representatives say that they work hard to keep clients in the program, that relapses are understood to be a part of treatment and that if clients are honest with them, they will do everything they can to help them succeed.

Juvenile cases

Judge Ronald Pahl is the family court judge. All juvenile proceedings in the county are held in the Pendleton courthouse.

The district attorney's office assigns a deputy full time to the juvenile department; this deputy files all the petitions in dependency cases and represents the state in delinquency proceedings as well. A secretary in the juvenile department prepares subpoenas, summonses, and other documents in dependency cases.

Procedure in dependency cases

Initial appearances in juvenile matters occur in the afternoon, as needed, which is approximately one to two days per week. About a year ago, Judge Pahl, working with the contract firms and DHS, instituted the practice of having attorneys appear at shelter hearings.⁹ A mediation session is scheduled in every case approximately forty-five days after the initial shelter hearing. The county was able to fund this program when support from the Juvenile Court Improvement Project ended in 2005. Approximately half of all dependency cases were formerly being resolved at mediation. One representative of the state indicated recently, however, that the program may be in jeopardy because some attorneys decline to participate.¹⁰

Occasionally, attorneys do not become aware of conflicts until the mediation session. Substitution of new counsel at this stage can significantly delay the proceedings.

The court conducts reviews in dependency cases annually. The Citizen Review Board reviews cases every six months.

The CASA coordinator reported that as of September there were eighteen active CASAs working with eighty children in foster care. CASAs are not appointed until in Umatilla County until approximately thirty days after shelter hearing.

⁸ During 2008 the Commission will review drug court operations around the state, focusing on the role of counsel in each county and will consider whether it should issue guidelines for participation of public defense attorneys in this specific type of early disposition program.

⁹ This practice has largely resolved a problem brought to OPDS's attention in the past, of some attorneys not meeting with their clients prior to the mediation session.

¹⁰ Two attorneys associated with the Blue Mountain Defender consortium were identified as being unwilling to permit their clients to participate.

Comments on representation in juvenile dependency cases

One juvenile system participant said that she is concerned that many attorneys are not meeting with their child clients regularly, or sometimes at all. She could name only two attorneys who visit their child clients regularly, one at IPD and one at BMD. The attorney who represents children in most of the dependency cases does not appear to have contact with them, although it was reported that in the past month he has made efforts to do so.

One juvenile system representative said that although attorneys regularly attend CRB hearings or send representatives, most of them do not participate. They take notes but do not provide any information to the board. They appear not to have information about child clients, and, if they have it about parents, are not providing it. There are two attorneys, one from each contract provider, who are always prepared and make effective presentations on behalf of their clients. If they cannot attend they normally send detailed information in writing.

Judge Pahl said that in cases subject to the Indian Child Welfare Act it might be helpful to provide some training to the attorneys about how to use the act to their clients' advantage.

Additional comments regarding quality of representation are set forth below with respect to each of the contractors.

Procedure in delinquency cases

Attorneys are present for shelter hearings in delinquency cases. They are appointed in only about half of the cases, however, with the other half waiving counsel and generally resolving their cases as proposed by the juvenile department at the initial hearing. The juvenile department reports that it diverts most first time offenders out of the court system.

The juvenile department in Umatilla County has six probation counselors, one assigned to intake and one to sex offender supervision. The other four are field officers. A representative of the department said that they maintain good working relationships with defense attorneys, although the district attorney's office does not permit them to talk directly to defense attorneys about their cases. There are few juvenile delinquency trials; the department representative indicated that only about five cases had been tried in the previous year.¹¹ Motions are filed only occasionally.

The local detention facility has 24 beds; only 15 are currently staffed and 11 or 12 of these are generally rented to other counties. The region recently received a Casey Foundation Juvenile Detention Alternative Initiative (JDAI) grant. Judge

¹¹ OPDS received only three requests for non-routine expense approvals in juvenile delinquency cases from Umatilla County in the one year period beginning October 1, 2006.

Pahl and Chuck Belford, the director of the juvenile department, attend national JDAI meetings. Members of the defense bar have also been active participants. Umatilla County is also seeking to become a model court site through the National College of Juvenile and Family Court Judges. Judge Pahl noted that there are few local resources available for adjudicated youth. They often use resources in Spokane, Yakima and Bend. There is a multi-treatment center in Umatilla County but it is not appropriate for all.

With respect to minority youth in the county, one juvenile system representative said that one of the local police agencies sites minority youth in disproportionate numbers. It is hoped that this practice can be addressed through the JDAI.

There is a significant population of non English-speaking Hispanic youth, especially in the west end of the county. The juvenile department has one Spanish speaking juvenile court counselor but treatment resources are scarce for this population.

Comments on representation in delinquency cases

The director of the juvenile department said that there might be a need for more attorneys to handle delinquency cases. Attorneys sometimes come from Union County to take cases that cannot be handled by the local attorneys but this can result in delay due to scheduling issues and travel time for these lawyers. He also said that caseloads may be too high or lawyers may be devoting too much of their time to other cases. Some attorneys are not meeting with their clients in a timely way¹² and don't appear to be able to give priority to their juvenile cases.

Judge Pahl said that he would like to see attorneys do more research on dispositional alternatives and present a plan in each case.

Public Defense Providers

Intermountain Public Defender¹³

Intermountain Public Defender (IPD) is a private non-profit corporation that contracts with PDSC for 100% of its legal services. The IPD office is located in downtown Pendleton, two blocks from the courthouse. The office was founded in 1994 and currently has eight full time attorneys, including its Executive Director, Doug Fischer. The office employs both clerical and investigative staff. It contracts to handle all case types except for aggravated murder and post-conviction relief cases. Under the current contract IPD has agreed to handle

¹² One local attorney said that the juvenile department needs to improve its communication with defense attorneys. Attorneys aren't always notified when their clients are taken into custody or when there are other important developments in the case.

¹³ A copy of IPD's response to OPDS's questionnaire for public defense offices is attached as Exhibit C.

4,944 cases over the two-year period ending December 31, 2007. IPD is paid \$1,000 per month for representing clients in drug court and also receives a stipend for travel expenses. In the past IPD was paid \$357 per case, regardless of case type. A change to a rate structure based on the value of different types of cases resulted in a revenue increase under the 2005-2007 contract. In the past IPD has reported that 89% of contract funds were expended for salaries and benefits, and only 11% for overhead. The office provides health insurance and funds a pension program (10%) for all employees and pays bar dues and NACDL and OCDLA membership for the attorneys.

The office has a four-member board of directors, two of whom are attorneys in private practice, one is a retired judge and one is an accountant. The board's primary function has been to insure financial accountability. An auditor reviews monthly bank statements and performs an annual audit. The Board meets annually to review the audit results and at such other times as needed.

IPD adopted a written personnel policy manual in 2005. It has no formal performance evaluation process, however. IPD reports that performance evaluation is an on-going process at IPD. Management receives input from judges, court staff, the district attorney and others. Concerns are evaluated and discussed with the individual in question. On rare occasions employees have been encouraged to seek other employment.

Despite having hired a number of new employees over the last several years, IPD does not appear to have a formal orientation, training or mentoring program, other than its "open door" policy under which new staff are encouraged and expected to seek advice from more experienced staff. IPD does fund fifteen hours of CLE credits for each attorney every year. IPD also maintains a library and provides access to online legal research tools to its attorneys.

IPD case management

IPD attorneys appear at criminal arraignments. Discovery is not always available at this appearance. In most cases, an investigator makes initial contact with in-custody clients within 24 hours of appointment. Upon receipt of discovery, clerical staff reviews the police reports and checks for potential conflicts. The attorney then receives the file. If no conflict is found, a letter, including both an appointment time and the next court date is then sent to the client. If withdrawal is appropriate, a motion is filed immediately.

Cases are assigned on a case-weighted basis in order to balance the workload among the attorneys and give each of them cases consistent with their experience.

IPD covers drug court in Pendleton and shares coverage of the Hermiston drug court with Blue Mountain Defenders.

Comments on quality of representation by IPD

While many people interviewed for this report had very positive things to say about IPD's "turn around" and about the good work it does on many cases, about its training of new attorneys, about its preparation in criminal cases and aggressive representation of clients, and about the representation it provides in the special courts, it also appears that IPD may have some significant quality issues to address.

All of the following concerns were mentioned by one or more of the persons interviewed for this report: clients continue to complain that they are not able to reach their attorneys,¹⁴ especially juvenile court clients;¹⁵ juvenile system representatives say that most IPD attorneys appear but do not participate in Citizen Review Board hearings, and that some attorneys have no contact at all with child clients.¹⁶ Another juvenile system representative said that one IPD attorney, who is not a bad attorney, can be very difficult to reach, even on urgent matters affecting his clients, and failed to see one of his clients for six months following his appointment.

Some of these commentators believed that quality problems were probably related to workload and that the attorneys often appear to be "swamped."

Blue Mountain Defenders

The Blue Mountain Defender consortium (BMD) was founded in 2005, succeeding to a caseload previously assigned to the Umatilla/Morrow Defense Consortium. The administrator of the BMD consortium is Craig Childress. There are eight other attorneys identified in the 2005-2007 contract as being included in the consortium.

BMD contracted with PDSC for the two-year period ending December 31, 2007 to handle a mixed caseload of 2600 cases. The consortium's case mix is similar to that of IPD, except that BMD does not receive appointments in murder cases.

BMD did not provide a description of its current operating structure other than to say that for the last two years it has operated as a small public defense firm with

¹⁴ One former IPD attorneys said that the court requires clients to contact their attorneys regularly and, since IPD does not have voicemail, people may be trying to contact them after hours without success.

¹⁵ One juvenile system representative suggested that IPD attorneys meet with their clients immediately after the shelter hearing to schedule an appointment with them rather than trying to contact them later by phone or letter.

¹⁶ This has been a common concern in many parts of the state. OPDS recently sent to its contractors a statement outlining OPDS's expectation with respect to representation of children. A copy of this statement is attached as Exhibit D.

subcontracting lawyers taking a few selected case types according to individual members' needs and limitations. It appears that Mr. Childress and another consortium member, Dan Stephens, devote almost 100% of their time to public defense cases and consider themselves to be the sole members of BMD. Other attorneys associated with the consortium are considered "outside attorneys" and are reported to devote between 20 and 80% of their time to public defense cases. It is not clear whether this distribution is based on the preferences of all concerned. Mr. Childress has acted as the administrator of the consortium and OPDS's contact has been exclusively with him.

BMD has drafted a proposed set of bylaws that would become operative if it were awarded a contract beginning in 2008. Under the bylaws, there would be a board of three to seven directors, including five members of the consortium. A retired Oregon State Police officer and a community activist are being considered for appointment to the board as lay members. The consortium administrator would serve on the board for an initial three-year term although the bylaws also indicate that his term as an officer would be for five years and would permit him to be removed only for cause.¹⁷ Other members would be subject to removal by a vote of two thirds of the directors then in office.

Currently, the consortium administrator and his staff person receive 5% of the total monthly payment to the consortium for their administrative duties.¹⁸

The administrator submitted written responses to questions regarding the structure and operation of the consortium. A copy of this document, along with the proposed bylaws is attached as Exhibit E.

OPDS received many positive comments about BMD. The judges praised the general level of representation provided by BMD attorneys and the level of experience they bring to their work. Court staff is appreciative of the consortium's management of its cases.

Two consortium attorneys were identified as being particularly skilled trial lawyers and two were noted to provide superior representation in juvenile court cases although neither of the latter appeared to be assigned many juvenile cases.

Concerns were expressed by a number of people about the practice of the consortium administrator and the other attorney who works in the same office¹⁹

¹⁷ Mr. Childress explained that because he gave up other employment to plan and organize the consortium, his role as executive director is preserved under the proposed bylaws for at least three years.

¹⁸ It is not clear whether the 5% is in addition to or includes the \$7,500 line item for administration in the PDSC contract with BMD.

¹⁹ A number of the justice system representatives who were interviewed expressed concern about at least the appearance of impropriety when attorneys representing co-defendants or other parties to a single proceeding share office space, and in some cases, have common law office staff. It is undoubtedly a struggle in small communities for lawyers to find affordable office space

appearing to take the same position on nearly all of the cases in which both are involved, even when their clients' interests appear to be very different.

Concern was also expressed by a number of juvenile system representatives about Mr. Childress assigning to himself most of the child clients in juvenile dependency cases. One child advocate said he did a "pretty good job," but others reported that he sometimes does not know the names or ages of the children he represents, generally sits through trials without making an opening or closing statement on behalf of his child client or asking any questions of the witnesses, and that until very recently he failed to meet with child clients, including adolescents who were capable of considered judgment.

One observer said that Mr. Childress and the other attorney in the BMD office are extremely disrespectful to DHS representatives in the courtroom, at CRB reviews and during mediation sessions. This observer said that the behavior of these attorneys is not just unusually adversarial. In her opinion it is unprofessional and works to the detriment of some clients.

Hourly paid attorneys

Some attorneys in the area expressed an interest in handling public defense cases on an hourly basis but it is rare that there is a need to appoint a non-contract attorney. These attorneys do not want to participate in the current consortium, however. In addition, a court representative said that there are capable attorneys in the area who could do excellent work in public defense cases but they are not available to the court for appointment because they are not part of the consortium.

Morrow County

The population of Morrow County in 2006 was 12,125. Funding for county services has been less stable in recent years in Morrow County than in Umatilla. There are some economic development projects underway that may improve the economy. Ground will soon be broken on a speedway in Boardman and a new ethanol plant has recently been completed.

There are two law enforcement agencies in the county, the Morrow County Sheriff's Office and the Boardman Police Department.

and consortia members in a number of counties share space and often some office equipment. The sharing of staff creates the greatest risk for jeopardizing the confidentiality and secrets of public defense clients among attorneys who represent parties with opposing interests in the same or related proceedings. Ethics Opinion 2005-50 indicates that staff in such circumstances should not open mail, receive telephone calls or review client information in any case in which two attorneys represent parties with opposing interests. Mr. Childress provided OPDS with a detailed description of the staffing at his office and the steps that he and Mr. Stephens have taken to protect client confidences. As of January of 2008 Mr. Stephens plans to relocate his office to Hermiston.

Elizabeth Ballard is the district attorney. She has been in office for approximately a year and served as a deputy district attorney for three years before becoming the district attorney. She currently has no deputies.

Criminal cases²⁰ are scheduled in Morrow County every Thursday and sometimes on Friday although the court hears primarily civil matters when it is in session on Fridays. It can be difficult to conduct trials with so little court time available.

BMD attorneys handle almost all of the cases in Morrow County and have assigned a single attorney to cover most of these matters. This attorney appears in person for criminal arraignments and other matters on Thursdays. On other days she appears by video connections. The round trip distance between Pendleton and Heppner is 144 miles.

Both Judge Reynolds and District Attorney Ballard indicated that the BMD attorney who handles most of the cases in their county does a very competent job. She is generally prepared, is in good communication with the court and the state, and provides vigorous representation to her clients.

Juvenile matters are heard in the county court in Morrow County and, consequently, public defense providers are paid by the county, not OPDS.

Summary of Testimony at November 7, 2007 Meeting

Judge Ronald Pahl's courtroom is located in the courthouse in Pendleton. He is the juvenile and family law judge. He also handles civil cases. He said that there is a "pretty good group" of attorneys handling juvenile cases. He recently implemented a policy requiring attorneys to be present for initial appearances in juvenile cases and believes the new process is working well. Occasionally it is difficult to find enough attorneys for all of the parties, especially on short notice. He encourages attorneys to meet with child clients and believes there has been some improvement in that regard. In some cases Judge Pahl has seen an attorney for a child appear to be intimidated by an attorney for a parent into not advocating the child's position. One area in which attorneys may need additional training is in the law applicable to Indian Child Welfare Act cases. In delinquency cases only about half of the youth who come before the court request court-appointed counsel. The others, sometimes with input from their parents, waive counsel. Umatilla County is one of the Casey foundation's juvenile detention alternative initiative sites. The defense lawyers have been skeptical about the benefits of the initiative for their clients but that may be because they have not yet received any training. There has not really be an overcrowding issue at the county detention facility but the records kept by the project will be useful in

²⁰ A total of 350 credits were claimed by BMD for the period of January 1, 2006 through September 30, 2007.

identifying trends and whether there is minority overrepresentation. Judge Pahl is also the drug court judge. The Pendleton drug court had a graduation recently. It is a great program. It has a fifty percent success rate but that is good. The county also has conditional discharge and diversion options. With respect to the requirements for admission to the drug court program, Judge Pahl can understand that when an attorney believes that a case has been overcharged that they would be reluctant to recommend a guilty plea to their clients since the fifty percent that don't succeed end up with a conviction. The Hispanic population of the county is approximately fifteen percent although it is closer to fifty percent in some areas. Judge Pahl does not believe there are any Hispanic attorneys in the area. There are Native American attorneys who practice in the tribal court and occasionally appear in the county courts.

Umatilla County District Attorney Dean Gushwa was appointed by the governor in January of 2007. He was a deputy district attorney in the office for thirteen years and also worked briefly as a defense attorney in private practice. He has eight deputies who prosecute cases in four courtrooms in two separate courthouses. It takes forty-five minutes to travel from one courthouse to the other. The county did not provide any additional staff for the office when the new courthouse opened in Hermiston. He has tried to create uniform policies for both facilities and meets weekly with all of the deputies. There needs to be proportionality in negotiated pleas and the handling of cases. One deputy is assigned to juvenile court and is located at the juvenile department. She handles both dependency and delinquency cases. His office has experienced significant turnover this year, losing four of its deputies, but there have been more applicants for open positions lately. IPD is doing a very good job and maintains a very collegial atmosphere among its attorneys. The attorneys comport themselves professionally and have good working relationships with his office. In the past some non-IPD lawyers filed frivolous motions but IPD lawyers do not. They use whatever ethical legal mechanisms they can, however, to help their clients. In death penalty cases, Mr. Gushwa believes that if the conduct meets the elements for aggravated murder, the sentencing jury should be the body which decides whether a death sentence will be imposed, not the district attorney, unless there is a very unusual circumstance such as mental retardation. Mr. Gushwa said he believed that other district attorneys take an even stricter view. Since he took office he has made it his policy to provide discovery to the defense at the time of arraignment. He would like to be able to provide it electronically in the future.

Judge Jeffrey Wallace is assigned to the Hermiston courthouse, which opened in March of 2006 after the previous structure was destroyed by fire. With more cases now being heard there the defense attorneys have to do more traveling. Because the western part of the county is growing more rapidly than the eastern portion it is expected that number of cases assigned to Hermiston will continue to grow. Blue Mountain Defenders also handles cases in Heppner, the county seat for Morrow County, which is located forty-eight miles south of Hermiston. Judge

Wallace has been very happy with both IPD and Blue Mountain Defenders. They are dedicated lawyers who do a good job. He is pleased with the quality of representation they provide. Post conviction relief cases filed by inmates at the two prisons in Umatilla County are generally heard by senior and *pro tem* judges in Salem.

Doug Fischer, the director of IPD, described the board of directors that oversees his office. He said that IPD continues to have difficulty recruiting and retaining attorneys. All of the members of the BMD consortium were initially recruited and trained by IPD. Three attorneys have fifteen years or more of experience. The others all graduated from law school within the last couple of years. Training is provided to new attorneys by Mr. Fischer and other experienced attorneys. He would like to see public defense providers pool their resources and create training programs for new attorneys. While attorneys in the past believed that when they represented children in dependency cases they could just adopt the position taken by DHS, that approach is changing. It is now becoming the expectation that counsel in these cases will make an independent decision about the interests of the child.

Toni Sloan and Nancy Paxton with the Citizen Review Board said that while attorney attendance at CRB hearings is very good, the attorneys often appear not to have met with their child clients prior to the hearing. They generally express what they believe to be in the child's best interest, although they may have no independent information upon which to base this belief. They do not generally inform the board what the child's wishes are. More children, especially those who are fourteen or older, should be encouraged to attend the reviews and express their own preferences. They are also concerned that attorneys for children may sometimes align themselves with the position taken by a parent's attorney even though it is not in the child's best interest. In most cases IPD is appointed for one of the parents and BMD is appointed for the child and any other parent.

Craig Childress, the administrator of the BMD said that he organized the consortium. It operates like a small firm with some "satellite" attorneys available in conflict cases. There are a total of eight members of the consortium. Mr. Childress and Dan Stephens share office space and handle most of the cases. In setting up the office they created the necessary safeguards to protect clients from conflicts and breaches of confidentiality. If they take similar positions on behalf of their individual clients it is because each of them has determined that such a position is in the client's best interest. Cases are assigned within the consortium according to criteria established by the members specifying the type and number of cases each of them wished to handle. The attorneys meet regularly and discuss their caseloads. The attorney handling a case receives the full amount of compensation that the consortium is paid by OPDS. BMD is proposing to create a board of directors in 2008. Mr. Childress also volunteered to respond to questions that Commissioner Welch had posed to Mr. Fischer.

Commissioner Welch said it might be appropriate for the larger juvenile court community to discuss the role of counsel for children. Mr. Childress agreed and said that he does visit with child clients and explores both the expressed wishes and the best interest of his client and conducts his own investigation. He said he went to law school to become a juvenile attorney and worked for seven years in Douglas County before coming to Umatilla County. He and all the members of the BMD consortium have passion for their work. Not all lay people understand the role of attorneys and the need to question witnesses and sometimes take an aggressive stance in a case.

Nina Kik is the Umatilla County Drug Court Coordinator. She described the creation of the drug court, the eligibility criteria, and the process for screening applications and admitting clients. While Mr. Fischer was involved in the planning committee for the drug court she would like to see other defense attorneys participating in the decisions that are being made about the policies of the court. Some attorneys discourage clients from entering the program. She acknowledged that some were likely to fail (twenty of the forty-four who had entered the program had been terminated from the program) but said that the program tries to meet the needs of the individual clients, including those who require in-patient treatment.

Summary of Developments since November 2008

In Umatilla County there have been some changes in the court's processing of criminal cases since the November 2008 PDSC meeting in Pendleton. Instead of assigning cases to the judge who conducts the arraignment, the presiding judge, Judge Garry Reynolds, now hears all the arraignments at the Hermiston courthouse. Out of custody defendants whose cases arise in the western part of the county appear in Hermiston. Out of custody defendants whose cases arise in the eastern part of the county appear from Pendleton by video, as do all in-custody defendants, who participate by video from the jail. Under the current procedure, which is still in the experimental stage, Judge Reynolds also handles the initial pretrial hearings in criminal cases and then assigns them to the other judges for trial.

It was also reported that the court, the district attorney and the public defense providers are working on the development of an early case resolution program. Materials developed in Washington County to describe its successful program and a copy of PDSC's guidelines for these programs were provided to members of the planning group in Umatilla County.

Both public defense providers now have offices in Hermiston to facilitate the representation of clients whose cases are assigned to that court. Attorney Dan Stephens with the consortium now has his office in Hermiston and IPD has also opened a small office there and will be assigning attorneys to that office. Managing two offices will be an additional challenge for IPD.

There have also been some changes in the handling of juvenile cases. The Umatilla County District Attorney's office was awarded additional funds under an intergovernmental agreement with the Oregon Department of Justice to expand its participation in juvenile dependency cases.

Since the Commission's visit to Pendleton, there appears to have been an increase in the number of delinquency cases in which attorneys are appointed²¹. The practices that have resulted a high percentage of unrepresented youth, however, continue. The juvenile department resolves many cases informally. In addition, youth against whom petitions are filed are asked to come to the juvenile department before the court hearing. They are generally accompanied by their parents. At this meeting the juvenile counselor goes over the allegations and the police reports with the youth and asks the youth to comment on them. Unless the youth denies the allegations, the counselor generally proposes a plea agreement. They discuss the right to counsel with the youth, and most youth, in consultation with their parents, waive counsel and agree to accept the plea offer. While juvenile department staff acknowledge that youth who had the benefit of counsel from the outset might choose to proceed differently, they don't believe that attorneys available to the youth in Umatilla County are able to provide meaningful representation. In their view if an attorney is appointed it usually takes three to six months to get the case to court, by which time the youth might have as many as four or five new sets of charges. They also indicated that delinquency cases "mean nothing to these lawyers." They said that in the cases in which attorneys have been appointed they don't meet with their clients until they see them in the courtroom; they don't know juvenile law and they don't assign any importance to juvenile cases. There are no lawyers who are exceptions to this rule. One consortium attorney is better than the others but he, too, is swamped with criminal cases. They believe that the county needs attorneys who specialize in this area of practice if things are going to improve. In addition, the defense attorneys have been feuding with the district attorney's office and so cases are being set for hearings in August because very few of the contested cases are settled.²² Acknowledging that caseloads are a major problem for lawyers, juvenile department staff nevertheless believe that too much of the attorneys' time and energy goes into adult cases and not enough into juvenile cases. OPDS encouraged juvenile department staff and the OPDS

²¹ During the '06-'07 contract period there was an average of 4.13 appointments per month for new juvenile delinquency felony and misdemeanor cases. In January of 2008 there were 48 new appointments. In February there were 21 new cases.

²² Staff did acknowledge that a large part of the scheduling problem is the fact that the juvenile court judge has only three hours per week to hear juvenile delinquency cases. In addition, staff claimed that when lawyers come to court not ready to proceed the court permits them more time. Craig Childress said that the court permits only one contested case to be set per week. If a hearing is required, the next opening might well be three months away. He suggested that the court consider a pretrial conference in any cases that are being set for adjudicatory hearings since many of them ultimately settle while waiting for the court date. Another option for accelerating hearings might be to use a referee to hear some of the juvenile matters.

contractors to seek a meeting with the other interested parties, including the court and the district attorney, in an effort to improve the handling of juvenile delinquency cases. OPDS offered to attend and participate if requested to do so.

Increased Compensation for Contractors

IPD received a 13.96% funding increase, which represents a 17.86% increase in rates. Despite an increase in salaries, IPD continues to struggle with turnover of attorneys. Four of the last five attorneys hired have left. Most of them have gone to other public defense offices that can pay them more. An experienced attorney was recently rehired, however, to staff the Hermiston office.

It was recommended to the Commission at its March 21, 2008 meeting that a contract be approved with Blue Mountain Defenders (BMD). OPDS staff advised the commission that during the three month period for which the Commission had extended the '06-'07 contract with BMD it became clear that the consortium needed to know what the rates would be for cases under the contract and if there was in fact going to be a new contract. Staff had interviewed all of the consortium members and determined that they were satisfied with the manner in which cases were being distributed under the contract. Others reported that the consortium administrator was more approachable and that he appeared to be more engaged in dependency cases in which he represented children.²³ Finally, the office sharing issue which was brought to OPDS's attention by a number of concerned individuals was resolved when Mr. Stephens moved his office to Hermiston. The Commission approved the proposed contract. In the new contract, the consortium received a 29.58% increase in values.

Access to Needed Expertise

Testimony provided to the Commission at its meeting in November indicated that, particularly in Judicial District No. 10 (Union and Wallowa Counties) there is very limited access to interpreters, investigators and mental health evaluators. To some extent, the same limitations should apply in Judicial District 6 although OPDS has not been advised that the attorneys in Judicial District 6 are experiencing similar difficulties obtaining appropriate services as reported by their colleagues in Judicial District 10.

Karla Young is a certified Spanish interpreter. She provides interpreter services in multiple eastern Oregon counties, including Umatilla and Morrow. She is the court interpreter but also works for other clients, including public defense attorneys²⁴. She reports that there are very few interpreters available in the area.

²³ Mr. Childress responds that he has not made any dramatic changes in his manner of interacting with others and does not believe he was ever disrespectful but does appreciate the need to be sensitive to how others perceive him.

²⁴ As indicated in the testimony in November 2007 she is the only interpreter currently being used by public defense providers in Umatilla, Morrow and Wallowa Counties, except for a death

There is one other court certified interpreter but she works principally in Washington where the compensation is better. She said that court interpretation is more complex than interpretation in other types of proceedings and the certification examination is very difficult. She knows a number of highly educated bi-lingual individuals who have not been able to pass the exam. There is a larger pool of interpreters in Baker City and Ontario but many of them work principally in Idaho. Kelly Mills is the head of interpreter services for the Oregon Judicial Department. She reported that in the past the department had offered regional testing and that it may go back to that approach in an effort to develop larger pools of applicants. The state rate of \$32.50 per hour for certified interpreters has not been increased in ten years. The “master” interpreters in the state often end up working in the federal court where the compensation is significantly higher.

From OPDS’s non-routine expense request data base, staff was able to identify a number of investigators and mental health evaluators who have been approved for work on public defense cases in both Judicial District 6 and 10. OPDS has also advised contractors that it is prepared to pay the expenses, when necessary, to bring experts and investigators from other parts of the state to assist in their cases.

Service Delivery Plan for Judicial District 6

PDSC expresses its sincere appreciation to all the members of the criminal and juvenile justice communities in Judicial District 6 for their assistance in informing the commission and helping to guide the creation of this service delivery plan for the district.

In light of all of the information received, PDSC approves the following service delivery plan for Judicial District 6.

The number and types of providers in Judicial District No. 6 appear to appropriate ones. The public defender’s office is the principal provider in Umatilla County and does much of the training of new defenders in the area. It offers leadership in other areas, including participating in the planning and operation of special courts such as the drug courts. Doug Fischer serves on the Local Public Safety Coordinating Council and meets regularly with judges and the district attorney to keep abreast of developments and to monitor the quality of the work IPD lawyers are doing.

A well-managed consortium is often the best alternative provider in an area the size of Judicial District 6. It can add members as needed and provide members with flexibility in terms of the amount of time they are able to devote to public defense representation. While the Commission was advised of some concerns regarding the management of Blue Mountain Defenders, as of March 21, 2008 it

penalty case in which five interpreters from the Willamette Valley were used over the course of the proceedings.

was satisfied that the consortium was functioning adequately and approved a contract for the period ending December 31, 2009 to handle all of the public defense caseload in Morrow County and a portion of the caseload in Umatilla County.

While the structure of the public defense system in Judicial District 6 appears to be sound, there are a number of areas of concern which PDSC commends to further study and effort by its providers and others in the local juvenile and criminal court systems. OPDS should offer to participate actively in the discussion of these issues and explore ways in which it can aid in resolving them. In approximately six months OPDS will provide a report to PDSC on the outcome of these efforts.

Challenges for PDSC's Contractors

Although IPD fulfills many of the functions of a good public defender office it continues to struggle with several significant challenges. The need to serve a second courthouse on a regular basis will be a strain on resources, and the continuing turnover of professional staff means that senior attorneys are required to spend a significant amount of their time training new attorneys. Other types of training are needed to supplement what is available within the office and from CLE offerings. Mr. Fischer has inquired whether some of his newer criminal attorneys might participate in the trial skills training at Metropolitan Public Defender, Inc. (MPD). MPD has previously invited attorneys from other offices to participate when space is available. OPDS has requested that MPD facilitate access to its training by IPD's lawyers. In addition to a need for additional training resources for its criminal attorneys, it appears that IPD needs to significantly improve the training for attorneys in juvenile cases. (See further discussion below.) The office has at least one attorney who previously specialized in juvenile law and is highly regarded in the local juvenile court community, but who is currently handling exclusively criminal matters. Whether the office has the resources to train attorneys in more than one area of practice is not clear. OPDS's General Counsel will work with IPD to apprise them of training options to supplement what is available within the office.

BMD appears to be managing the consortium's workload to the court's satisfaction. In addition it appears to have addressed some of the concerns regarding its management that were brought to OPDS's attention. Comments about representation provided by BMD attorneys indicate that some of its lawyers excel in trial work, others in juvenile representation. The consortium should explore ways in which highly skilled consortium members can share their expertise with others either through formal CLE sessions or by providing training, coaching, mentoring as needed by its members.

Representation in Juvenile Cases

In both delinquency and dependency cases, juvenile system representatives noted significant deficits in the representation provided by attorneys at both IPD and BMD, although as noted in the draft report there are attorneys in both groups who do excellent work in dependency cases. OPDS believes the training tools are available in Oregon for lawyers in all parts of the state who seek to provide high quality representation in juvenile cases. There are frequent CLE events, some offered without cost, that focus on juvenile representation. There are websites and list serves. A bi-monthly newsletter is sent to all OPDS contractors that is devoted exclusively to developments in juvenile law and practice. OPDS's general counsel is available to work with providers to help them identify their particular training needs and possible training options. At least some in the local juvenile court community recommend that there be a change in the culture in juvenile delinquency cases. Juvenile department staff has suggested a meeting among interested groups to discuss how to improve the handling of these cases, both in terms of the timely scheduling of cases and in terms of the quality of representation being provided. OPDS staff are available to participate in such a meeting and would hope that the group would also explore ways of providing counsel to youth much earlier in the process so that youth in Umatilla County are accorded the same constitutional protections as youth in other counties and that are recommended by national models of juvenile representation. It is hoped that if lawyers receive adequate training and fulfill their professional duties to clients in delinquency cases, their involvement will no longer be seen as an obstacle to justice but as a critical component of a well functioning juvenile justice system.

Drug Courts

In Umatilla County it appears that at least some members of the defense bar believe that most clients eligible for the drug court would not be well served by participation in the program. In 2008 the Commission is scheduled to review drug court models from around the state and the role of defense counsel in those courts. Based on its review, the Commission may wish to establish guidelines for counsel in these cases. It is hoped that Umatilla County officials are open to considering revisions to any parts of its program that unnecessarily deter potential clients in need of drug court services from participating.

Attachment 6

**OPDS's Draft Report to the Public Defense Services Commission
on Service Delivery in Judicial District No. 10
Union and Wallowa Counties
(May 8, 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, Coos, Clatsop, Curry, Lane, Lincoln, Linn, Multnomah, Marion, Klamath, Yamhill, Hood River, Washington, 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 Union and Wallowa Counties' public defense system undertaken in preparation for the PDSC's public meeting in Pendleton on November 7, 2007, a summary of the testimony provided at that meeting and a proposed service delivery plan for Judicial District No. 10.

PDSC's Service Delivery Planning Process

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

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

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

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

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

Background and Context to the Service Delivery Planning Process

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

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

its mission statement, PDSC is also dedicated to ensuring the delivery of quality public defense services in the most cost-efficient manner possible. The Commission has undertaken a range of strategies to accomplish this mission.

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

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

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

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

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

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

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

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

“Structure” versus “Performance” in the Delivery of Public Defense Services

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

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

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).

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 task of addressing performance issues with operational implications.

Organizations Currently Operating within the Structure of Oregon's Public Defense Delivery Systems

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

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

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

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

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

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

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

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

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

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 in which they still represent public defense clients 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, in post-conviction relief cases, and in geographic areas of the state with a limited supply of qualified attorneys. In light of PDSC's ability to select and evaluate individual attorneys and the one-on-one relationship and direct lines of communications inherent in such an arrangement, the Commission can ensure meaningful administrative oversight, training and quality control through contracts with individual attorneys. Those advantages obviously diminish as the number of attorneys under contract with PDSC and the associated administrative burdens on OPDS increase.

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

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

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

OPDS's Preliminary Investigation in Judicial District No. 10

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 November 7, 2007 from 9:00 a.m. to 1:00 p.m., PDSC held a public meeting in Room 316 of the Umatilla County Courthouse in Pendleton, Oregon. The purpose of that meeting was to (a) consider the results of OPDS's investigation in the district as reported in the preliminary draft report, (b) receive testimony and comments from judges, the Commission's local contractors, prosecutors and other justice officials and interested citizens regarding the quality of the county's public defense system and services, and (c) identify and analyze the issues that should be addressed in the Commission's Service Delivery Plan for Judicial District No. 10.

The initial draft of this report was intended to offer guidance to PDSC's invited guests at its November 7, 2007 meeting, as well as the Commission's contractors, public officials, justice professionals and other citizens who might be interested in this planning process, about the kind of information and comments that would assist the Commission in improving Judicial District No. 10's public defense delivery system. This final draft report and proposed service delivery plan is intended to provide the Commission with a summary of the testimony taken at the November 7, 2007 meeting and information about any changes that have occurred since that time, as well as to propose a final service delivery plan for the district.

In the final analysis, the level of engagement and the quality of the input from all of the stakeholders in the justice systems in these two counties is 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 Judicial District No. 10.

OPDS's Findings in Judicial District No. 10

Circuit Court

Judicial District No. 10 is comprised of Union and Wallowa Counties. There are two courthouses in the district, one in La Grande and one in Enterprise. The distance between the two courts is 65 miles and the travel time, in good weather, is approximately 1½ hours.

There are two judges in the Tenth Judicial District,⁴ Presiding Judge Phillip Mendiguren and Judge Russell West. Both have courtrooms in the Union County Courthouse and both hear cases at the Wallowa County Courthouse as well.

Public Defense Providers

At the time of the hearing on November 7, 2007, there were two consortia providing representation in criminal and juvenile cases in the Tenth Judicial District – the Union/Wallowa Indigent Defense Consortium (UWIDC) - “the men’s consortium” - and the Union/Wallowa Women’s Consortium (UWWC). The men’s consortium included five attorneys (two of whom were women) and handled all case types except murder and aggravated murder. It contracted to provide representation in a total of 1,470 cases over the two-year period ending December 31, 2007. In addition it received \$1,000 per month to cover drug court and \$1,000 a month to cover the early disposition program.

The women’s consortium was comprised of three attorneys, one of whom was also a part of the men’s consortium. It contracted for a mixed caseload of 384 cases for the two-year period ending December 31, 2007.

All of the attorneys are experienced and handle all case types. They all practice in both counties and many of them also appear in cases in neighboring counties when needed. The court sometimes requests that a particular attorney be assigned to a case based on the attorney’s special expertise.

⁴ In an effort to describe the workload in the district, it was reported by the Judicial Department that there were 1,395 cases of all types including violations filed per each judicial position during the period of January 1 to June 30, 2007. There were 649 cases per judicial position if violations are excluded. The statewide average without violations for this period was 1,008. During the same period one felony and 3 misdemeanors were tried in Wallowa County, and 12 felonies and 20 misdemeanors in Union.

For the current contract cycle, both groups decided to form a single consortium that includes all of the members of the previous consortia. Differences between consortium members in the past caused the attorneys to reorganize periodically. Those currently working under contract believe they can be more effective and efficient as a single consortium. Rick Dall was the administrator of the men's consortium and has been selected as the administrator of the joint consortium in the contract approved by the Commission in December, 2007.

Union County

The population of Union County in 2006 was 25,110. La Grande is the county seat. Union County has not experienced the kind of dramatic shifts in general fund dollars available for county services that other rural counties in Oregon have.

Union County District Attorney Timothy Thompson was appointed to his position in October of 2006. Prior to that appointment he had worked as a deputy district attorney in Josephine County for a number of years and at the Department of Justice for eight years. He currently has two deputies although the office previously had three and may add a third in the future. The county recently received a grant for a half-time prosecutor to specialize in domestic violence cases. The three-county region of Union, Baker and Wallowa received a five-year grant for \$250,000 per year.

Mr. Thompson said that criminal filings were down in Union County at the end of 2007 but he believed they would increase as soon as the cases currently in the system have been cleared and he recommended that the Commission not see this temporary reduction as a long-term development.

Mr. Thompson said that all of the members of the consortium are competent and experienced and he hopes that PDSC will take the necessary steps to allow these attorneys to continue handling public defense cases. He said that Rick Dall is well suited to the administrator role.

Criminal Cases

In criminal cases, attorneys are present for arraignments. Out of custody arraignments occur on Tuesdays. The district attorney selects some cases for early plea offers. Mr. Dall, the contract administrator meets with the defendants in these "rocket docket" cases and discusses the district attorney's offer with them. If a defendant decides to accept the offer, he or she generally waives counsel and proceeds to entry of plea and sentencing⁵. Those who are uncertain

⁵ A copy of PDSC's Guidelines for Participation of Public Defense Attorneys in Early Disposition Programs is attached as Exhibit A. The guidelines contemplate that counsel will establish an attorney/client relationship with the defendant in an early disposition proceeding and that the

can have additional time to consider the offer. Offers are extended in approximately 95% of misdemeanor cases and only occasionally in felony cases.

Cases that don't settle at arraignment are set for pretrial conferences. Only those cases that are not resolved at the pretrial conference are set for trial.

The judges reported that there is an active motion practice in the county.

Drug court

There has been a drug court in Union County for seven years. The court meets weekly. As of mid-September, 2007 the drug court had graduated 35 clients, terminated 16, and was currently serving 19. The District Attorney would like to see the number increased to 40. The program is currently open to applicants charged with drug possession but not manufacture. It is also open to clients charged with property offenses. Mr. Dall is the attorney who represents defendants at drug court hearings. In Union County, (unlike Umatilla County, for example), applicants for drug court generally negotiate with the District Attorney over which charge or charges will be admitted and discharged upon successful completion of drug court.⁶ No plea or stipulation is required in order to apply for admission to the program.

Comments on the criminal system

The District Attorney has been meeting with the judges on a regular basis to discuss procedure in criminal cases. Beginning late last year, the defense bar has been included in the meeting. One of the issues that Mr. Thompson believes should be addressed at a future meeting is the number of many mandatory appearances in criminal cases. Written pleas are accepted in misdemeanor cases but parties are required to appear in person in felony cases and the District Attorney believes there may not need to be as many appearances as are currently scheduled.

Comments on the quality of representation in criminal cases

It was reported that there was a period when attorneys were doing most of their own investigation. They now appear to be hiring investigators more often.⁷

court will allow the attorney to continue the matter, if necessary, to perform an investigation before advising the defendant how to proceed. It is not clear whether the Union County EDP includes legal representation in this sense.

⁶ The PDSC will be reviewing the representation of drug court clients at one of its monthly meetings in 2008.

⁷ OPDS's records confirm that Union County attorneys are now requesting approval for investigation expenses on a regular basis.

One court representative said that defense attorneys don't always assess their cases early enough in the process.⁸ While the attorneys generally do a good job for their clients, one attorney is sometimes not prepared to proceed.

The court said it would be beneficial to their clients if attorneys were able to get them involved in treatment before sentencing or at least come to court with a plan for the client. These issues were scheduled for discussion at one of the monthly meetings of the court, the district attorney and the defense bar.

Juvenile Cases

Juvenile cases are heard by both of the Circuit Court judges. Court staff tries to ensure that each case is consistently assigned to the same judge.

Delinquency cases

The juvenile director estimated that attorneys are appointed in approximately 70% of the delinquency cases in Union County. In the remaining 30% the youth generally make an admission without requesting counsel. The court regularly schedules reviews in juvenile delinquency cases and appoints the same attorney who represented the youth in the original case upon request.

The county expects to open a juvenile drug court in the near future.

Comments on quality of representation in delinquency cases

The juvenile director said that the lawyers in Union County seem to be in good contact with their juvenile clients. He said it is unusual for delinquency cases to go to trial. Defense attorneys have not often challenged their client's competency but youth under twelve are rarely prosecuted in the county. He also said that private attorneys seem to obtain psychological evaluations of their clients in sex offense cases more often than public defense attorneys.

Dependency cases

DHS files its own petitions in Union County with assistance from the district attorney's office, which appears in all dependency cases.

The court has recently begun appointing attorneys at the initial shelter hearing in dependency cases. Some attorneys are concerned about their ability to be prepared for these hearings since they generally receive less than complete discovery at this stage of the proceedings.

⁸ This representative also said that the district attorney's office doesn't always make offers in a timely manner.

Comments on quality of representation in dependency cases

One local juvenile system representative said that the general quality of representation provided by consortia attorneys is good. They attend Citizen Review Board hearings as well as court reviews and present useful information. There is one attorney who does not appear to be meeting with her child clients, however. A second attorney is reported to regularly raise issues involving legal technicalities that do not appear to be in his client's interest.

Wallowa County

Wallowa County had a population of 7,140 in 2006.

Both criminal court and juvenile court proceedings are held on Wednesdays in Enterprise, including drug courts for adults and juveniles. Pleas and pretrials in adult criminal cases are heard at 10:00 a.m. and juvenile cases at 2:00 p.m. In addition, one of the judges sits in Enterprise four to five days per month to hear trials. Each of the consortium attorneys appears in Enterprise at least once a month. Attorneys are required to be in court and are not permitted to participate from remote locations. Appearances in misdemeanor cases (in which clients are not required to be present), however, may be handled in writing.

In-custody criminal arraignments are conducted via video connection with the judge in his chambers in La Grande, the District Attorney at the courthouse in Enterprise, and the defendant at the jail. Defense attorneys are not present for arraignments because appointment of counsel does not occur until a request is made at arraignment. The attorney is notified promptly, by fax, of the appointment. A release hearing can be scheduled as soon as the following judicial day.

With respect to shelter hearings in dependency cases, because they generally have up to twenty-four hours' notice the attorneys are generally able to be present in the courtroom with the parents, DHS and the District Attorney. The judge ordinarily appears by video connection from his chambers in La Grande. The District Attorney's office is appearing in all juvenile dependency cases at this time.

Mona Williams, the District Attorney for Union County, took office in January of 2007. She had no prosecutorial experience at the time. She said that the county budget is stretched tight. The sheriff's office is short-handed and her office could use another deputy or at least an investigator. The loss of timber revenue has had a big impact on the county. The last mill in the area closed recently and there was only a one-year extension of funding under the Secure Rural Schools and Community Self Determination Act.

Ms. Williams said that the number of criminal filings had increased somewhat in the past year, although the number of methamphetamine cases declined during the same period.

She indicated that consortium attorneys appear to be good advocates for their clients and are willing to try cases. She had a lot of trials when she first took office, presumably because the defense attorneys were testing her. There is not a lot of motion practice in the county, however.

Summary of Testimony at November 7, 2007 Meeting

Judge Phillip Mendiguren, the presiding judge in Judicial District No. 10, discussed how both the two judges in the district and the defense attorneys must spend a significant amount of their time traveling between courts. He described the operation of the "rocket docket" in Union County, the drug courts in both counties and the recent addition of a juvenile drug court in Union County. He described a recent encounter with a drug court graduate which made him realize how worthwhile the time and effort invested in drug courts can be. He said that if he became aware that an attorney was not performing adequately he would notify Rick Dall, the new consortium administrator. But quality is a product of adequate compensation. Conflicts do arise between attorneys and their clients but when communication breaks down, a motion for substitution is almost always granted. It is difficult for the court to rule on some of these motions because the attorneys do not provide any information about the substance of the conflict, which they say they cannot ethically reveal. On legal issues attorneys can be trusted to cite appropriate legal authorities.

Rick Dall described the history of the two public defense consortia in the district and their proposal in this contract cycle to form a single consortium - the Grand Ronde Defenders - comprised of all six members of the existing consortia. The group has already arranged with an independent attorney to handle drug court cases in Enterprise so that consortium members do not have to make that weekly appearance. In addition, this attorney has agreed to cover arraignments for consortium attorneys. The group intends to create a board of directors and a more structured organization that will have the capacity to remove members, if necessary, who are not performing adequately. Cases are currently distributed among members on a rotation basis although a single attorney will generally be assigned to all of the pending cases for a particular defendant. All of the member attorneys are qualified to handle all of the case types that the group contracts to handle. Caseloads have been down in Union County in the past year although both the district attorney and the defense lawyers expect that they will increase now that the new district attorney has been appointed. Under the circumstances, there has been no need for additional defense lawyers. Mr. Dall noted that attorneys in the consortium receive lower rates of compensation than attorneys in neighboring counties even though they do more traveling.

Anne Morrison and Victoria Moffet described their own backgrounds and the formation of the “women’s consortium.” Ms. Moffet has been a member of both consortia. They discussed in detail the difficulties involved in trying to visit with clients who may be located in distant parts of the state because of the lack of local treatment and placement services, about the lack of defense resources such as investigators, interpreters and mental health evaluators. They suggested that OPDS recruit investigators to the area and consider whether it would be possible to assign a “courtesy” attorney to juvenile clients who are located in distant areas, much like the “courtesy workers” assigned by DHS. Both attorneys noted that the court’s recent decision to appoint counsel at shelter hearings has had a significant impact. Some cases proceed no further than the shelter hearing when it becomes clear that there are no jurisdictional grounds. Ms. Moffet also said that the early disposition program is resolving some of the minor cases to the benefit of clients. She said that it has been difficult to communicate with the district attorney’s office in juvenile delinquency cases and that the juvenile department staff has not been adequately trained to draft petitions or determine whether the requisite elements of an offense are present before filing a petition. District Attorney Tim Thompson is working to improve this process.

Summary of Developments since November 2008

Under its current contract the new consortium received a 44% increase in compensation which represents a 22% increase over the rates provided to the predecessor consortia.

Most of the persons interviewed in Judicial District 10 expressed appreciation for the quality of representation being provided by the experienced attorneys currently handling cases there. They asked that sufficient support be given to these attorneys to permit them to continue to do the job. It would probably be very difficult to replace any of these attorneys with attorneys having similar levels of experience. In addition, the lawyers are required to travel relatively long distances, sometimes in severe weather conditions, to meet with their clients and attend court hearings. The Commission’s funding priorities established at its August retreat⁹ were applied by OPDS in its contract negotiations with this group of lawyers in the hope that they would be able to continue representing public defense clients and to attract additional attorneys as needed.

Mr. Dall reported that the consortium is working on an internal consortium agreement and is continuing to discuss particulars, including how best to address performance issues. Mr. Dall has been referred to administrators of other consortia who have developed agreements of the type that the Grand Ronde Defenders are exploring.

⁹ A copy of the minutes of the Commission retreat are attached as Exhibit C.

Testimony provided to the Commission at its meeting in November indicated that there is very limited access to interpreters, investigators and mental health evaluators in Judicial District 10.

Karla Young is a certified Spanish interpreter. She provides interpreter services in multiple eastern Oregon counties, including Union and Wallowa. She is the court interpreter but also works for other clients, including public defense attorneys¹⁰. She reports that there are very few interpreters available in the area. There is one other court certified interpreter but she works principally in Washington where the compensation is better. She said that court interpretation is more complex than interpretation in other types of proceedings and the certification examination is very difficult. She knows a number of highly educated bi-lingual individuals who have not been able to pass the exam. There is a larger pool of interpreters in Baker City and Ontario but many of them work principally in Idaho. Kelly Mills is the head of interpreter services for the Oregon Judicial Department. She reported that in the past the department had offered regional testing and that it may go back to that approach in an effort to develop larger pools of applicants. The state rate of \$32.50 per hour for certified interpreters has not been increased in ten years. The “master” interpreters in the state often end up working in the federal court where the compensation is significantly higher.

Mr. Dall reported that consortium members are satisfied with the Spanish language interpreter who is available. They have found her to be helpful and flexible. They encounter more difficulty finding interpreters in other languages. They often represent Pacific Islander clients and must rely on family and friends or AT&T to provide interpreter services.

From OPDS’s non-routine expense request database, staff was able to identify a number of investigators and mental health evaluators who have been approved for work on public defense cases in Judicial District 10. OPDS has also advised contractors that it is prepared to pay the expense, when necessary, to bring experts and investigators from other parts of the state to assist in their cases.

Mr. Dall believes that currently there is an adequate supply of investigators available. Mr. Dall said that obtaining psychological evaluations has also not been a real problem. There was a dependency case several months ago when there were conflict problems but attorneys are usually able to find someone in La Grande, Baker or Pendleton. They know that if they need to go outside the area, OPDS can cover travel expenses.

¹⁰ As indicated in the testimony in November 2007, she is the only interpreter currently being used by public defense providers in Umatilla, Morrow and Wallowa Counties, except for a death penalty case in which five interpreters from the Willamette Valley were used over the course of the proceedings.

A Service Delivery Plan for Judicial District 10

PDSC expresses its sincere appreciation to all the members of the criminal and juvenile justice communities in Judicial District 10 for their assistance in informing the commission and helping to guide the creation of this service delivery plan for the district.

In light of all of the information received, PDSC approves the following service delivery plan for Judicial District 10.

A single consortium appears to be the appropriate type of provider for the district at this time. Experienced attorneys are relatively rare in this part of the state and a consortium structure provides members with flexibility in terms of the amount of time they devote to public defense cases and with the ability to add new members as needed, assuming they are available.

While the structure of the public defense system in Judicial District 10 appears to be sound, there is at least one area of concern that PDSC commends to further study and effort by consortium members. While the quality of representation provided in the district is generally regarded as very good, there are certainly some issues that need to be addressed. If lawyers are not meeting with their child clients, plans need to be made for them to do so.¹¹ If attorneys are coming to court unprepared, this information needs to be provided to the consortium administrator, and the consortium needs to have in place procedures for addressing issues of attorney underperformance, as well as the other policies and procedures outlined in OPDS's list of best practices. It is also hoped that in the future it will be possible for the consortium to become a more stable organization, even if the membership may change from time to time. Instead of restructuring periodically, the attorneys currently providing service in the area should be able to create an organizational structure that can meet their needs, the needs of their clients, and the needs of the court and OPDS over time.

¹¹ All OPDS contractors received a statement from OPDS in 2007 regarding its understanding of the role of counsel for children. The statement is attached as Exhibit D.

Attachment 7

FINAL REPORT

(December 7, 2006)

OPDS's Final Report on Service Delivery in Clatsop County & PDSC's Service Delivery Plan for the County

Introduction

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

Foremost among those strategies is PDSC's service delivery planning process, which is designed to evaluate and improve the operation of local public defense delivery systems. During 2004, 2005 and 2006, the Commission completed investigations of the local public defense systems in Benton, Lane, Lincoln, Linn, Multnomah, Marion, Klamath, Yamhill, Hood River, Wasco, 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 Clatsop County's public defense system, and the comments and discussion that occurred during PDSC's public meeting in Clatsop County held on Thursday, September 14, 2006 in the Clatsop County Courthouse in Astoria. The Commission heard from judges, public defense contractors and other justice professionals in Clatsop County regarding the condition of county's public defense system and how the delivery of public defense services in the county could be improved. The final version of this report will contain PDSC's service delivery plan for Clatsop 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 at the conclusion of 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.

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

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

OPDS has also formed a Quality Assurance Task Force of contractors to develop an evaluation or assessment process for all public defense contractors. Beginning with the largest contractors in the state, this process is aimed at improving the internal operations and management practices of those offices and the quality of the legal services they provide. In 2004, site teams of volunteer public defense managers and lawyers have visited the largest contractors in Deschutes, Clackamas and Washington Counties and prepared reports assessing the quality of their operations and services and recommending changes and improvements. In 2005, the site teams visited contractors in Columbia, Jackson, Klamath, Multnomah and Umatilla Counties and, in 2006, teams have visited the juvenile contractors in Multnomah and Lane Counties and criminal and juvenile contractors in Linn and Lincoln Counties. In accordance with its Strategic Plan for 2003-05, PDSC has also developed a systematic process to address complaints about the behavior and performance of public defense contractors and individual attorneys.

Numerous Oregon State Bar task forces on public defense have highlighted the unacceptable variations in the quality of public defense services in juvenile cases across the state. Therefore, PDSC has undertaken a statewide initiative to improve juvenile law practice in collaboration with the state courts, including a new Juvenile Law Training Academy for public defense lawyers. In 2006, the Commission has 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.

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

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

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

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

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

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

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

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

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

PDSC intends, first, to review the service delivery system in each county and develop service delivery plans with local conditions, resources and practices in mind. Second, in conducting reviews and developing plans that might change a local delivery system, the Commission is prepared to recognize the efficacy of the local organizations that have previously emerged to deliver public defense services in a county and leave that county's organizational structure unchanged. Third, PDSC understands that the quality and cost-efficiency of public defense services depends primarily on the skills and commitment of the attorneys and staff who deliver those services, no matter what the size and shape of their organizations. The organizations that currently deliver public defense services in

Oregon include: (a) not-for-profit public defender offices, (b) consortia of individual lawyers or law firms, (c) law firms that are not part of a consortium, (d) individual attorneys under contract, (e) individual attorneys on court-appointment lists and (f) some combination of the above. Finally, in the event PDSC concludes that a change in the structure of a county's or region's delivery system is called for, it will weigh the advantages and disadvantages and the strengths and weaknesses of each of the foregoing organizations in the course of considering any changes.

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

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

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

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

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

organizations, including paralegals, investigators, automated office systems and formal personnel, recruitment and management processes.

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

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

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

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

³ Id.

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 Investigations

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

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

This preliminary draft report provided a framework to guide the Commission's discussions about the condition of the public defense system and services in Clatsop County, and the range of policy options available to the Commission — from concluding that no changes are needed in the county to significantly restructuring the county's delivery system. The preliminary draft was also intended to provide guidance to PDSC's guests and audience members at its September 14th meeting in Astoria, as well as the Commission's contractors, local public officials, county justice professionals and private citizens who were interested in this planning process, about the kind of information that would assist the Commission in improving the delivery of public defense services in Clatsop County.

In the final analysis, the level of engagement and the quality of the input from all of the stakeholders in the judicial district's justice system is probably the single most important factor contributing to the quality of the final version of this report and PDSC's service delivery plan for Clatsop County. Accordingly, OPDS invited written comments from any interested public official or private citizen prior to the Commission's September 14th meeting in Astoria.

A Demographic Snapshot of Clatsop County⁴

⁴ The following information was taken from Clatsop County's official website, [Wikipedia](#) and data compiled by Southern Oregon University's Southern Oregon Regional Services Institute, which is contained in the Institute's [Oregon: A Statistical Overview](#) (May 2002) and [Oregon: A Demographic Profile](#) (May 2003).

Named after the Clatsop Indian Tribe, Clatsop County with a population of 36,000 is located on Oregon's rugged northwest coast. Incorporated cities in the county include Astoria, Cannon Beach, Gearhart, Seaside and Warrenton. The county's principal industries are fishing, lumber, and agriculture. About 30 percent of the land within Clatsop County belongs to the State of Oregon as part of Oregon's state forest system.

The Lewis and Clark Expedition wintered at Fort Clatsop in 1805-06. Astoria, the state's oldest city named after John Jacob Astor, was established as a fur trading post in 1811. On June 22, 1844, Clatsop County was created from the northern and western portions of the original Twality District. Until the creation of Vancouver County, Washington, Clatsop County extended north across the Columbia River. Provisional and territorial legislatures established Clatsop County's present boundaries in 1845 and 1853.

Before 1850, most of Clatsop County's government was located in Lexington, Oregon, a community located where Warrenton is now. As Astoria grew, it became the center of commerce and industry in the county. The county's residents chose Astoria as the county seat in 1854. The Port of Astoria was created in 1914 to support trade and commerce in Clatsop County.

Fort Stevens, located near the peninsula formed by the south shore of the Columbia River and the Pacific Ocean, was the only military installation in the continental United States that was attacked during World War II. A submarine from of the Imperial Japanese Navy fired 17 rounds at Fort Stevens on June 21, 1942 and escaped before the fort's guns could return fire. Damage to the fort was slight (reportedly a baseball backstop was destroyed and a power line severed).

Approximately 13 percent of Clatsop County's residents hold an undergraduate college degree and 6.5 percent have a graduate degree (compared to respective statewide averages of 16.4 percent and 8.7 percent).⁵ Twenty-seven percent of the county's adult population is employed in management or professional positions, compared to the state's average of 33.1 percent. Compared to a statewide average of 26.3 percent, 29 percent of Clatsop County's residents over the age of 25 graduated from high school.

In 2000, Clatsop County had one of the lowest unemployment rates among Oregon's 36 counties at 4 percent. Its per capita annual income was \$19,515, compared to a statewide average of \$20,940. The county had a relatively high poverty rate, however, at 13.2 percent, compared to an 11.6 percent rate in Oregon and a 12.4 percent rate in the United States. The teen pregnancy rate in the county is below average at 15.9 per 1,000 residents, compared with the statewide average of 16.7. Clatsop County's high school dropout rate was Oregon's 14th lowest over the past decade.

⁵ In comparison, the respective numbers in Yamhill County are 13.4 and 7.2 percent and, in Klamath County, they are 10.6 and 5.4 percent.

The diversity of Clatsop County's population is relatively low. Its non-white and Hispanic residents make up 9.2 percent of the county's population, compared to 16.5 percent for Oregon as a whole.

With juveniles (18 years old or younger) making up 24 percent of Clatsop County's total population, its "at risk" population (which tends to commit more criminal and juvenile offenses) equals the state average. Not surprisingly, its "index crime" rate is also equal to Oregon's at 50 index crimes per 1,000 residents (compared to the state's rate of 49.2);⁶ however, its juvenile arrest rate was the ninth highest in the state (at 75.6 per 1,000 residents compared to Oregon's average of 53).

In 2005, the public defense caseload in Clatsop County totaled 2,114 out of 171,850 cases in the state. That amounted to 1.2 percent of Oregon's public defense caseload in 2005.

OPDS's Preliminary Findings in Clatsop County

On August 24 and 25, 2006 John Potter and Peter Ozanne visited Clatsop County on behalf of OPDS to gather preliminary information for PDSC's September 14th meeting in the county. They interviewed both Circuit Court Judges, members of the court's staff, the District Attorney and the Sheriff, representatives of the county's juvenile department, the Citizens Review Board and the local office of the Department of Human Services, and the administrator of one of PDSC's public defense contractors.⁷

Six lawyers in two consortia contract with PDSC to provide public defense services in Clatsop County. Clatsop County Defenders Association (CCDA) is made up of four attorneys including its administrator, Kris Kaino. The second consortium is made up of Dawn McIntosh and Mary Ann Murk. Ms. Murk administers the consortium (the "Murk Consortium"). The public defense attorneys have between nine and 30 years of law practice experience and devote most of their time to public defense practice.

Both consortia pay their members each month based on the percentage of work they perform under the consortia's contracts each month, and the attorneys settle up with their consortia based on value of work at the end of their respective contracts. Kris Kaino assigns arraignment pickup days for both consortia. Based

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

⁷ As of the date of this Preliminary Draft report, OPDS was unable to talk with the administrator of Clatsop County's other public defense contractor or management and staff of the county's community corrections department; however, like all the other persons in Clatsop County interviewed by OPDS, they have been invited to attend and speak at the Commission's September 14, 2006 meeting in Astoria.

upon the experience of OPDS's Contract and Business Services Division (CBS), all the attorneys in both consortia work well together. There are minor variations in contract rates between CCDA and the Murk Consortium; however, both consortia are aware of the differences and apparently prefer this option because of the difference in their mix of cases.

Based upon its two days of in-person interviews and subsequent telephone interviews, OPDS found that virtually all of the justice officials and professionals in Clatsop County are generally quite satisfied with the operation of its public defense system and the quality of legal services delivered by that system. Although assessments of the skills and commitment of among the six lawyers who contract with PDSC varied, four attorneys received numerous compliments for their dedication and advocacy skills and none were considered less than competent.

Both attorneys in the Murk Consortium were singled out for their strong personal commitment and zealous advocacy on behalf of children in juvenile dependency cases. Not surprisingly, they receive most of the court appointments as counsel for children in the county's dependency cases. Most assessments of the performance of CCDA's attorneys in juvenile cases were less complimentary, including impressions that some of the attorneys' apparent commitment to their parent-clients in dependency cases did not equal their commitment to defendants in criminal cases and observations that several CCDA attorneys frequently fail to contact their clients or obtain pretrial discovery prior to their first appearance in delinquency cases. Because the Circuit Court seriously considers the recommendations of Clatsop County's CRB, most attorneys regularly attend the CRB's hearings; however, at least one of CCDA's attorneys apparently fails to attend most CRB hearings involving his clients.

One judge complimented the county's public defense attorneys for their willingness to participate on local policymaking bodies and contribute to court improvement projects.

Neither CCDA nor the Murk Consortium apparently has a board of directors, by-laws or formal quality assurance or disciplinary policies and procedures. Neither consortium's administrator was aware of a reason why Clatsop County has two consortia, other than the State of Oregon's desire in the past to promote competitive bidding among local public defense attorneys. According to the Circuit Court, when the conduct or performance of an individual attorney is called into question, judges take up the matter directly with that attorney. Representatives of other justice agencies in the county were unaware of any means to bring problems or complaints to the attention of the consortia or whether anyone in either consortium was responsible to handle problems and complaints.

During the course of its interviews, OPDS identified five significant concerns

regarding the future of public defense in Clatsop County. First, the Circuit Court, in particular, is deeply concerned about the limited supply of qualified public defense attorneys in the county. Assuming that six defense attorneys can continue to competently handle a caseload generated by a District Attorney's office with six or seven prosecuting attorneys,⁸ both judges in Clatsop County wonder what the court will do when one of those six attorneys leaves public defense practice.⁹ Apparently, no other attorneys in the county have expressed a willingness to engage in public defense practice and, due to the quality of the attorneys from outside Clatsop County who have been willing to take appointments in the past, the judges believe importing attorneys from other counties on a regular basis is not a feasible solution. Indeed, one of the Circuit Court's judges is so concerned about the impending shortage of public defense attorneys in the county that she traveled to the University of Oregon Law School to encourage recent graduates to enter law practice in Clatsop County and take court appointments.

Second, although the demands of public defense caseloads are a concern in most counties of the state, complaints by consortium attorneys and the District Attorney about the demands of Clatsop County's caseload seemed especially emphatic. The focus of these complaints is the speed with which the Circuit Court processes the criminal and juvenile cases on its docket, which the attorneys believe prevents them from properly evaluating, preparing and resolving many of their cases.¹⁰ While those attorneys expressed appreciation for the Circuit Court's efforts to maintain high standards of judicial administration, they feel that the level of Clatsop County's justice resources, including its supply of lawyers, cannot continue to support what they perceive as one of the fastest moving dockets in the state. Nearly all of the justice professionals with whom OPDS spoke also noted that handling of juvenile and criminal caseloads in Clatsop County is further complicated by variations in the practices and procedures in the two departments of the Circuit Court, which are due at least in part to a lack of communication between the county's judges on matters of judicial administration.

Third, another concern expressed to OPDS in Clatsop County, as well as throughout the state, is the rates paid under the county's public defense contracts. In particular, the attorneys and judges in the county reported what they believe is an unjustified variation in the rates attorneys are paid to handle juvenile dependency cases in Clatsop County compared to Multnomah County. The experience of the Juvenile Rights Project (JRP) in Clatsop County was cited

⁸ Clatsop County's District Attorney informed OPDS that his office will receive funding from the county for a seventh attorney in December, but he indicated that the county's commitment for this funding is limited to six months.

⁹ One consortium attorney is currently a candidate in a run-off election for the new Circuit Court Judge in Clatsop County. OPDS understands that other consortium attorneys may be considering retirement or significant changes in their law practice specialties.

¹⁰ Everyone who voiced this concern also expressed hope that the addition of a third judge in the Clatsop County Circuit Court will reduce the pressures of the court's docket.

during one of OPDS's interviews as evidence of this unfair disparity in contract rates. JRP at one time handled a juvenile dependency caseload in Clatsop County under contract with the state. According to the information OPDS gained from this interview, JRP chose not to seek renewal of its contract with the state because it could not afford to operate under the contract rates paid for that work in Clatsop County.

Fourth, OPDS is concerned about (1) an apparent absence of criminal defense attorneys in Clatsop County's early disposition program (EDP), (2) differing perceptions in the county about the reasons for this absence of defense attorneys, including perceptions of PDSC's lack of support for EDPs, and (3) the possibility in light of these perceptions that defense attorneys may be excluded from other specialty court programs in the county such as drug courts. One of the county's judges reported that defense attorneys do not participate in his department's EDP in part because a staff person at OPDS informed him that the agency refuses to provide financial support for the participation of lawyers in EDPs. The county's other judge noted that defense attorneys do not participate in the EDP because they have refused to do so for philosophical reasons. One of the consortium's administrators informed OPDS that defense attorneys feel ethically bound not to participate in Clatsop County's EDP because the District Attorney has refused to provide discovery before the court appearances of defendants who qualify for the EDP. The District Attorney, on the other hand, indicated that police reports are available for review in the courtroom at EDP proceedings and that defendants are given a week to consider the prosecution's settlement offer or consult with an attorney.

OPDS advised all of these individuals of (a) PDSC's support for EDPs, (b) the Commission's development of EDP guidelines in order to ensure the participation of defense attorneys in EDPs that is consistent with their legal and ethical obligations to their clients¹¹ and (c) PDSC's commitment to assist counties like Clatsop County in the development of quality, cost-efficient EDPs. Nevertheless, because the participation of defense attorneys apparently varies in the criminal drug courts administered by the two departments of the Clatsop County Circuit Court, and because the court is currently developing a new juvenile drug court, OPDS is concerned that the county might not avail itself of the Commission's assistance and support for specialty court programs like EDP and drug courts. As a result, Clatsop County may proceed to administer drug courts and continue to administer its EDP without the participation of defense attorneys.

Finally, as noted above, neither CCDA nor the Murk Consortium has adopted the kinds of organizational structures, programs or processes that PDSC generally recommends for consortia. This raises a concern that Clatsop County's public defense delivery system may not have the capacity to meet the future demands of public defense practice in the county.

¹¹ A copy of PDSC's Early Disposition Guidelines is attached in Appendix A.

OPDS's Recommendations for Further Inquiry at
PDSC's September 14, 2006 Meeting in Astoria

In light of the foregoing concerns, OPDS recommends that PDSC focus its inquiries and discussion at the Commission's September 14th meeting in Astoria on the following five topics:

1. The supply of public defense attorneys in Clatsop County. OPDS recommends that PDSC discuss with the judges and lawyers in attendance at the Commission's September 14th meeting feasible options for increasing the supply of qualified public defense attorneys in Clatsop County. For example, in light of efforts by at least one judge in the county to recruit recent law school graduates into public defense practice, the Commission might consider joining forces with Clatsop County and other similarly situated counties to establish formal law school recruitment teams. These teams could appear at Oregon's three law schools during the hiring season for the purpose of encouraging law students to consider public service positions in underserved areas of the state that offer unique opportunities for legal employment and quality of life.
2. The demands of Clatsop County's public defense caseload. With additional analysis and information from CBS's contract staff, such as comparative data on caseloads across the state, PDSC should inquire into whether the rate at which cases on Clatsop County's Circuit Court docket are processed is unusually high. If so, the Commission might also inquire into the prospects for relieving the pressure of the court's docket, such as the pending addition of another judge, and how PDSC and the Commission's contractors in Clatsop County can assist in relieving that pressure.
3. The contract rates for Clatsop County's consortia. With the benefit of further information from CBS on comparative contract rates, the Commission should discuss the experiences and perceptions of judges and lawyers in Clatsop County regarding (a) the unique challenges of public defense practice in the county, (b) how those challenges might compare with the challenges of public defense practice in counties with higher contract rates (such as Multnomah County) and (c) why the contract rates in Clatsop County should be equal or closer to counties with higher rates. If, in the opinion of PDSC, it appears possible that the contract rates in Clatsop County should be raised to match the rates in other counties, or it appears that further study of these rates and the rates in other counties is justified, the Commission should consider directing OPDS to conduct a study of contract rates in furtherance of PDSC's policy to establish more rational and predictable public defense contract rates in

Oregon.¹²

OPDS's study should be designed to determine if more consistent rates can and should eventually be established across the state. Those rates might include standardized base case rates, with permissible limited variations that take into account local circumstances such as prosecutorial charging practices and the nature and extent of judicial proceedings within specific case categories. Depending on OPDS's assessment of the difficulty of this task and the Commission's assessment of its current priorities, the study could be designed as a pilot project affecting the contract rates in a limited number of counties or as a statewide study affecting the contract rates in every county in the state. In either case, the study should be designed to implement new contract rates or a new rate system for implementation in the affected counties during the formation of contracts in 2007.

4. The participation of defense attorneys in Clatsop County's EDP and other specialty court programs. In developing guidelines for the design and operation of EDPs in consultation with the Oregon Criminal Defense Lawyers Association, the Oregon District Attorneys Association and the Chief Justice's Criminal Justice Advisory Committee, PDSC recognized that the interests of individual defendants and the taxpaying public can be served by the expeditious resolution of cases in which prosecutors offer relatively favorable dispositions or the opportunity to participate in rehabilitative corrections programs. The Commission also recognized, however, that EDPs or other specialty court programs, which lack the usual court processes of adjudication in favor of prompt resolutions or therapeutic objectives and which fail to provide access to legal counsel in the courtroom, present the risk that uncounseled defendants, especially with language or educational deficits, will be unable to fully understand the range of legal options available to them or the legal and personal consequences of their legal decisions.¹³ Consequently, PDSC's EDP guidelines were designed to promote the participation of defense counsel in these programs while preserving their advantage in terms of the expeditious resolution of case and cost savings.

OPDS urges the Commission, during the course of its discussions with judges and lawyers in Clatsop County on September 14th, to confirm its

¹² During the course of its discussions and deliberations over the past several years, the Commission has referred to this policy as the pursuit of an "administrative model" with relatively standardized contract rates largely determined in advance by PDSC, as opposed to the pursuit of a "market model" with variable contract rates that depend on the relative knowledge and negotiating skills of the parties and the supply and demand for lawyers in the relevant market (or county).

¹³ The Clatsop County District Attorney did report that the presiding judge in the county's EDP is extraordinarily rigorous in advising uncounseled defendants of their legal rights and accepting waivers of those rights or guilty pleas.

commitment to ensuring the participation of defense attorneys in the development and operation of EDPs and other specialty court programs. PDSC should also offer the assistance of OPDS, its Quality Assurance Task Force and local public defense attorneys to assist the Clatsop County Circuit Court in developing cost-efficient specialty court programs that are consistent with (a) the mission of the county's criminal and juvenile justice systems to ensure due process and promote public safety, (b) the rights of victims and public defense clients in the county and (c) the interests of the taxpaying public.

5. The organizational development of Clatsop County's consortia.

Like some relatively small, well-established consortia in other parts of the state that deliver public defense services to the general satisfaction of local courts, Clatsop County's consortia appear to operate primarily for the purposes of submitting contract proposals to PDSC and administering their contracts in accordance with CBS's contracting policies and procedures. Neither consortium appears to have adopted the organizational components that the Commission has recommended to other consortia in the state, such as a board of directors, a formal organizational structure, a complaint process, an attorney disciplinary process and training, mentoring, recruitment and quality assurance programs. As a result, Clatsop County's delivery system may not be capable of adapting to a future that will inevitably include population and caseload growth, personnel changes on the Circuit Court,¹⁴ in the consortia and in the District Attorney's office,¹⁵ and changes in state and local justice and law enforcement policies.

During PDSC's September 14th meeting, OPDS recommends that the Commission inquire into the feasibility of and support for adopting some or all of the foregoing organizational features of consortia in Clatsop County. In accordance with PDSC's general policy of refraining from imposing organizational structures and processes that are inconsistent with the culture and local practices in a county, the Commission may wish to weigh the advantages of recommending changes in the organization and operation of Clatsop County's consortia against (a) the level of local satisfaction with the consortia's current operations and legal services, (b) the importance of first addressing the other concerns described above and (c) the current demands on the six attorneys who provide public defense services in the county.

The Results of PDSC's September 14, 2006 Meeting in Astoria

¹⁴ Following the results of the November election, Clatsop County will have a third Circuit Court Judge.

¹⁵ Clatsop County will have an additional deputy district attorney in December, which may be a permanent addition to the District Attorney's office depending on a continuation of county funding.

The commission heard testimony from the two circuit court judges for Clatsop County, Judge Phillip Nelson and Judge Paula Brownhill, from the Director of the Clatsop County Juvenile Department, Georgia Gates, from R. Hendricks of the Oregon Youth Authority, and from public defense attorneys Mary Ann Murk, Kris Kaino, Ty Settles, Don Haller and John Orr. Comments were also received from Cora Lane, the Director of Community Corrections, and from Josh Marquis, the District Attorney for Clatsop County. Peter Ozanne and Kathryn Aylward provided additional information.

In general, the witnesses testified that the six consortium attorneys are competent and hardworking. They were particularly praised for their work in juvenile cases – for attending meetings for which they are not directly compensated and for continuing to represent their clients after the initial disposition. It was reported that they appear to be trying the appropriate cases and litigating appropriate motions. They are also actively involved in the local criminal and juvenile justice systems.

Witnesses and commission members also discussed each of the five potential issues identified in the draft report.

The supply of public defense attorneys in Clatsop County.

There is currently, or almost certainly will be in the near future, a need to add new public defense attorneys in Clatsop County and to replace current members as they pursue other professional options. Some witnesses said that the six consortium attorneys are overwhelmed by their caseloads. One of the judges said that more lawyers are needed. One of the consortium administrators said that, while he believes they are able to handle the current workload, in a perfect world where the system was adequately funded they could use one or two more attorneys. In addition, a third judge will be added in January of 2007. While some believe this may lighten the load for the attorneys, others anticipate that it will have the opposite effect.

Attracting new public defense attorneys to the county could be difficult. Some of the obstacles to successful recruitment are case rates¹⁶, which are lower in Clatsop County than in some other counties; high caseloads¹⁷; the rising cost of living in the area; the significant indebtedness of many newly admitted attorneys; the inability, due to time constraints, of current consortium members to mentor new members.

¹⁶ The director of the juvenile department testified that “In order to bring attorneys into this town, you are going to have to pay them.”

¹⁷ Of course, as a number of witnesses testified, if case rates were increased the consortia might then be in a financial position which would allow them to hire additional attorneys and lower their caseloads.

Possible solutions include increased case rates, a loan forgiveness program through the state or federal government, stipends to assist with relocation costs and assistance with recruitment as outlined at page 16 of this report.

The demands of Clatsop County's public defense caseload

Judge Nelson said he wondered how the consortium attorneys could keep up with the caseload. He suspected that they were overwhelmed by the number of cases and appearances. The director of the county juvenile department said that juvenile attorneys are overwhelmed by the demands of juvenile practice.

The recent implementation of an early resolution process may help resolve cases sooner and prevent set-overs. In recent years the number of trials has fallen dramatically. Some witnesses believed that the addition of a third judge might help to slow the pace. The local legal community previously came together to review docketing practices. After approximately a year of discussion the current docketing system was implemented and had positive results.

Possible solutions to the caseload issue include continued coordination among members of the local legal community to reduce unnecessary appearances; increased case rates which would permit the consortia to add new attorneys; the use of trained professional volunteers such as the AmeriCorps attorneys currently placed at the Juvenile Rights Project in Portland; the use, when appropriate of investigators to assist in the observation and assessment of child clients' placements and circumstances.

In addition, in the next biennium there may be supplemental funding available to reduce caseloads, increase compensation and improve representation in juvenile dependency proceedings.¹⁸

The contract rates for Clatsop County's consortia. Judge Nelson told the commission "You need to pay your providers here more money." Judge Brownhill noted the difference in rates for juvenile attorneys in Clatsop County compared with juvenile attorneys in other counties. One consortium attorney testified that he had examined the contracts of other providers in the state and determined that the rates in Clatsop County were among the lowest in the state. Another consortium attorney reported that she was paid \$210 for representing a child client at a dependency hearing. In order to prepare for that hearing it was necessary to spend several hours at meetings and twenty to thirty hours driving to Ontario, Oregon to visit with her client.

Chair Ellis explained that the commission had directed OPDS to address any rate disparities (that were not based on articulable differences in circumstances) as resources permitted, but without reducing the rates of any contractor. He

¹⁸ A bipartisan group of legislators has formed the Dependency Representation Workgroup to explore methods of improving representation in juvenile dependency cases.

acknowledged that the elimination of disparities could not occur immediately.

As suggested above at page 15 of this report, the Commission may wish to weigh the unique challenges of public defense practice in Clatsop County against the challenges of practice in counties with higher rates and determine whether Clatsop rates should be equal or closer to those higher rates. The commission could also direct OPDS, prior to the next contract cycle, to conduct a study of contract rates in furtherance of PDSC's policy to establish more rational and predictable public defense contract rates in Oregon.

The participation of defense attorneys in Clatsop County's EDP and other specialty court programs

Witnesses testified that the county's early disposition program permits defendants charged with relatively minor offenses to resolve their cases at or shortly after arraignment.

Consortium attorneys testified that they had declined to participate in the county's EDP program because they did not believe they would have adequate discovery or time to investigate the case, and because the compensation offered them was inadequate. One attorney was concerned that his reputation among the general public would be negatively affected by involvement in a program that "just moves people in and out." Judge Nelson said that when the program was in the development stage he asked the Indigent Defense Services Division about compensation for the defense attorneys and that he didn't "think there was anybody willing to work for that price."

An experienced Marion County attorney reported that he and other Marion County attorneys had participated in that county's early disposition program from the beginning. He believed the program served a useful purpose for clients charged with minor offenses who wanted to resolve their cases quickly. He attributed the success of the program to the involvement of experienced defense and prosecution attorneys.

Members of the commission noted that an early disposition program could be of benefit to out-of-town weekend visitors without significant criminal records who did not want to return to Clatsop County to contest the charges. Currently, because defense attorneys are not present, these individuals receive no legal representation¹⁹. While the position of the Clatsop consortium attorneys appears to be a principled one, some reconsideration of their position might be in order in view of the experience in Marion and other counties and the importance of providing legal representation to the participants in the program.

Further discussion, including a discussion of the appropriate compensation rate,

¹⁹ A consortium attorney said that one of his clients in a retained case had accepted an EDP offer without realizing that it would result in the loss of his driver's license.

might be productive, particularly if experienced attorneys from jurisdictions such as Marion County were included.

The organizational development of Clatsop County's consortia

Testimony from consortium attorneys as well as OPDS staff clarified that the existence of two separate consortia in Clatsop County was the result of a number of historical events rather than conscious planning. Both consortia operate with a minimum of organizational structure.

While there is general satisfaction with the services provided by both consortia the Commission could nevertheless recommend to both groups consideration of the benefits that might accrue from consolidation of the two consortia and from adoption of some of the organizational components that the Commission has recommended to other consortia in the state. Participation in the consortia workgroup currently being organized by consortia managers would give the Clatsop County organizations an opportunity to discuss these issues with similarly situated contractors.

PDSC's Service Delivery Plan for Clatsop County

PDSC is grateful for the cooperation and hospitality extended to its staff and its members during its visit to Clatsop County and the initial investigations made in preparation for that visit. PDSC expresses its sincere appreciation to all the members of the Clatsop County criminal and juvenile justice communities for their assistance in informing the commission and helping to guide the creation of this service delivery plan for the County.

PDSC incorporates into this service delivery plan as its factual bases for the recommendations that follow: (a) The information that OPDS received during its visit to Clatsop County on August 24 and 25, 2006 and reported to PDSC in the preliminary draft of this report, and (b) the presentations and comments to the commission at its September 14, 2006 meeting, which are summarized above.

Based on these factual bases and the commission's discussions and deliberations during its October 20th meeting, PDSC adopts the following four components of a service delivery plan for Clatsop County.

1. Appropriateness of Contractual Structure. The two-consortia model seems to be working satisfactorily in Clatsop County. Both consortia members and OPDS's contract and business services staff report that the system works effectively; and virtually all of the local justice officials and professionals interviewed express satisfaction with the operation of the defense system and

the quality of defense services provided in the county. No structural changes appear to be needed in Clatsop County.

While neither consortium has a board of directors or formal policies and procedures as outlined in OPDS's developing list of "best practices" (Exhibit A), these practices may be of limited utility in such small organizations. Both consortia are encouraged, however, to be aware of recommended practices and to consider the potential benefits some of those practices might have for them and their members.

2. Caseloads/Compensation/Recruitment. High caseloads, compensation rates that are lower than rates in some areas of the state and difficulty in recruiting new public defense attorneys to the county are interrelated problems that will need to be addressed by PDSC and the Clatsop County consortia working together.

During the current legislative interim a bi-partisan group of Oregon legislators has been examining the relationship between high caseloads, low rates of compensation and the quality of representation in juvenile dependency cases. It is anticipated that this group will propose legislation in the 2007 session to improve quality by, among other things, limiting caseloads and increasing compensation.

If additional funds are available to PDSC for dependency representation in the next contract cycle, OPDS staff and the two Clatsop consortia will need to consider how to use those resources most effectively to address the interrelated caseload, compensation and recruitment issues in the county.

Whether or not additional resources are available for the next contract cycle, PDSC will need to determine how funds that are appropriated will be distributed among its providers. In order to facilitate this discussion OPDS staff will need to develop a method for comparing rates that takes into account the many variables that affect the appropriate values for particular case types from one county to another. If the Commission determines that its goal is consistency of rates, these many variables will have to be articulated and assigned appropriate values.

In 2003 the Commission identified a number of strategies for assisting public defense providers in outlying areas of the state to attract and retain attorneys. These included offering extended contracts with guaranteed caseloads, establishing apprenticeship training programs in larger contract offices for attorneys willing to commit to practicing in underserved areas, offering housing support, technical support and/or capital assistance for attorneys willing to relocate to underserved areas. If caseload and compensation factors indicate that the Clatsop County public defense community needs additional attorneys before the next contracting cycle and that it would be

feasible for both the new attorney(s) and the current consortium attorneys to add a new attorney or attorneys, OPDS should be prepared to assist in the effort by exploring ways of implementing these strategies in such a way that they benefit both the new attorney and the current providers.

In addition, OPDS should establish a law school recruitment team to appear at Oregon's three law schools during the hiring season to encourage students to consider public defense employment opportunities in all parts of the state, including underserved areas. OPDS should work with the Diversity Task Force to coordinate recruitment efforts.

3. Participation in EDP programs. Early Disposition Programs that meet PDSC's standards can be a cost-effective alternative to full prosecution and can provide significant benefits to many defendants. Defendants given the option of participating in these programs are entitled to the assistance of counsel. Indigent defendants in Clatsop County are not being afforded such representation.

OPDS will offer to work with Clatsop County judges, the district attorney and both consortia to identify and address any obstacles (including inadequate discovery) to defender participation in EDP programs in the county. Experienced defense attorneys from counties with effective EDP programs will be invited to participate.

In view of the Commission's mandate to promote quality, cost-effective defense services, OPDS will also initiate a discussion with the Oregon District Attorney's Association about creating statewide standards for EDP programs.

4. Juvenile law practice. Murk Consortium attorneys were reported to be doing superior work on behalf of their child clients in juvenile dependency cases. CCDA, however, like many of PDSC's other contractors who provide legal representation in juvenile cases, apparently needs to improve the quality of its juvenile law practice. Some CCDA attorneys are reported to be inadequately committed to their parent clients and ill prepared for initial hearings in delinquency cases. The Commission recommends that CCDA attorneys review the Oregon Rules of Professional Conduct, PDSC contract requirements, and the revised bar standards²⁰ regarding appropriate representation in these cases. The commission further recommends that OPDS consider sending a Quality Assurance Task Force site team to Clatsop County to examine the quality of representation in juvenile cases. PDSC

²⁰ The General Principles for Counsel in Criminal, Delinquency, Dependency and Civil Commitment Cases, the General Standards for Representation in All Criminal, Delinquency, Dependency, and Civil Commitment Cases, the Specific Standards for Representation in Criminal and Juvenile Delinquency Cases, the Specific Standards for Representation in Juvenile Dependency Cases, and the Specific Standards for Representation in Civil Commitment Proceedings

requests that CCDA report back to the commission no later than October 1, 2007 regarding steps taken to address these issues.