

Members

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Henry H. Lazenby, Jr.
John R. Potter
Janet C. Stevens



Ex-Officio Member

Chief Justice Paul J. De Muniz

Executive Director

Peter A. Ozanne

PUBLIC DEFENSE SERVICES COMMISSION

Thursday, May 11, 2006 Meeting*

9:00 a.m. to 1:00 p.m.**

Multnomah County Juvenile Justice Complex
(Donald E. Long Center)
Courtroom No. 2
1401 N.E. 68th Avenue***
Portland, Oregon

AGENDA

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| 1. Action Item: Approval of the Minutes of PDSC's April 13, 2006 Meeting (<i>Attachment 1</i>) | Barnes Ellis |
| 2. OPDS's Monthly Report (<i>Attachment 2</i>) | OPDS's Management Team |
| 3. Action Item: Review and Approval of Proposed Contracts (<i>Attachment 3</i>) | Kathryn Aylward |
| 4. Action Item: Approval of Change In Compensation Plan (<i>Attachment 4</i>) | Kathryn Aylward |
| 5. An Assessment of the Delivery of Public Defense Services in Juvenile Dependency Cases (<i>Attachment 5</i>) | Peter Ozanne
Ingrid Swenson |
| <ul style="list-style-type: none"> • An Overview of Juvenile Dependency Practice & Procedure | Judge Elizabeth Welch |
| <ul style="list-style-type: none"> • Best Practices & Challenging Developments in the Law | Professor Leslie Harris |
| <ul style="list-style-type: none"> • Lawyers' Perspectives on the Challenges & Quality of Juvenile Dependency Practice | Angela Sherbo
Lindsay Partridge |

- Where Do We Go From Here? Ingrid Swenson & Guests
- 6. Impact of House Bill 3511 ("Jessica's Law") (*Attachment 6*) Kathryn Aylward
- 7. **Action Item:** Review & Approval of the Service Delivery Plan for Judicial District No. 7 (*Attachment 7*) Peter Ozanne

Notes

**PDSC's next meeting is scheduled for Thursday, June 15, 2006, from 9 to noon at the Inn of the Seventh Mountain in Bend, Oregon.*

***Lunch will be available immediately following the meeting in the cafeteria at the Donald E. Long Center.*

****Directions to the Meeting Location: Heading east on Highway 84, take the 68th Avenue exit. Turn immediately right onto 68th Avenue heading south. Turn right within half a block into the parking lot in front of the Donald E. Long Center. Parking is also permitted along 68th Avenue.*

Attachment 1

PUBLIC DEFENSE SERVICES COMMISSION

OFFICIAL MEETING MINUTES

April 13, 2006 Meeting
Hood River County Courthouse
Courtroom 301
309 State Street
Hood River, Oregon

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

STAFF PRESENT: Peter Ozanne
Kathryn Aylward
Ingrid Swenson
Laura Anson

[The meeting was called to order at 11:05 a.m.]

Agenda Item No. 1 Minutes of February 9, 2006 meeting

01 **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. 2 OPDS Monthly Report

012-216 Peter Ozanne reported on Peter Gartlan's argument before the U.S. Supreme Court in Oregon v. Sanchez-Llama and OPDS's response to an erroneous report in The Oregonian newspaper regarding the Secretary of State's Audit of the Indigency Verification and Application/Contribution Programs.

Agenda Item No. 3 Introduction of the Preliminary Report on Service Delivery in Judicial District No. 7

217-Tape 3; Side B-068 Peter Ozanne summarized the results of OPDS's preliminary investigation in Judicial District No. 7 and the contents of its preliminary draft of a report on service delivery in the district. The Commission then received comments and discussed issues regarding service delivery in the district with Presiding Circuit Court Judge, Hood River County District Attorney John Sewell, Jack Morris, a senior partner in Morris Olson, Wheeler County District Attorney Tom Cutsforth, Circuit Court Judge John V. Kelly, Kevin Hashizume, the administrator of WSIDC and Brian Aaron of Aaron & Associates.

069-338

Steve Gorham, the Executive Director of Marion County Association of Defenders (MCAD) summarized MCAD's written progress report on the consortium's improvements in its operations and quality assurance programs.

Agenda Item No. 5

Continuing Review of PDSC's Contracting Process

340-568

Greg Hazarabedian, the Executive Director of Public Defense Services of Lane County, Inc., elaborated on his written comments on PDSC's contracting process. Peter Ozanne commented on the contracting plan and process OPDS has followed in accordance with the directions of PDSC.

572

MOTION: Shaun McCrea moved to adjourn; Chip Lazenby seconded the motion; hearing no objection the motion passed. **VOTE: 5-0**

[The meeting was adjourned at 3:55 p.m.]

PUBLIC DEFENSE SERVICES COMMISSION

UNOFFICIAL MEETING TRANSCRIPT

April 13, 2006 Meeting
Hood River County Courthouse
Courtroom 301
309 State Street
Hood River, Oregon

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

STAFF PRESENT: Peter Ozanne
Kathryn Aylward
Ingrid Swenson
Laura Anson

[Tape 1, Side A]

Agenda Item No. 1 Minutes of February 9, 2006 meeting

01 Chair Ellis [The meeting was called to order at 11:05 a.m.] The first item on the agenda is the minutes of our February meeting. Both the official summary minutes and the more comprehensive meeting transcript have been distributed. Are there any additions or corrections to either of these?

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. 2 OPDS Monthly Report

012 P. Ozanne I'd like to first refer to a couple of items on the agenda. And you have additional documents before you. I handed out a copy of a report dated April 10 from the administrator of the Lane County Public Defense Panel, which is the new entity to handle private attorney appointments in the county. I thought the Commission could review this report before the next meeting, when we will take it up. Steve Gorham handed out another document, which I don't believe anyone has had a chance yet to look at it. I certainly appreciate receiving this update of what has been going on at MCAD. If we have some time during the meeting, I told Steve that we would give him an opportunity to offer some comments, recognizing that the Commission hasn't had a chance to review his report yet.

The first thing I should report on is the Legal Services Division's appearance on behalf of Mr. Sanchez-Llamas before the U.S. Supreme Court. Peter Gartlan presented the oral argument. I think it was apparent that the petitioner, our client, had an uphill battle. The issue, for those of you who haven't heard about the case, involved a foreign national charged with a crime. The first question is, does a foreign national charged with a crime, and accepting the fact that

the Geneva Convention's requirement directing an authorized official to inform that person of his right to contact his country's consulate was not satisfied --

035 Chair Ellis

It is not the Geneva Convention. It is the Consulate Treaty of 1963.

036 P. Ozanne

Thank you -- does that treaty give rise to an individual right on the part of the defendant? Second, if so, does that individual have a remedy for this treaty violation in a domestic American court in the form of exclusion of evidence of his statements to police? The first question, the existence of an individual right under a treaty, is a timely one. The day before our argument, the Court heard a case involving a detainee at Guantanamo. One of the issues was the same. As most of you probably know, treaties are traditionally considered agreements between nations and not the individual citizens of those nations. So a citizen of a nation generally cannot assert an individual right under a treaty. There are exceptions and, of course, we were arguing for an exception in our case, as were the lawyers for the detainee in the Guantanamo case, which involved an individual who was alleged to be the driver for Osama Bin Laden. So that issue is of particular interest to the Supreme Court. The Court peppered Pete Gartlan with lots of questions. The indication from the questions was that the Justices were not particularly enamored with the idea of a new exclusionary rule, which should come as no surprise to anybody who has followed the work of the Court over the past 20 years. There was a more robust discussion about the question of individual rights under a treaty. As an outside observer, I guess I would put the chances of a favorable ruling on that issue at 50/50. Justice Scalia, who is known for not being friendly to reliance on international law or foreign law, asserted that the Court should not go beyond traditional means to enforce treaties, which in this case would call for the Mexican Embassy to file a formal complaint or protest to the U.S. State Department. Justice Alito asked several questions that seemed fairly neutral; Justice Breyer asked several Socratic questions which -- though difficult to tell -- seemed somewhat friendly. I thought Pete did an excellent job of standing up to the barrage and engaging in a dialogue with the individual Justices. I thought it was particularly effective to argue in the context of the notification issue, which I think was reported widely in the press, that, if you were arrested in Syria and you had three rights -- 1) the right to remain silent; 2) the right to confer with a Syrian lawyer; and 3) the right to contact the American Consulate -- notification of the third right would be especially be important to you. What would you do if you were notified of all three? Would you go to the Syrian lawyer? The Court was very interested in the possibility of relying on defendants' attorneys to notify defendants of their treaty rights and, if defense counsel fails to do so collateral review or post-conviction relief would be the remedy for the treaty violation. There was a lot of discussion about this possibility and Pete made the point that "No, the notification has to occur up front by the first official who contacts the defendant, not later on by an attorney," keeping in mind the Syrian scenario. I thought he did a nice job of making this point. It seemed to sink in with a couple of the Justices. I thought the Solicitor General, Mary Williams, got into a little trouble while trying to explain what efforts were being made in Oregon to enforce the treaty requirement of official notification. I think the comment from Justice Souter was "Well, I'm not at all confident that the law is being followed in Oregon." But I'm not suggesting that he was about to adopt an exclusionary rule as the alternative. I thought Pete represented our agency and the State of Oregon well. We'll obviously await the written opinion with great interest.

083 Chair Ellis

Good.

085 P. Ozanne

The only other item that I have is the report in The Oregonian with respect to the Verification Program and the Application Contribution Program and the Secretary of State's audit of the Judicial Department's administration of those programs. I felt obligated to submit a request for a correction. I conferred with many people, including the Chief Justice, recognizing that the main problem, which I thought the Judicial Department's response in the original article identified, is: if you want to avoid instances where people get a court-appointed lawyer who aren't eligible for one, then the legislature needs to provide sufficient resources for more court

staff to do the job. Otherwise, I think the right analogy is to IRS audits. Without more staff, the Judicial Department is only going to be able to spot check or sample cases. It is certainly not going to be able to cover every instance. That is the ultimate question for the legislature, whichever agency administers the programs. The point is the Judicial Department needs more staff to do the job in the way the Secretary of State suggested. I was very mindful of the fact that any request for a correction by The Oregonian would be implicitly pointing fingers at the Judicial Department. We don't want to do that for all kinds of obvious reasons, particularly because we are closely affiliated with the Department and want to support its efforts. On the other hand, I felt that we, as a new agency, need to be aware of an institutional memory in the legislature that our predecessor agency, the State Public Defender, apparently mismanaged its budget on one or more occasions. Therefore, I thought it was important to clarify the record so that legislators would know that our agency is not simply continuing to mismanage its finances. Barnes and I agreed that we would not go further and submit a letter to the editor. There was no reason to draw more attention to the issue. Certainly the newspaper's readers wouldn't care about the distinction. But now we have a documentary record that is available if there are questions during the next legislative session about our agency's credibility or ability to manage our finances. We can at least say that this isn't one of our problems. But again, the main issue is lack of resources to do the job well. That is something certainly the Chief and the Department, with our support, will emphasize in the next legislative session.

- 127 Chair Ellis I was curious, in reading the Secretary of State's audit report, how they picked the 203 files that they reviewed and what geographic range that represented. How valid a sampling is that? Is that a tiny fraction of a big number of cases? What they did is took a very tiny fraction and I'm not sure quite what they did to process it, and then extrapolate that over a very large number of cases. Has anyone looked at how valid their methodology really was?
- 136 P. Ozanne Well, I certainly haven't. Kathryn, have you had any conversations on the subject?
- 139 K. Aylward It is my understanding that, when the Secretary of State prepares an audit report, they send a draft of the report to the agency in question and the agency has a chance to review and make comments in terms of the methodology, the process and any corrections. I did not see a draft of the audit, but I would agree with you, Mr. Chair. They gave us the list of the 203 cases that they targeted and said "How much did you spend for an attorney on that particular case?" In some of those cases, contractors had taken the case, done the work, and never reported the case. So I wonder how they could account for the fact that some of these cases never received credit. In the case of some counties, public defenders were appointed. If they take 101 cases, we are still only going to pay them for 100.
- 150 Chair Ellis How did you answer their question?
- 151 K. Aylward Just as it was asked: what funds were expended or what was the value of this case? If it was a misdemeanor valued at \$280 and our contractor claimed one credit, we said \$280. It would have been nice if our agency had had an opportunity to review the draft report.
- 157 Chair Ellis I have a suspicion that we are going to hear about this during the next legislative session. I don't want to get into a fight with the Secretary of State's office, but I think between now and the next session we ought to have the best response that we can.
- 162 P. Ozanne Kathryn, did you have anything else you wanted to add on behalf of the Contract and Business Services?
- 163 K. Aylward No.
- 163 Chair Ellis Let me just make one other statement. When we were preparing the legislation that created this Commission and the issue was, should the Commission have OPDS take on verification, I was strongly of the view that I would rather not see this Commission and OPDS do it.

Frankly, it puts our providers in a difficult position if providers are somehow being looked to to verify the truth of financial representations their clients make. I was strongly of the view that it would be best to leave it with the Judicial Department for that reason; and also for the reason that in many counties this function is performed by a multifunction individual, and it was just not possible to fully separate the functions because you didn't have enough FTE. I was reminded of all this when this audit issue came out. I think the right decision was made. I think it should stay with Judicial and I think Judicial, I'm confident, is doing the best they can under the circumstances. It just reminded me of that separation issue and trying to keep defense providers from also becoming police is important. I found myself feeling good that we had done that.

189 P. Ozanne As I understand it, our predecessor agency, the Indigent Defense Services Division, did for a time have the verifiers employed by its office, reporting to Ann Christian. Apparently, that wasn't very successful because of the problem with off-site management. I think the decision was made that the local management of verifiers by the courts would result in a more effective system.

195 Chair Ellis Chief, anything you wanted to add to this?

196 Chief Justice De Muniz Peter alluded to the fact that we had made a response to The Oregonian. Our agency was provided with the preliminary draft and we did a great deal of work in responding and pointing out errors in both methodology and other factors along the way – as much as we were able to respond in the time available. If I recall the numbers correctly, I think the bottom line was that, in order to do the kind of verification we needed to recover the amounts that were indicated in the audit – I think it was \$2.5 million – it would now cost \$3.8 million in services.

207 Chair Ellis That sounds a little like the discussion I had with the repair shop for my chain saw. I try not to expend more in repairs than the value of the saw.

209 Chief Justice De Muniz Those are policy choices that we are going to have to address when the legislature comes to town.

215 Chair Ellis Are we ready to move to Judicial District No. 7?

Agenda Item No. 3 Introduction of the Preliminary Report on Service Delivery in Judicial District No. 7

217 P. Ozanne I see we have Presiding Judge Hull in the audience. I would like to ask him in a moment to come up and speak with you. Throughout the day, I see a number of people who we hope will speak. I see that we have representatives for our contractors here and I know the Hood River County District Attorney will be here to speak in the next hour. Let me just offer some broad-brush strokes with regard to the result of our preliminary investigation. Then Judge Hull, as presiding judge, can speak first and answer the questions you may have. The preliminary draft report is really an attempt to frame some of the issues we noted during our initial assessment by talking to a number of key players in the counties in the judicial district. When I say "the counties," I am talking about all five counties in the judicial district. Although, as I indicated in the report, given our time and resources, we didn't get to spend as much time as I would have liked in a perfect world to cover Gilliam, Sherman and Wheeler counties. We spent our time in this county, Hood River, and in Wasco County. When I say "we," Commissioner John Potter was kind enough to join me for our preliminary investigation and spent two of the three days in the district talking with folks. As I indicated in the report, we talked to all four judges, to the district attorneys in Wasco and Hood River County, to both sheriffs and the police chief of The Dalles, and representatives of the Department of Human Services and community corrections in both Wasco and Hood River County. To the extent

these offices, like the courts, have relationships or operations in Wheeler, Sherman and Gilliam Counties; we asked questions and received information regarding those counties as well. We also spoke with the Trial Court Administrator, Chuck Wall, who has been kind enough to provide his hospitality and these accommodations. I also talked by telephone to the three district attorneys in Sherman, Gilliam and Wheeler Counties. I understand that, this afternoon, Tom Cutsworth from Wheeler County will be attending our meeting. In a period of three days, we were able to develop a pretty good picture of defense services in Judicial District No. 7. And, as I hope the preliminary report makes clear, things are going well here. I think people are generally very satisfied with the public defense services in the district. Once again, we encountered good working relationships among the people in the district's justice systems. The advocacy is zealous when necessary, but relationships are not jeopardized in general by personal issues or conflicts. I thought it was particularly interesting that probation officers and police said that our contract lawyers are tough advocates – “they cross-examine us intensely, but they are professional and they are not tempted to get into personalities when it isn't necessary and they maintain professional relationships.” As I indicated in the report, these people said that the lawyers make them more effective in terms of their own agencies' practices and procedures. I think that, in general, the lawyers in this district are doing the work that we ask them to do. The primary problem, as noted in the report, is a shortage of qualified public defense lawyers. After the courts get past the “starting lineup” – our contractors and the more experienced private attorneys – “the bench” is very thin. Jack Morris, who will speak to you today, has spoken about this issue in the district many times before. We have discussed it many times with regard to what we have called underserved areas of the state – areas where there isn't a sizable population of lawyers and there are problems of recruiting lawyers and getting them to stay in the area. So, once they get past our contractors and a number of good people on the list, the judges in this district worry about who they can appoint and what they are going to do when qualified lawyers retire or move on. So the supply of lawyers is a big issue here. The report does address one other issue. As you know, we have a great opportunity to come to a county and learn through our investigations of their justice systems. And I think most counties appreciate the fact that someone from the outside looks at their operations and reports on the effectiveness of those operations, keeping in mind that we also try to mind our own business. One issue that a lot of people reported, and though it wasn't a matter the Commission was going to act on I wanted people in the district who had read the report to know that we were aware of the issue, was an ongoing disagreement between a senior lawyer at the Morris Olson firm and a juvenile court counselor in Hood River County. Though I mentioned it in the report, I'm confident that the judges in the district will resolve this issues if it disrupts the administration of justice or proceedings in the courtroom. Since the report was written, I understand that there may be a unique practice in the county that may call for gathering more information and that may suggest that we want to be careful about discouraging vigorous but fair advocacy by our defense contractors. In this instance, there is apparently a practice in Hood River County involving a team approach to sex offender treatment of juveniles where the therapist and the juvenile court counselor work together with an individual juvenile in order coordinate their efforts to rehabilitate and treat the juvenile. Although this is considered a best practice in the corrections profession, I understand in Hood River County that the juvenile court counselor sits in during therapy sessions where self-incriminating statements may be made that are conducive to treatment, but which may result in corrections sanctions. I understand the best practice envisions separate therapeutic sessions with the therapist and the juvenile where secrets and confidences can be freely revealed and separate case management sessions with the court counselor and the therapist to share appropriate information and track a juvenile progress. So there may be a true philosophical or professional disagreement in this county about this matter which no doubt will be resolved through leadership from the bench. Finally, another issue that I raised in the report for discussion today is an issue of planning for the future of Oregon's public defense system. In counties such as this, and there are probably not that many, where a private law firm is our primary contractor, is this the structure that you wish to perpetuate in the future. As the draft report hopefully makes clear, the law firm in this district – the Morris Olson firm – is doing an excellent job. I am impressed with their

implementation and administration of best practices. For example, Jack Morris sent me the firm's office manual, which I am going to share with our Legal Services Division because it is a very good office manual. We also know that the firm has conducted a survey of court personnel to see how its lawyers are doing. You know from the appendix to our draft report that Jack and his partners conduct lawyer evaluations on a periodic and systematic basis. Therefore, I am not suggesting that there is any problem with the primary private law firm in this county that currently needs addressing. But in terms of planning for the future throughout the state, I am raising the issue for discussion. I suggested in our report that a private law firm may be less receptive to the influence and the suggestions of the Commission with regard to best practices than a non-profit corporation that operates as a consortium or a full-time public defender. Not surprisingly, Jack Morris disagrees with these observations and I said "Great, we'll have a discussion here at the Commission meeting." After three years, it is my impression that sometimes our conversations about best practices, boards of directors, connections with the community, periodic management and attorney performance reviews and lawyer accountability amount to a dialogue between the Commission and non-profit public defenders and consortia, with private law firms and attorneys looking on as disinterested or uninvolved observers. If I were in that position, I would certainly be thinking, "I have a law firm and I'm running it the way I want to without outside meddling." With that I suggest, Mr. Chair, that we invite Judge Hull to come up as our first guest, followed by Hood River County District Attorney John Sewell.

- 421 Chair Ellis Judge Hull, thank you very much for coming. Let me just mention from the Commission's point of view, we started about a year ago on a program of trying to go to areas in the state and meet with the people who are involved in the system. We are here to learn. We are here to get a good understanding of what is happening in this area and we don't start with a presumption that there is only one way to provide quality defense service. We have actually got a range of ways throughout the state that we are using. I think the other lesson that we have learned is this is a very diverse state. The law enforcement issues vary a lot because you have got different levels of population, you have different types of population and you have got a different economic base in different parts of the state. We just think it is healthy for us to get around and learn. It is also healthy for the different counties to get a chance to interact with us and give us some of their thoughts and observations. It is in that spirit that we are here and we look forward to hearing from you.
- 446 Judge Hull It is too bad you weren't up here yesterday because it was beautiful. The clouds are coming in today. I don't have a lot to talk about because I talked with Mr. Ozanne and Mr. Potter when they were here three weeks ago. What I told them was where to go fishing and apparently they didn't follow up. Let me just talk to you a little bit from the perspective of a judge. If I'm not incorrect, Mr. Brown, you were a district attorney many years ago?
- 454 J. Brown Many years ago.
- 455 Judge Hull In Corvallis, correct? The same time I was district attorney here.
- 456 J. Brown I am remembering that as you speak.
- 457 Judge Hull We used to share information about operating our district attorney offices many years back in the early 70's. Just to give you some history so you understand my comments, I come from a background of being a prosecutor back in 1970 until 1974.
- 462 Chair Ellis With Judge Jeldricks?
- 462 Judge Hull I followed Judge Jeldricks in the district attorney job, when he went into private practice and then went on the bench in 1973. Then I was in private practice from 1975 through 1990, and I did a substantial amount of criminal defense work in those days when they would put horse

collars on us to get us in to do criminal work. I did my share of criminal work both at the misdemeanor level and the felony level.

470 Chair Ellis

So you come from a hermaphroditic background?

481 Judge Hull

Yes, and I became a judge in 1990. So I have a full gambit of the operational experience. And from what I have seen and my experience, I am very satisfied with what is going on here in terms of the quality of the legal services provided, the timeliness of them and the professionalism of them in dealing with others in a professional capacity. But at the same time, when there is an issue to litigate it is done in way that is not offensive, but also represents the client to the fullest. The only problem we have, and I think Peter mentioned it, is occasionally we get into situations where – and this is not a fault of our providers, it is just the numbers – a case has multiple defendants and we start running out of attorneys because we have co-defendants or there are children involved. We have attorneys for children and the parents and lot of the attorneys just don't do criminal defense work anymore. At my old law firm, there is not a lawyer that does criminal defense work anymore. Judge Jeldricks, when he was the presiding judge, had a rule that "If you are going to practice law in this jurisdiction and do any courtroom work, you are also going to provide criminal defense services when I call you." I don't subscribe to that philosophy because I think if you call up a lawyer and he doesn't want to do the case, he is not going to put his heart and soul into it. If the lawyer doesn't want the case and won't take it, I am not going to require him to provide defense services.

511 Chair Ellis

If I can ask, I would think in a smaller county with the law firm as the predominant provider, you are going to have conflict situations where it is going to be very hard to provide counsel in these situations. How do you deal with that?

518 Judge Hull

We just start figuring out who is representing whom, and then we know Morris Olson is representing one of the parties and Mr. Aaron is involved because his firm is the backup provider. Then there are other lawyers who do criminal defense work or juvenile work on a regular basis in addition to doing private practice. We call them. Then sometimes we go to The Dalles and bring attorneys in from there to cover those situations where we need multiple lawyers involved. It doesn't happen a lot, but it happens enough to where we need to address those coverage situations. That is just the problem of a small community. A lot of lawyers start developing a good civil practice and they don't want to be in the courtroom anymore.

536 Chair Ellis

Is there a seasonal component to the caseload here?

538 Judge Hull

That is an excellent question, and I haven't thought about that and haven't really analyzed it. Even though we are a tourism area, I have not found that it increases during the summer. Mr. Morris can address this better. I don't find that to be a big issue based on tourism. Probably just because of numbers, we probably have more cases in the summer because of more traffic going through the area. So, to some extent, yes, but I don't find it a big swing in terms seasonality. I am open for other questions. I am satisfied with how the public defense system is operating. I think it is much better than it used to be when I was a prosecutor. And things are different today. The volume is much greater than when I was a prosecutor. Drugs didn't exist much in the 70's. Now, eighty percent of the cases are drug-related. When I was doing defense work, we didn't have this system. The judge just went out and tried to get various private attorneys to provide services. But again, the numbers have increased in the drug cases and everything else related thereto. It has just exponentially increased from about the late 80's. I can't speak to Mr. Ozanne's comment about having a board of directors because that is an internal matter as to how you folks operate and I have never been involved in that situation. I know when I was practicing law and providing legal services, I would not have liked to have a board. Can I just digress a bit about the issue that was raised in The Oregonian. I felt a little bit uncomfortable this morning when I had the Chief in my courtroom and I had that very situation. It is really tough when we are doing an hour or an

hour and a half of arraignments and we are doing them one right after the other. Somebody is charged with a very serious crime, you look at their questionnaire and they have some assets.

[Tape 1; Side B]

- 081 Judge Hull If you don't understand the framework in which this all works, somebody would say, not sitting in my chair, "Sure, they can afford a lawyer." But my comment is, "How are they going to afford a lawyer when they are self-employed and now they are sitting in jail subject to a \$50,000 bail?" How are they going to sell assets to pay for a lawyer when they are sitting in jail on \$50,000 bail? I appoint a lawyer for them because I have a 60-day speedy trial issue. I have to get the case moving. I have got to get a defense lawyer on board, if they are not able to hire a lawyer right away. I have got to get discovery moving, if there are going to be motions, because I have a 60-day issue. They are going to be released unless they waive the 60-day issue on the speedy trial. So those are ramifications that weren't even discussed in the newspaper article that trial judges face as a reality. As a practical matter, the case has to start marching pretty quickly. We can't be waiting two or three weeks to get a lawyer on board. I have a trial docket that I need to fit this case into, especially if they don't waive their 60 days. That, I don't believe, was really addressed in the article by The Oregonian. I read that article and thought, "Boy, I wish they would come to my court sometime and just see some of the practical issues that we deal with to try and keep the cases moving." It is not as easy as recouping all this money and making better choices. I think trial judges have a difficult time in that regard just because they have a very short time frame to deal with cases. That is my comment on that.
- 103 Chair Ellis Questions for Judge Hull?
- 103 C. Lazenby I am just wondering, in general, outside the criminal defense delivery system, is the county facing infrastructural stresses in terms of a lot more cases of drugs. Are there treatment programs in place or are they flooding your docket? Is it more backed up than, say, 10 years ago, in terms of the number of judges that you have here to process cases?
- 109 Judge Hull I think we are doing a fairly decent job in terms of dealing with what I call the social aspects of the cases. It is hard to generate services that fit all the types of cases because we don't have hard numbers to support to have services for all of those cases. Sometimes it is difficult to deal with this situation. We are running a drug court both in Wasco County and Hood River County now. We held that court this morning and we are getting more people involved. Everybody – the district attorney's office and the defense lawyers – are involved. We are up and running in that regard. I don't see us being flooded with cases.
- 124 Chair Ellis Let me go back to the conflict area for a moment. We have learned in some areas that the system for identifying conflicts is not perfect. You get part way into a case and it turns out there is a conflict with another witness or co-defendant, and then you have to change lawyers.
- 130 Judge Hull Then you have to find a back up.
- 131 Chair Ellis From our point of view, that is a real problem because we have to pay one and then pay another. How much of that are you doing?
- 132 Judge Hull Not much. That happens occasionally, but I think very rarely. I must say that, in terms of the two major providers, Mr. Morris's office and Mr. Aaron's office, they do a very good job of keeping some sort of a diary or logging of information. So they know right up front. I'll make an appointment and they will get back to me either that day or the next morning and say, "We have a conflict." They look at the computer and see if there has been any prior representation and let me know immediately. Sometimes it is that day. We have the beauty of not having 14 attorneys in Mr. Morris' firm where the left hand does not know what the right hand is doing. We have two or three lawyers from their firm that work in Hood River and two or three that work in Wasco County. They keep pretty good tabs and have a good

tracking system of who they have represented. They let me know and Mr. Aaron does the same thing. Even the lawyers who are not part of that group let me know right away. I can call up Mr. Gellar and say "I have a case. Are you able to handle that?" He'll do a quick computer check and say he has a prior conflict and can't do it. We don't run into a problem very often. We sometimes run into the problem where we discover that this person is a witness and the witness comes into the case later on. Then we have that problem. But that is very rare.

- 158 Chair Ellis This is a hard question for you to answer, I'm sure. But I'll float it out there. One worry we have, obviously is: are cases being tried when they shouldn't be tried? Are pleas being made that really shouldn't be made, or is there about the right mix between those?
- 164 Judge Hull I guess I can rely on my opinion based on 36 years. I think the cases that are being tried need to be tried and the cases that are getting resolved, short of a trial, should be getting resolved. Some cases have to be tried and I learned that early on. I don't find we are spending a lot of time in the courtroom that we shouldn't spend in the courtroom. I think cases are getting plea bargained when they should be. I have been satisfied with that. If I am not satisfied with that, normally I will make some comment, and I have done that very rarely because I question how much I want to get into the process. But on the whole, I think the cases that should be tried are being tried and the cases getting resolved should be getting resolved. I have been satisfied with that. I think Mr. Morris and Mr. Aaron and those that work in the system know what cases need to be tried and what cases don't need to be tried. They deal with the system enough that we are not spending time in the courtroom that we don't need to and spending money in that regard. When it is being spent it is being spent pretty well. I have been satisfied with that.
- 187 Chair Ellis One of the comments in the preliminary draft report is there has been a lot of turnover among younger lawyers and another passage indicates it is harder than perhaps I would have thought to attract new lawyers to the community who are interested in providing defense services. Do you have an observation about those issues?
- 193 Judge Hull I haven't really thought about that.
- 195 Chair Ellis This is otherwise known as the graying of the defense bar.
- 196 Judge Hull Practically speaking, I have a son at the University of Oregon, and he is a mountain climber and a skier. I'll just tell you a family story and my comment to him, and then it will explain some of the answers to that. He said "Dad, someday I hope to come back and practice law in Hood River." I said, "Jeremy, I'm not sure how you are going to do that because I don't think you can afford to live here." Housing today in this town is expensive. You cannot buy a dog house for \$275,000 to \$400,000. To live here in Hood River, the cost of living has just gone bananas because of the pressure and what is going on in the community.
- 206 Chair Ellis When you say that, you are talking about the recreational sports?
- 207 Judge Hull Housing here – and maybe that is true throughout the state and I'm sure it is – housing here has gotten difficult to buy. You can't buy a two or three bedroom house for much less than \$300,000 to \$400,000. I don't know how a young lawyer could come in and afford to make a down payment and a house payment. In the summertime, I can rent a bedroom out of my house for \$600 a month. I did that 12 years ago, and it has gotten worse today. I don't know how people can afford to rent a place to live on what young lawyers make; plus make their debt service from law school. and if they are married and have children. Economically, it is a very difficult situation. Then again, I think a lot of lawyers say, and I remember my days, "I'll get my experience in the courtroom and then I am going to go out and make some money in the private practice." Working in the district attorney's office and working in defense services is not where you make a substantial income down the road. The pay is much greater

in private practice than in working for a public agency. It is hard to keep people unless you are real dedicated. I think that explains why there is some turnover to whatever extent there is. I don't know if I have answered your question or not.

- 232 Chair Ellis Do you have any suggestions about how we can perform our job better or how either Peter or Kathryn can interact better?
- 235 Judge Hull I don't. Your function is to oversee this entire process statewide, is that correct? I think you have a very difficult job because, as you indicated when I first came in and as you were going around the state, things are different. Things are different here than when you talk to Wasco County. We do things differently than 20 miles up the road. They do things differently than we do. I think it is a function of how we have done things in the past. Maybe it is time to change all that but, over the years, small communities east of the Sandy River and south of Portland, and in eastern and central Oregon, have had their own framework of how they have done things, and it is not easy to change. Maybe some of them are resistant to change. But we have just developed the habit of doing things that way. I have been here for 36 years and we are still doing things somewhat the same way. Wasco County does things their own way. I think you have a difficult job to try and provide services or oversight when you have all these different competing things. It is really interesting when I go to the judge's conference, and I just came back from one. It is fun to talk to other judges because, when you listen to how they run their courts and know how we run ours, we get some ideas, but everything is different. It was also interesting when I went to the National Judges School in Reno, Nevada 16 years ago. I was shocked that not everybody ran their justice system the way Oregon does. There are 50 states and they all run them differently. We are so accustomed to thinking this is the way it is done, when in fact this isn't the way it is always done at all. It is unique to Oregon, and it is unique to Hood River and unique to The Dalles. So you have a difficult job, and I can't tell you how to do a better job. I'm glad you are doing it and not me.
- 266 Chair Ellis You know our door is open. So if you come up with any suggestions, please let us know.
- 267 P. Ozanne Judge, are there any unique issues in other parts of the district? As I mentioned, and if you had a chance to look at the draft report, we haven't given as much attention to Sherman, Gilliam and Wheeler Counties as we would have liked in a perfect world. Are there issues in those three counties, even though they have a much smaller caseload?
- 275 Judge Hull Not really. I will say that we get prompt coverage in those counties and I have been satisfied. The only problem that I have in those counties is when I try a case there is that I ask the jury if anyone has heard anything about the facts of this case and everybody on the prospective jury panel has already heard about the case and discussed the case. It is difficult to get 12 people who haven't already heard everything about the case. I have more problems with jurors in those counties than I do with getting defense coverage. We have a consortium in The Dalles and I think the Morris Olson firm covers Gilliam and Wheeler also?
- 284 J. Morris All three counties.
- 284 Judge Hull So we see them on the road, and now we are using the video a lot for arraignments. And that saves a lot of travel time. We get good coverage and I have been satisfied with it. I had a trial two weeks ago and I am not going to mention names. But in Gilliam County, in Condon, John Olson was defending in that case and Scott Jackson from the Attorney General was prosecuting that case. It was probably the best case I have seen tried in 25 years, including my own involvement as a defense attorney. I always thought I was a pretty good attorney. But I walked back to my office the next day and talked to Marsha, my JA, and I said, "You know, I had to go to Condon to observe some of the best legal work I have seen in 25 years." I firmly believe that. And I have tried as a judge cases in Multnomah County, Washington County, Linn County and Lane County. That case was tried better than any case I have seen

in a long, long time. I think you are getting the bang for the buck with this sort of work. That is my view.

305 Chair Ellis Any other questions for Judge Hull?

306 Judge Hull Thank you very much. I appreciate the time.

316 John Sewell I may need just a moment to collect myself. I was hoping in my heart of hearts that some of the best work that Judge Hull had ever seen had actually been when I was in the courtroom. I'll get over that. I know that most of you haven't met me. Just real quickly by way of background, I am John Sewell. I am the district attorney for this county. I have been a prosecutor for 26 years. The last 14 years I have been the elected district attorney here; for 12 years, as a deputy. For the last 20 years I have been appearing in this courtroom, such as it is. I worked for four years on the coast before I came here. I worked for a year in Coos County and three years in Lincoln County. I am not going to reiterate the comments that I made to Mr. Ozanne and Mr. Potter. They are in the report. I would state simply that I am of the opinion that the community is well served by the public defense services that are being provided. I should comment on a couple of things. I think there is still a seasonal aspect to the workload here in that it does go up in the summer months a little bit. I don't think that is any different though than a lot of communities in the state. When the weather is nicer, the criminals are more active. Another aspect is, in the winter when there is snow on the ground, it slows down a little bit. I think another point not to be overlooked, and I think you would probably hear this around the state. If communities are on the I-5 corridor or on the I-84 corridor, they get a lot of work off of that freeway. It is not just a matter of whether there are 20,000 people or 40,000 in the summer. I have spent a lot of time prosecuting cases, as do my deputies, that arise on Interstate 84 and that involve defendants that aren't residents of this community. Following up on one point that was made about the cost-of-living, I have two deputy district attorneys that work for me; they both live in the greater Portland area and commute here. This is a god awful expensive place to live because of what has gone on with the surfing industry and what it has done for the property values in the community. Addressing the issue of the juvenile department and their participation in the sex offender treatment programs that go on here, I would observe that it has always been the practice here that anything that is said in treatment stays in treatment. And by that I mean there are no charges ever filed based on any, for lack of a better word, confessions or admissions that are made during those treatment programs. In other words, if a young person acknowledges that there are two or three other victims that they have had that we didn't know about, that is the end of it. We find out about them outside of that venue, of course, and they are in play. I would note that the juvenile counselor or counselors that participate in those sessions aren't doing it simply as an observer, but actually play a role in the process and participate in that process. I would also point out that they do not sit in on individual counseling sessions. They sit in in the group sessions that sometimes occur and, any suggestion that practice be discontinued, I would suspect would be met with stern resistance by my office, the juvenile department, and the treatment provider. It is a very workable situation. It does not work to the detriment of any of the young people that are participating in those programs. And again, we do not file charges based on any admissions that are made in these counseling sessions. This is a matter of fact and just for your information. There was a question to Judge Hull about cases being pled out as opposed to cases being tried. Over the years here, I have seen a shift in the number of cases that go to trial. I think that is attributable to a number of things.

386 Chair Ellis Shift in what direction?

386 J. Sewell More cases plead out now than go to trial. I think that is for a number of reasons. One is that some cases just don't ever end up in the system. First time DUIs go to diversion. We are one of the first jurisdictions in the state to have a domestic violence diversion program, so first time domestic violence cases go to diversion. First time drug possession cases, as a matter of policy in my office, regardless of what the rest of their criminal history might be, if

they don't have a prior drug arrest, they are eligible for a conditional discharge on their first PCS. So some cases are being funneled off initially because of those alternative programs that exist. I think sentencing guidelines, Measure 11, have had an effect somewhat on the number of cases that go to trial. In the language of the street, when there is real money on the table, defendants think twice about rolling the dice. Then, finally the fact that we have a jail here, a real honest-to-god working jail, that presents the possibility of people actually being incarcerated if they are convicted, and being incarcerated for a longer period time if they turn down the deal. The fact that people aren't released unless they are really, honestly a good release risk without the posting of cash bail has greatly diminished the number of failures to appear that we have in this community; the number of cases that just never get resolved and it also, I think, compels the defendants to make decisions. I think it is just human nature that we have some of the people that by nature are somewhat irresponsible in their day-to-day lives. You have a person that is charged with a crime. They are not paying for their lawyer because they have a court-appointed attorney, so they don't have a lot to think about immediately; they don't have a lot to worry about; they don't have to make a decision. Sometimes they don't keep the appointment with their lawyer once they are out. Those cases are hard to resolve. When they are sitting in jail because they can't make bail and they are not from here and their lawyer is sitting across the table from them, they get the offer on the table and they have to make up their mind. They want a trial; that is fine. We will have the trial. If they want to take the offer, they'll take the offer. But that results in not just more cases being resolved quickly; but a lot more cases being resolved with pleas because it is in front of them and a decision is mandated. I think I have addressed all of the things that caught my ear when I was sitting in the back of the room. I know you are waiting on your lunch, so I will just simply ask at this point if there are any questions.

431 Chair Ellis

Tell us a little bit about the size of your office.

431 J. Sewell

There is me. I am a working district attorney, in that besides administering the office, which happens more or less, I handle the bulk of the felony caseload in the office. The cases I don't handle involve child abuse or child neglect. I have one deputy district attorney that is funded by the county. That is the same number of deputy district attorneys that the county has paid for since the day that Judge Hull was the district attorney back in the 1970's. I think I had the first deputy district attorney that was funded full-time by the county. That deputy district attorney does all of the misdemeanor caseload, except for cases that involve child abuse or child neglect or domestic violence. I have another deputy district attorney that is not paid for by this county. It is funded through our CAMI program. Are you familiar with that program? Every defendant convicted in this county – not every, but almost all defendants – is ordered to pay some sort of unitary assessment to the court. Part of the money that is collected goes into this program; that is, the Child Abuse Multidisciplinary Intervention Program. Those monies then are used in this county in approved programs to address the issues of child abuse and child neglect. The bulk of those funds received in this county go to fund the other prosecutor that I have in my office. The funds do not support a full-time position, but they support a position where I have a deputy district attorney that works four days a week or 80 percent. Her responsibility is solely addressing cases that involve child abuse, child neglect and domestic violence in a home where children are present. She will do misdemeanors or felonies that fall into that area. Any felonies she doesn't do, I do. Any misdemeanors that she doesn't do, the other deputy district attorney does. That is how it works.

473 Chair Ellis

That first district attorney, the one that is funded by the county, is 100 percent of his or her time misdemeanors?

477 J. Sewell

That is because, at this point in time, that deputy district attorney is new to the office. As they develop more experience, then I would expect, for a variety of reasons including job satisfaction, that they will be given an opportunity to do more felony work.

- 483 Chair Ellis How did you recruit?
- 483 J. Sewell My typical method of recruiting a new deputy district attorney is to advertise the position in The Oregonian, which is required by the county. But more significantly, we advertise it in the District Attorney Association's monthly newsletter. For an entry level position, I will typically get somewhere between 50 and a 100 resumes or applications. Of those, there might be 20 percent --
- 491 Chair Ellis People that are in district attorney offices elsewhere?
- 492 J. Sewell Some of them will be in other district attorney offices that are interested in a move. Some of them are recent graduates from law school that just know through the grapevine that the District Attorney's Association publishes job openings.
- 499 Chair Ellis That is a pretty large number of responses.
- 501 J. Sewell Sure. It is not uncommon to get 50. That is pretty typical. It was a different time economically, but the first time I ever had to hire a deputy right after I became the elected district attorney, I think I got 110.
- 506 Chair Ellis You would describe it as a buyer's market?
- 508 J. Sewell It still is for district attorneys. That is changing. Every time I have an opening, and I don't have openings every day, I get a few less: from 110 down to 60 down to 50 down to 40. It is dropping. I think there is less interest because of the economic factors in being a prosecutor. I think philosophically there is still more interest in being a prosecutor than there is in being a defense attorney. That is just my take on it.
- 519 Chair Ellis When you were going through that process, did you develop any information on comparable incomes for entry-level district attorneys and defenders?
- 522 J. Sewell Every year the District Attorney's Association does a salary study. From that I know what every district attorney office in the state is paying. I have just the rudimentary knowledge of what is going on out in the private sector. I think state secrets should be guarded as well as private attorneys guard their income figures.
- 531 Chair Ellis So, to put it out on the table, what do you pay an entry-level district attorney?
- 534 J. Sewell I am embarrassed to admit that, right off the top of my head, I don't know. What are you getting?
- 537 C. Rasumussen For a four-day work week I am getting \$45,000.
- 539 J. Sewell She is paid as well as I am. It is just that she only works four days a week, so she gets \$45,000. That is just about what we pay an entry-level deputy to be here five days a week. You know what I make? I make \$67,000 and some change. For kids just out of law school with stars in their eyes, we can compete very well with a private law firm. Then you get some people like me that just stay on because they don't know any better. In terms of where they are, a couple of years into this game and we can't compete.
- 559 Chair Ellis Can't compete with the private firms doing defense work or the private firms doing --
- 561 J. Sewell General work; the civil work. The first deputy district attorney I ever hired left after four years to go to Clackamas County to do the exact same job that he was doing here for a 50 percent pay raise at the district attorney's office there. That is another way we can't compete, and by "we" I mean the smaller counties. We cannot compete with the district attorney

offices in the I-5 corridor in terms of what they will pay for an experienced prosecutor. I could leave tomorrow and get a job working for one of my buddies and make substantially more money.

- 575 Chair Ellis Within this area of Hood River and The Dalles, which way do you think the parity pipe runs? Are the entry-level district attorneys doing better or not as well as the entry-level defenders?
- 581 J. Sewell They are very, very close. The district attorney and I make the same salary and I think the deputy district attorneys are very close. We might just pay a little bit more.
- 585 Chair Ellis You are comparing prosecutor to prosecutor, and I am trying to get a handle –
- 586 J. Sewell Defense attorneys? In the private sector?
- 587 Chair Ellis You don't know?
- 587 J. Sewell Might as well be where they have nuclear weapons stashed in terms of what I know about what they make. I have suspicions, but I really don't know. I'm sorry I can't address that. I tell you where one of my windows of knowledge comes from. For years we have had a program where new associates from private firms in Portland come out and do some misdemeanors –
- 603 Chair Ellis Get some courtroom experience?
- 603 J. Sewell Yes, with a real judge and a real jury. I know what they make from talking to them, these entry-level associates.
- 608 Chair Ellis They make more than you make?
- 609 J. Sewell Oh yeah, by 40 percent. Even though we are working with a bit smaller firm now, and principally because a couple of associates moved on, they still make substantially more than anything I can pay; and for that matter, more than I make. The gal that comes up here right now to try a drunk drive once in awhile, makes more than Judge Hull.
- [Tape 2; Side A]
- 001 Chair Ellis . . . He announced that some of the Trail Blazers were making more than the President of the United States. But I pointed out to him that the President didn't have a very good outside shot. I do want to say that one of the things that happened in the last few years has been much better, and in many ways, very healthy communication between the Commission and district attorneys, and between the defense community and the prosecution community, in our common interest of getting adequate legislative support for the criminal justice system as a whole. I want to commend you, as an individual, and your group within the district attorney community. I think that this has been a very healthy thing. It used to be almost a cannibalistic process, and now it is the opposite. I really think since the crisis of 03, both sides have recognized that we are part of a broader system and, if either function is underfunded, neither function can work very well.
- 019 J. Sewell I apologize for digressing into a discussion about what I make or what my deputies make. I know that is not your purpose here, and it is not that I think anybody in this system makes too much. I think there are some of us that don't make enough. I did want to make one observation, and this is not any reflection on how law is practiced here, the people involved or how well services are delivered. But I worked in counties that have had both kinds of systems and, in terms of the big picture, or where indigent defense might be going in the future, from having worked with both systems and seen both up close, it is my opinion that a delivery system that involves public defender offices is more efficient and more effective than the contract system or the consortium system, in terms of how the services get delivered.

- 031 Chair Ellis Are you comparing service provision from an office that is distinguished from appointed individuals? Is that the point you are making?
- 032 J. Sewell If I want to annoy Jack Morris, I refer to him as the Public Defender's Office because, the fact is, that is what they do here. They are the primary contractor and that is really what they do. I worked in Coos County where they had a public defender's office. Working there, I think I had a very intimate knowledge of how it was organized and how it was operated; and I saw the results in terms of how their clients were defended. I worked in Lincoln County for three years before the days of this Commission, of course, and before the state had actually taken over indigent defense. It was the judge sitting up on the bench going down the list, trying to figure out who was available to take the next case for \$40 an hour, which was a very ineffective way to do it. That is where we have problems here in this community. Once we have been through the primary contractor and the secondary contractor, it is who is next on the list. I just think that, in terms of who is first up to do the work, I think it works more effectively and efficiently when it is in a public defender's office in a community, rather than a contract firm or consortium.
- 050 Chair Ellis Treating Morris Olson as a public defender?
- 050 J. Sewell I tend to believe that, much to their irritation. But they are; that is what they do.
- 052 Chair Ellis You are a specialist and your two deputies also specialists. Do you feel that the degree of specialization that you're seeing in your counterparts is comparable to your own or less? How would you describe it?
- 056 J. Sewell I would say it is comparable. Not to belabor this, but how they operate is basically as a public defender's office. It is because of that that I see that level of expertise, if you will. It is difficult, and this is no comment on the individuals, but it is difficult to see that level by others. I guess a better way to put it is, it is difficult for individual practitioners to maintain that same level of expertise while they are also trying to practice law in a number of other areas, particularly when you are talking about the firms in town that still have somebody that participates in indigent defense. It is usually the youngest, newest member of the firm. You are not going to see the same level of expertise as in a the firm where that is pretty much all they do.
- 070 Chair Ellis Any questions for John?
- 071 S. McCrea I just have a comment, because you covered pretty much the questions that I had. John, I wanted to compliment you. I am sort of the designated criminal defender position on the Commission and I want to compliment you on the programs that you have with the domestic violence diversion and the conditional discharge on drug offenses. What I am inferring in terms of the effort at rehabilitation of offenders is that, if there are other disclosures, those don't get charged, which would encourage people to be able to disclose and hopefully move on. Those are wonderful programs, and I hope that you can persuade some of your colleagues around the state to take a look at them.
- 078 J. Sewell One thing that is encouraging is the statewide efforts now to promote drug courts, for instance. I think that would be a help. I would echo what Judge Hull said with respect to what meth has done to our caseload.
- 084 S. McCrea We appreciate all your comments.
- 084 J. Sewell Well, hopefully they were helpful. Thanks a lot.
- 095 Chair Ellis Let's break for a half an hour and will resume again at 1:00.

[Break at 12:30 p.m.]

- 101 Chair Ellis [The meeting was called back to order at 1:10 p.m.] Jack, if you would step forward and share your perspectives with us.
- 104 J. Morris I have been looking forward to this meeting, particularly since about 11:00 this morning when it looked like the meter was going toward favorably, rather than the other way.
- 107 Chair Ellis Was that in doubt?
- 108 J. Morris Well you never know, Barnes. With some of the folks on this Commission, anything could happen. Thanks for coming and visiting with us in Hood River. We appreciate it. Those of us who are in eastern Oregon living and working here sometimes feel a little neglected. So it is nice to have you here. I think all of you know me. I want to tell you a little bit about the firm. We have two offices, and there are seven attorneys and seven staff. I want to deal with a couple of things that have been mentioned with respect to the staff makeup. But let me introduce some folks first. John Olson, the 25-year wonder with that trial several weeks ago, is my senior partner. John is 40 and he has been with us about seven years. Prior to that, he was a public defender and head of the office in Twin Falls, Idaho. Lonnie Smith is just a hair over 50 and has been with us five years. He was a civil lawyer in Florida. He was also, in a prior life, a CPS worker for child protective services. That has led him into being our secret weapon when it comes to juvenile law. He is our resident expert. Just two years ago, he received the blue ribbon award for person of the year from the CRB. And rumor is, and I'm not sure if I believe this part or not, that is the first time it has ever been awarded to a criminal defense lawyer. We are pretty pleased with that so we can have a little sound bite we can point to to say, "Hey, juveniles, that is our specialty."
- 126 P. Ozanne Jack, we frequently get complaints from CRBs about lawyers not showing up, so that is especially noteworthy.
- 128 J. Morris I don't think we ever miss them. Brian Starnes is the other shareholder. He is here in the front row. He is 34-years-old and he has been with us eight years. He was from Nebraska and we felt sorry for him because of that and I gave him a job. We have three associates. Heather Clark, who has been with us five years and she is 30. Jennifer Robins is 31 and has been with us a year. I should mention Heather Clark is our drug court specialist out in Wasco County. Jennifer was a court clerk in Multnomah County. And we have our most recent addition, Conor Sullivan, who is 27 and an alumnus of Lane County Public Defender, having been a certified law student and clerk there. I think I forgot to mention, John, in addition to myself, were both alumni of Metro in Portland. He was a certified law student there. I have been here 15 years. It has been a fun ride. Prior to being here, I was a trial lawyer at Metro under Jim Hennings, which was a unique opportunity that I am still appreciative of. I was a felony group leader and I dabbled in Senate Judiciary Committee in the '85 and '89 sessions. That is where probably, originally, I know most of you from. It may seem a little odd that I mention ages and length of time with the firm, but I am doing that for a reason. The reason is there was a mention in the preliminary report that a comment was made that seemed like we had a lot of turnover. The fact is I don't believe we do. We went back and checked and we have had, since 1993, about one vacancy per year with seven attorneys, and two of those were due to the BRAC problem. I think that is just about right. That is subject to disagreement, but any of you who have ever run an office similar to ours know that there has to be a certain amount of turnover. We can't have seven people all with 10 years of experience simply because we can't afford it. The other thing that is good about that, and I think it addresses one of the Commission's concerns, is it has given us the opportunity to get some new attorneys in and get them trained. Probably the stranger thing I mentioned is ages. I have done that on purpose as well because there is constant concern voiced to the Commission and elsewhere about the graying of the defense bar. Our average age is 38 and we have a wide range of

ages. So we are only a little tiny bit gray. We can still serve this Commission and indigent defense for a good 20 to 25 years, I think.

- 162 J. Potter I didn't catch your age, Jack?
- 162 J. Morris Well, 50 is fast approaching, but not quite as fast as your Vice-Chair.
- 165 S. McCrea Two months is not that big of difference.
- 166 J. Morris When I received the preliminary report on Monday I was, as you might expect, very pleased. It was extremely complimentary, and I appreciate the work that Peter did. As some of you know, I have been at several of the Commission hearings. I think I have read all of the reports that have been done so far. With probably some room for disagreement, I think the things that were said about our firm are probably about the most complimentary passages that have been found in those reports, and I appreciate that very much. Peter is obviously a fine judge of legal talent and I think the Commission should keep him on for at least awhile. The one area of disagreement that we do have – and I'm not really clear if we are still even disagreeing on this – but you saw from the e-mails that were included the objection that I made to Peter's language about the Commission being skeptical about whether a private firm can play this role. I know, when we spoke last toward the end of the conversation, you said something to the effect of "Jack, I think you have convinced me of your position."
- 181 P. Ozanne Yes. In fact the report didn't say "the Commission;" it said "OPDS." And most people know that, when I say "OPDS" in the context of these preliminary draft reports, it is really mostly me.
- 184 C. Lazenby Then why are we here?
- 185 P. Ozanne That is just in the preliminary report, Chip.
- 185 J. Morris So I am hoping that I changed your mind; and I am hoping that I have changed your mind to the degree that you will feel it is appropriate to perhaps delete that language.
- 187 Chair Ellis Can you share with us the dialogue you are referring to?
- 188 J. Morris I believe you have copies of a couple of e-mails in your materials.
- 190 P. Ozanne We sent Jack's survey of court staff with that.
- 191 Chair Ellis I am not starting with any agenda, but it is a subject that I find interesting because you have had experience in an MPD office, and because you have the private firm model you are using here. How would you describe the differences between an MPD model and the private firm?
- 196 J. Morris Barnes, I am really glad you asked that question; and the reason for that is because, as John Sewell acknowledged a little while ago, we are in fact basically a de facto public defender's office. Having had the good fortune of working for Jim Hennings at Metro, I think there are very few differences between our office and a public defender. The differences that we do have are all positive ones. That is the theme of what I want to tell you and my response to the questionnaire. What we have done is combine what I think is the best things of a public defender's office with some of the advantages of a private firm. I really think that is where we are at, and that is the primary message that I wanted to give to you folks today. To the extent that I need to address that, I don't know how big of an issue that is. Does that answer your question?
- 208 Chair Ellis That is the conclusion, give me the buildup.

- 209 J. Morris What we do have, partially out of just good fortune and partially out of our structure, is a core group of experienced, talented lawyers. As I said, we have five people who have been here longer than five years. The other three shareholders are all extremely talented. We work on the team concept model, as we did at Metro with respect to our support staff. None of our support staff is simply a clerical worker. When they are hired, they are told they are going to play a lot of different roles such as trial assistant, social services hunter and all of those types of things. That is what we have. What we have done is combine the best features of a public defender. We have the zealotry of not just a public defender's office, but a good public defenders' office. We have the commitment to indigent defense that might typically be found in a PD's office and, as I think I have pointed out in the questionnaire, we participate in the system as one might expect.
- 225 Chair Ellis What percentage of your firm's revenues are public defense versus private?
- 226 J. Morris The little bit of retained work that we do over the last couple of years resulted in an average of about another 15 percent of income for our attorneys. Our salary scales --
- 229 Chair Ellis Let me see if I understand that. Does that mean 85 percent of your revenues are indigent defense services and 15 percent are private?
- 232 J. Morris About 11 percent of our revenues is private and that results in about a 15 percent increase for the attorneys.
- 235 Chair Ellis Private revenues, is that all retained criminal work?
- 235 J. Morris Yes it is.
- 236 Chair Ellis So you guys are 100 percent criminal defense but, of the 100 percent criminal defense, 89 percent is public defense --
- 238 J. Morris Criminal and other areas that are connected, like juvenile and that kind of thing. So it results in about a 15 percent increase on average. It also results in us being able to have things that we probably wouldn't have otherwise. It gives us some flexibility. If we are over budget and we have a little bit of extra money from retained work, that helps a lot. It helped us get through the BRAC experience and, as I said, it helps us have some extra things that we probably wouldn't have otherwise. An example is, when we have an attorney or staff that celebrates their fifth year anniversary with us, we buy them a plane ticket to someplace within reason as a reward. It has allowed us to do some other things, and this one might resonate a little bit better with you. One of the things we were able to do two years ago when we started drug court is we contributed \$1,000 from the firm toward drug court start-up costs. If we were strictly state revenue, we wouldn't be able to do those kinds of things.
- 253 Chair Ellis I should know this, but what is your contract configuration? Is that on a bulk basis or a unit basis?
- 256 J. Morris It is on a unit basis with differing case values and caseload projections for a two-year period. Is that what you are asking me?
- 258 Chair Ellis Yes.
- 259 J. Morris A typical contract, as I understand it. It is fairly uniform around the state. I have told you what we have and what we have done and how we see ourselves. Again, I think at least in some part, I have Jim Hennings to thank for this. We see ourselves as having responsibility to indigent defense that extends outside our firm. We play the role that Jim does in his shop in Multnomah County or that Greg does in Lane County. We see ourselves as being responsible for participating in policy decisions that are made. We do that on a regular basis. I myself am

involved in a number of different things like the LPSCC Committee and the drug court. We had a juvenile work group not too long ago. We see ourselves, probably to our detriment, being responsive to the needs of indigent defense and the Commission, probably even more than we should be at times. I'll return to that in a minute. As I said, the little bit of revenue that we get allows us to do other things. The other thing it does is it helps us avoid the stigma of being a public defender. When I say that, I suspect that you all know what I am talking about. There is a stigma that is completely undeserved by clients who don't know any better; who when they hear the term "public defender" count it against you. I was present at the Lane County meeting and I thought Doug Harclerod, the Lane County District Attorney, put it real well. He was asked a question along the lines of who gets the most complaints, the PD's office or the court-appointed list. His response was, "Well it seems to be the PD's office," which he found somewhat amazing because he found them to be by far the most skilled and talented group of lawyers in Lane County. My point is it allows us to kind of sidestep some of that stigma that makes it easier to deal with our clients. Again, the stigma is completely and totally undeserved in every area of this state that I am familiar with. A moment ago, I told you that we probably put indigent defense's needs above our own to a degree that we shouldn't. I guess the best example of that is a few years ago the state, I think it was Ann Christian, asked us to cover the eastern counties, what we call the "eastern front." That is Gilliam, Sherman and Wheeler. We stepped up to the plate and we have been doing that ever since. And believe me, it does not pencil out cost-wise. We do it because somebody needs to do it, and it might as well be us. For those of you who are geographically challenged, from The Dalles, and the attorneys in The Dalles are the ones primarily responsible for those counties, the county seat, Morrow, is 80 miles round trip; Condon is 140 round trip and Fossil is 180 miles round trip. We get a little bit of a travel allowance, but we still come out on the short end. Again, the reason we have always done that is because you guys need somebody to do it, and it is us. So we shoulder that burden with some hesitation I suppose, but I think in return we have been treated well and it works both ways. So we are happy to do that. That brings up another issue. Until the BRAC crisis, I was naïve enough to think that all the contractors had wonderful relationships with indigent defense like we do. I found out during that crisis that this is not the case. I mention that only as an example of the cooperation we have, for instance covering the eastern counties; but also because you can't say it too often: we have had the best luck of the draw with indigent defense analysts that we could ever hope for. We had Larry Craig to begin with, we had Lorrie Railey and now we have Laura Weeks. Our relationship with the state has probably been the least troublesome and the most mutually beneficial of any contractor in the state. Maybe that it is an exaggeration, but I don't think so. That is the way I feel about it. Our willingness to help out has almost gotten us into trouble at times. Ann Christian approached me a few years ago and asked me if we would be willing to help out in another jurisdiction and open an office if the need arose. I almost committed ourselves to doing that. It wasn't until a few months later that we ran into each other and I raised the issue again that she mentioned: "You know Jack, I might have neglected to mention that, if you open that office, it is going to be doing PCR work and nothing else." So what I learned from that is sometimes you have to watch your good friends the closest. I really do strongly disagree with the idea that there is any reason for skepticism. We not only can fill a niche as the primary contractor that might typically be done by a public defender or a consortium; I think we are already doing it. And I think we are meeting most of the best practices that the Commission is interested in pursuing. I do agree, as Peter wrote in the preliminary report, that, given the percentage of income that we have from the state contract, it is probably appropriate for indigent defense to be a little bit more involved in our affairs than in a typical law firm. To the degree that there is any hesitancy, and perhaps there is not as much as I think, I think the hesitancy of having a private law firm is this idea that here is a firm with 10 attorneys and maybe a couple of guys are doing criminal defense and some appointed work and everybody else is doing divorce and that kind of thing. That is not us because we are strictly criminal defense. The only difference is we do a little bit of retained work on the side, which is basically the icing on the cake. Our salary scales for staff and attorneys both – and one of the side benefits of this hearing is I went back and looked at the salary scales for Metro again – our attorney's salary scale was right on the mark.

They are virtually identical. Our staff salary scale was lagging a little bit behind, so just this last week I made some adjustments to that so both the scales are basically identical now. The beauty of it is we have the same salary as our colleagues in Metro; but on top of that, there is a little icing, and that little bit of icing makes the difference. I think it has made the difference in being able to retain the really talented lawyers that I have, so it has worked well. In any event, I guess I do agree with Peter to an extent that perhaps you guys should be a little bit more involved with us. I think personally the way to do that is when there is a question you pick up the phone and ask. One of the things that Peter mentioned was that historically, for instance, salary scales haven't been available. If you want to know what we make, pick up the phone and ask. It was just up until a few years ago that part of the contract, the RFP, included a budget; and it also included salary figures that were dropped for some reason. I'm not privy to why that was but I never had a problem with that. We are doing the job that you want us to do, and the fact that we are a private firm shouldn't cause you any concern.

- 384 Chair Ellis It sounds like your hiring has been more lateral than entry level.
- 386 J. Morris I don't think that is accurate.
- 387 Chair Ellis How do you handle training?
- 388 J. Morris As I mentioned in the materials, one of the ways that we handle training is that there are always colleagues talking to each other in the office. When I started at Metro, I was one of six misdemeanor lawyers. I learned real quick that it is nice to have a trainer and all that kind of stuff to look to. But you learn from each other the most, so we encourage that. The biggest red flag that I ever see with a new attorney in the office is somebody that doesn't ask questions. If they are not asking questions, I am asking them why they are not asking questions. The other thing – again this is partly because we have a little bit more leeway budget wise than other folks – we send our lawyers to probably more OCDLA conferences than anybody else. We typically go to at least four a year. Those registration fees are paid by the firm and there are usually or sometimes a little bit of a housing allowance. I think you will see us at more conferences than just about anyone else.
- 408 Chair Ellis One question I have is, I'm not sure I know the percentage, I think your firm does the majority of the defense work in the two counties –
- 411 J. Morris I'm just guessing about 80 percent.
- 412 Chair Ellis As a firm, you are subject to the unit rule for conflicts. Judge Hull seemed to believe you are doing okay. You are able to identify these conflicts early and resolve them; but I want to get your take on that.
- 416 J. Morris I think Judge Hull's comments were right on the mark. I think we identify them early and, a good portion of the time, we identify conflicts before we ever pick the case up and we simply don't pick the case up. We take a look at the possibility of conflicts when we get the in-custody list in the morning. Hood River is particularly easy to deal with that issue because we are extremely fortunate to be able to get discovery at the first appearance. We go up, we get a charging instrument, we get discovery on the spot. If we have a conflict, often times we are aware of it before we ever leave arraignments. One thing I would disagree with Judge Hull on, he was saying maybe that day or maybe the next day. Often times it is addressed before we even leave the courtroom. Conflicts are just not a big issue for us.
- 429 Chair Ellis Apparently, not at the stage of identifying the conflicts early in the process but, given the high percentage of the volume that your firm does, what is your observation on the ability of the system to represent the conflicted party?
- 437 J. Morris Are you talking about co-defendant situations?

- 438 Chair Ellis Could be a co-defendant or a key witness; or it could be any number of things that created a conflict. In your observation, does the system have enough alternatives in it that the party you can't represent gets decent representation?
- 443 J. Morris That is kind of several different questions. I don't think we have any more problems with conflicts than we would, for instance, if we were a public defenders office. The same rules apply in the same situations.
- 447 Chair Ellis That is true. I'm more concentrating –
- 448 J. Morris You are asking me about resources?
- 450 Chair Ellis Right.
- 451 J. Morris I don't think there is a shortage of attorneys in Hood River, but Wasco County is another matter. It is difficult to get good people in Wasco County. And it is also difficult to get them anywhere, but Wasco County is a little bit tougher. I was kind of surprised to hear some of the figures that John Sewell tossed out as far as applicants. Ten, twelve, thirteen years ago when we had a vacancy and ran an ad, we would get 30 or 40 resumes. The last vacancy, I think we had fewer than 10; and that has been the way it has been for several years. That has changed dramatically. I don't think you can under-emphasize the fact that there has been a huge philosophical change with people coming out of law school. It is not just a money issue. The pool of people who are interested in doing criminal law and the sub-pool, which is much smaller, of people wanting to do criminal defense has shrunk dramatically. Out of that shrunken pool, it has narrowed even more by the fact that people are coming out with huge student loan debts and they can't afford to accept an offer. We have also in the audience, and I am so appreciative of the fact that she reminded me of this, Ginger Mooney, who actually has a home in Hood River and commutes to Salem. Last time we had an associates position open, we made her an offer – and again, our salaries our commensurate, almost identical with public defender offices. As much as it made sense for her to accept that offer and work for us, and we would have loved to have had her, she had to turn it down simply because of money. So it is an issue. Does that answer your question?
- 484 Chair Ellis Partially. The issue I am trying to make sure I am comfortable with is the percentage of the volume that one firm is doing and whether that creates problems.
- 489 J. Morris Well, I think we do about 80 percent, and I think that is a huge advantage for indigent defense.
- 490 Chair Ellis It is, unless you have this problem of conflicts and an inadequate ability to represent the conflicted parties.
- 493 C. Lazenby You live in a small community and you are doing 80 percent of it. You are bound to come up with a lot of witnesses in some of the cases that you have represented.
- 499 J. Brown That provokes me to wonder about the Judge's comments on the impact of your freeway. How many of your clients are actually county residents? Is that a factor?
- 501 J. Morris It is, and we get a fair amount and it has changed dramatically since I first started up here. We used to get a whole bunch of folks that were here seasonally. These were folks coming up from Mexico to work the orchards. That population has been assimilated quite a bit and they are here more year round. But we do get a lot of folks from out of the county. You have to remember that, geographically, these are tiny counties. So it is not uncommon to have folks who have no relationship to a county here. It is not like we are in Lane County and you have a population that never crosses the county line. It makes sense that it might seem to be huge

issue, but isn't hasn't proven to be one. I think Judge Hull's comments were completely accurate.

- 517 Chair Ellis I asked him and I'll ask you, any suggestions how we can do our job better? Any thoughts on how Kathryn and Peter can do their jobs better?
- 523 J. Morris When I was asked that question in the questionnaire the answer was, you could always do things better. I guess the one suggestion that comes to mind is, you have already in most areas identified key people or key persons, or someone you can talk to find out what the situation is locally. I think maybe that should be pursued a little bit more. If you are going to think about bringing somebody else in, or something of that nature, make a phone call and find out what is going on. Other than that, I can't think of a lot of things that I would suggest. I think PDSC is doing a decent job.
- 541 Chair Ellis You strike me as one who really has your lines out around the state –
- 542 J. Morris My lines out? Is that like a fish analogy?
- 543 Chair Ellis Your trap lines. You seem to have pretty good communication. Are you getting advice, help, or ideas from other public defender groups around the state?
- 550 J. Morris As to management?
- 551 Chair Ellis Just straight criminal law practice.
- 552 J. Morris Barnes, I am glad you asked me that too. That ties into the fact that we spend a lot of time at conferences. As most of you know, at the annual conference, I make it a point of meeting people out by the pool and getting advice. No Barnes, seriously, every one of my newer lawyers I have ever had is told, "Go to the conference, we are footing the bill. I expect you to go to classes but not every one. It is really important, and this is on a serious note, that you meet lawyers from other areas." I make it a point to try and introduce my new lawyers to other lawyers around the state. That way, when they get a case where there is someone that needs particular expertise, instead of having to reinvent the wheel, or feeling kind of lost if they pick up a sex case, I can say: "Call Shaun. She had that issue three weeks ago in a case of hers." Or if it a traffic case, "Call David McDonnell." That works out real well. I am a firm believer that informal training and informal passing of knowledge really works better than formal.
- 577 C. Lazenby Go back to the private law firms. One of the things the Commission has been wrestling with, and it permeates a lot of our conversations, is: what is the best form to deliver the services and how do we structure those in different places? We have obviously learned that every county is different. What strikes me about this conversation today regarding private law firms is that it really is a matter of form over substance because, substantially, you function as the local public defender. And I appreciate what you said about the private sector part, allowing you to build a little bit of a cushion. Do you think that that is a unique development with your law firm and this location, or is it something that might be transplanted elsewhere – where you have a private law firm that predominantly provides criminal defense services with a modest amount of privately retained, but largely a publicly supported firm; or are you in a unique circumstance?
- 601 J. Morris No offense, Barnes, but I think that is the best question that has been asked so far. My feeling is, quite honestly, that in an area similar to ours that, what we have been fortunate enough, in all honestly to kind of stumble into; it works well enough that I think it should be copied in other parts of the state. We are in a sense a de facto public defenders' office will all the good things that go along with that, and we get a little bit of extra money. What can possibly be wrong with that? I consider ourselves really fortunate.

- 615 Chair Ellis How do you handle cases within your group? Is it who is available or by subject matter specialty?
- 619 J. Morris It is a little bit different in the two offices. In The Dalles office, we have four attorneys and they rotate a pick-up week and then adjustments are made. So, if the new attorney picks up a serious case, of course, it goes to a more experienced attorney, and vice versa. That is a little bit of a variation from one of my goals, which has always been that the attorney who actually picks up the case sees it all the way through. In the Hood River office, there are three of us. Usually, two of us are here, if not all three of us, for in-custody arraignments; and we pick them up as they come down the pike. One of the things that has been really nice with my experience and the other attorneys in the office is, if there are three of us there, there is never any of this “you pick it up, I’ve got too many cases.” I have lawyers that are willing to jump up and take a case, and I am real appreciative of that.
- [Tape 2; Side B]
- 052 J. Morris One of the things we have always done is to be present at first appearances. Years ago, when I first got here, that was a challenge in Wasco County because they never did arraignments at the same time every day. We fought for a couple of years, at least to get the court to set it at the same time so we could be present. Before that, attorneys had not been present at a first appearance. The compromise position that we originally reached was they would still do arraignments whenever they wanted to, but they would call us. That didn’t work out all that well. Sometimes when they called us, arraignments would already be starting and we would have to drop everything and run over there. But we finally got a system now where they are at a set time; so we are there. I could be mistaken about this, but I brought this up before. I thought the contracts before provided that a contractor had to be present at first appearances. Maybe I am imagining that, but I thought they did. I think that should be in there now. I think it is important to be there at first appearances.
- 066 Chair Ellis If there is a particularly serious case and you got someone less experienced who happens to be at arraignment, does that find its way to the more experienced lawyer?
- 068 J. Morris Every time. And usually we know if there is a serious case on the docket. “Serious” is a relative term, but we take a look at the dockets before arraignments and we have a pretty good idea of what is on before we ever go to court. So the appropriate attorney is there.
- 071 Chair Ellis You heard the district attorney’s response to my question about cases being tried and cases being pled. Do you have any thoughts on that? I thought he gave a very interesting answer.
- 075 J. Morris I would like to think that we are trying the right amount of cases. That is one of those things that you debate internally all the time. I think John and I both give a lot of thought to that. Are we being too easy or are we being too hard? I think we’ve struck a pretty decent balance. John [Sewell] and I have, on occasion, beaten the hell out of each other in court. I think we have both learned that the other one can do some harm if we let them. So I think that helps resolve cases. In Wasco County, I think we may try a few more cases; but that varies by lawyer, of course. John [Olson] probably tries more cases than any of the other folks, and I think that is partly due to the unbelievable success that he has. Looking at him, he never says a word; but when he tries cases, he wins.
- 090 Chair Ellis The Chauncey Gardiner of the trial bar. One of the things that we are interested in on the appellate side and the LSD group handles that –
- 093 J. Morris You know, I just can’t get past that analogy.

- 094 Chair Ellis I can't either. I am interested from your perspective on the trial side how that relationship works. Are you okay with how the appellate part of the practice is being handled?
- 097 J. Morris You know, we don't have all that much contact. But I guess the thing that strikes me is I am impressed with how efficiently they take on cases. You make a call down there or go to their website and you get an immediate response, and that is real nice. I think they work really well from what I see, and I know there are some real talented people there.
- 104 Chair Ellis A lot of lawyers, at least on the civil side, hate to give up cases when they go on appeal. Do you feel we should continue this relationship we have now where the appellate work is all done or primarily done by FTE in Salem, and trial lawyers kind of lose touch with their cases when they go on appeal?
- 110 J. Morris I think that is the best system because I think appellate work is real specialized just like trial work, and I don't think the two necessarily lend themselves to cross-pollination or whatever.
- 112 Chair Ellis You don't feel like they screw up your case?
- 112 J. Morris I have found the appellate counsel in Salem to be extremely helpful. If I have a particular issue that I want to talk to them about, I get the impression that they are real appreciative of that.
- 115 Chair Ellis Even before the appeal is started and you have a hot legal question in a case that you are dealing with, do you get support from them?
- 116 J. Morris Absolutely. I always thought there has been a real good exchange.
- 117 Chair Ellis I had actually not heard of much of that occurring.
- 119 J. Morris Well, technology isn't my strong suit. I don't like to e-mail stuff down there. I like to talk to a human being. Maybe that is why I feel there is a good exchange. But I found that they have been really receptive to ideas and, if I have a case or issue that I am excited about, then they get excited too.
- 123 Chair Ellis I should know this, but has your office been involved in the site visit program?
- 126 J. Morris As a recipient?
- 126 Chair Ellis Either as a recipient or as a participant.
- 127 J. Morris I participated on the site visit team that looked at the PDC consortium in Multnomah County.
- 130 Chair Ellis Would you welcome a site visit, or would you resent it?
- 133 J. Morris In a jurisdiction where we are the primary contractor, I see this as a site visit, basically. There is not very much difference from what I did in Multnomah County. So if you want to do it again, sure, come on down.
- 141 J. Potter The line of succession: can you do a little historical review for us? You took over from Pitcher & Wright?
- 143 J. Morris I did.
- 144 J. Potter They were the primary provider here before you took over?

- 145 J. Morris The reason that I am here is because Paul Crowley went on the bench back in 1989 or 1990 and Ken and Ellen had an associate position open. I applied for it, they gave it to me and I had to turn it down because they couldn't pay me enough.
- 148 Chair Ellis You were at MPD at the time?
- 149 J. Morris It was actually even less than MPD, so they had the same problem back then that we have now. There was some competition for that judicial seat. There were actually four people in the firm there was Wright and Pitcher, who were the partners and two associates. Paul Crowley was one of the associates and he got the judicial seat. Understandably, there were some feelings that you might not want to appear in front of your former associate, so they decided that they wanted to make a change and called me up and asked me to take over the firm. Initially I said "no," but they eventually talked me into.
- 158 J. Potter If we were to ask you -- were there any hiccups in the system between the transition of Pitcher & Wright and the new Morris firm?
- 160 J. Morris Oh, I would have to say there were. But that was a real unique situation too because what happened is Ken and Ellen left and moved to the Metropolitan area. Paul went on the bench and the other associate was his wife who, for whatever reason, didn't want to be there anymore. So basically, all four people left. I took it over, but how often is that going to happen?
- 165 J. Potter You understand that some of these questions that have been asked before about private law firm and public defenders is about continuity. We just saw this in another county: a long-time public defender there leaves and gets replaced by someone else; but there is not a hiccup in the system. The public defender office was still intact. So what happen when you decide that Mexico calls?
- 173 J. Morris Oh, you are on thin ice there. I don't see a problem because I have three very capable shareholders, and I think any one of them is capable of stepping in.
- 176 J. Potter Have you talked about that? Would that be something that would be the most feasible scenario? It would seem to be to me, but have you talked about it? When you say, "I have had it and I'm done with this," and you ask the shareholders if they are interested in taking this over, is there is a succession plan?
- 180 J. Morris Have we sat down and written out a plan? No. Do I have three capable attorneys, all of whom I am confident could step in and take over? Yes. We make management decisions together, at least to some extent, even though physically we are in two offices. The attorneys get together every Wednesday morning and talk about management issues, as well as other things. I just don't envision a problem there at all.
- 187 J. Potter Is it reasonable for me to be asking the question? Is it one of the things that should be addressed by a Commission like this when we are looking at service delivery in a community?
- 189 J. Morris Is it a reasonable question? Sure. Have we got it covered? I think so.
- 191 J. Potter Who is going to be the head?
- 192 J. Morris Well, that would be decided by a democratic process among the three of them. I have always considered John to be my senior partner and I suspect it might be him. But there is always room for democracy.
- 195 J. Potter There is going to be a buyout, right? This is a private law firm. It just wouldn't be turned over to someone.

- 198 J. Morris Would there be a buyout? That would nice.
- 200 J. Potter I'm trying to help you, Jack.
- 201 J. Morris I don't know, John. Like I said before, you have to watch your friends the closest. So far, these three folks that I call shareholders have not had to buy anything. It is basically their status, for whatever it was worth, in recognition of their contribution to the firm.
- 208 J. Potter I think it is a legitimate concern for the Commission. What happens when we have a major provider, who is doing a great job in the community; and then the lead partner goes on to do other things?
- 211 J. Morris Number one, I don't think it is clear that I am the lead partner. I am up here by myself because Peter took the other chair. I was thinking of having John come up as well; but I don't see that as an issue. I like to think that I have created an office or culture where the way we do things now follows with the other people. You have probably noticed that I have referred to Jim Hennings' office a couple of times. I do the things the way I do things in large part because of the experience I had there. I would like to think, and I feel relatively comfortable with this, that things would continue in the same vein here because of the fact that we have worked together as long as we have, and because we have done things the right way for a long period of time.
- 224 C. Lazenby Is your concern, John, springing from the perception that perhaps Jack is the key to this and, if he were suddenly to decide that he was going to have his new address, that we would be left with having to grapple with succession; or are you moving that the Commission should start thinking about, in some of these circumstances where there are key people, that we contractually require them to give us a substantial amount of notice before there is any significant management changes? Is that what you are asking?
- 231 J. Potter I am not even suggesting a solution. If Jim Hennings leaves, they will go out and recruit a replacement for Jim Hennings. When Jack Morris leaves, it seems to me to be different. Do we now have one of the partners, who steps in, takes over and buys out; or does the partnership go up for sale and somebody else steps in?
- 238 J. Morris I guess the way I envision it is – to kind of answer that scenario – if Jim drops dead on the way home today, there is a recruitment process that is going to take some time. There is an application process that is going to take some time. If I drop dead walking down the steps of the courthouse, I have got three guys who can pick up the ball tomorrow. That is the way I see it.
- 243 S. McCrea It is really a philosophical question that we have talked about previously: that is, who is our contract with? Is our contract with the person or with an entity because whoever signs the contract is doing so on behalf of the firm, right?
- 249 J. Morris Right.
- 250 S. McCrea So it comes down, I think, to a philosophical question for the Commission. Are we going to insist that the entity be the same entity that we contracted with, or is it up to that entity to fill the requirements of the contract? I am not claiming that I have an answer to this, but this is what we went through with some of those other contracts that we have dealt with at our last meeting. I'm not sure how far involved with our providers we need to or should get.
- 258 Chair Ellis Jack, the answer to that is you have been doing this for 16 years and there is not a whole lot of indication of instability here. I am sure you will give us indications if there are going to be some major shift, and then we will just have deal with it. One of the largest assets your firm

has is the goodwill and the relationships you have with us. If things take any wild or drastic turns, then we will have to look at what we do.

- 267 J. Morris I would agree with that.
- 268 Chair Ellis I am interested in the fact that to practice at the level you do there is a fair amount of capital investment required. I am sure you have computer systems. I gather that such an asset is essentially yours?
- 274 J. Morris John is also a part owner as well.
- 276 Chair Ellis That creates its own complication when we get to transition.
- 278 J. Morris Are you asking for a bequest in my will or something?
- 278 Chair Ellis No, I am just stating an observation and will leave it at that. Any other questions for Jack?
- 280 J. Brown Judge Hull reminded me of the days many years ago when I thought I had an impact on the criminal justice culture in a county. A couple of years we went in that county and, as far as I could see, there wasn't a trace of it left. I think as we look at building on the effort and energies of folks that have gone before us – Barnes and the study group he chaired and all of that – it seems to me that part of what we have to be looking at is how do we imbue a statewide system with persisting values? I would be curious about your thoughts, now or in the future, about how you see what is going on here and how in your absence you would have a sense that, when there was an issue of a client that thought he or she got less than a real defense – and we are all very, very mindful of how many of those complaints are groundless and one of the things that a client gets told is go to the law library and file a complaint against your lawyer – in terms of the quality of services, how in a small operation there can be a feeling of both comfort and candor in terms of whether people are free to tell the leadership that the services aren't quite what they should be, especially in a small community. How do you stay in touch with community values? What I am leading up to is, when we look at the model that has the board of directors outside the organization that represents different interests in a community, or even an advocacy of different parts of a community, how does that sustain itself when you are gone?
- 326 J. Morris I don't think by any means that I am not irreplaceable, particularly with the other partners that I have. I am just really, really valuable, but not irreplaceable. I think again, if I were to leave tomorrow for some reason, I think they would pick up where I left off. And I think that is a certainty because, if you have a good practice and do things the right way, I think that carries over. Again, I guess the thing that I can point to is that I got my legal education, and John did to some extent too, at the PD's office where things were done a certain way. You can find pieces of Jim Hennings all over my office in the way that we do things. From our team approach with staff to just the way we feel about clients. I think there is a carryover and I think that, when you have a positive culture in the office that it can't help but carry over. I'm not sure if that actually answers your question.
- 345 J. Brown I think I am sort of answering with your help my own question – that a culture is created and maintained by associations, through relationships. By selecting people that you are comfortable working with, you have confidence that you have the capacity, talent and commitment and the same kind of values. Maybe that is enough of an answer. If the leadership of your firm got wiped with one drunk driver – maybe we will all agree not to travel again, but Barnes is in the will so it is covered – then maybe the staff works closely with a successor, try to remind them of the way it used to be and trust for the future, rather than look to an institutional thing.

- 362 J. Morris Well, I think the relationships that we have in the office and the fact that we share the same values will carry over. I think that is more effective than any outside influence. We know what the day-to-day thing is and I think that is what is important. More importantly perhaps, we know what the attitude is.
- 371 S. McCrea I have a question as part of the scenario of wiping out the firm. What I want to ask you about, Jack, is what Jim is talking about: imbuing values. One of things that you talked about here today is your concern about being able to attract applicants and good people to the firm. I am looking at the response that you made on page five of the questions that we gave you. You said: "We have found over the years that, while an opening in the firm may attract a number of applicants, many of those applicants are applying simply because they need a job and have been unsuccessful in finding one." You go on to talk about looking for people who have an interest in criminal law –
- 385 J. Morris A demonstrated interest –
- 387 S. McCrea Is it getting harder to find those people; is that what I am correct in inferring from what you have written?
- 389 J. Morris Absolutely, it is much harder. As I said before, ten years ago if we ran an ad, we would get 40 or 50 responses. Now we typically get less than 10. Things have changed dramatically, and I think there is a natural assumption to think that it is all money. Money is a big part of the issue, but it is not all money. Law school, back when some of us went, was sort of a culture in itself for people that had a commitment to ideas. I am painting with too broad of a brush but, just for purposes of looking at it, it seems to me that it is much more of a substitute anymore for an MBA. Those same social values aren't there to the same degree. There has been a huge drop off in interest in doing criminal defense. I think what John [Sewell] was saying is that there has been a huge drop off in interest in criminal practice period. But it has been more extreme on the defense side.
- 405 S. McCrea So what can you suggest to us that we can do? Obviously, money would be one thing. Are there any other suggestions you can give as to how the Commission can attempt to generate interest in criminal defense?
- 410 J. Morris I think programs like the program at Lane County Public Defender are good. The Certified Law Student Program that Jim has at his office is good. But I think the reality is that you can try to come up with a lot of different ideas to stir up interest; but really, to a large degree, that interest is either there or it is not. What you are left with, and I think it is just a fact, is a much smaller pool of applicants. And you cannot afford to have a situation where those applicants who are interested cannot accept jobs for monetary reasons. I think that is what is happening. We have a much smaller pool of applicants and some of those folks, based on the stories that I hear, have student loan balances that are just frightening. They are like house mortgages and they can't go to work for \$37,000 or \$38,000 a year. They shouldn't have to. Indigent defense will always be under-funded. That is just the nature of the beast. But it has always been subsidized by idealism and that idealism, for the most part, is gone. For those few people that are left, there is going to have to be a monetary situation where they can join in, and it is just as imbalanced now as it ever was. I heard from a good source that one of the district attorney offices in Central Oregon is starting people right out of law school at \$60,000 a year. I know people who have been doing criminal defense for 20 years that aren't making that.
- 437 C. Lazenby I think there is another unspoken piece that I know I experienced early in my career when I tried to make the transition out of being a criminal defense lawyer into doing other kinds of law. It was much more pronounced twenty years ago when I was doing that, but it still exists. There is just this sense that, if you choose to do criminal defense, then there is either something inadequate about your skills as a lawyer or you have inadequate values to make the

transition. I have seen other criminal lawyers in Portland having a difficult time making a transition out of criminal defense into other kinds of litigation. They almost end up trapped there. That is a little inarticulate, and I see the Chief Justice shaking his head, because I know he made that transition. But I think you are probably the exception rather than the rule. I have watched a lot of criminal lawyers in Portland, young criminal lawyers, struggle to get out of that field. It is sort of unspoken, but there is this resistance to them migrating over to places where maybe they can make more money. Out of the prosecutor's office, I have seen prosecutors that I started out practicing with easily make the migration over to insurance defense, and then on to other more lucrative types of civil work. I think that is unsaid, but I think the law students and younger lawyers coming out of schools feel that. It is a resistance for them going into this practice as a career path.

- 461 J. Morris I agree with all of that. I also think there has always been an attitude on some fronts that, if you make the choice to do criminal defense, then you should be prepared to make a sacrifice. Why should we have to make a sacrifice if want to do criminal defense? Why should I get paid \$40 an hour doing criminal defense, when the guy that cleans my drain from Roto Rooter makes \$80? It doesn't make any sense. We shouldn't be expected to make that sacrifice. We make sacrifices in terms of our families, time with them and our emotional and mental health. We make enough sacrifices as it is without having to make monetary ones.
- 473 Chair Ellis Do you have good relationships with your legislators?
- 475 J. Morris I can't honestly say that. I have been involved in a number of things on the state level.
- 482 Chair Ellis Other questions for Jack?
- 483 J. Potter Are we brainstorming here a little bit?
- 483 Chair Ellis I thought we were philosophizing and we were doing estate planning. We were doing virtually everything.
- 484 J. Potter I want to get into the will too. Jack, you had mentioned that maybe what you are doing should be a model for the system and that we should use your model around the state in other places. Take that a little bit further. Do you think it would be constructive to have the legislature allow public defense or public defenders to do retained work and still maintain a non-profit status, so that they can –
- 499 J. Morris That wouldn't be possible if they were a non-profit.
- 500 J. Potter But if you could change the way that it was defined, would you advocate for a system that did allow public defense to move to a model like you have? You would have Jim Hennings' office doing what they are doing, except they could take up to 11 percent of privately retained work, thereby paying their people more and letting the legislature off the hook.
- 510 J. Morris I don't think that would work in a number of respects. One, the first that comes to mind is the size of the office. I just don't think, as a practical matter, it would work. The beginning of your question, would it be political suicide? I can't answer a hypothetical involving non-profits because that is pretty far-fetched. But would I advocate that something like my firm be copied and would that be political suicide? I don't think so at all. I think it could be presented as: "We can pay these people enough because indigent defense is under-funded. We have to give them and we want to give them the opportunity to have at least a small part of their caseload at the going market rate." If you use the \$40 figure – and I realize we are not using that a whole bunch around the state anymore – then that is 20 or 25 cents on the dollar. I think the system that we have set up works, and I think it works well. Can you apply it to Lane County Public Defender? No. Can you apply it Jim's shop? No. If it can be presented

the right way, and the right way is saying that we can't pay these people enough and they have got to be allowed to make a living some other way.

- 534 Chair Ellis What percent of your personal time is spent on direct lawyering versus management? How do you divide your time?
- 538 J. Morris All seven of the attorneys, including myself, has a full caseload.
- 542 Chair Ellis The management that you do?
- 542 J. Morris I do that in my spare time.
- 545 Chair Ellis I think it is pretty obvious that one of the talents you have brought to this process is management skills that not every lawyer has.
- 547 J. Morris I have never been accused of that before.
- 548 Chair Ellis This is an important day in your life. Anything else? Thanks a lot.
- 551 J. Morris Thank you very much.
- 551 P. Ozanne Barnes, there are a number of people here I think the Commission would like to hear from.
- [Tape 3; Side A]
- 001 P. Ozanne Tom Cutsforth has come here from Wheeler County.
- 004 T. Cutsforth I hate following Jack because he is so astute and has so much experience in this area, that he is so hard to follow. Mr. De Muniz, Your Honor, and others – I think I met Mr. Potter somewhere because he looks familiar -- but the rest of you I have no clue. Mr. Lazenby I have heard your name, but I don't believe I have ever met you.
- 009 P. Ozanne Well, we can go down the line and provide introductions.
- 010 J. Brown Jim Brown, I am a lawyer out of Salem.
- 010 Chair Ellis Barnes Ellis, nice to see you.
- 010 S. McCrea Shaun McCrea, based out of Eugene.
- 011 J. Potter John Potter from the Oregon Criminal Defense Lawyers Association.
- 012 T. Cutsforth And Justice De Muniz. I'm Tom Cutsforth and I am one of three part-time attorneys in the State of Oregon – or at least we are called part-time, although none of us carry a private practice now because we don't have time – to serve as a district attorney. I think I may be preaching to the choir here. I have already heard all of the things that I was really going to talk about. And even though the \$40 per hour that Jack said wasn't used around the state much, I know we are using that figure, and it is insane. If you use that figure, and let's say you can bill eight hours a day – and we all know better than that; you are not going to bill \$40 an hour for eight hours a day – you make \$1,600, \$6,400 a month and \$76,800 a year. And guess what? That is \$2,000 less than John Sewell makes and John Sewell's secretary is paid for and his office is paid for –
- 022 Chair Ellis I was going to say, you hadn't talked about overhead yet.

- 023 T. Cutsforth All of his overhead is covered and his medical benefits are paid for. This guy, who just spent all of his time doing criminal law and made \$76,800, has to come up out-of-pocket for his secretary, for his office. It isn't right and, if there is anything I can do to support the defense bar and get that number changed, I am all for it.
- 027 Chair Ellis I understand you have been hard at work with Senator Wyden recently?
- 028 T. Cutsforth How do you know that?
- 029 Chair Ellis Well, I have my sources.
- 029 T. Cutsforth I have been trying to get some forgiveness for student loans because I know that these people are coming out of law school with a \$100,000 debt and they can't come work for us. They can't come to work for the district attorney. Not in my position. I only make \$53,000 and some change. In this part of the state, 15 years ago, I would say, was one of the most stable. If you were a DA in this part of the state, you were probably a lifer. Boy, has that changed. We have got a DA in Gilliam who came practically right out of law school without any trial experience and still has none or very little. We have a DA in Sherman County who has very little law practice and very little trial practice. In Grant County, you can't put a DA there and make them stick. In Morrow County, he gets a \$36,000 stipend and he has so much to do that he threw his hat out. He is gone and going back into private practice. You are paying them that. What about the poor defense attorneys?
- 041 Chair Ellis Is he going back to private practice there?
- 042 T. Cutsforth He is going back to the private practice there. He is going to take on the County Counsel, which is going to pay him a little more, and then he is going to do a private practice on the side.
- 044 Chair Ellis You describe yourself as a part-time prosecutor –
- 045 T. Cutsforth I did private family law practice for 10 years. I gave it up in 2000.
- 046 Chair Ellis How do you divide your time now?
- 046 T. Cutsforth Well, right now I am doing almost all criminal and county counsel work. Back when I was doing private practice, it was a very difficult. There were lots of conflicts because most people who I was representing either got beat because they were the woman or they were beating them because they were the man. Then I would have to prosecute one or the other. It just wasn't working because the conflicts were incredible. I didn't have a Chinese Wall or somebody else I could go to when the other offices became unstable. It would be like Jack having a serious murder case and turning it over to his new graduate from law school, who is an associate. So I go to the AG. If you go to the AG, you lose your home court advantage. Now you have a Salem attorney and maybe John Olson shows up. You have a Salem attorney against somebody the jury might know. If you lose your home court advantage, you lose a lot of ground.
- 061 Chair Ellis We are obviously interested in the defense side. From your prospective, how would you describe the quality and adequacy of defense services in Wheeler County?
- 064 T. Cutsforth Okay, let me just back up a bit. I have been doing this for 19 years. I started in Lane County as a law student. I prosecuted Jesus Christ and John Lennon on the same day, at least that is who they said they were. But, of course, then they went to the mental hospital. They had a public defender there and it was a meat grinder. Then I went to work for Union County. What I did in Union County is they had a bunch of private attorneys that had a law practice, and they would just go down a list and pick one. They did it that way and sometimes you got

good services and sometimes you got bad, and it just wasn't necessarily their main area of practice. They weren't necessarily really experienced in that area. When I came here, except for maybe two occasions when they threw somebody brand new at me, and I know it wasn't intentional and they didn't last long, I have been very, very pleased with the people that show up for criminal defense. I feel that the defendant has his constitutional rights adequately represented and that the defendant has been adequately represented.

- 079 Chair Ellis How is it handled at the early stages in the less populous county where you have remote providers?
- 080 T. Cutsforth Well, it is a problem. I run two justice of the peace courts and neither one of the justice of the peaces are attorneys. Gilliam County has one justice of the peace court and she is not an attorney. Sherman County has one and he is not an attorney either. Then I also have a juvenile judge who is not attorney. He is my county judge; same in Sherman County and in Gilliam County. So you end up in the original proceedings with no attorney except me on those cases. On circuit court cases, if I get lucky and I happen to already have somebody on the docket so that John is out there – and he is good about coming out there; it is 110 miles from here – I am lucky, and then we can get that case rolling. If not, we are stopped. “I want an attorney here.” “Fill out the form.” A month later we are back for a re-arraignment with an attorney. So now we have already lost a month. Then a month later, we do an entry of plea. The case is three months old now. The victim isn't interested in the case. Age is not good for the prosecutor and the victim; and the defendant may be in Mitchell and Mitchell is 160 miles from here. So the ability for attorneys to contact their clients is difficult. They do well, considering the hurdles they have to get over.
- 100 Chair Ellis What advice do you have for us as to how we should be looking at the Eastern Oregon low population counties?
- 102 T. Cutsforth I think what I see with Jack Morris and his law firm is they have done and handled what the legislature thought they would do. They should be allowed to do criminal practice as a public provider and then carry a private caseload on the side to make up the difference. The reality of the situation is, I wish our crime rates hadn't gone up, but they have gone up tremendously over the last 15 years. I have been the district attorney in Wheeler County for 16 years now.
- 109 Chair Ellis Is that all drugs?
- 109 T. Cutsforth It is drugs, domestic violence, sex offenses that you wouldn't believe could happen in small communities. And it is transients that are going through mainly for drugs. But in that entire 16 years the defense attorneys' rates have remained the same. I don't know how they drive and make it work, unless they subsidize the practice. I use to subsidize mine that way, until it got to the point where I just couldn't handle it anymore. I don't know whether Jack will burnout on his core group, but they at least have the ability to say “I would like to go to Hawaii for a week.” If I go to Hawaii for a week and I come back, everything that happened that week is right in the middle of my desk. If somebody was in custody in front of John and has to be arraigned in 24 or 48 hours, good luck. They have to release them, unless they can get a hold of me and do it by telephone. We do a lot of telephone work and, with this video thing, I have seen more of the judges in the last two months since they put that in than I had in the last five years. I don't know whether that is good or bad, but that is how it is. The video thing has really helped and I want to thank Chuck Wall for that. I don't know why, and maybe it is not in the court budget, to set up one of those in a room where the defense can use it, and then I could just leave the room. The defendant is in the room, so they can have a face-to-face over this couple of miles, so that John doesn't have to drive. I don't just mean John either, because Mr. Hashizume drives out there and he has volunteered to do some of our juvenile cases; which is wonderful because we have to appoint those straight out of the bar book. John comes and does one of those for \$40 an hour, I can't believe he would do that, but he does sometimes. That should be pro bono. He should get a big plus for pro bono because

that is what that is for him. It is outside the contract for \$40 an hour. Like you said, you can't get the Roto Rooter man for \$40 an hour. I think what Jack has is working. I just hope he doesn't burn out a bunch of his people. I hope they can get some money for this because it is a mess.

- 141 Chair Ellis Well we have already decided to take out a new life insurance policy. Any other questions for Tom?
- 144 T. Cutsforth Somebody was talking about wages and I brought a list of all the entry level deputy district attorneys for the State of Oregon. I brought how many deputies each county has and also how much they pay the office managers, which exceeds my salary. Thank you.
- 149 Chair Ellis They don't have the prestige that you have.
- 150 T. Cutsforth Oh, prestige, that is what I have. I'm all for that. There are only three pay scales for the elected DA's. One is roughly \$54,000. The other is \$78,000, and the last is \$92,000. They are subsidized variously by various counties.
- 155 Chair Ellis Is Senator Wyden ready to help us get relief on the student debt?
- 156 T. Cutsforth Yes, he is ready to push that one.
- 157 Chair Ellis We're ready to push him. We'll tell him you said that.
- 159 T. Cutsforth Good.
- 161 P. Ozanne Tom, thank you for traveling all this way.
- 161 T. Cutsforth You're welcome. Thank you for having me.
- 165 Judge Kelly My name is John Kelly and I am one of the four judges in the district. I can't tell you how much I hate being a witness.
- 168 Chair Ellis I can't tell you how much we enjoy being judges.
- 169 Judge Kelly I came without remarks, but I am happy to answer your questions.
- 171 Chair Ellis Maybe you can give us an idea of how Wasco County varies from Hood River?
- 172 Judge Kelly It is prettier. Very little, I would guess. I think the spread is a little broader here. There are more secondary contractors, and I'm not sure if that is even the appropriate term. We all have the same primary contractor, Morris Olson Smith & Starnes. We in Wasco County then go to a secondary contractor, which is the Wasco/Sherman Indigent Defense Corporation and Mr. Hashizume primarily the attorney there. It has been other folks over the years. Then we just start looking around to see who will do the indigent defense work. In The Dalles itself, there are only three or four other lawyers who are willing to take appointments. We often go to them looking for a lawyer and, when that fails, we are off to Portland, Salem or wherever we can find somebody.
- 186 Chair Ellis How often does it happen that the two principal providers either are conflicted or for some reason not available?
- 188 Judge Kelly Daily to weekly we are looking for a third lawyer where there are co-defendant and conflicts. The inability to find someone for a single defendant, that doesn't happen very often. When it tends to happen, conflicts seem to be greater for both. So the more difficult the defendant and the more difficult the case, I think the more likely you are to find a conflict. But that doesn't

happen very often. I would guess a few times a year where we are actually going further than Hood River to find a lawyer. I am not sure I addressed your question.

- 198 Chair Ellis Well, you are close to it. When you say a few times a year we are talking five times?
- 199 Judge Kelly I would think that is a fair guess. I don't have a number, but I could probably get you a number.
- 201 Chair Ellis It is almost always in the multiple-defendant case category?
- 201 Judge Kelly To go further than Hood River? No, I would say it is mostly in the type of the case, especially if Morris Olson has had a conflict, a significant Measure 11 case, a murder case or a extraordinarily difficult defendant case; that tends to be when we have to go further.
- 207 Chair Ellis The latter group you are talking about are defendants that reject their lawyers?
- 207 Judge Kelly Turn them into the Bar. I may be wrong about this, but my experience is that an affidavit of prejudice against your lawyer is a conflict because you can't stay on the case with that.
- 211 Chair Ellis Have you had many instances where you have had to have substitutions part-way through the prosecution?
- 213 Judge Kelly Yes, less than 10 percent of the time.
- 213 Chair Ellis I would hope so.
- 214 Judge Kelly Sure, defendants will dislike lawyers and all of a sudden – and I'll pick Jack because he is here – everybody will decide, and it gets round our local jail, that Jack is not the guy you want. So all of a sudden everybody wants a new lawyer. We are not required to let lawyers out simply because a defendant doesn't like that particular person. But eventually, that reaches the point where the lawyer wants out and, generally, when the lawyer asks to be excused, it is allowed.
- 230 Chair Ellis How you would describe the communication between the court and defense counsel? We have been in some communities where that is not going well.
- 233 Judge Kelly My sense is it is good. Now, if I left the room and you asked the defense lawyers, you might hear a very different story. Now let me ask you a question that will probably give you a better answer. What do you mean by communication?
- 236 Chair Ellis We have had some instances where lawyers are not appearing on a timely basis and there are defaults on cases.
- 240 Judge Kelly We have that problem and I will begin that by saying, when I look around the room, I don't see anybody in this room who I have that problem with. There are certain lawyers who are chronically late, not only by not being to court on time, but by not making pleadings on time and not seeing their clients on time. That is a problem. It tends to be a greater problem the further you go from the contractor defense lawyers, like Morris Olson or Wasco/Sherman. Generally speaking, I think we have a fairly decent relationship between the judges and the defense bar. One of the characteristics of being a judge is everybody tells you you are funny and wise. They never tell you how poorly you are doing. So we may not be doing as well as we think, but it seems okay.
- 256 Chair Ellis Other questions for Judge Kelly?

- 256 P. Ozanne I don't suppose the Commission knows this fact but I understand that you do most of the juvenile work in Wasco County. We have found, though we haven't found anything like this in your county, around the state that the quality of juvenile practice varies. While there are many able lawyers, sometimes there is an attitude that you take juvenile cases because you have to or, when you become a "real lawyer" you will leave this practice and become a criminal defense lawyer. How do you feel about the quality of work in your court?
- 266 Judge Kelly It is very high. There are primarily three groups of lawyers that we are using for juvenile work. Morris Olson usually gets one of the parents. The Wasco/Sherman group gets the other parent and Jennifer Hinman gets the child. That is the way we have worked it lately. I don't see any problem with the level of service and the level of dedication. It is very different because it is less technical. There is less procedure and tends to be less motion practice and usually a faster time limit. In dependency cases, we are federally mandated to get things done at a certain speed. The lawyers that I am dealing with have a really good sense of significant differences between what juveniles need and what adults need and what resources are available. I am really pleased with what I see in the court.
- 291 C. Lazenby You mentioned the further you get away from the established firms that there was chronic lateness. Are those lawyers compensated by our system?
- 294 Judge Kelly Yes, and I don't mean this as a criticism of indigent defense. But retained lawyers are usually punctual. Yes, these are lawyers who are being paid on the indigent defense budget. In small communities, I don't think it is any surprise that lawyers are a limited resource and lawyers who are willing to do criminal defense are a really limited resource. People who have done trial work for years and years don't want to do criminal defense. I'm sure that is no surprise to you. They don't want appointed criminal defense and, if you have your choice of working for a guy who is middle class and has a good income and kids like yours, and went to schools like you did, or working for some crack addict out of a trailer park, you will favor the middle class client even if the money is the same.
- 314 Chair Ellis When you have that experience, do you know how to find us and let us know that is happening?
- 315 Judge Kelly Well the honest answer is "no." I am aware of your existence.
- 318 Chair Ellis Peter give him a card. That is an invitation to let us know.
- 318 Judge Kelly I will, but let me tell you what my reservations might be about that. I am talking probably about a group of three to five individual lawyers. It is a small community and, if all of sudden I don't have those three to five individual people available, I don't know where I would go next. Then I would have to get a lawyer from Hood River and, frankly, Hood River lawyers never get the nice cases. They get the dogs and usually the mean dogs too. They burn out and they don't want to drive to The Dalles, if they can stay in Hood River. So then I have to go to Portland probably. That would be the next closest lawyer, and that creates more problems than having a lawyer that is late from my point of view. But I'll call.
- 342 J. Brown Speaking totally for myself, one of things we have struggled with, in terms of dealing with the legislature and seeking adequate funding for indigent defense, is from time-to-time there have been statements made that have been derogatory about indigent defense. Some relate to inappropriate use of funding and excessive or unneeded experts. Believe it or not, there are actually people in the political community that enjoy being critical of the indigent defense function. I am sure that is a shock and is appalling. But when we express a concern about lawyers being punctual and the like, it is from that kind of perspective, again not speaking for the Commission.

- 358 Judge Kelly I don't mean to make light of it. Obviously, it is unprofessional to not show up on time and not file pleadings on time. I try not to give folks a free pass on that. These folks are underpaid, making \$40 an hour. My primary practice 20 years ago was criminal defense, and I think then I was making \$40 an hour. It is a bargain. Experts can be used and they probably are overused at times.
- 378 P. Ozanne Judge, what you identified poses the same problem for us when you call Kathryn or me and ask for a solution. We are faced with the same shortage of lawyers that you identified. It is a supply issue again and, of course, that is related to inadequate defense funding. I have learned over the three years I have been here that, when I see unacceptable lawyering from time-to-time and I say, "This has got to end," Kathryn or someone else on our staff says "There is no alternative!" So I certainly appreciate your perspective. And we can't magically create a new supply of lawyers in the district when you call us.
- 388 Judge Kelly Let me back up one step. The fact that some lawyers are late or not punctual, actually, they are pretty good advocates for their clients. They know the law, they know the facts and they do a good job. I don't want to leave the impression that these people aren't good lawyers. That isn't fair to them.
- 396 Chair Ellis Thank you very much for driving over here. Let's take about a 10 minute break.
- [Break at 2:45 p.m.]
- 403 Chair Ellis [The meeting was called back to order at 2:55 p.m.] The Chief Justice said he wanted to meet with some of the court staff people, so that is why he will not be here for the rest of our session.
- 407 P. Ozanne Kevin, do you want to come up, and your colleague too?
- 416 Chair Ellis Welcome. Maybe you can tell us a little bit about yourself and your background.
- 417 K. Hashizume My name is Kevin Hashizume and I'm not sure how I got in charge of Wasco/Sherman Indigent Defense Consortium. I think it is because the other attorneys left and I was the one that was left at that point in time. Prior to that, my first job was working with Jack Morris, doing work in The Dalles. After a little bit of time, I went off and started working for Meredith Van Valkenberg. At that point in time, one of the attorneys that was working there had just left and gone to the district attorney's office in Wasco County and was working there as a deputy district attorney. Shortly thereafter, one of the other partners left and went down to California.
- 433 Chair Ellis So how many years have you been in practice?
- 433 K. Hashizume Since October of 1999; so maybe five or six years, somewhere around there.
- 435 Chair Ellis How many of those were with Jack?
- 436 K. Hashizume Right around a year or maybe a little less.
- 439 Chair Ellis Describe where you are now?
- 439 K. Hashizume When I went to Meredith Van Valkenberg's office, part of what their work was involved in a share of Wasco/Sherman Indigent Defense. Wasco/Sherman Indigent Defense is a separate corporation that has the contract with the state to provide public defense services when Morris Olson has a conflict. In the past, that was made up of a lot of different attorneys from different firms. When I first went to Van's office, there was basically Van's office and one other office. Andy Carter worked there. He took half of the contract and our office took half

of the contract. In the past, it had been split up among other offices as well. About a little over a year ago, Andy decided it was no longer financially feasible for him to keep the contract and he wanted out. Right around that time, I had actually left Van's office and gone out on my own. So for a short time, we were splitting up the contract work with my own office, Van's office and Andy Carter's office. I ended up going back to Van's office to help out and Andy left the contract. Now, Van's office is the only office that is taking any cases from Wasco/Sherman Indigent Defense. We have tried approaching some of the other attorneys in the community that take the hourly appointments, but none of them were interested.

- 466 Chair Ellis So you are functioning essentially as a two lawyer consortium?
- 471 K. Hashizume Yes, right now.
- 471 Chair Ellis You are the manager?
- 471 K. Hashizume Yes, I ended up with that.
- 473 Chair Ellis What percentage of your personal time is spent on this? 100 percent?
- 476 K. Hashizume I would say probably 60 percent of my time.
- 477 Chair Ellis The other 40 percent is private?
- 477 K. Hashizume I am one of the only people that will take the cases in the municipal court in The Dalles. That probably takes up another 10 or 20 percent of my time. The remainder of it is private retained work.
- 482 Chair Ellis How is the municipal court funded?
- 482 K. Hashizume It is out of the city's budget and they pay us \$40 an hour.
- 486 J. Potter Private retained criminal work?
- 486 K. Hashizume No civil.
- 487 Chair Ellis How are you able to keep current from a CLE point-of-view.
- 489 K. Hashizume I let my membership in the OCDLA lapse. Then about a year ago, I got back on again and am starting to go to the seminars again. In the meantime, I subscribe to the newsletters to get the updates on criminal law. Van's office has a season ticket for the State Bar CLEs, so we go to those CLEs; although, granted, there are very few of them that have anything to do with criminal law.
- 499 Chair Ellis One of the things we have been talking about with Jack and others is the difference between a public defender structure and a private firm structure. The PD model, certainly it's true with Metro and Lane County and I believe it is true with the other PDs, that they often will share their resources with the other practitioners. How does that work here?
- 509 K. Hashizume Whenever I have an issue that I wasn't familiar with or I felt another attorney had more experience with, the attorneys in The Dalles office of Morris Olson have always been very welcoming to me when I have questions. Other attorneys in private practice have also always been willing to assist me as well, when I hit a point that I don't know the answer.
- 517 Chair Ellis Given your experience, which is good but not as much as some others, the cases you end up doing, do you feel comfortable doing?

- 522 K. Hashizume I feel comfortable because, through the years, whether I liked it or not, I ended up involved in cases. I think it was real early on and it was a retained case, I ended up with Meredith Van Valkenberg co-counseling a kidnapping, robbery and a few other charges out in Pendleton. I think it was second or third year and I was assisting at the trial. When I was at Morris Olson, right away I jumped in with both feet doing trials in the first month. I think all along I have always been used to having to try cases and kind of learn on the run and ask a lot of questions. Quite honestly, Mr. Van Valkenberg doesn't do a lot of criminal law anymore. In the past, he did work for the district attorney's office and he did do criminal defense work. Judge Kelly used to be one of the partners as well. The office has always done a certain extent of criminal defense work. But when I needed moral assistance or somebody to sit there with me and help me with clients, he has always been willing to do that. And he has been very good about working through personality problems, when one develops between a client and myself.
- 556 Chair Ellis Did you grow up in the area?
- 556 K. Hashizume I grew up in Los Angeles.
- 558 Chair Ellis When did you move to the Northwest?
- 559 K. Hashizume I moved to Portland after I finished law school and took the Bar and then I happened to really like the way the Gorge looked.
- 564 Chair Ellis Other questions?
- 567 K. Hashizume One of things, and I am very new to this idea and process of meeting with all of you, but I did find the initial report – I guess it wasn't everything I would have liked for it to say about us. But at the same time, I appreciate seeing the comments and I was going to talk to Peter more about it in the next week. After seeing the report, one of the things I did today was I saw that there were some concerns, so I went ahead and made phone calls to both of our local judges to see if I could sit down and find out what their concerns are explicitly, and then figure out how we can try to address them.
- 579 Chair Ellis We have actually had the experience in two or three communities that it helps to have us come to a county. I think it gets people talking.
- 585 K. Hashizume The court has been good because they have had some concerns in the past about certain things. They brought it to my attention and I have tried to address them. I think there has always been a very comfortable and open relationship there. I have always been very open to listening to what they are trying to implement. I have been trying to work very closely with the court when there are areas of concern.
- 601 Chair Ellis We would obviously continue to encourage you in that direction. Any other questions? Thank you very much. We appreciate it.
- 609 B. Aaron I am one of the lawyers that is doing the conflicts contract; and is transitioning out, primarily because of the money. I have hired a new associate and I am embarrassed to tell you what I am paying her right now. I would really like to be able to go back to my office and tell my staff that she is getting a raise. I can't do that. It is driving me out right now. My retirement plan is to work until I die because that is what I am going to do.
- 624 Chair Ellis Give me a little of your history.
- 627 B. Aaron I was born in Southern California. When I was very young, I moved to a town that was smaller than Hood River, so I have always wanted to live in a rural area. I went to law school in the Bay Area at Santa Clara and did undergraduate there as well. My first job was with the

Metropolitan Public Defender. I worked there just about two years starting in 1990. Then, in 1992, I came out here and worked briefly with Jack Morris' office. In 1993, I hung out my own shingle and contracted with the state to do conflicts and have been doing that ever since.

- 641 Chair Ellis So currently you are in private practice here in Hood River with one associate. What percentage of your work is indigent defense?
- 645 B. Aaron For about the first six years of my practice, I had an associate with me at the time, but I was doing strictly contract work or privately retained criminal work. You get by on it. The \$70,000 would be fine, if I didn't have an office and support staff. I was doing predominantly criminal defense work. I dabbled in a little bit of domestic relations, but my heart was with criminal defense and I am sad that I am leaving it now. I am transitioning out of it.
- 663 Chair Ellis What will you transition to? Will it be predominantly retained criminal?
- 666 B. Aaron I will still be doing retained criminal, but the associate I was working with most recently, before I hired Sherri here, did the civil end of the practice. He went out on his own and many of those cases stayed at my office. So I am going to be focusing on the civil end. Working at the contract rate of \$320 per case, or even outside the contract at \$40 an hour, I look at that and say, "I could be doing that, but I can make \$150 to \$200 in civil." I would rather stay doing criminal work, if you guys give me some more money.
- 692 Chair Ellis Don't be surprised if we use you as an example of what the state is facing?
- 697 J. Potter Brian, is your associate going to be doing court-appointed criminal work?
- 699 B. Aaron Yes she will. She is an '05 graduate, and right now she is handling some juvenile and some misdemeanors. I also have her doing some court appointments. I have her signed up for some CLEs coming up. I have to echo what Jack says and that is, if she wasn't there asking questions every day, I would be very concerned. She has been real good about asking questions.
- 718 Chair Ellis Will she do that as an associate for you? So your firm will still be taking the cases. Who is taking the work?
- 722 B. Aaron For the next year, I will be transitioning out of my caseload.
- [Tape 3; Side B]
- 002 B. Aaron What I am reading is there is a problem with some of the conflict attorneys and you are not getting the quality of attorneys. There were some attorneys here in town that quit taking court-appointed work because why would they continue at \$40 an hour work when there is \$150 an hour work out there? You are losing money to do that. What you should probably do is set up a consortium, where there is a group of attorneys who are doing criminal work and, where there is a minimum requirement, have standards set and then pay them a decent amount of money to come in and take these cases.
- 011 C. Lazenby I don't want to put you on the spot, but I will. Earlier, Tom Cutsforth was talking about the possibility of a federal program, and he didn't flesh it out. But it sounded like Americorp for law students. Basically, they would get some sort of federal compensation to cover their law school debt in exchange for working in the criminal field either on the defense side or the prosecution side. On the defense side what concerns me about that idea is the supervision piece. Do you think that practitioners such as yourself, that is where I get you off the spot, practitioners such as yourself would be willing to sort of pro bono supervise those law

students or would you want to be compensated for supervising them and teaching them the ropes.

- 021 B. Aaron We do that pro bono as it is. Of course we would love to get compensated for that. I know Jim has offered his office to new attorneys coming to train them. If there could be compensation for it then yes and I am certainly more than willing to answer any questions. Jack's office has always been very good about that. When I have had questions his attorneys have always had an open-door policy that I can call them and ask them questions and I think most people that do criminal defense are that way. I think you can go to the bigger public defender's offices and get the mentoring and training there.
- 031 C. Lazenby I think I just saw Greg volunteer.
- 031 B. Aaron The philosophy has been changing as noted earlier. I think there are more recent grads coming out and I don't know whether it is television or what it is the philosophy now that they want to be prosecutors. Twenty or thirty years ago it would have been public defenders. I think some sort of forgiveness program, and I don't know what pull you have, but it would certainly be beneficial to talking to state law schools about some sort of program for them to forgive student loans.
- 037 Chair Ellis Thank you very much.
- 037 B. Aaron Thank you folks for being here.
- 038 P. Ozanne Your question reminded me, Chip, when I first took this job I had a former colleague from the University of Oregon Law School call me and ask: "Now that you are in the public defense, could you please find some lawyers who do indigent defense work and would be willing to set up an Innocence Project on a pro bono basis?" My response was, "I'll find the pro bono defense attorneys when you find some pro bono law professors."
- 046 C. Lazenby Right. You know we have had these twin problems. We wrestle with attracting younger practitioners to do this work. How do you get folks to the rural or less populous areas? There is the cost problem doing all that. I appreciate the fact that, for lawyers in private practice, it is more than a loss leader, it is a bleeder in terms of money going out the door. But at some point to solve those problems, there has got to be some training. I hate to admit this, but my first day as a lawyer, I walked into where I was working and they handed me a file and said "Go get this guy out of jail." I did, but that is not exactly training. The same thing would be true if you do end up with some sort of program that helps get rid of debt. Now you have the work force out there. But they are going to have to learn and be supervised in order to prevent mass malpractice within the first six months that they are thrown into the system. It has got to come from experienced lawyers.
- 062 Chair Ellis Any other witnesses?
- 063 P. Ozanne Unless there is someone else in the audience who I haven't identified earlier that would like to speak to the Commission.
- 064 Chair Ellis Steve, you wanted to share some thoughts with us?
- 068 S. Gorham I can be very brief. Peter on February 2 suggested that MCAD give you some updates as to what we have been doing, based on our site visit and your report. This is our first formal update. I think we have kept Peter, Kathryn and Ingrid informally involved in things that we have been doing since last summer. Here is our first formal update. We have tried to do several things. We have been concentrating, first I think, on the communication plan, which I think you see there. There was some, I think, valid criticism of some of our attorneys. We addressed some of the issues that came up here today about communication and being on time

and those professional issues. We immediately instituted the communication plan that you see. I believe it is going better, but it is not perfect yet. We have less, if you will, concerns expressed by the courts to us. One of the problems in Marion County, which I hope you all realize, is what I call the courthouse crisis. Our courthouse was trashed and is still trashed. They are slowly getting it back into shape, but none of us are back in the courthouse. That means the diversity that has been in practice in Marion County centered in two locations is now diversity centered in many different locations. Some of the problems having to be in two places at once exist even more so now. But I think the good part about that is, if there is any good part in regard to how MCAD has handled it, we are really an integral part of what has gone on with the crisis and the judicial system. I think that there is probably no one who could say that we didn't do an exemplary job, and continue to do an exemplary job, in helping the courts come back from that crisis. We have tried to do our best to be in the right place at the right time and the other things that have gone on with the courthouse crisis. I, as maybe the de facto public defender in the county, have been involved in all the planning that goes on with the courthouse crisis, and we are starting to come back. The good news, I guess in that regard, is that they hope that the basement and the first floor of the courthouse will be workable and usable and open to the public in May. I think they still have their fingers crossed a little bit, but they think in May.

109 J. Potter

Is this all smoke damage?

110 S. Gorham

The basement was fire damage. The reality is one room in the basement, the jury assembly room was in the basement, and next to it was a big conference room. The major fire, if you will, was in the conference room and everything else was smoke damage. They had the heating and air conditioning system running that weekend. It happened on November 12, which was a Saturday morning. Because the heating and air conditioning was running there was smoke damage in every other place including the fifth floor. If you ran your finger at counsel table in one of the courtrooms on the fifth floor it came out very dirty. They basically had to gut the inside of the building. All of the courtrooms had drop ceilings, so they had to take all of the drop ceilings and go to the cement on all the floors. They had to seal all that because the cement soaked up the smell of the smoke. The court itself has to be cleaned and disinfected and all of the files. I think that will be long term. It is been quite a job. I think the good news is, in essence, we are getting a new courthouse interior. There will be some upgrades to various systems. There are things they found behind the walls they are fixing. It is going to cost about \$14,000,000.

133 Chair Ellis

Which insurance covers what?

133 S. Gorham

The insurance is going to cover all but about two and a half million. They are not covering the upgrades. One of the things they found was some of the roof was leaking, and those kinds of things they are not covering. That has been good for the county.

138 Chair Ellis

They have put some technology in the courtrooms?

138 S. Gorham

They are saying they are, and that we are going to get a wired courthouse out of it. I think Justice De Muniz knows about that and through some of his help –

142 Chief Justice
De Muniz

I don't know if anyone is interested but, from the first day I was Chief Justice, I contacted both state and county officials and within 48 hours developed a plan. Actually, the Marion County Courthouse will be a state-of-the-art courthouse. To the extent that we don't have the money for some of the significant upgrades, all of the wiring will be done, so when we do have the money, it will be ready. Steve is correct. When I toured the courthouse in late December, they had taken everything down to the studs on the first two floors. Every stitch of furniture, communication equipment and computers; it was completely reduced to a shell, and now they are building it up. The facilities are insured through the county and all the

operational materials, all the desks and communication equipment, is a state matter. Judge Lipscomb and people like Steve Gorham have done a great job cooperating to see that we have a place for our court again. I grew up in that courthouse, so I knew all the bad spots and this is a chance for us to remake this facility.

170 S. Gorham One of the other major changes that you will see that we have done and we are just beginning this. We have been planning it since January, but we just started it this month in April. We have organized into workgroups. We call them teams, and we have given you the workgroup plan. Basically, we have divided all of our attorneys into these workgroups and they are mandated to go. It is to get two major things out of it to begin with. It is to get a collaborative process that was really going on informally, but to formalize that. We have referred a lot to Jim Hennings from Metro PD and how they have teams that work together. This was to kind of formalize that for MCAD, so the attorneys can collaborate with each other and talk about, not only their cases, but other issues in criminal defense that come up. We were doing it, but I think we were doing it on an informal basis. Now we are doing it on formal basis. The other piece of it that we have started to do as part of our quality assurance process is going to be worked through the workgroups. Concerns, or you might call them complaints, that have come to me, they will still come through me but immediately be funneled through the workgroups. The workgroups themselves will have a set process for working through those concerns and making sure that whoever has expressed those concerns is informed of them and brought up to speed as to what has been done about them. As for the individual involved, if there is some necessary training or supervision necessary, the workgroup will set an action plan in place to correct whatever the problem was. We were really encouraged to do that. One of the other concerns that you all had was our attorney-of-the-day system. I believe that the workgroups will turn into a process to address this concern. Two major concerns of that system are matching the qualifications of the attorney – meaning the less experienced or the more experienced attorney with harder or less hard cases – and the attorney-of-the-day workload. We had one attorney getting all the felonies in a day and maybe they get overloaded. That is a piece that we don't want to change, and the courts and the district attorney don't want us to change until we can collaborate with them to do that. The courthouse crisis has prevented us from that collaboration and that planning. We had started it last fall before the courthouse got trashed. But that had to be put in abeyance until we can get back into the courthouse. Now that we are almost there, we will start doing that again. That is another place that I think the workgroups will help us change.

225 Chief Justice
De Muniz When I was reading this, are these work groups equivalent to practice areas?

228 S. Gorham No, they are not set up as practice areas yet. We may end up going there. We had a choice how were we going to organize it. We were going to organize it into work areas or where the district attorney's office has a sex unit. We decided not to start there. I think that was based on member input. We started with an ad hoc committee to set up the workgroups. I don't have the exact number, but I think it is between three-quarters and 80 percent of our members actually went and were involved in the setting up of the workgroups. They thought a more generalized area would be best to start with. It may turn out that after we are up and running that we will feel that it would be better to go to set types of cases. But right now, the generalized area was thought to be the best. I think as you can see from the plan, one of the important things in the plan was to be sure that we actually have less experienced members of the defense bar along with more experienced members of the defense, as well as very experienced members, in the workgroups.

251 Chief Justice
De Muniz Oh I see, you are actually combining people of different levels of experience and different practice areas to assist one another.

- 256 S. Gorham The committee that helped set this up thought that that was the best way to go. It hopefully will turn out to be the best way to go because we are just starting, so we are not 100 percent sure.
- 259 Chair Ellis How is it going with the outside board?
- 260 S. Gorham It is going very well. We always have been a 501(c)(3) corporation. We have had bylaws. The membership changed the bylaws so we have three outside members, one member appointed by Willamette Law School, one member appointed by the presiding judge of Marion and one member appointed by the Marion County Bar. We have two of those members now, and I think we will have our third member by next week. The two members that we have are Mike Wise, who is a professor at Willamette, and Michael Swaim, who is a long-term practicing lawyer in Marion County, and who at some point was the Mayor of Salem.
- 271 Chair Ellis The total board size is?
- 271 S. Gorham Nine. We expanded the board size until we got those outside members. So it will end up still being nine. There will be six board members and three from the outside.
- 276 Chair Ellis The other was your communication plan.
- 278 S. Gorham That is the thing that we did right up front to try to make sure that the concerns that you heard from the judges of not getting returned phone calls and potentially people being late was addressed right away. I believe the concerns and complaints have lessened to almost nothing because of the communication plan.
- 284 Chair Ellis There is probably some overlap between the two who have been let out of MCAD and the problems?
- 287 S. Gorham I'm not sure that was where those major concerns came from. There was one person who was totally let out of MCAD, and that was a quality assurance problem with that particular attorney. We had been delaying doing something for a long time, and should have done something. I think the process last summer kind of gave us a kick in the pants to actually do something about that problem attorney. The other person is a very experienced criminal defense attorney who kind of, we felt, lost his way in the desire to do the work. It was not necessarily that his quality was down, but his desire was, so we partially suspended him. I would say successfully it got him interested in doing the work again. I think he had slacked off a little bit, and now I think he's interested in doing the work again. To bring him totally back, we have given that assignment to the workgroup. So he will be mentored in a certain way and then, if the mentoring by the workgroup is successful, he will get back on doing whatever he wishes to do.
- 309 Chair Ellis I haven't had a chance to read it as thoroughly as I will, but it seems like a good report and we appreciate it.
- 310 S. Gorham This is a two-way street. So after you do look at it, if you think that there is anything that needs to be improved in it, please let us know. I had one comment about something else. A question you asked, Chairman Ellis, about the LSD division: I think the communication of the LSD division from my experience they do a really, really good job on the appeals. I think they do a superb job on the appeals. If we call them we get great answers from them. What we would like to see is some communication without having to call them. It would be nice to see some of the legal issues being sent out maybe through OCDLA's pond or something like that. It would be great if the LSD people who do death penalty cases would work on a "standardized," if you will, demurrer. I just finished writing, unfortunately, a 153-page demurrer. But just to make sure that we have covered everything, now I can call them and get

feedback. It would be nice if they might work on those kinds of standardized things and get them published. That is not a criticism of them. But I think it might be just one more helpful thing that trial-level practitioners could get.

338 Chair Ellis Thanks. Continuing review of the contracting process?

Agenda Item No. 5 Continuing Review of PDSC’s Contracting Process

340 P. Ozanne That is how it is listed, Mr. Chair. What we really wanted is to provide the opportunity for a continuing conversation about the contracting process. I see at least one person who submitted a written comment, and that is Greg Hazarabedian from Lane County. I don’t know if Greg wants to add to his written comments, or if you had questions of Greg. There weren’t as many comments as we had hoped for from contractors, but perhaps Greg would you like to speak to the Commission about it.

351 G. Hazarabedian Let me start off by saying that my letter may be coming on a little more gangbusters –

354 Chair Ellis There were others that were even more so.

355 G. Hazarabedian I wanted the Commission to understand that, while clearly we had some feelings about this issue that Peter asked us about and we addressed them and I think quite appropriately and respectfully, the problems I perceived with the part of how the process works is not an attitude shared to all the other parts of how Peter, Kathryn and the rest of their crew do their jobs. I wanted to make that clear. That may not have been as explicitly expressed in the letter upon subsequent reading as I would have liked. We don’t have big problems dealing with indigent defense systemically. We have a good, positive working relationship, and I think we help each other out on a continual basis. I do think there were issues that need to be addressed with regard to the last session of contracting. Be forewarned that my experience with contracting prior to this last session was as a sole practitioner and then a death penalty lawyer. This was admittedly my first time being involved in the process of getting a large organization contract. Balancing that, though, is the fact that I work with five other folks from my office both administrative and legally, who have been involved with past practices and did that. Certainly I didn’t presume to have experience or breadth of knowledge necessary to do it. I think the criticism, hopefully constructive, that I made is pretty self-evident. I think there is no need for me, unless there are questions, to go through the comments again. I think we communicated in the letter what our concerns are. I would be happy to take questions, if anybody has any.

384 Chair Ellis I think we are good.

385 G. Hazarabedian Thanks very much for your time.

388 Chair Ellis Kathryn and Peter, do you want to comment on the letters or on the process?

391 P. Ozanne It is a –

392 Chair Ellis This is your opportunity to take it or leave it.

393 P. Ozanne I am certainly glad there were comments, and I wish there were more. There are probably other people that have other suggestions out there. The one thing that we’ve talked a lot about, and I think we are working toward this process, is the administrative model. Maybe Greg wants to add some comments about what perhaps he thought was a request for information from OPDS that didn’t turn out to apparently produce anything. But as for the “take it or leave it” approach, we are actually moving toward it in the sense of establishing a predictable and transparent administrative process; instead of a negotiation process where

nobody knows what's going on with other contractors and the skills of negotiators affect the terms and conditions of contracts.

- 408 Chair Ellis Consistency does push toward the idea that once you get to a consistent position, you have to stay there.
- 410 P. Ozanne I think so and, of course, it is something that the Commission needs to continually reflect on. When I took this job, I was critical of the contracting system – and in some ways I still am – in the initial report I did with Geoff Guilfooy. In my opinion, the way a public contract system ought to operate is that this Commission should make rationale decisions about the allocation of resources, the rates should be set accordingly and should be relatively consistent, and differences in rates should be based on articulable bases that we can justify and explain. Therefore, the distribution of funds and the terms of contracts would be predictable and negotiations would be minimal. If that is the right model, then I think we will be saying, in effect, take it or leave it as a general rule. There may have been individual instances where we could have done a better job in communicating this concept. I guess that is about all I have to say right now on this subject. Maybe Greg would be interested in talking more about substantive issues such as workload, as opposed to process. Greg, you mentioned, and I have heard Jim Hennings speak about the issue often on our Contract Committee, the concept of workload, as opposed to caseload. But we really haven't made any headway on the committee about this concept. In other words, rather than measuring and compensating people based on numbers of cases, we base it on attorneys' workload. But I really don't know how that would work. Jim has something that seems to work in his office, where a group of experienced lawyers determine –
- 435 Chair Ellis Not workload, it is work unit I thought.
- 437 G. Hazarabedian There are some fairly accurate studies out there –
- 441 P. Ozanne Just let me finish my point, Greg, and then you can have at it. It seems to me that in order to implement a work unit or work load system as part of our contracting system, since it would vary so much from county-to-county, you would have to have some system to evaluate work units on a county-by-county basis and it would have to be updated fairly routinely. That would involve a pretty substantial allocation of resources. So, having said that, Greg, have at it.
- 449 G. Hazarabedian I have seen some of the literature nationally and I would be prepared, between now and the next Commission meeting, to contact some people around the country and see how they got to that position.
- 455 Chair Ellis When they say work unit, they distinguish between preparing a motion versus arraignment versus trial; or are you talking about something more granule than that?
- 459 G. Hazarabedian I think what we are talking about is, what does it take the office to do the work? Rather than talking about what a certain case is worth, it is talking about what it takes the organization to do the work.
- 466 Chair Ellis Get the literature.
- 470 J. Hennings Barnes, the work unit concept is really almost an insurance concept. It takes a broader scope and then says, "Okay, generally this is what happens in this kind of case." It works best if you can subdivide it. I have discovered a major flaw in my own approach, which was to take all the felonies as a group. When I first did it, it broke down very easily. One and five were basically the same, six and seven were a little bit higher, eight was a little higher and nines and tens quite a bit higher in terms of the average amount of work. We asked our staff how many of these kinds of cases could you handle in a year. I have found there is a major issue

and that has to do with the operations in Multnomah County. It is the split in the county between property and drug and assault-type cases. It is worse with A, B and C felonies. Some cases are much more serious, so they no longer fall into those areas.

- 509 P. Ozanne I have seen some of the literature used by national organizations to build workload standards. They start with the proposition that “we are not getting paid enough, we need more money and here is why. Here is the work we do.” This work unit principle in the literature is usually being used to get more money and to justify it.
- 518 J. Hennings I have used it internally in terms of management.
- 520 P. Ozanne But how does it work in terms of allocating a fixed amount of money across the state through our contracting process?
- 523 J. Hennings That is the problem. If it is a fixed amount of money, you are going to fail. I think you need two legislative sessions to do it right. Basically, you have got to decide how much work somebody can reasonably do. Somebody has to get a decent wage in order to ensure quality. And you have to keep the workload, not the number of cases but the workload, small enough so that you can reasonably expect quality work. I think that is really the job of this Commission. You have got to set what that workload is so that you have a better chance that quality work is being done. Your standards don’t do anything if you so overload the work that has to be done that they can’t do it.
- 560 Chair Ellis Jim, you gave me some information you might want to share about Joe O’Leary.
- 563 J. Hennings Joe O’Leary is now the advisor to the Governor on criminal justice matters.
- 567 Chair Ellis I think that is good news.
- 568 P. Ozanne Kelly Skye is also Deputy Legal Counsel to the Governor.
- 572 Chair Ellis Any other business? I do want to thank the community for coming out and sharing your thoughts with us. **MOTION:** Shaun McCrea moved to adjourn; Chip Lazenby seconded the motion; hearing no objection the motion passed. **VOTE: 5-0**

[The meeting was adjourned at 3:55 p.m.]

Attachment 2



JAMES D. HENNINGS
Director

METROPOLITAN PUBLIC DEFENDER SERVICES, INC.

April 20, 2006

Peter Ozanne
Director
Public Defense Services Commission
1320 Capitol Street NE, Suite 200
Salem, OR 97303-6469

Re: Input on Improving the Fairness and Efficiency of the Contracting Process

Dear Peter:

Thank you for the opportunity to provide input on this critical issue. As I have testified, the continuing and increasing disparity of resources for indigent defense providers compared to other workers in the criminal justice system is becoming a major threat to the quality of the services which the defense can provide. It is my personal opinion that major attempts must be made to address this inequity in the next legislative session and that at most the Public Defense Services Commission has two legislative sessions to make major improvements or face the prospect of a totally nonfunctioning defense services system.

The Commission has repeatedly talked about the graying of the indigent defense bar which is a real problem. Over the next four years the attorneys who created and grew the Oregon Criminal Defense Lawyers Association will be retiring. The criminal defense lawyers in Oregon who remain in criminal defense will be forced to change careers because they will not be able to shoulder the personal financial burden which is the obligation of the state. The attorneys who are just coming into criminal defense are decreasing in number (if available at all) and remain in criminal defense only long enough to be trained. Because of increasing costs these younger attorneys cannot afford to perform defense services and pay their school loans and have a family and have any personal life. Likewise, the Indigent Defense Offices that are currently operating at a loss due to the failure of the state to pay for appropriate operating costs and capital items, let alone appropriate wages and retirement, will be forced out of the business due to bankruptcy. In order for the Commission to guarantee the ongoing quality of defense services I believe it is necessary to establish a Commission policy that the provision of indigent services will be paid at an equitable and appropriate rate. Following are my suggestions on how to reach such a point.

I suggest that the Commission adopt as a policy that it will contract only for reasonable workloads and will pay appropriate compensation for that work.

On the matter of equity the contracting process should have two goals.

First, there should be no contracting above a reasonable workload per year as measured by the number of FTE attorneys receiving the contract. The measure should be workload and not caseload because the real quality issue is whether the attorneys have sufficient time and resources to provide the services necessary for quality work. The oft' heard statement that "if you want more money you must do more cases" must disappear unless the Commission is not concerned about the capability of its contractors to perform at a quality level.

The second goal should be that the Commission will pay for FTE staffing without regard to provider type. This mean when measured as a number of FTEs assigned under the contract, whether full time or part time, there will be an adequacy of resources.

There must be adequate salaries and benefits at least as measured by the local district attorney salaries and fringe.

There must be adequate support costs which include support staff salaries and benefits again as measured no less than the local district attorney, adequate overhead costs for the real cost of rent, supplies, and the other items necessary to run a modern law office, and adequate capital expenses both for new items and most importantly for replacement of capital items as measured by a standard depreciation schedule.

There must be appropriate compensation, both salary, benefits and support costs, for specialty programs such as early disposition and drug court which are based upon workload estimates separate and apart from standard case processing.

In order to reach these goals the Commission needs to create a process which periodically sets annual workload standards and forbids contracting on an FTE basis above those standards unless a special case is made that, due to local circumstances, the contractor can handle at a quality level a higher workload per FTE.

The Commission then needs to set the standard of compensation under the contracts to pay appropriate costs for salaries, benefits, overhead and capital expenses as a set rate.

Essentially the Commission needs to create a standard of acceptable workload per FTE and appropriate payment for the workload and then to commit to contracting with those mandates.

At that point the unfairness of take or leave it bid negotiations will not destroy the excellent defense provider system which now exists.

Thank you for your attention and invitation to provide this input. If I can provide any further assistance, please contact me.

Yours,

James D. Hennings
Executive Director
Metropolitan Public Defender

/mm

Attachment 3

Presenter: Kathryn Aylward

Public Defense Services Commission
Meeting Action Item
May 11, 2006

Issue

PDSC approval of Preliminary Agreement (PA).

Discussion

The Contract and Business Services Division has entered into a Preliminary Agreement for a death penalty contract with Frank E. Stoller. Actual contract documents will be signed pending approval from the PDSC.

Prior to entering into the agreement, Mr. Stoller had been representing a client on an aggravated murder postconviction relief case as an hourly paid attorney. The same client was then sentenced to death on another case and required appointment of counsel for representation on the automatic death sentence review. Although Mr. Stoller was uniquely suited to be appointed to the second case, the financial impact of increasing the public defense portion of his business prohibited his acceptance of the case without the benefit of a contract.

The PA is for a halftime contract for a term from April 1, 2006 through December 31, 2006 for a total compensation of \$63,873.

Recommendation

Approve the preliminary agreement discussed above.

Required Commission Action

Vote to approve the preliminary agreement discussed above.

Attachment 4

Presenter: Kathryn Aylward

Public Defense Services Commission
Meeting Action Item
May 11, 2006

Issue

PDSC approval of a change in the OPDS Compensation Plan.

Discussion

Executive Branch agencies will be adjusting all compensation plans to add a new top step to each salary range effective 7/1/06. In addition, Executive Branch agencies will be adding a 2% COLA (with a minimum increase of \$50) effective 12/1/06.

The Judicial Department added a new top step to its salary ranges effective 1/1/06 and anticipates adding the 2% COLA (with a minimum increase of \$50) effective 9/1/06. A final determination as to whether the Judicial Department will be adding the 2% COLA on 9/1/06 is dependent on the outcome of contract negotiations with health insurance providers for rates that will apply to calendar year 2007.

The Commission is required to establish and adjust compensation rates for the Office of Public Defense Services that are commensurate with other state agencies and that can be met within existing resources. Although our recommendation would be that, as a Judicial Branch agency, we should align our compensation plan with the Judicial Department, we could not have added a new top step effective 1/1/06 within existing resources. We can, however, add a new top step and provide a 2% COLA (with a minimum increase of \$50) effective 7/1/06.

Recommendation

Approve the attached Compensation Plan.

Required Commission Action

Vote to approve the new Compensation Plan effective July 1, 2006.

**OFFICE OF PUBLIC DEFENSE SERVICES
COMPENSATION PLAN**

Effective: July 1, 2006

CLASSIFICATION TITLE	Step 1	Step 2	Step 3	Step 4	Step 5	Step 6	Step 7	Step 8	Step 9	Step 10
Accountant 1	2531	2647	2771	2904	3044	3184	3337	3505	3673	
Accountant 2	2771	2904	3044	3184	3337	3505	3673	3848	4034	
Accountant 3	3337	3505	3673	3848	4034	4229	4437	4657	4889	
Accounting Tech 1	1808	1880	1957	2048	2117	2216	2307	2420	2531	
Accounting Tech 2	2117	2216	2307	2420	2531	2647	2771	2904	3044	
Accounting Tech 3	2307	2420	2531	2647	2771	2904	3044	3184	3337	
Business Services Manager	3870	4061	4265	4482	4705	4937	5180	5441	5708	5996
Chief Defender	5708	5996	6292	6598	6928	7279	7641	8014	8406	
Chief Deputy Defender	5708	5996	6292	6598	6928	7279	7641	8014		
Compliance Specialist	2531	2647	2771	2904	3044	3184	3337	3505	3673	
Contract & Business Services Director	5604	5879	6176	6481	6796	7136	7497	7869	8260	
Deputy Defender 1	3649	3831	4023	4224	4438	4669				
Deputy Defender 2	4438	4669	4901	5145	5399	5673	5954	6249		
Executive Assistant	3039	3185	3353	3520	3689	3870	4061	4265	4482	
Executive Director	5996	6292	6598	6928	7279	7641	8014	8415	8830	9266
General Counsel	5335	5604	5879	6176	6481	6796	7136	7497	7869	
Internal Auditor	4219	4430	4652	4884	5130	5388	5654	5933		
Legal Secretary	2117	2216	2307	2420	2531	2647	2771	2904	3044	
Legal Secretary Supervisor	2584	2712	2844	2990	3130	3281	3454	3625	3805	
Office Assistant 2	1542	1603	1672	1741	1808	1880	1957	2048	2117	
Office Specialist 1	1741	1808	1880	1957	2048	2117	2216	2307	2420	
Paralegal	2531	2647	2771	2904	3044	3184	3337	3505	3673	
Public Defense Analyst	3645	3827	4019	4219	4430	4652	4884	5129	5386	
Senior Deputy Defender	5182	5441	5708	5996	6292	6598	6928	7279		

Attachment 5

For background information in preparation for PDSC's May 11, 2006 meeting the following material is excerpted from:

A Report of the Oregon Judicial Department's Juvenile Court Improvement Project

*Child Abuse and Neglect Case Processing in Oregon's
Courts 2003-2004 Assessment*

*** PART I: BACKGROUND ***

SECTION 1: MISSION AND HISTORY OF THE JUVENILE COURT

The goal of Oregon's Juvenile Court in the dependency arena is to protect children, preserving families whenever possible.

Oregon Courts insure that children "in the system" are safe, that appropriate measures are taken to address and promote their health and well-being, and that they get out as timely as possible into safe and permanent homes.

HISTORY OF THE JUVENILE COURT: THE EARLY HISTORY OF CHILD WELFARE LAWS IN AMERICA

American child welfare policy has "been marked by a tension between two missions: an emphasis on rescuing children from abusive or neglectful families on the one hand, and efforts to support and preserve their families on the other" (Schene 24). From colonial times until the turn of the twentieth century, child protection efforts focused on the poorest citizens and immigrants and removed their children to orphanages or indentured servitude with no concern for the children's return.

In the 20th century, child advocates shifted their focus, discovering that "the best place for normal children was in their own homes" (Bremmer). In 1909, the White House Conference on Children concluded that the "[c]hildren of parents of worthy character, suffering from temporary misfortune, and children of reasonably efficient and deserving mothers who are without the support of the normal breadwinner, should as a rule be kept with their parents, such aid being given as may be necessary to maintain suitable homes for the rearing of the children. Except in unusual circumstances, the home should not be broken up for reasons of poverty, but only for considerations of inefficiency or immorality" (Roosevelt).

In response to this changed thinking, states enacted mothers' aid laws. Ultimately, Congress created the federal Aid to Families with Dependent Children program through Titles IV and V (ultimately IV-B) of the Social Security Act of 1935 (Jones). Government support for families led to a decline in the number of children in foster care (Kadushin).

CHILD WELFARE LAWS FROM 1970 TO THE PRESENT DAY

By the late 1970s, between 500,000 and 750,000 children were in publicly funded foster care at any one time. Numerous state and national studies conducted during the 1970s documented the many problems facing children who were at risk of placement or already in out-of-home care (Fanshel & Shinn and Shyne & Schroeder). Legal experts analyzed the problems in the legal system that contributed to this situation (Goldstein et al., Mnookin, Wald, tenBroek).

These studies revealed that many children spent their formative years drifting from one foster home to another without ever establishing bonds with either their biological or foster families. The state made little or no effort to reunite these children with their families or provide them with permanent and stable substitute homes.

This research formed the basis for much litigation on behalf of foster children. In 1977, the U.S. Supreme Court relied heavily on the literature when it noted:

[C]hildren often stay in "temporary" foster care for much longer than contemplated by the theory of the system...indeed, many children apparently remain in this "limbo" indefinitely.... It is not surprising then that many children, particularly those that enter foster care at a very early age and have little or no contact with their natural parents during extended stays in foster care, often develop deep emotional ties with their foster parents.

Yet such ties do not seem to be regarded as obstacles to transfer of the child from one foster placement to another. The record in this case indicated that nearly 60% of children in foster care in New York City have experienced more than one placement, and about 28% have experienced three or more. The intended stability of the foster home management is further damaged by the rapid turnover among social work professional who supervise the foster-care arrangements on behalf of the State. Moreover, even when it is clear that a foster child will not be returned to his natural parents, it is rare that he achieves a stable home life through final termination of parental ties and adoption into a new permanent family.

Smith v. Organization of Foster Families, 431 U.S. 816, 833-38, 97 S. Ct. 2094, 53 L. Ed.2d 14 (1977)

By the late 1970s, the stage was set for wholesale reform of the country's child welfare system.

FEDERAL RESPONSE

Against this backdrop, Congress amended Title IV-B and IV-E of the Social Security Act in 1980. Commonly known as P.L. 96-272, the Adoption Assistance and Child Welfare Act of 1980 was designed to reduce unnecessary use of foster care. To receive federal foster care funds, each state had to provide a system of case planning, case review and services to prevent unnecessary removal of children from their homes and promote reunification. The Act also provided subsidies to promote expeditious permanent placements for children who cannot safely reunite with their families.

During the same period, removal of Native American children from their families of origin was particularly high. In 1974, approximately 25 to 35% of all Native American children lived in adoptive or foster homes (U. S. House of Representatives 7531). Eighty-five percent of those children were in non-Native American homes.

In response, Congress passed the Indian Child Welfare Act (ICWA), 25 United States Code (USC) 1901, et seq, in 1978. ICWA did three things:

- imposed federal procedural protections on child custody proceedings in state courts,
- set high standards for removal of a Native American child from the child's family of origin, and
- required that state agencies actively work to prevent the removal of Native American children from their homes or provide reunification services to families when the state did remove children.

Both P.L. 96-272 and ICWA assigned oversight responsibilities to state juvenile courts. Under both laws, the juvenile court is responsible for ensuring that state child welfare agencies make efforts to provide services to help reunify the family. Under ICWA, the court ensures that the state identifies Native American children and that Native American tribes have notice and an opportunity to participate in proceedings involving children who are members of a tribe or are eligible for tribal membership.

THE ADOPTION AND SAFE FAMILIES ACT (ASFA)

In 1997, Congress passed The Adoption and Safe Families Act (Public Law 105-89); ASFA made the most significant changes to federal child welfare law since 1980 by addressing three primary concerns:

- Children continued to remain too long in foster care.
- The child welfare system favored family preservation and reunification over children's health and safety.
- States were not devoting enough effort to adoption as a permanent placement option for abused and neglected children

ASFA clarified that all removal and reasonable efforts decisions were based on a child's health and safety. The timelines for providing reunification services were shortened in an effort to place children in permanent homes sooner. ASFA also encouraged states to expedite permanency decisions through concurrent planning and other innovative approaches. Finally, ASFA established performance standards that create financial penalties for child welfare systems that fail to show improvement in child welfare outcomes.

SECTION 7: INITIATING A JUVENILE COURT DEPENDENCY PROCEEDING

FILING A PETITION

Any person in Oregon with personal knowledge about an abused or neglected child may file a petition in juvenile court (ORS 419B.809(1),(3)). Department of Human Services (DHS) child welfare caseworkers and juvenile department staff may file petitions based on information and belief (ORS 419B.809(3)). Typically, DHS assesses the safety needs of children before a petition is filed. Depending on the county, either DHS or the juvenile department is responsible for drafting and filing the petition itself. Respondents to the statewide survey for the reassessment report that in at least half of Oregon counties, the responsibility for drafting and filing petitions now rests with DHS.

INITIAL SERVICE OF SUMMONS

Adequate notice is not only constitutionally required but key to ensuring participant presence in court. Non-custodial parents cannot come forward to participate in reunification services if they are unaware of court involvement. Additionally, notifying absent parents gives them the opportunity to come forward to be reunited with their children or pay support. Because of this, notice should be provided at the earliest possible stage of the dependency proceeding to all parties, including custodial and noncustodial parents, putative fathers and others with legal custody.

In Oregon, the party filing the petition must serve summons on the parents, including putative fathers in some instances, and on children age 12 and over (ORS 419B.839(1)). Statutory revisions to conform with ASFA reduced the amount of time available for service from sixty to thirty days after the petition is filed (ORS 419B.812(3)). The juvenile code now specifies that the summons include information regarding the jurisdictional allegations, availability of legal assistance, and the consequences of failure to appear at court hearings (ORS 419B.815(4)). A specific form for a summons is set out in statute as well (ORS 419B.818). When the petition involves a child covered by the Indian Child Welfare Act, DHS must notify the tribe of the proceeding (ORS 419B.878). The court may order parents to participate in services only if they have been properly summoned (ORS 419B.385 and ORS 419B.387). Throughout the state, summons are most commonly issued and served by the county juvenile departments.

THE COURTS SHOULD ENSURE ADEQUATE NOTICE BY:

- Requiring quick and diligent notification efforts by the social service agency;
- Requiring both oral and written notification in language understandable to each party and witness;
- Requiring notice to include reason for removal, purpose of hearing, availability of legal assistance; and
- Requiring caseworkers to encourage attendance of parents and other parties.

Resource Guidelines, p.36

SECTION 8: SHELTER HEARINGS

CURRENT OREGON LAW AND PRACTICES

When the state removes a child from home on an emergency basis, the juvenile court must hold a hearing within 24 hours of removal, excluding Saturdays, Sundays, and judicial holidays (ORS 419B.183). The person removing the child must make efforts to notify parents of shelter hearings (ORS 419B.171). Parents may be notified by the juvenile department, DHS, or law enforcement. Different Oregon communities refer to these hearings as preliminary hearings, shelter-care hearings, and 24-hour hearings. This report calls them shelter hearings.

At shelter hearings, the court must decide whether the child can be safely maintained in or returned to the home pending the disposition of the petition. The outcome of a case where a child remains at home with services to the family is predictably different from the outcome where the child is placed in foster care and visits with the family weekly for an hour. The court and participants in the shelter hearing must analyze the facts surrounding the initial removal and consider what steps might be taken to ensure the child's safety in the home.

Because shelter decisions have profound effects on the lives of the people before the court and substantial influence on the course of the case, the judicial officer must insist on a thorough presentation of all relevant information. National standards support this careful approach.

At the shelter hearing the court must give parents the "opportunity to present evidence to the court...that the child...can be returned home without further danger of suffering physical injury or emotional harm, endangering or harming others, or not remaining within the reach of the court process prior to adjudication" (ORS 419B.185(1)). Both state and federal law require the court to make written findings at the shelter hearing regarding:

- DHS's reasonable or active efforts to prevent removal;
- Future services the agency should provide to promote reunification;
- Where removal is ordered, that removal or continuation in care is in the child's best interest;
- Whether the child is a member or eligible for membership in a Native American Tribe; and consequently covered by the Indian Child Welfare Act (ORS 419B.185).

When making a reasonable efforts finding, judges must specify the services DHS provided to prevent removal of the child (ORS 419B.185(1)(a)). DHS must assist the court by submitting a written affidavit outlining services provided in support of a reasonable efforts finding (ORS 419B.185(2)). Since 1997, state law has also required DHS to give priority to relatives as placement resources and report to the court on the efforts made to place children with family (ORS 419B.192(1)).

Shelter hearings are the court's first opportunity to make inquiry and orders on issues that will recur throughout the life of a juvenile court case. The court should inquire about paternity, absent parents and efforts to locate them, appointment of counsel and CASA for parents and children, ICWA applicability, and

preliminary services available for families. The court may also set next court dates and direct staff or DHS to serve parents with summons for further proceedings (*Resource Guidelines* 37-39).

SECTION 9: JURISDICTIONAL AND DISPOSITIONAL HEARINGS

The jurisdictional hearing is critical to ensuring due process and important in resolving dependency cases. Families who have an adversarial relationship with DHS or disagree with the basis for jurisdiction may need the court to make a judicial determination of jurisdictional facts before they will engage in services. Where a family opposes particular services, the jurisdictional hearing is key to determining which services are appropriate for the family.

Parties to the petition must admit or deny allegations pertaining to them within 30 days of the petition's filing (ORS 419B.305(2)) and should exchange discovery within 30 days after the petition is filed (ORS 419B.881). The court must schedule a contested hearing and notify parties of the date and time either orally or in a written order (ORS 419B.816(1)). The order must include an admonition that the court will proceed, regardless of whether the party appears at the next hearing (ORS 419B.816(3)). The court must hold a jurisdictional hearing within 60 days of filing a petition (ORS 419B.305(1)). Continuances are granted only by a written order establishing that good cause to extend beyond 60 days exists (Id.). The case must be given the highest scheduling priority if a continuance is granted (ORS 419B.305(4)).

Between the shelter and jurisdictional hearings is generally when DHS caseworkers develop initial service agreements. Attorneys meet with clients, receive discovery and conduct their own investigation. In many cases, DHS also holds a "Family Decision Meeting," a facilitated meeting designed to engage families and other people important to the child in the case planning process, advise parents of ASFA timelines, and explain the consequence of noncompliance with services (ORS 417.365; OAR 413-040-0031).

ORS 419B.310(1) provides that "the court without a jury" decides jurisdictional issues. Unlike the preliminary hearings and subsequent review hearings, the rules of evidence apply to jurisdictional hearings, and jurisdictional allegations must be proven by a preponderance of the evidence, except for Native American children who are tribal members or eligible for membership, in which case ICWA requires the evidence be clear and convincing (ORS 419B.310(3); 25 USC 1912(e)).

The court must hold a dispositional hearing within 28 days of the jurisdictional hearing, unless there is good cause to extend the time, and enter "an appropriate order directing the disposition of the case" (ORS 419B.325(1); Uniform Trial Court Rules (UTCRC) 11.050). Most often, dispositional hearings immediately follow the jurisdictional hearing.

If the court finds that the allegations of the petition have not been proven by a preponderance of the evidence, the appropriate disposition is dismissal. If the court finds the child within its jurisdiction, the court has options for disposition (ORS 419B.331). It may allow the parents to retain legal custody with particular conditions of protective supervision, appoint a guardian if a party or intervener so petitions (ORS 419B.366), or as in the vast majority of the cases, temporarily commit the child to DHS for care and placement (ORS 419B.337(1)).

The dispositional phase of a dependency proceeding is a critical step in ensuring permanency for the child. The court's dispositional order sets the expectations for the parents' progress and DHS's provision of services for the case. Oregon law grants juvenile court judges the authority to specify the particular type of

care, supervision or services to be provided by DHS to children placed in the DHS custody and to the children's parents or guardians. (ORS 419B.337(2)).

Before dispositional hearings, the judge considers written dispositional reports from DHS, CASA, and other parties. DHS must distribute its written reports on its investigation to all participants at least seven days prior to the dispositional hearing (UTCR 11.060(1)). Other parties are required to distribute any reports or witness statements within three days of the dispositional hearing (ORS 419B.881(2)(a)(B)). National standards support early distribution of proposed dispositional plans so all parties can fully participate in the hearings (*Resource Guidelines* 56).

The DHS report contains the Agency's case plan for providing services to the family. The case plan must

- have a rational relationship to the jurisdictional allegations,
- incorporate the perspective of the family,
- be integrated with other service agencies, and
- include a concurrent plan that the agency intends to implement if the parent is unable to make sufficient progress for the child to return home (ORS 419B.343(1),(2)).

If the current plan is something other than return to parent, the case plan should specify the current permanent plan (ORS 419B.343(2)). The case plans of all children age 16 and older must include independent living services; the Agency should include independent living services in the case plans of children ages 14 and 15 if appropriate (ORS 419B.343(3)).

At the dispositional hearing, the court must review the Agency's case plan to ensure that it is adequate to meet the child's needs (ORS 419B.343(1)). The court reassesses reasonable or active efforts and, as at the shelter hearing, must briefly describe the services DHS provided to justify the findings (ORS 419B.340(2)). If necessary, the court must make a new finding that removal from the home (or continuation in care) is in the child's best interest (ORS 419B.340(1)).

ASFA added new responsibilities for the court at disposition. Now, Oregon and federal law require that the court review the DHS case plan and make reasonable or active (in cases subject to the ICWA) efforts findings regarding the agency's reunification and preventative services (ORS 419B.340(2),(7)). In making the finding, the court must consider the health and safety of the child as the paramount concern (ORS 419B.337(1)(b)). DHS can ask the court to be relieved of making reasonable or active efforts when there is a judicial determination that certain aggravated circumstances exist (ORS 419B.340(5)). Because of the strict timelines for reunification, the order (as well as the record) should document that the court advised the parents of the urgency of complying with the approved case plan.

Jurisdictional hearings end the investigation and fact finding stages of dependency proceedings. This is the last opportunity for parties to debate the state's intervention into family life. Dispositional hearings are generally combined with jurisdictional hearings and are the court's opportunity to provide their expectations to families and DHS. Participation by all parties as well as thorough judicial inquiry are important to successful hearings.

Dispositional orders should be written in easily understandable language so that parents and all parties fully understand the court's order; they should explicitly state:

- the legal disposition of the case, including the custody of the child, based upon the statutory options provided under state law;
- the long-term plan for the child (e.g., maintenance of the child in the home of a parent, reunification with a parent or relative, permanent placement of child with a relative, placement of the child in a permanent adoptive home);
- whether there is a plan for monitoring the implementation of the service plan and assuring the child's continued well-being;
- the evidence or legal basis upon which the order is made when placement or services are ordered that were not agreed upon by the parties;
- the terms of parental visitation;
- parental responsibilities for child support; and
- scheduled date and time of next hearing, if needed.

Resource Guidelines, p. 61

SECTION 10: REVIEWS - COURT AND CRB

CURRENT OREGON LAW AND PRACTICES

Once the court approves the initial disposition for a dependency case, there are a variety of state and federal review mechanisms to ensure agency and party compliance with the case plan. Judicial and citizen oversight of dependency cases allow for re-examination of case planning goals and adjustments that reflect the parents' progress and the child's needs. Periodic, rigorous review is critical, particularly when children are placed out of the home. ASFA timelines heighten the importance of careful monitoring of DHS service delivery, concurrent planning and parent's progress.

Review by the CRB

Except for permanency hearings, reviews under state law shall be conducted by an administrative or citizen "foster care review board." In Oregon, the Citizen Review Board (CRB) fulfills this function in 33 out of 36 counties (ORS 419A.090 et seq.). Local Citizen Review Boards have between three and five citizens "with special knowledge or interest in foster care and child welfare which may include but shall not be limited to adoptive parents and members of the profession of law, medicine, psychology, social work, and education" (ORS 419A.092(1)(a)).

"Review hearings are necessary because continuation of a child in foster care for an extended time has a negative effect on a child and family. A child in foster care forms new relationships which may weaken his or her emotional ties to biological family members. A child shifted among foster homes may lose the ability to form strong emotional bonds with a permanent family. A careful decision concerning the future of every child is needed as soon as possible. Review hearings can help ensure that decisions concerning a child's future are made at regular intervals and implemented expeditiously."

Resource Guidelines, p. 66

When CRB reviews a case, reports otherwise submitted to the court are submitted to the them. Reviews commence six months after a child enters care and every six months thereafter unless a review is conducted by the court (ORS 419A.106(1)(a)). CRBs invite participation from parents, mature children, advocates, CASAs, attorneys, foster parents, involved relatives, service providers, and other interested parties. The court can cancel a CRB review if it conducts a review within 60 days of the scheduled CRB (ORS 419A.106(1)(b)). CRB sends a *Findings and Recommendations* document to the court and DHS for each review conducted. DHS must give CRB written notice they do not intend to implement the recommendations (ORS 419A.120(1)). In 2003, CRB also assumed responsibility for reviewing the status of children in guardianships established by the juvenile court (ORS 419A.109).

CRB findings become part of the juvenile court file (ORS 419A.120(2)). The court, upon review of the CRB findings and recommendations, has the opportunity to make modifications or set a separate court hearing to pursue issues raised at the board review. The court must also inform the CRB in writing if it modifies, alters, or takes action on a recommendation (ORS 419A.120(1)). In some counties, the court formally approves the recommendations and orders that the recommendations be implemented.

Court Review

DHS must file a report with the juvenile court or the CRB six months after a child is placed in substitute care and at least every six months thereafter (ORS 419B.443(1), ORS 419B.446). The report must contain

- a description of the problems that resulted in placement
- a discussion of services for the child and family
- a proposed treatment plan that includes visitation, expectations of the parents and children
- a proposed timetable for achieving the current permanent plan

ORS 419B.443(1)(a-e).

The court must send the report to parents (and tribes if the case is governed by ICWA) and inform them whether the court will set a hearing (ORS 419B.452). The court or any party may request a review hearing so that the court may "order modifications in the care, placement, and supervision of the child" (ORS 419B.449(1)). The court must hold the review within 30 days of the request (ORS 419B.449(1)(b)). If parents' rights have been terminated and the child has not been placed in an adoptive home, the court must hold a hearing upon receipt of DHS' six-month report (ORS 419B.449(1)(a)).

Review hearings should consider DHS' efforts to return children to their parents or to implement the permanent plan if it is other than return to parent (ORS 419B.449(2)). The court order should state why continued foster care is necessary and include the expected time for return or other permanent placement. In addition, the court must review the agency's efforts to implement a concurrent plan, including efforts to identify or select an adoptive home (ORS 419B.449(3)).

It is critical that review hearings involve all parties and interested persons, including foster parents. It is particularly important that service providers for parents and children be available or thoroughly interviewed before review hearings. (*Resource Guidelines 70*).

When the court reviews a case plan, the key issues to be addressed at a review hearing are:

- Whether the agency is making reasonable efforts to rehabilitate the family and eliminate the need for placement of a child.
- Whether services set forth in the case plan and the responsibilities of the parties need to be clarified or modified due to the availability of additional information or changed circumstances.
- Whether the child is in an appropriate placement which adequately meets all physical, emotional and educational needs.
- Whether the terms of visitation need to be modified.
- Whether the terms of child support need to be set or adjusted.
- Whether any additional court orders need to be made to move the case toward successful completion.
- What time frame should be followed to achieve reunification or other permanent plan for each child.

Resource Guidelines, pp. 70-72

SECTION 11: PERMANENCY HEARINGS

CURRENT OREGON LAW AND PRACTICES

Permanency hearings are the most significant change to dependency proceedings related to ASFA. Permanency hearings are post-dispositional hearings to select the permanent plan for children in foster care. Before ASFA, the court and child-welfare agencies had 18 months after removing a child to work with parents before designating the final permanent plan. Now, both state and federal law require permanency hearings 12 months after jurisdiction and no later than 14 months after the child's placement (ORS 419B.470(2)). When the court decides that reunification services are not required, the court must hold the permanency hearing within 30 days (ORS 419B.470(1)).

"The court is responsible to schedule and conduct the permanency hearing for a time and date certain that fall within the statutory maximum time frames."

Adoption Guidelines, p.19

At the permanency hearing, the court makes many of the same findings made at review hearings and CRB reviews. The court makes reasonable efforts findings regarding DHS services; may order modifications of the care, placement, and supervision of the child; and may also order changes to the case plan (ORS 419B.476(2)). The primary purpose of the hearing, however, is to make a permanent plan for the child.

ASFA prioritizes permanency goals for children in foster care in the following order:

- Safe return home to a parent
- Adoption, by a relative or non-relative
- Guardianship
- Another planned permanent living arrangement

When the court approves a permanent placement, the order must explain why it did not choose more preferred plans. When the plan is return to parent and the court has found that DHS has made reasonable efforts to provide reunification services, the court must first ask whether the parents have made sufficient progress for the child to safely return home (ORS 419B.476(2)(a)). If the parents are not prepared to take custody of their child(ren) immediately, the court may order the parents to participate in specific services for a specific period if participation in those services will result in reunification within a reasonable time (ORS 419B.476(4)(c)). If the court concludes that the parents have not made sufficient progress and that more services will not result in returning the child to a parent in a reasonable time, the court must consider alternative permanent plans.

Following ASFA's priorities, adoption is the preferred plan for children who are not able to safely return to their parents' care. If the court approves a guardianship, the order must explain why adoption is not in the child's best interest (ORS 419B.476(5)(e)). The least favored permanent plan is "planned permanent living arrangement." To justify that plan, the court must show a compelling reason why each of the more permanent plans is not in the child's best interests (ORS 419B.476(5)(f)).

Once the court approves a permanent plan, the agency must work quickly to achieve it. The court order from a permanency hearing must be entered within twenty days of the hearing and must include specific timelines for achieving the permanent plan (ORS 419B.476(5)(b)). The court may also monitor DHS's permanent planning efforts by reviewing the efforts made to identify and select an adoptive resource (ORS 419B.476(4)(e)).

SECTION 12: TERMINATION PROCEEDINGS

CURRENT OREGON LAW AND PRACTICES

When parents fail to make sufficient progress to have their children safely returned within a reasonable time, the state or child may move to sever the parent-child relationship so that the child may be adopted (ORS 419B.500). DHS is required to file a petition to terminate parental rights (unless there is a compelling reason not to) when:

- a child has been in care for 15 out of the last 22 months,
- a parent has been convicted of murder or voluntary manslaughter of another child of the parent,
- a parent has been convicted of aiding, abetting, attempting or conspiracy to commit murder or voluntary manslaughter of a child of the parent,
- a parent has been convicted of felony assault that resulted in serious physical injury to a child of the parent, or
- a parent has abandoned the child. (ORS 419B.498(1))

Because termination has enormous consequences, the law requires a new round of procedural protections for parents and children. A petition stating grounds for termination must be served on the parents (ORS 419B.819(1)). Attempts must be made to find parents who were absent at the jurisdictional stage. Indigent parents are appointed counsel (ORS 419B.518). At trial, the state or child must prove the allegations by clear and convincing evidence rather than the "preponderance" standard required in dependency proceedings. If a child is subject to ICWA, the state must prove the allegations beyond a reasonable doubt (ORS 419B.521(1)).

National standards support the use of pretrial conferences "to check delays in the appointment of counsel, ensure early notice to parties and expedite discovery. They can also resolve evidentiary issues prior to trial" (*Resource Guidelines* 93). No such standardized process exists in Oregon but Oregon does encourage mediation in cases involving termination (ORS 419B.517).

The state or child can file to terminate parental rights in cases of extreme conduct without proving reasonable efforts (ORS 419B.502). These provisions parallel, for the most part, the "aggravated circumstances" that release DHS from providing reasonable effort to families at jurisdiction.

Adoption 2002 recommends that, in cases where reasonable efforts are not required at jurisdiction, they should not be required for termination of parental rights in order to avoid leaving children in foster care limbo:

State law should ensure that for those circumstances in which reunification services are not required, there are applicable grounds for the termination of parental rights. While the criteria for not requiring reasonable efforts need not be the same as grounds for termination, they reasoned, the State should take care to avoid situations in which a child will remain in foster care without efforts to reunify his or her family. In this situation, it is not possible to terminate parental rights although adoption is in the child's best interests.

Adoption 2002

Oregon law does not require DHS to make reasonable efforts if excused by a court, either at disposition or termination, when parents kill, attempt to kill, starve, torture or sexually abuse a child (ORS 419B.340(5), ORS 419B.502). Parents with prior involuntary terminations are not entitled to reunification services when they have not ameliorated their condition. In cases where parental abuse or neglect has caused serious physical injury to a child or where a parent has "unlawfully caused the death of another parent," Oregon courts may make a finding that reasonable efforts are not needed at disposition (ORS 419B.340(5)(a)(c), (G)). However, there is no corresponding provision in Oregon's termination statute.

SECTION 13: APPEALS OF JUVENILE ORDERS

CURRENT OREGON LAW AND PRACTICES

The appellate process serves to ensure fairness in the juvenile dependency system. Parties need adequate time to address appealable issues, but it is important that the appellate process does not unduly delay permanency for children. *Adoption 2002* recommends that State law establish specific guidelines to expedite appeals in child welfare cases. These guidelines should include setting a short deadline for notice of appeal; setting short deadlines for preparation of transcripts and records for appeal; setting a special tight briefing schedule; and setting time limits or guidelines for deliberations and issuance of decisions.

The National Council of Juvenile and Family court Judge's Adoption and Permanency Guidelines (Permanency Guidelines) recommend a timeline that resolves termination appeals within 150 days of notice of appeal (p.40). In Oregon, any person whose rights or duties are adversely affected by a juvenile court judgement has a right to appeal (ORS 419A.200(1)). Notice of appeal must be filed within 30 days of entry of the judgement and must be served on all parties who have appeared in the proceeding, the trial court administrator, the transcript coordinator, and the Court of Appeals (ORS 419A.200(3)(c)).

"Judgements" for appeal purpose are:

- any order dismissing or disposing of a petition,
- orders finding a child within the jurisdiction of the court, or
- any order entered after disposition that adversely effects the appellant including orders from permanency hearings (ORS 419A.205(1)).

Children and parents are entitled to court-appointed counsel for the appeal, subject to trial-level limitations (ORS 419.211(2)(b)). The Court of Appeals reviews all juvenile appeals by examining a transcript of the proceedings and any records or evidence admitted at trial and determining whether the trial court made the correct factual finding(s).

*** PART IV ***

SECTION 16: QUALITY OF REPRESENTATION AND ADVOCACY

For courts to fulfill their federal and state obligations, judges must be provided with accurate and complete information. The court system depends on each party's ability to discover and present evidence and to advocate effectively. In most instances, this means that parties to court proceedings should be represented by counsel. Of equal importance is quality of representation.

This section discusses attorneys who appear in juvenile court dependency proceedings. The reassessment team collected data about frequency of appearances by attorneys for parents, children, caseworkers (through the Department of Justice) and "the State" (through local district attorneys). The team observed attorneys in court proceedings in each of the five study counties and interviewed lawyers and other court participants about representation issues. Foster parents and other juvenile court participants responded to survey questions about quality of representation.

Data about Court Appointed Special Advocates is included here. CASAs are parties to juvenile court dependency proceedings, not representatives. However, because their role in juvenile court is to advocate for the best interest of abused and neglected children, they are discussed in this section.

COURT APPOINTED COUNSEL FOR PARENTS AND CHILDREN

ROLES AND RESPONSIBILITIES FOR ATTORNEYS

Indigent families have a right to court appointed counsel. Parents are entitled to be represented by a court-appointed attorney when "the nature of the proceedings and due process so require" (ORS 419B.205(1)). Children are entitled to court appointed counsel whenever a request is made or upon the court's own motion (ORS 419B.195(1)).

The court appoints attorneys for parents and children who are eligible for public defense services. Some attorneys are compensated for court-appointed work on an hourly basis. Others have entered into contracts with the Public Defense Services Commission (PDSC) to provide representation in certain categories of cases at specified rates. Most public defense representation in juvenile dependency proceedings is provided pursuant to contracts. PDSC, established in 2001, took over responsibility for indigent defense from the State Court Administrator in 2003. ORS 151.216(1)(a) charges PDSC to "establish and maintain a public defense system that ensures the provision of public defense services in the most cost-efficient manner consistent with the Oregon Constitution, the United States Constitution and Oregon and national standards of justice."

PDSC contracts with attorney providers for services in specific counties. For the most part, attorneys contract to represent parents and children in a set number of hearings (jurisdiction/disposition hearings, reviews, CRBs,

and terminations) throughout the year and are paid a twelfth of their annual contract amount on a monthly basis. Contract attorneys may be sole practitioners or consortia or non-profit public defender corporations depending on the particular county. Each year, PDSC contracts for thousands of appointments for parents and children in juvenile court dependency proceedings.

The performance of court-appointed counsel in dependency cases is governed by a variety of standards. Parents are entitled to “adequate representation” in dependency cases, just as they are in criminal proceedings (*State ex rel Juv. Dept. v. Geist*, 310 Or 176, 796 P2d 1193 (1990)). Court-appointed counsel for parents and children must meet the qualification standards for court-appointed counsel to represent indigent persons at state expense (*Qualification Standards*) that are developed and maintained by the Public Defense Services Commission (PDSC,). These standards were adopted by the State Court Administrator’s Office of the Oregon Judicial Department and implemented by the Indigent Defense Services Division of that department before the transfer of responsibility for trial level public defense services to the PDSC in 2003. These standards address issues such as caseload size, adequate support staff, experience, and familiarity with applicable law. The standards also create procedures for disqualifying attorneys from eligibility for court appointments.

In 1996, the Oregon State Bar adopted the following principles and performance standards (*OSB Principles and Standards*) for representation of parents and children in dependency proceedings: “The General Principles for Counsel in Criminal, Delinquency, Dependency and Civil Commitment Cases, “General Standards for Representation in All Criminal, Delinquency, Dependency and Civil Commitment Cases” and “Specific Standards for Representation in Juvenile Dependency Cases.” The OSB Principles and Standards address conflict of interest, attorney obligations to child clients, adequate client contact, and standards for investigation and practice at each stage of dependency proceedings (Oregon State Bar Indigent Defense Task Force 29-34). The principles are mandatory; the standards are aspirational. Familiarity (though not compliance) with these standards is required by both the Qualification Standards and the PDSC model contract for public defense providers.

Quality of Representation

The reassessment focused on a fundamental component of representation to assess quality – client contact. Creating and maintaining a relationship with a client is critical to effective representation (OSB Standard 3.5). The OSB Principles and Standards recommend that attorneys meet and conduct an initial interview within 72 hours of appointment and confer with their clients “as often as necessary after the initial interview to ascertain all relevant facts and otherwise necessary information” (OSB Standard 3.5.7). The PDSC model contract requires that a contractor must “arrange for” contact with out-of-custody clients within 72 hours of appointment, including notification of a scheduled interview time or what the client must do to schedule an interview time (PDSC model contract 7.1.4.2). The goal of these standards is to ensure that parents and children have well-informed, active representation at the earliest possible time in dependency proceedings. Survey and interview results suggest that these standards are not being met.

Juvenile court participants in the study counties routinely reported that their juvenile defense bar had a high level of expertise in juvenile legal issues. Participants also consistently reported that some practitioners provided high quality legal services to parents and children alike. However, participants routinely expressed concern about attorneys delaying contact with adult clients until shortly before scheduled court appearances

and rarely contacting child clients.

Reassessment team members observed attorneys in court and CRB reviews who appeared to be meeting their clients for the first time or for the first time since the last court appearance, validating reports from juvenile court participants. Thirty percent of respondents to the statewide survey reported that they believe that attorneys only rarely or occasionally (less than 35% of the time) contact clients before the day of a court appearance.

Attorneys reported several barriers to early contact with clients. Attorneys reported that delay in receiving notice of appointment slowed initial contact with clients. While most counties initiate appointment of counsel for parents and children at shelter hearings, in many counties attorneys are not present at the time of appointment and are not notified of their appointment until after the hearing. Some attorneys reported that notice of appointment may not arrive until two weeks after the shelter hearing. This delays first contact as well as creates confusion if the client was notified of the appointment before the attorney receiving the order. Some court staff reported that some attorneys appeared to wait until the day of a scheduled court appearance to notify the court of a conflict of interest requiring withdrawal from representation.

Lack of discovery was also noted as a factor in delaying initial contact. In most counties, attorneys receive the petition, court dates and discovery presented at the shelter hearing from the court or juvenile department - whichever is responsible for completing appointment of counsel. Attorneys then usually must formally request discovery from DHS. Attorneys expressed a reluctance to schedule first appointments with clients until all discovery was available. Some attorneys also expressed a reluctance to "track clients down" and waited until clients made contact with their offices.

Attorney contact with child clients was also concerning. The OSB Standards (OSB Standard 3.5) and PDSC model contract (7.1.4.2) hold attorneys for children to the same standard for client contact within 72 hours of appointment. The OSB Standards advise that children should be observed or visited in their home environment (OSB Standard 3.5.4).

The reassessment team surveyed foster parents statewide about contact by attorneys for children in their care. About half of those responding indicated that court-appointed counsel rarely (less than 5% of the time) called within one week of appointment and only 9% indicated that counsel usually (more than 75% of the time) made contact within the first week after appointment. Similarly, about half of those responding indicated that court-appointed counsel rarely met the children in the home of the foster parent before they went to court for the first time, while 13% reported that the attorneys usually meet the children in the home prior the first court appearance. 37% of court participants statewide reported that they believed that attorneys for children visited their clients in their homes rarely or occasionally.

"Often we never know who the attorney or CASA workers are until we see them in court. It would be good if there was a way to get information to the judge about the children without having to speak in front of parents. Sometimes these kids tell us things that should be known, and we're never sure if the case workers pass information along."

Foster Parent

CASA programs reported that they frequently act as liaisons between children and their attorneys because there is so little contact from children's lawyers.

There is a debate in some county's juvenile bars about the role of attorney for children. Some contractors question whether client contact is necessary at all to represent children. Others were unaware that client contact was a contractual requirement or that standards existed that required in-home contact with dependent child clients. Attorneys expressed concerns about the work load involved in monitoring children's care by visiting children in their placements.

Given the fairly widespread acknowledgment that some juvenile practitioners do not meet basic standards for client contact, it is worthwhile to consider what quality control mechanisms exist for public defense contractors.

"The only communication I have received is through the case worker. Never an attorney or judge or other advocate. Sometimes I feel left in the dark concerning my granddaughter's case and pending adoption. Not even my caseworker can answer vital questions about this case! 'I'm not sure' is not a good answer. I have had a child in my care for 6 months now. His attorney has never talked to me regarding the child or seen the child outside of court."

Foster Parent

PDSC's Qualification Standard 4.1E outlines the process for suspending an attorney from receiving public defense appointments. The process allows for either a presiding judge or the State Court Administrator²¹ to suspend an attorney when they become aware of "facts that call into question an attorney's ability to provide adequate assistance of counsel."

Juvenile court participants expressed concern about placing much of the responsibility for monitoring attorney performance and seeking suspension with the local courts. In general, juvenile court participants interviewed perceived that giving local courts responsibility for oversight of the quality of representation was inconsistent with their roles as judicial officers. Participants believe that monitoring attorney performance (at least of public defense attorneys) is more appropriately the role of the contracting agent for the state, PDSC. The views of participants notwithstanding and even though the Judicial Department no longer has responsibility for the provision of public defense services, the court remains the appointing authority and has an important role to play in monitoring the quality of representation and reporting concerns about quality to the attorney or contractor and PDSC.

PDSC is aware through reports from the Oregon State Bar and others about concerns regarding the quality of representation being provided in juvenile dependency cases. Through its contract process it continues to seek the highest quality legal services available. In addition, PDSC, in conjunction with JCIP, juvenile practitioners, and other interested groups, is working to create a "Juvenile Training Academy" curriculum that may become mandatory for all juvenile practitioners. In addition, PDSC has started a public review process for each county's public defense providers. It completed its first review, which involved Linn, Lane, Benton

²¹This standard was written when the State Court Administrator was the contracting authority for indigent defense. PDSC has the same authority to suspend contractors for poor performance.

and Lincoln Counties and will perform a review in Multnomah County in the fall of 2004. The review process allows for public comment about quality of representation as well as an opportunity for self-assessment of individual providers. PDSC has also made efforts to evaluate the quality of representation provided by individual public defender offices and consortia. It has completed the evaluation of one large public defender office to date and has scheduled the evaluation of two others before the end of the year. In counties with fewer public defense providers, the PDSC may perform county-wide quality evaluations rather than evaluations of each individual attorney or office. PDSC has also initiated a formal complaint process which will provide an established procedure for handling complaints from judges, other court participants, and the general public regarding both the quality and the cost of public defense services.

Attachment 6

Enrolled House Bill 3511

Sponsored by JOINT SPECIAL SESSION COMMITTEE

CHAPTER

AN ACT

Relating to sex offenses; creating new provisions; amending ORS 137.700, 144.085, 144.101, 144.103 and 144.107; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 137.700 is amended to read:

137.700. (1) **Notwithstanding ORS 161.605**, when a person is convicted of one of the offenses listed in subsection (2)(a) of this section and the offense was committed on or after April 1, 1995, or of one of the offenses listed in subsection (2)(b) of this section and the offense was committed on or after October 4, 1997, the court shall impose, and the person shall serve, at least the entire term of imprisonment listed in subsection (2) of this section. The person is not, during the service of the term of imprisonment, eligible for release on post-prison supervision or any form of temporary leave from custody. The person is not eligible for any reduction in, or based on, the minimum sentence for any reason whatsoever under ORS 421.121 or any other statute. The court may impose a greater sentence if otherwise permitted by law, but may not impose a lower sentence than the sentence specified in subsection (2) of this section.

(2) The offenses to which subsection (1) of this section applies and the applicable mandatory minimum sentences are:

-
- (a)(A) Murder, as defined in
ORS 163.115.300 months
 - (B) Attempt or conspiracy
to commit aggravated
murder, as defined
in ORS 163.095.120 months
 - (C) Attempt or conspiracy
to commit murder, as
defined in ORS 163.115.90 months
 - (D) Manslaughter in the
first degree, as defined
in ORS 163.118.120 months
 - (E) Manslaughter in the
second degree, as defined
in ORS 163.125.75 months

- (F) Assault in the first degree, as defined in ORS 163.185.90 months
- (G) Assault in the second degree, as defined in ORS 163.175.70 months
- (H) **Except as provided in paragraph (b)(G) of this subsection,** kidnapping in the first degree, as defined in ORS 163.235.90 months
- (I) Kidnapping in the second degree, as defined in ORS 163.225.70 months
- (J) Rape in the first degree, as defined in ORS 163.375 **(1)(a), (c) or (d)**.100 months
- (K) Rape in the second degree, as defined in ORS 163.365.75 months
- (L) Sodomy in the first degree, as defined in ORS 163.405 **(1)(a), (c) or (d)**.100 months
- (M) Sodomy in the second degree, as defined in ORS 163.395.75 months
- (N) Unlawful sexual penetration in the first degree, as defined in ORS 163.411 **(1)(a) or (c)**.100 months
- (O) Unlawful sexual penetration in the second degree, as defined in ORS 163.408.75 months
- (P) Sexual abuse in the first degree, as defined in ORS 163.427.75 months
- (Q) Robbery in the first degree, as defined in ORS 164.415.90 months
- (R) Robbery in the second degree, as defined in ORS 164.405.70 months
- (b)(A) Arson in the first degree, as defined in ORS 164.325, when the offense represented a threat of serious physical injury.90 months
- (B) Using a child in a display of sexually explicit conduct, as defined in ORS 163.670.70 months
- (C) Compelling prostitution, as defined in ORS 167.017.70 months

- (D) Rape in the first degree,
as defined in
ORS 163.375 (1)(b).....300 months
- (E) Sodomy in the first degree,
as defined in
ORS 163.405 (1)(b).....300 months
- (F) Unlawful sexual penetration
in the first degree, as
defined in
ORS 163.411 (1)(b).....300 months
- (G) Kidnapping in the first
degree, as defined in
ORS 163.235, when the
offense is committed in
furtherance of the commission
or attempted commission of an
offense listed in subparagraph
(D), (E) or (F) of
this paragraph.....300 months

SECTION 2. ORS 144.103 is amended to read:

144.103. (1) Except as otherwise provided in ORS 137.765 **and subsection (2) of this section**, any person sentenced to a term of imprisonment for violating or attempting to violate ORS 163.365, 163.375, 163.395, 163.405, 163.408, 163.411, 163.425 or 163.427 shall serve a term of post-prison supervision that [*shall continue*] **continues** until the term of the post-prison supervision, when added to the term of imprisonment served, equals the maximum statutory indeterminate sentence for the violation. [*Any costs incurred as a result of this subsection shall be paid by increased post-prison supervision fees under ORS 423.570.*]

(2)(a) A person sentenced to a term of imprisonment for violating one of the offenses listed in paragraph (b) of this subsection shall serve a term of post-prison supervision that continues for the rest of the person's life if the person was at least 18 years of age at the time the person committed the crime.

(b) The offenses to which paragraph (a) of this subsection applies are:

(A) ORS 163.375 (1)(b);

(B) ORS 163.405 (1)(b);

(C) ORS 163.411 (1)(b); and

(D) ORS 163.235 when the offense is committed in furtherance of the commission or attempted commission of rape in the first degree, sodomy in the first degree or unlawful sexual penetration in the first degree if the victim is under 12 years of age.

(c) When a person is sentenced to a term of post-prison supervision described in paragraph (a) of this subsection, the person must be actively supervised for at least the first 10 years of the post-prison supervision and actively tracked for the remainder of the term. Active tracking may be done by means of an electronic device attached to the person.

[2] **(3) A person sentenced to a term of imprisonment for violating ORS 163.185 (1)(b) shall serve a term of post-prison supervision that [*shall continue*] continues until the term of the post-prison supervision, when added to the term of imprisonment served, equals the maximum statutory indeterminate sentence for the violation.**

(4) Any costs incurred as a result of this [*subsection*] section shall be paid by increased post-prison supervision fees under ORS 423.570.

SECTION 3. (1) The amendments to ORS 137.700 and 144.103 by sections 1 and 2 of this 2006 Act apply to a person convicted of a crime that was committed on or after the effective date of this 2006 Act.

(2) The amendments to ORS 137.700 by section 1 of this 2006 Act apply only to a person who was at least 18 years of age at the time the person committed an offense described in ORS 137.700 (2)(b)(D), (E), (F) or (G).

SECTION 4. ORS 144.085 is amended to read:

144.085. (1) All prisoners sentenced to prison for more than 12 months shall serve active periods of parole or post-prison supervision as follows:

(a) Six months of active parole or post-prison supervision for crimes in crime categories one to three;

(b) Twelve months of active parole or post-prison supervision for crimes in crime categories four to 10;

(c) Prisoners sentenced as dangerous offenders under ORS 161.725 and 161.735, for aggravated murder under ORS 163.105 or for murder under ORS 163.115 shall serve at least three years of active parole or post-prison supervision;

(d) Prisoners sentenced for violating or attempting to violate ORS 163.365, 163.375, 163.395, 163.405, 163.408, 163.411, 163.425 or 163.427 shall serve a term of parole that extends for the entire term of the offender's sentence or a term of post-prison supervision as provided in ORS 144.103 [(1)]; and

(e) Prisoners sentenced for robbery in the first degree under ORS 164.415 or for arson in the first degree under ORS 164.325 shall serve three years of active parole or post-prison supervision.

(2) Except as authorized in subsections (3) and (4) of this section, when an offender has served the active period of parole or post-prison supervision established under subsection (1)(a) or (b) of this section, the supervisory authority shall place the offender on inactive supervision status.

(3) No sooner than 30 days prior to the expiration of an offender's active parole or post-prison supervision period as provided in subsection (1) of this section, the supervisory authority may send to the State Board of Parole and Post-Prison Supervision a report requesting the board to extend the active supervision period or to return the offender to active supervision status, not to exceed the supervision term imposed by the sentencing court under the rules of the Oregon Criminal Justice Commission and applicable laws, if the offender has not substantially fulfilled the supervision conditions or has failed to complete payment of restitution. The report shall include:

(a) An evaluation of the offender's compliance with supervision conditions;

(b) The status of the offender's court-ordered monetary obligations, including fines and restitution, if any;

(c) The offender's employment status;

(d) The offender's address;

(e) Treatment program outcome;

(f) Any new criminal activity; and

(g) A recommendation that the board extend the supervision period or return the offender to active supervision status.

(4) After reviewing the report submitted under subsection (3) of this section, the board may extend the active supervision period or return the offender to active supervision status, not to exceed the supervision term imposed by the sentencing court under the rules of the Oregon Criminal Justice Commission and applicable laws, if it finds the offender has not substantially fulfilled the supervision conditions or has failed to complete payment of restitution.

(5) During the pendency of any violation proceedings, the running of the supervision period and the sentence is stayed, and the board has jurisdiction over the offender until the proceedings are resolved.

(6) The board shall send written notification to the supervised offender of the expiration of the sentence.

SECTION 5. ORS 144.101 is amended to read:

144.101. (1) The State Board of Parole and Post-Prison Supervision has jurisdiction over imposition of conditions of post-prison supervision and sanctioning for violations of those conditions for a person convicted of a felony if:

- (a) The term of imprisonment imposed on the person is more than 12 months;
- (b) The felony is classified as crime category 8, 9, 10 or 11 of the sentencing guidelines grid of the Oregon Criminal Justice Commission;
- (c) The person is subject to a sentence under ORS 137.700 or 137.707;
- (d) The person is sentenced as a dangerous offender under ORS 161.725 and 161.737;
- (e) The person is subject to a term of post-prison supervision under ORS 144.103 [(1)];
- (f) The person is committed to the custody of the Department of Corrections under ORS 137.124;
- (g) The responsibility for correctional services for the person has reverted to the department under ORS 423.483; or
- (h) No local supervisory authority is responsible for correctional services for the person under the laws of this state.

(2) Except as provided in subsection (1) of this section, a local supervisory authority has jurisdiction over imposition of conditions of post-prison supervision and sanctions for violations of those conditions for a person sentenced to a term of imprisonment of 12 months or less.

(3) If a local supervisory authority imposes conditions of post-prison supervision or sanctions for violations of those conditions, the person may request the board to review the conditions or sanctions. The board shall review the request and may, at its discretion, review the conditions and sanctions, under rules adopted by the board.

(4) Nothing in this section affects the jurisdiction of the board over imposition of conditions of parole and sanctioning for violations of those conditions.

SECTION 6. ORS 144.107 is amended to read:

144.107. (1) The State Board of Parole and Post-Prison Supervision and the Department of Corrections, in consultation with local supervisory authorities, shall jointly adopt rules under this section to establish sanctions and procedures to impose sanctions for a violation of the conditions of post-prison supervision for a person serving a term of post-prison supervision subject to subsections (2) and (3) of this section.

(2) The rules adopted under subsection (1) of this section apply only to a person serving a term of post-prison supervision for a felony committed on or after July 14, 1997.

(3) In addition to the limitation under subsection (2) of this section, the rules adopted under subsection (1) of this section apply only to a person serving a term of post-prison supervision:

- (a) That follows the completion of a sentence to a term of imprisonment that exceeds 12 months;
- (b) That is imposed for a felony that is classified as crime category 8, 9, 10 or 11 of the sentencing guidelines grid of the Oregon Criminal Justice Commission;
- (c) That is imposed as part of a sentence under ORS 137.700 or 137.707;
- (d) That is imposed as part of a sentence as a dangerous offender under ORS 161.725 and 161.737; or
- (e) That is subject to ORS 144.103 [(1)].

(4) The board shall adopt rules under subsection (1) of this section that include, but need not be limited to, a sanction under ORS 144.108 of imprisonment in a correctional facility for a period that may exceed 12 months. The rules adopted by the board may not allow the imposition of more than 24 months of imprisonment as a sanction without a subsequent hearing to determine whether additional imprisonment is appropriate. A subsequent hearing must follow the same procedures as those used in an initial hearing under ORS 144.108.

(5) The rules adopted under subsection (1) of this section must provide that the total time served in Department of Corrections institutions by an offender who is sanctioned under the rules, including the time served on the initial sentence and all periods of incarceration served as sanctions in Department of Corrections institutions, may not exceed the greater of:

- (a) The length of incarceration plus the length of post-prison supervision imposed by the court unless the offender was sentenced under ORS 137.765;

- (b) A maximum term of imprisonment imposed by the court; or
- (c) If the offender was sentenced under ORS 137.765, the length of the maximum statutory indeterminate sentence for the crime of conviction.
- (6) As used in this section, "Department of Corrections institutions" has the same meaning given that term in ORS 421.005.

SECTION 7. This 2006 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2006 Act takes effect on its passage.

Passed by House April 20, 2006

.....
 Chief Clerk of House

.....
 Speaker of House

Passed by Senate April 20, 2006

.....
 President of Senate

Received by Governor:

.....M.,....., 2006

Approved:

.....M.,....., 2006

.....
 Governor

Filed in Office of Secretary of State:

.....M.,....., 2006

.....
 Secretary of State

Attachment 7

May 4, 2006

MEMORANDUM

TO: Public Defense Services Commission
FR: Peter Ozanne
RE: OPDS's Latest Draft of Its Report to PDSC on Service Delivery in
Judicial District No. 7 & PDSC's Service Delivery Plan for the District

Please note that the Commission's Service Delivery Plan for Judicial District No. 7, which appears at pages 18 to 24 of the accompanying May 5th draft of OPDS report to the Commission, is based mostly on my personal sense of what Commission members might conclude with regard to service delivery in the district, rather than what it has actually concluded. This is due to the fact that the Commission's members had little time to discuss the issues at the end of PDSC's April 13th meeting in Hood River.

Therefore, the attached report continues to be a draft. It may need to be revised as a result of the Commission's deliberations at its May 13th meeting in Portland, and perhaps at subsequent meetings.

DRAFT

(May 5, 2006)

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

Introduction

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

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

This report presents the results of OPDS's preliminary investigation of conditions in Hood River and Wasco Counties, in particular, and in Gilliam, Sherman and Wheeler Counties to a lesser extent. It also contains the comments during PDSC's April 13, 2006 public meeting in Judicial District No. 7 from judges, prosecutors, public defense contractors and other justice professionals in the district, and reflects the deliberations of PDSC leading up to its adoption of a service delivery plan for the district. In conclusion, the report sets for PDSC's Service Delivery Plan for Judicial District No. 7.

PDSC's Service Delivery Planning Process

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

Second, starting with preliminary investigations by OPDS and the preliminary draft of a report such as this, the Commission reviews the condition and operation of local public defense delivery systems and services in each county or 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 County and the principal contractor in Linn County. During the remainder of this year, the Quality Assurance Task Force plans to send site visit teams to Lane, Washington, Lincoln and Columbia Counties. In accordance with its Strategic Plan for 2003-05, PDSC has also developed a systematic process to address complaints over the behavior and performance of public defense contractors and individual attorneys.

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

The Commission is also concerned about the “graying” of the public defense bar in Oregon and the potential shortage of new attorneys to replace retiring attorneys in the years ahead. More and more lawyers are spending their entire careers in public defense law practice and many are now approaching retirement. In most areas of the state, no formal process or strategy is in place to ensure that new attorneys will be available to replace retiring attorneys. The Commission has also found that impact of such shortages

are greatest in less populous areas of the state, where fewer lawyers reside and practice, but where the demands for public safety and functional justice systems with the requisite supply of criminal defense and juvenile attorneys are as pressing as in urban areas of the state. As a result, PDSC is exploring ways to attract and train younger lawyers in public defense practice across the state.

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

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

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

Organizations currently operating within the structure of Oregon’s public defense delivery systems. The choice of organizations to deliver public defense services most effectively has been the subject of a decades-old debate between the advocates for “public” defenders and the advocates for “private” defenders. PDSC has repeatedly declared its lack of interest in joining this debate. Instead, the Commission intends to concentrate on a

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).

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

³ *Id.*

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.

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

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

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

3. Law firms. Law firms also handle public defense caseloads across the state directly under contract with PDSC. In contrast to public defender offices and consortia, PDSC may be foreclosed from influencing the internal structure and organization of a law firm, since firms are usually well-established, ongoing operations at the time they submit their proposals in response to RFPs. Furthermore, law firms generally lack features of accountability like a board of directors or the more arms-length relationships that exist among independent consortium members. Thus, PDSC may have to rely on its assessment of the skills and experience of individual law firm members to ensure the delivery of quality, cost-efficient legal services, along with the external methods of training, standards and certification outlined above.

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

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

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

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

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

OPDS’s Preliminary Investigation in Judicial District No. 7

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

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

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

The preliminary draft of this report was intended to provide a framework to guide the Commission’s discussions about the condition of the public defense system and services in the Judicial District, and the range of policy options available to the Commission — from concluding that no changes are needed in the county to significantly restructuring the county’s delivery system. The preliminary draft of this report also provided guidance to

⁴ Relevant portions of the preliminary draft of this report, which differ significantly from this version of the report, or which contain material that PDSC has specifically addressed in this report, are set forth in Appendix A.

PDSC's invited guests at its April 13th meeting in Hood River, as well as the Commission's contractors, public officials, justice professionals and other citizens who were interested in this planning process, about the kind of information and comments that would assist the Commission in improving public defense in Judicial District No. 7.

In the final analysis, the level of engagement and the quality of the input from all of the stakeholders in the judicial district's justice system is probably the single most important factor contributing to the quality of the final version of this report and PDSC's Service Delivery Plan for counties in the district. Accordingly, OPDS invited written comments from any interested public official or private citizen prior to the Commission's April 13th meeting in the district for inclusion in the final version of this report.⁵

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

Hood River County

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

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

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

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

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

⁶ The following information was taken from the official websites of the counties in Judicial District No. 7 and from data compiled by Southern Oregon University's Southern Oregon Regional Services Institute, which is contained in the Institute's Oregon: A Statistical Overview (May 2002) and Oregon: A Demographic Profile (May 2003).

The influx of new residents may explain the higher education level of Hood River County compared to other less populous, rural counties in the state. Just over 15 percent of its adult population holds a Bachelor's Degree and 7.8 percent with a graduate degree (compared to statewide averages of 16.4 percent and 8.7 percent respectively).⁷ The county has an average proportion of its adult population employed in management and professional positions at 32.5 percent (compared to the state's average of 33.1 percent). Only 70.4 percent of its residents over the age of 25 graduated from high school or its equivalent, however, compared to the statewide average of 78.6 percent.

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

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

With juveniles (aged 18 years old or younger) making up 28 percent of its total population, the county's "at risk" population (which tends to commit more criminal and juvenile offenses) is the fourth highest in the state. Nevertheless, Hood River County ranked 29th in "index crimes" in 2000 among Oregon's 36 counties with a rate of 27.6 index crimes per 1,000 residents (compared to a statewide rate of 49.2) and 24th in juvenile arrests at 52 per 1,000 residents compared to Oregon's average rate of 53.⁸

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

Wasco County

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

⁷ The respective numbers in Yamhill County, for example, are 13.4 and 7.2 percent. In Klamath County, they are 10.6 and 5.4 percent.

⁸ For the purposes of this statistic, "index crimes" are those crimes reported by the Oregon State Police as part of its Oregon Uniform Crime Reports, and include murder, rape and other sex offenses, robbery, aggravated assault, burglary, theft, including auto theft, and arson. Oregon: A Statistical Overview at p. 122.

Wasco County was created by proclamation of the Oregon Territorial Legislature and approval by Congress on Jan. 11, 1854. It was the largest county in U.S. history. The county comprised 130,000 square miles and was named for the Wasco tribe of the Chinook occupying some of the area, though most of the area was apparently controlled by the Shoshone. The county stretched from the Cascades to the Rocky Mountains including parts of what are now Idaho, Montana, and Wyoming. The northern border was Washington Territory and the southern border was California. The county seat was The Dalles, which was the only white settlement east of the Cascades with approximately 35 permanent residents, which gained fame as the end of the Oregon Trail.

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

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

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

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

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

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

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

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

Gilliam, Sherman and Wheeler Counties

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

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

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

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

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

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

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

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

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

With a combined population of approximately 5,000, Gilliam, Sherman and Wheeler Counties enjoy relatively low crime rates. Gilliam and Wheeler Counties were tied for the second lowest index crime rates in Oregon in 2000 (13.6 per 1,000 after Wallowa County's 6.2). Sherman County had the 12th lowest rate of 30.5 per 1,000 (compared to a state average of 49.2). Wheeler, Sherman and Gilliam Counties also had some of the lowest juvenile arrest rates in Oregon with rankings of first, fifth and seventh, respectively. As a result of such low crime and arrest rates, the three counties' public defense caseload in 2005 was 206, or 0.15 percent of the state's total caseload for that year.⁹

OPDS's Preliminary Findings in Hood River and Wasco Counties

On March 20 to March 23, 2006, John Potter and Peter Ozanne visited Hood River and Wasco Counties on behalf of the Commission and OPDS to gather preliminary information for PDSC's April 13th meeting in the Judicial District. They interviewed all four Circuit Court Judges and the Trial Court Administrator in the District, both counties' District Attorneys and Sheriffs, representatives of both counties' community corrections and juvenile departments and local offices of the Department of Human Services, the police chief of The Dalles, two CASAs and all three public defense contractors in the District.¹⁰

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

PDSC contracts with three organizations to deliver public defense services in Judicial District No. 7. With four shareholders, three associates and over 20 years of experience as a public defense provider, Morris, Olson, Smith & Starns, P.C. (Morris Olson) is the

⁹ In 2005, the total public defense caseload for the five counties in Judicial District No 7 was 3,128 cases, which represented 1.83 percent of the state's caseload for last year.

¹⁰ OPDS is currently conducting additional telephone interviews with representatives of the courts and local adult and juvenile justice agencies in Hood River and Wasco Counties, as well as in Gilliam, Sherman and Wheeler Counties. The results of these interviews will be included in the final draft of this report, which will be submitted to PDSC prior to its review and approval of a Service Delivery Plan for Judicial District No. 7.

largest contractor in the District, providing services in all five of its counties.¹¹ The firm's responses to a questionnaire developed by OPDS's contractor site visit teams, which provides additional information about the firm's governance and quality assurance practices, is attached in Appendix B.

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

The Wasco/Sherman Indigent Defense Corporation (WSIDC), as the name implies, provides defense services in Hood River and Sherman Counties. WSIDC currently has two associates in the law firm of VanValkenburgh & Associates. One associate, who also serves as the consortium administrator has approximately five years of experience and the other associate has less than two years of experience.¹⁴

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

There is a perception in both Hood River and Wasco Counties, however, that the turnover rate of Morris Olson's lawyers over the years has been high. The apparent result is the arrival of new lawyers in the District who lack the necessary training and experience to handle cases effectively for some period of time. Opinions vary about the level of training and supervision that new lawyers receive at Morris Olson, though virtually all observers complemented the firm's lawyers for their professional skills and ethics once they gained some experience.

Jack Morris has frequently reported the difficulties his firm faces in retaining younger lawyers once they have been trained, including skyrocketing housing prices in the area (now in Wasco County as well as Hood River County) and greater professional opportunities for young lawyers in the Willamette Valley.¹⁵ Mr. Morris indicated during

¹¹ Morris Olson's current contract with PDSC for the delivery of services through December 2007 is for 2,437 cases per year at an annual amount of \$879,468.

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

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

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

¹⁵ As the questionnaire in Appendix A indicates, OPDS's contractor site visit teams have increasingly taken an interest in the issue of attorney retention and its relationship to the distribution of contract funds and other revenues by PDSC's contractors as salaries for their attorneys. This information has historically not been accessible to OPDS or its predecessor agency on the ground that its contractors are independent. In response to this questionnaire, Morris Olson indicates that the salary scale is "approximately \$50 to \$100

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

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

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

Most of the justice officials and professionals interviewed by OPDS in March offered favorable comments about the services provided by WSIDC. While admittedly not the most aggressive advocates, the majority of observers felt they had good relations with their clients and served the interests of those clients. A number of those observers questioned the level of lawyer training and supervision available at WSIDC and noted that the least experienced attorney frequently lacked the technical knowledge to advance his clients interests in juvenile court.¹⁷ A few questioned the interest or commitment of WSIDC's attorneys to public defense work. To his credit, in the face of the announced

less per month compared to that of Metropolitan Public Defender." Appendix A, Morris Olson's "Response to Questionnaire for Public Defense Firms," p. 8.

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

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

intention by the Juvenile Court Judge in Wasco County to appoint another attorney on the court-appointment list to represent children in juvenile dependency cases, WSIDC's administrator expressed his view that this attorney did an excellent job in representing children and encouraged OPDS to enter into a contract with her at WSIDC's expense.

The District Attorneys in Hood River and Wasco Counties expressed general satisfaction with their counties' public defense systems and their offices' working relationships with the counties' defense attorneys.¹⁸ While they emphasized that their office's settlement offers do not vary depending on the identity of the attorney for a defendant or juvenile client, they did report variations among public defense attorneys with respect to their willingness to accept settlement offers or proceed to trial, and in their level of experience and competence. Variations in the experience and competence of defense attorneys appear to be most pronounced between contract attorneys and attorneys on court-appointment lists. Both prosecutors also reported that, among PDSC contractors, Morris Olson generally had lawyers with the greatest skills and abilities as advocates in their counties.

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

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

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

Preliminary Findings in Gilliam, Sherman and Wheeler Counties

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

¹⁸ Both District Attorneys handle a full caseload and have two deputies.

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

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

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

PDSC's Public Meeting in Judicial District No. 7

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

The Commission received comments on April 13th from the following guests, in order of appearance: Presiding Circuit Court Judge Donald W. Hull, Hood River County District Attorney John Sewell, Jack Morris, a senior partner in Morris Olson, Wheeler County District Attorney Tom Cutsforth, Circuit Court Judge John V. Kelly, Kevin Hashizume, the administrator of WSIDC and Brian Aaron of Aaron & Associates. An edited transcript of their comments and discussions with the Commission's members and staff is included in Appendix C.

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

PDSC agrees with OPDS's conclusion in the preliminary draft of this report that the public defense delivery system and the Commission's contractors in Judicial District No. 7, in general, are operating effectively and cost-efficiently and that its primary contractor,

Morris, Olson, Smith & Starns, P.C., in particular, is a well-established, well-run law firm made up of knowledgeable, first-rate public defense attorneys.¹⁹ The Commission shares local concerns in the district, which were expressed to OPDS during its preliminary investigations, that the limited supply of qualified public defense attorneys poses problems for the quality of justice and a threat to public safety if the lawyers who currently take court-appointments leave the district, retire or stop taking appointments for economic reasons.²⁰ The Commission also concludes, as OPDS suggested, that there may be a shortage of available training and supervision for new lawyers entering public defense practice in the district.

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

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

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

Even in the absence of additional resources, PDSC firmly believes that a coordinated strategy by OPDS and its contractors to actively recruit graduating law school students for legal practice in underserved areas of the state will produce results. In particular, new lawyers will be drawn to regions of Oregon like Judicial District No. 7 by (a) a statewide directory of job openings administered by OPDS and (b) recruitment teams made up of lawyers from less populous areas of state, who can impress upon anxious law students facing a highly competitive job market that places like Hood River and

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

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

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

Wasco Counties offer professional opportunities and a quality of life that many law school graduates will be unable to find along the I-5 corridor. PDSC urges OPDS and contractors like Morris Olson to coordinate such efforts with OPDS's new Diversity Task Force, which will likely be designing and implementing similar strategies to encourage attorneys and legal staff of color to consider practicing in areas of the state with professional opportunities and welcoming communities.

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

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

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

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

In the event new lawyers happen to arrive in the district or the foregoing recruiting strategies prove successful, and these new lawyers fill the district's greatest need by taking court-appointments that Morris Olson cannot handle due to conflicts, PDSC believes that a more systematic training and mentoring program will be necessary to ensure the continuing quality and cost-efficiency of public defense services in the district. Thus, the Commission proposes that, when local justice policymakers identify the need for more training and mentoring of new lawyers, Morris Olson, which admittedly performs most of the functions of a public defender office in the district, should, in accordance with that role, design and propose to PDSC a formal training program for new public defense lawyers practicing outside of its offices. The Commission recognizes that such a program would need to be recognized and agreed to under the terms and conditions of its contract with Morris Olson.

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

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

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

Notwithstanding his persuasive arguments in support of this claim, Mr. Morris's

presentation to PDSC on April 13th, along with other information that OPDS and PDSC have been able to gather about the Morris Olson firm, leads the Commission to reach two separate but related conclusions. First, the performance of Morris Olson or any organization, whatever its structure, depends primarily on the quality of the people it employs. Morris Olson, indeed, Oregon's entire public defense system, have benefited from the firm's ability to attract a core group of first-rate attorneys, including senior lawyers who have been imbued with standards of management and a commitment to excellence through prior professional experiences at places like Metropolitan Public Defender, Inc. In the absence of an employment relationship with public defense attorneys, PDSC and OPDS must recognize that their role in promoting incremental improvements in the quality of public defense services by changing the structure of local delivery systems or by establishing quality assurance programs are no substitute for successful efforts to employ highly qualified lawyers.

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

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

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

- 4. In light of the particular skills and experience of Morris Olson's lawyers, PDSC urges the firm to collaborate with OPDS and OCDLA in offering a forum or open house for elected public officials in Judicial District No. 7 no later than September 2006 in order to provide information about the challenges and realities of public defense practice.*

Although PDSC could make this recommendation to almost any public defense contractor or attorney in Oregon, it is directed to Morris Olson for four reasons. First, the firm offers a model in the state of what has been done to provide excellent legal services with inadequate resources, and what will be lost if the level of state funding continues to fall behind the rate of inflation and cost of living in Oregon. Second, the skills and experience of Morris Olson's attorneys ensure that communications with local elected officials will have positive effects. In particular, at least two of the firm's senior attorneys have management experience in other public defender offices, one has recently been recognized by the Citizens Review Board for excellence and contributions to children and families in the district, and another has acquired valuable experience as legal counsel to a key legislative committee. Third, the firm forthrightly admitted that it has not devoted any of its considerable talents to informing local public officials about the accomplishments and mission of Morris Olson and other public defense firms and attorneys in Judicial District No. 7. Finally, the time is right with seven months to go before the next session of the Legislative Assembly.

PDSC can only offer a few suggestions about the form that a public forum or open house for local elected officials might take. The lawyers in Morris Olson, OPDS and OCDLA will obviously have other ideas. Some or all of this report might accompany letters of invitation to state and local elected officials in Judicial District No. 7 and, depending on the level of interest and support from other public defense providers, perhaps adjacent counties in Central and Northeastern Oregon. Judges and other justice officials could also be invited to offer their perspective on the role and condition of public defense in the area. Certainly, staff of OPDS and appropriate representatives of OCDLA should attend. Depending on the date of the event, members of PDSC could also attend.

Given the likelihood that such an event would succeed in communicating a message of the importance and quality of Oregon's public defense system and the threat to its continued existence and, consequently, to the public safety of all Oregonians, by inadequate state funding, PDSC may urge public defense contractors in other parts of the state to sponsor similar forums. The deadline of September 2006, which the Commission proposes here, is meant to support the plans of OPDS and OCDLA to use the forum or open house in Judicial District No. 7 as a pilot project to discuss at OCDLA's Annual Management Conference in October and to consider replicating in other parts of the state.

This recommendation is based on the Commission's conclusion that Oregon's public defense community cannot expect OPDS's small staff, PDSC's volunteer members and the few lobbyists retained by OCDLA to secure increased state funding for public

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

PDSC views this reality and the attendant obligation as analogous to a trend that has been sweeping through the private practice of law for at least the past two decades. Nearly every lawyer currently engaged in private practice recognizes the necessity of devoting his or her efforts to “business development.” Indeed, many law firms now hire specialized staff devoted to that effort and set the compensation levels of their lawyers based, in part, on their success in developing new business. In effect, efforts to develop the understanding and support for public defense among elected officials and policymakers represent a business development obligation for every lawyer in Oregon who devotes a significant amount of time to public defense practice and depends on the revenue generated from that practice. In the absence of such efforts, the Commission cannot ensure that its actions and the actions of the limited staff of OPDS and OCDLA will, by themselves, achieve the goal of adequate state funding for public defense.

APPENDIX A

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

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

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

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

- 1) Identify and actively recruit defense attorneys in the offices of current contractors, who have approximately three to five years of experience and are interested in establishing law practices in underserved areas of the state;
- 2) As a primary incentive, offer these attorneys four-year contracts with guaranteed caseloads, supplemented by appellate and PCR cases if necessary;
- 3) Advocate for the forgiveness of student loans and housing allowances as additional incentives;
- 4) Recruit interested law students and, in cooperation with larger contractors' offices, provide apprenticeship training upon graduation, in exchange for a commitment to practice in underserved areas;
- 5) Offer technical and administrative support for new offices in these areas; and

6) Assign FTE from OPDS to fill gaps in services and to provide technical support in underserved areas of the state.

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

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

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

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

First, OPDS is skeptical that any private, for-profit law firm can serve as a primary vehicle for implementing and perpetuating the kinds of "best practices" in public defense management that PDSC has begun to identify over the past three years and has increasingly sought to implement. Those best practices include (a) the establishment of boards of director to bring greater management and financial expertise to contractors' operations, (b) county-wide or regional training and mentoring programs and active participation in policy making by primary contractors, (c) periodic evaluations of attorneys and staff, (d) periodic evaluations of management that are made available to the Commission and (e) fair, rational and transparent compensation systems. While it is certainly conceivable that a private law firm might adopt and promote these practices, the resistance that OPDS has observed from such organizations is understandable and perhaps reasonable, in light of the traditional organization, purposes and culture of forprofit law firms.

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

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

Finally, such a discussion by the Commission will have important policy implications for the state public defense system, from providing guidance to similarly situated contractors and local delivery systems that are interested in the future, to testing the scope and feasibility of some of the best practices that the Commission has begun to promote in the absence of additional organizational or structural changes in the state's delivery systems.¹

¹ For example, can the Commission expect to improve management practices or increase accountability significantly by recommending to private law firms that they form "advisory groups" in lieu of boards of directors or subject their firm's management to periodic formal evaluations?

APPENDIX B

QUESTIONNAIRE FOR PUBLIC DEFENDER OFFICES AND PUBLIC DEFENSE FIRMS

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

Appeal:

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

Availability

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

Board of Directors

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

Case Management

1. What is your case file protocol?

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

Community Education

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

Competence

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

Cultural Competence

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

Personnel

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

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

Training

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

Zeal

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

Conclusions:

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

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

APPEAL

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

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

AVAILABILITY

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

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

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

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

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

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

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

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

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

BOARD OF DIRECTORS

1. Does your office have a board of directors?

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

CASE MANAGEMENT

1. What is your case file protocol?

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

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

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

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

2. What is your case assignment process?

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

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

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

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

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

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

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

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

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

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

COMMUNITY EDUCATION

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

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

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

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

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

COMPETENCE

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

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

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

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

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

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

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

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

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

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

CULTURAL COMPETENCE

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

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

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

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

PERSONNEL

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

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

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

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

4. What is your staff evaluation process?

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

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

5. How do you address issues of under performance?

6. How do you acknowledge and reward excellence?

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

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

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

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

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

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

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

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

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

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

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

TRAINING

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

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

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

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

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

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

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

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

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

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

ZEAL

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

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

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

CONCLUSIONS

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

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

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

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

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

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

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

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

Respectfully submitted,

Jack Morris

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

APPEAL

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

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

AVAILABILITY

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

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

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

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

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

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

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

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

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

BOARD OF DIRECTORS

1. Does your office have a board of directors?

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

CASE MANAGEMENT

1. What is your case file protocol?

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

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

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

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

2. What is your case assignment process?

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

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

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

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

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

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

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

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

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

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

COMMUNITY EDUCATION

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

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

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

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

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

COMPETENCE

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

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

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

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

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

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

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

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

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

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

CULTURAL COMPETENCE

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

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

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

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

PERSONNEL

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

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

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

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

4. What is your staff evaluation process?

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

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

5. How do you address issues of under performance?

6. How do you acknowledge and reward excellence?

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

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

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

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

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

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

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

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

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

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

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

TRAINING

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

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

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

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

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

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

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

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

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

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

ZEAL

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

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

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

CONCLUSIONS

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

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

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

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

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

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

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

Respectfully submitted,

Jack Morris

APPENDIX C

PUBLIC DEFENSE SERVICES COMMISSION

EXCERPTS FROM THE UNOFFICIAL MEETING TRANSCRIPT

April 13, 2006 Meeting
Hood River County Courthouse
Courtroom 301
309 State Street
Hood River, Oregon

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

STAFF PRESENT: Peter Ozanne
Kathryn Aylward
Ingrid Swenson
Laura Anson

Agenda Item No. 3 Introduction of the Preliminary Report on Service Delivery in Judicial District No. 7

217 P. Ozanne I see we have Presiding Judge Hull in the audience. I would like to ask him in a moment to come up and speak with you. Throughout the day, I see a number of people who we hope will speak. I see that we have representatives for our contractors here and I know the Hood River County District Attorney will be here to speak in the next hour. Let me just offer some broad-brush strokes with regard to the result of our preliminary investigation. Then Judge Hull, as presiding judge, can speak first and answer the questions you may have. The preliminary draft report is really an attempt to frame some of the issues we noted during our initial assessment by talking to a number of key players in the counties in the judicial district. When I say "the counties," I am talking about all five counties in the judicial district. Although, as I indicated in the report, given our time and resources, we didn't get to spend as much time as I would have liked in a perfect world to cover Gilliam, Sherman and Wheeler counties. We spent our time in this county, Hood River, and in Wasco County. When I say "we," Commissioner John Potter was kind enough to join me for our preliminary investigation and spent two of the three days in the district talking with folks. As I indicated in the report, we talked to all four judges, to the district attorneys in Wasco and Hood River County, to both sheriffs and the police chief of The Dalles, and representatives of the Department of Human Services and community corrections in both Wasco and Hood River County. To the extent these offices, like the courts, have relationships or operations in Wheeler, Sherman and Gilliam Counties; we asked questions and received information regarding those counties as well. We also spoke with the Trial

Court Administrator, Chuck Wall, who has been kind enough to provide his hospitality and these accommodations. I also talked by telephone to the three district attorneys in Sherman, Gilliam and Wheeler Counties. I understand that, this afternoon, Tom Cutsworth from Wheeler County will be attending our meeting. In a period of three days, we were able to develop a pretty good picture of defense services in Judicial District No. 7. And, as I hope the preliminary report makes clear, things are going well here. I think people are generally very satisfied with the public defense services in the district. Once again, we encountered good working relationships among the people in the district's justice systems. The advocacy is zealous when necessary, but relationships are not jeopardized in general by personal issues or conflicts. I thought it was particularly interesting that probation officers and police said that our contract lawyers are tough advocates – “they cross-examine us intensely, but they are professional and they are not tempted to get into personalities when it isn't necessary and they maintain professional relationships.” As I indicated in the report, these people said that the lawyers make them more effective in terms of their own agencies' practices and procedures. I think that, in general, the lawyers in this district are doing the work that we ask them to do. The primary problem, as noted in the report, is a shortage of qualified public defense lawyers. After the courts get past the “starting lineup” – our contractors and the more experienced private attorneys – “the bench” is very thin. Jack Morris, who will speak to you today, has spoken about this issue in the district many times before. We have discussed it many times with regard to what we have called underserved areas of the state – areas where there isn't a sizable population of lawyers and there are problems of recruiting lawyers and getting them to stay in the area. So, once they get past our contractors and a number of good people on the list, the judges in this district worry about who they can appoint and what they are going to do when qualified lawyers retire or move on. So the supply of lawyers is a big issue here. The report does address one other issue. As you know, we have a great opportunity to come to a county and learn through our investigations of their justice systems. And I think most counties appreciate the fact that someone from the outside looks at their operations and reports on the effectiveness of those operations, keeping in mind that we also try to mind our own business. One issue that a lot of people reported, and though it wasn't a matter the Commission was going to act on I wanted people in the district who had read the report to know that we were aware of the issue, was an ongoing disagreement between a senior lawyer at the Morris Olson firm and a juvenile court counselor in Hood River County. Though I mentioned it in the report, I'm confident that the judges in the district will resolve this issues if it disrupts the administration of justice or proceedings in the courtroom. Since the report was written, I understand that there may be a unique practice in the county that may call for gathering more information and that may suggest that we want to be careful about discouraging vigorous but fair advocacy by our defense contractors. In this instance, there is apparently a practice in Hood River County involving a team approach to sex offender treatment of juveniles where the therapist and the juvenile court counselor work together with an individual juvenile in order coordinate their efforts to rehabilitate and treat the juvenile. Although this is considered a best practice in the corrections profession, I understand in Hood River County that the juvenile court counselor sits in during therapy sessions where self-incriminating statements may be made that are conducive to treatment, but which may result in corrections sanctions. I understand the best practice envisions separate therapeutic sessions with the therapist and the juvenile where secrets and confidences can be freely revealed and separate case management sessions with the court counselor and the therapist to share appropriate information and track a juvenile progress. So there may be a true philosophical or professional disagreement in this county

about this matter which no doubt will be resolved through leadership from the bench. Finally, another issue that I raised in the report for discussion today is an issue of planning for the future of Oregon's public defense system. In counties such as this, and there are probably not that many, where a private law firm is our primary contractor, is this the structure that you wish to perpetuate in the future. As the draft report hopefully makes clear, the law firm in this district – the Morris Olson firm – is doing an excellent job. I am impressed with their implementation and administration of best practices. For example, Jack Morris sent me the firm's office manual, which I am going to share with our Legal Services Division because it is a very good office manual. We also know that the firm has conducted a survey of court personnel to see how its lawyers are doing. You know from the appendix to our draft report that Jack and his partners conduct lawyer evaluations on a periodic and systematic basis. Therefore, I am not suggesting that there is any problem with the primary private law firm in this county that currently needs addressing. But in terms of planning for the future throughout the state, I am raising the issue for discussion. I suggested in our report that a private law firm may be less receptive to the influence and the suggestions of the Commission with regard to best practices than a non-profit corporation that operates as a consortium or a full-time public defender. Not surprisingly, Jack Morris disagrees with these observations and I said "Great, we'll have a discussion here at the Commission meeting." After three years, it is my impression that sometimes our conversations about best practices, boards of directors, connections with the community, periodic management and attorney performance reviews and lawyer accountability amount to a dialogue between the Commission and non-profit public defenders and consortia, with private law firms and attorneys looking on as disinterested or uninvolved observers. If I were in that position, I would certainly be thinking, "I have a law firm and I'm running it the way I want to without outside meddling." With that I suggest, Mr. Chair, that we invite Judge Hull to come up as our first guest, followed by Hood River County District Attorney John Sewell.

421 Chair Ellis

Judge Hull, thank you very much for coming. Let me just mention from the Commission's point of view, we started about a year ago on a program of trying to go to areas in the state and meet with the people who are involved in the system. We are here to learn. We are here to get a good understanding of what is happening in this area and we don't start with a presumption that there is only one way to provide quality defense service. We have actually got a range of ways throughout the state that we are using. I think the other lesson that we have learned is this is a very diverse state. The law enforcement issues vary a lot because you have got different levels of population, you have different types of population and you have got a different economic base in different parts of the state. We just think it is healthy for us to get around and learn. It is also healthy for the different counties to get a chance to interact with us and give us some of their thoughts and observations. It is in that spirit that we are here and we look forward to hearing from you.

446 Judge Hull

It is too bad you weren't up here yesterday because it was beautiful. The clouds are coming in today. I don't have a lot to talk about because I talked with Mr. Ozanne and Mr. Potter when they were here three weeks ago. What I told them was where to go fishing and apparently they didn't follow up. Let me just talk to you a little bit from the perspective of a judge. If I'm not incorrect, Mr. Brown, you were a district attorney many years ago?

454 J. Brown

Many years ago.

- 455 Judge Hull In Corvallis, correct? The same time I was district attorney here.
- 456 J. Brown I am remembering that as you speak.
- 457 Judge Hull We used to share information about operating our district attorney offices many years back in the early 70's. Just to give you some history so you understand my comments, I come from a background of being a prosecutor back in 1970 until 1974.
- 462 Chair Ellis With Judge Jeldricks?
- 462 Judge Hull I followed Judge Jeldricks in the district attorney job, when he went into private practice and then went on the bench in 1973. Then I was in private practice from 1975 through 1990, and I did a substantial amount of criminal defense work in those days when they would put horse collars on us to get us in to do criminal work. I did my share of criminal work both at the misdemeanor level and the felony level.
- 470 Chair Ellis So you come from a hermaphroditic background?
- 481 Judge Hull Yes, and I became a judge in 1990. So I have a full gambit of the operational experience. And from what I have seen and my experience, I am very satisfied with what is going on here in terms of the quality of the legal services provided, the timeliness of them and the professionalism of them in dealing with others in a professional capacity. But at the same time, when there is an issue to litigate it is done in way that is not offensive, but also represents the client to the fullest. The only problem we have, and I think Peter mentioned it, is occasionally we get into situations where – and this is not a fault of our providers, it is just the numbers – a case has multiple defendants and we start running out of attorneys because we have co-defendants or there are children involved. We have attorneys for children and the parents and lot of the attorneys just don't do criminal defense work anymore. At my old law firm, there is not a lawyer that does criminal defense work anymore. Judge Jeldricks, when he was the presiding judge, had a rule that "If you are going to practice law in this jurisdiction and do any courtroom work, you are also going to provide criminal defense services when I call you." I don't subscribe to that philosophy because I think if you call up a lawyer and he doesn't want to do the case, he is not going to put his heart and soul into it. If the lawyer doesn't want the case and won't take it, I am not going to require him to provide defense services.
- 511 Chair Ellis If I can ask, I would think in a smaller county with the law firm as the predominant provider, you are going to have conflict situations where it is going to be very hard to provide counsel in these situations. How do you deal with that?
- 518 Judge Hull We just start figuring out who is representing whom, and then we know Morris Olson is representing one of the parties and Mr. Aaron is involved because his firm is the backup provider. Then there are other lawyers who do criminal defense work or juvenile work on a regular basis in addition to doing private practice. We call them. Then sometimes we go to The Dalles and bring attorneys in from there to cover those situations where we need multiple lawyers involved. It doesn't happen a lot, but it happens enough to where we need to address those coverage situations. That is just the problem of a small community. A lot of lawyers start developing a good civil practice and they don't want to be in the courtroom anymore.

536 Chair Ellis Is there a seasonal component to the caseload here?

538 Judge Hull That is an excellent question, and I haven't thought about that and haven't really analyzed it. Even though we are a tourism area, I have not found that it increases during the summer. Mr. Morris can address this better. I don't find that to be a big issue based on tourism. Probably just because of numbers, we probably have more cases in the summer because of more traffic going through the area. So, to some extent, yes, but I don't find it a big swing in terms seasonality. I am open for other questions. I am satisfied with how the public defense system is operating. I think it is much better than it used to be when I was a prosecutor. And things are different today. The volume is much greater than when I was a prosecutor. Drugs didn't exist much in the 70's. Now, eighty percent of the cases are drug-related. When I was doing defense work, we didn't have this system. The judge just went out and tried to get various private attorneys to provide services. But again, the numbers have increased in the drug cases and everything else related thereto. It has just exponentially increased from about the late 80's. I can't speak to Mr. Ozanne's comment about having a board of directors because that is an internal matter as to how you folks operate and I have never been involved in that situation. I know when I was practicing law and providing legal services, I would not have liked to have a board. Can I just digress a bit about the issue that was raised in The Oregonian. I felt a little bit uncomfortable this morning when I had the Chief in my courtroom and I had that very situation. It is really tough when we are doing an hour or an hour and a half of arraignments and we are doing them one right after the other. Somebody is charged with a very serious crime, you look at their questionnaire and they have some assets.

[Tape 1; Side B]

081 Judge Hull If you don't understand the framework in which this all works, somebody would say, not sitting in my chair, "Sure, they can afford a lawyer." But my comment is, "How are they going to afford a lawyer when they are self-employed and now they are sitting in jail subject to a \$50,000 bail?" How are they going to sell assets to pay for a lawyer when they are sitting in jail on \$50,000 bail? I appoint a lawyer for them because I have a 60-day speedy trial issue. I have to get the case moving. I have got to get a defense lawyer on board, if they are not able to hire a lawyer right away. I have got to get discovery moving, if there are going to be motions, because I have a 60-day issue. They are going to be released unless they waive the 60-day issue on the speedy trial. So those are ramifications that weren't even discussed in the newspaper article that trial judges face as a reality. As a practical matter, the case has to start marching pretty quickly. We can't be waiting two or three weeks to get a lawyer on board. I have a trial docket that I need to fit this case into, especially if they don't waive their 60 days. That, I don't believe, was really addressed in the article by The Oregonian. I read that article and thought, "Boy, I wish they would come to my court sometime and just see some of the practical issues that we deal with to try and keep the cases moving." It is not as easy as recouping all this money and making better choices. I think trial judges have a difficult time in that regard just because they have a very short time frame to deal with cases. That is my comment on that.

103 Chair Ellis Questions for Judge Hull?

103 C. Lazenby I am just wondering, in general, outside the criminal defense delivery system, is the county facing infrastructural stresses in terms of a lot more cases of drugs. Are there treatment programs in place or are they flooding your docket? Is it

more backed up than, say, 10 years ago, in terms of the number of judges that you have here to process cases?

- 109 Judge Hull I think we are doing a fairly decent job in terms of dealing with what I call the social aspects of the cases. It is hard to generate services that fit all the types of cases because we don't have hard numbers to support to have services for all of those cases. Sometimes it is difficult to deal with this situation. We are running a drug court both in Wasco County and Hood River County now. We held that court this morning and we are getting more people involved. Everybody – the district attorney's office and the defense lawyers – are involved. We are up and running in that regard. I don't see us being flooded with cases.
- 124 Chair Ellis Let me go back to the conflict area for a moment. We have learned in some areas that the system for identifying conflicts is not perfect. You get part way into a case and it turns out there is a conflict with another witness or co-defendant, and then you have to change lawyers.
- 130 Judge Hull Then you have to find a back up.
- 131 Chair Ellis From our point of view, that is a real problem because we have to pay one and then pay another. How much of that are you doing?
- 132 Judge Hull Not much. That happens occasionally, but I think very rarely. I must say that, in terms of the two major providers, Mr. Morris's office and Mr. Aaron's office, they do a very good job of keeping some sort of a diary or logging of information. So they know right up front. I'll make an appointment and they will get back to me either that day or the next morning and say, "We have a conflict." They look at the computer and see if there has been any prior representation and let me know immediately. Sometimes it is that day. We have the beauty of not having 14 attorneys in Mr. Morris' firm where the left hand does not know what the right hand is doing. We have two or three lawyers from their firm that work in Hood River and two or three that work in Wasco County. They keep pretty good tabs and have a good tracking system of who they have represented. They let me know and Mr. Aaron does the same thing. Even the lawyers who are not part of that group let me know right away. I can call up Mr. Gellar and say "I have a case. Are you able to handle that?" He'll do a quick computer check and say he has a prior conflict and can't do it. We don't run into a problem very often. We sometimes run into the problem where we discover that this person is a witness and the witness comes into the case later on. Then we have that problem. But that is very rare.
- 158 Chair Ellis This is a hard question for you to answer, I'm sure. But I'll float it out there. One worry we have, obviously is: are cases being tried when they shouldn't be tried? Are pleas being made that really shouldn't be made, or is there about the right mix between those?
- 164 Judge Hull I guess I can rely on my opinion based on 36 years. I think the cases that are being tried need to be tried and the cases that are getting resolved, short of a trial, should be getting resolved. Some cases have to be tried and I learned that early on. I don't find we are spending a lot of time in the courtroom that we shouldn't spend in the courtroom. I think cases are getting plea bargained when they should be. I have been satisfied with that. If I am not satisfied with that, normally I will make some comment, and I have done that very rarely because I question how much I want to get into the process. But on the whole, I think the cases that should be tried are being tried and the cases getting resolved should be getting resolved. I have been satisfied with that. I think Mr. Morris and Mr.

Aaron and those that work in the system know what cases need to be tried and what cases don't need to be tried. They deal with the system enough that we are not spending time in the courtroom that we don't need to and spending money in that regard. When it is being spent it is being spent pretty well. I have been satisfied with that.

- 187 Chair Ellis One of the comments in the preliminary draft report is there has been a lot of turnover among younger lawyers and another passage indicates it is harder than perhaps I would have thought to attract new lawyers to the community who are interested in providing defense services. Do you have an observation about those issues?
- 193 Judge Hull I haven't really thought about that.
- 195 Chair Ellis This is otherwise known as the graying of the defense bar.
- 196 Judge Hull Practically speaking, I have a son at the University of Oregon, and he is a mountain climber and a skier. I'll just tell you a family story and my comment to him, and then it will explain some of the answers to that. He said "Dad, someday I hope to come back and practice law in Hood River." I said, "Jeremy, I'm not sure how you are going to do that because I don't think you can afford to live here." Housing today in this town is expensive. You cannot buy a dog house for \$275,000 to \$400,000. To live here in Hood River, the cost of living has just gone bananas because of the pressure and what is going on in the community.
- 206 Chair Ellis When you say that, you are talking about the recreational sports?
- 207 Judge Hull Housing here – and maybe that is true throughout the state and I'm sure it is – housing here has gotten difficult to buy. You can't buy a two or three bedroom house for much less than \$300,000 to \$400,000. I don't know how a young lawyer could come in and afford to make a down payment and a house payment. In the summertime, I can rent a bedroom out of my house for \$600 a month. I did that 12 years ago, and it has gotten worse today. I don't know how people can afford to rent a place to live on what young lawyers make; plus make their debt service from law school. and if they are married and have children. Economically, it is a very difficult situation. Then again, I think a lot of lawyers say, and I remember my days, "I'll get my experience in the courtroom and then I am going to go out and make some money in the private practice." Working in the district attorney's office and working in defense services is not where you make a substantial income down the road. The pay is much greater in private practice than in working for a public agency. It is hard to keep people unless you are real dedicated. I think that explains why there is some turnover to whatever extent there is. I don't know if I have answered your question or not.
- 232 Chair Ellis Do you have any suggestions about how we can perform our job better or how either Peter or Kathryn can interact better?
- 235 Judge Hull I don't. Your function is to oversee this entire process statewide, is that correct? I think you have a very difficult job because, as you indicated when I first came in and as you were going around the state, things are different. Things are different here than when you talk to Wasco County. We do things differently than 20 miles up the road. They do things differently than we do. I think it is a function of how we have done things in the past. Maybe it is time to change all that but, over the years, small communities east of the Sandy River and south of Portland, and in eastern and central Oregon, have had there own framework of

how they have done things, and it is not easy to change. Maybe some of them are resistant to change. But we have just developed the habit of doing things that way. I have been here for 36 years and we are still doing things somewhat the same way. Wasco County does things their own way. I think you have a difficult job to try and provide services or oversight when you have all these different competing things. It is really interesting when I go to the judge's conference, and I just came back from one. It is fun to talk to other judges because, when you listen to how they run their courts and know how we run ours, we get some ideas, but everything is different. It was also interesting when I went to the National Judges School in Reno, Nevada 16 years ago. I was shocked that not everybody ran their justice system the way Oregon does. There are 50 states and they all run them differently. We are so accustomed to thinking this is the way it is done, when in fact this isn't the way it is always done at all. It is unique to Oregon, and it is unique to Hood River and unique to The Dalles. So you have a difficult job, and I can't tell you how to do a better job. I'm glad you are doing it and not me.

- 266 Chair Ellis You know our door is open. So if you come up with any suggestions, please let us know.
- 267 P. Ozanne Judge, are there any unique issues in other parts of the district? As I mentioned, and if you had a chance to look at the draft report, we haven't given as much attention to Sherman, Gilliam and Wheeler Counties as we would have liked in a perfect world. Are there issues in those three counties, even though they have a much smaller caseload?
- 275 Judge Hull Not really. I will say that we get prompt coverage in those counties and I have been satisfied. The only problem that I have in those counties is when I try a case there is that I ask the jury if anyone has heard anything about the facts of this case and everybody on the prospective jury panel has already heard about the case and discussed the case. It is difficult to get 12 people who haven't already heard everything about the case. I have more problems with jurors in those counties than I do with getting defense coverage. We have a consortium in The Dalles and I think the Morris Olson firm covers Gilliam and Wheeler also?
- 284 J. Morris All three counties.
- 284 Judge Hull So we see them on the road, and now we are using the video a lot for arraignments. And that saves a lot of travel time. We get good coverage and I have been satisfied with it. I had a trial two weeks ago and I am not going to mention names. But in Gilliam County, in Condon, John Olson was defending in that case and Scott Jackson from the Attorney General was prosecuting that case. It was probably the best case I have seen tried in 25 years, including my own involvement as a defense attorney. I always thought I was a pretty good attorney. But I walked back to my office the next day and talked to Marsha, my JA, and I said, "You know, I had to go to Condon to observe some of the best legal work I have seen in 25 years." I firmly believe that. And I have tried as a judge cases in Multnomah County, Washington County, Linn County and Lane County. That case was tried better than any case I have seen in a long, long time. I think you are getting the bang for the buck with this sort of work. That is my view.
- 305 Chair Ellis Any other questions for Judge Hull?
- 306 Judge Hull Thank you very much. I appreciate the time.

316 John Sewell

I may need just a moment to collect myself. I was hoping in my heart of hearts that some of the best work that Judge Hull had ever seen had actually been when I was in the courtroom. I'll get over that. I know that most of you haven't met me. Just real quickly by way of background, I am John Sewell. I am the district attorney for this county. I have been a prosecutor for 26 years. The last 14 years I have been the elected district attorney here; for 12 years, as a deputy. For the last 20 years I have been appearing in this courtroom, such as it is. I worked for four years on the coast before I came here. I worked for a year in Coos County and three years in Lincoln County. I am not going to reiterate the comments that I made to Mr. Ozanne and Mr. Potter. They are in the report. I would state simply that I am of the opinion that the community is well served by the public defense services that are being provided. I should comment on a couple of things. I think there is still a seasonal aspect to the workload here in that it does go up in the summer months a little bit. I don't think that is any different though than a lot of communities in the state. When the weather is nicer, the criminals are more active. Another aspect is, in the winter when there is snow on the ground, it slows down a little bit. I think another point not to be overlooked, and I think you would probably hear this around the state. If communities are on the I-5 corridor or on the I-84 corridor, they get a lot of work off of that freeway. It is not just a matter of whether there are 20,000 people or 40,000 in the summer. I have spent a lot of time prosecuting cases, as do my deputies, that arise on Interstate 84 and that involve defendants that aren't residents of this community. Following up on one point that was made about the cost-of-living, I have two deputy district attorneys that work for me; they both live in the greater Portland area and commute here. This is a god awful expensive place to live because of what has gone on with the surfing industry and what it has done for the property values in the community. Addressing the issue of the juvenile department and their participation in the sex offender treatment programs that go on here, I would observe that it has always been the practice here that anything that is said in treatment stays in treatment. And by that I mean there are no charges ever filed based on any, for lack of a better word, confessions or admissions that are made during those treatment programs. In other words, if a young person acknowledges that there are two or three other victims that they have had that we didn't know about, that is the end of it. We find out about them outside of that venue, of course, and they are in play. I would note that the juvenile counselor or counselors that participate in those sessions aren't doing it simply as an observer, but actually play a role in the process and participate in that process. I would also point out that they do not sit in on individual counseling sessions. They sit in in the group sessions that sometimes occur and, any suggestion that practice be discontinued, I would suspect would be met with stern resistance by my office, the juvenile department, and the treatment provider. It is a very workable situation. It does not work to the detriment of any of the young people that are participating in those programs. And again, we do not file charges based on any admissions that are made in these counseling sessions. This is a matter of fact and just for your information. There was a question to Judge Hull about cases being pled out as opposed to cases being tried. Over the years here, I have seen a shift in the number of cases that go to trial. I think that is attributable to a number of things.

386 Chair Ellis

Shift in what direction?

386 J. Sewell

More cases plead out now than go to trial. I think that is for a number of reasons. One is that some cases just don't ever end up in the system. First time DUIs go to diversion. We are one of the first jurisdictions in the state to have a domestic violence diversion program, so first time domestic violence cases go to

diversion. First time drug possession cases, as a matter of policy in my office, regardless of what the rest of their criminal history might be, if they don't have a prior drug arrest, they are eligible for a conditional discharge on their first PCS. So some cases are being funneled off initially because of those alternative programs that exist. I think sentencing guidelines, Measure 11, have had an effect somewhat on the number of cases that go to trial. In the language of the street, when there is real money on the table, defendants think twice about rolling the dice. Then, finally the fact that we have a jail here, a real honest-to-god working jail, that presents the possibility of people actually being incarcerated if they are convicted, and being incarcerated for a longer period time if they turn down the deal. The fact that people aren't released unless they are really, honestly a good release risk without the posting of cash bail has greatly diminished the number of failures to appear that we have in this community; the number of cases that just never get resolved and it also, I think, compels the defendants to make decisions. I think it is just human nature that we have some of the people that by nature are somewhat irresponsible in their day-to-day lives. You have a person that is charged with a crime. They are not paying for their lawyer because they have a court-appointed attorney, so they don't have a lot to think about immediately; they don't have a lot to worry about; they don't have to make a decision. Sometimes they don't keep the appointment with their lawyer once they are out. Those cases are hard to resolve. When they are sitting in jail because they can't make bail and they are not from here and their lawyer is sitting across the table from them, they get the offer on the table and they have to make up their mind. They want a trial; that is fine. We will have the trial. If they want to take the offer, they'll take the offer. But that results in not just more cases being resolved quickly; but a lot more cases being resolved with pleas because it is in front of them and a decision is mandated. I think I have addressed all of the things that caught my ear when I was sitting in the back of the room. I know you are waiting on your lunch, so I will just simply ask at this point if there are any questions.

431 Chair Ellis

Tell us a little bit about the size of your office.

431 J. Sewell

There is me. I am a working district attorney, in that besides administering the office, which happens more or less, I handle the bulk of the felony caseload in the office. The cases I don't handle involve child abuse or child neglect. I have one deputy district attorney that is funded by the county. That is the same number of deputy district attorneys that the county has paid for since the day that Judge Hull was the district attorney back in the 1970's. I think I had the first deputy district attorney that was funded full-time by the county. That deputy district attorney does all of the misdemeanor caseload, except for cases that involve child abuse or child neglect or domestic violence. I have another deputy district attorney that is not paid for by this county. It is funded through our CAMI program. Are you familiar with that program? Every defendant convicted in this county – not every, but almost all defendants – is ordered to pay some sort of unitary assessment to the court. Part of the money that is collected goes into this program; that is, the Child Abuse Multidisciplinary Intervention Program. Those monies then are used in this county in approved programs to address the issues of child abuse and child neglect. The bulk of those funds received in this county go to fund the other prosecutor that I have in my office. The funds do not support a full-time position, but they support a position where I have a deputy district attorney that works four days a week or 80 percent. Her responsibility is solely addressing cases that involve child abuse, child neglect and domestic violence in a home where children are present. She will do misdemeanors or felonies that fall into that area. Any felonies she

- doesn't do, I do. Any misdemeanors that she doesn't do, the other deputy district attorney does. That is how it works.
- 473 Chair Ellis That first district attorney, the one that is funded by the county, is 100 percent of his or her time misdemeanors?
- 477 J. Sewell That is because, at this point in time, that deputy district attorney is new to the office. As they develop more experience, then I would expect, for a variety of reasons including job satisfaction, that they will be given an opportunity to do more felony work.
- 483 Chair Ellis How did you recruit?
- 483 J. Sewell My typical method of recruiting a new deputy district attorney is to advertise the position in The Oregonian, which is required by the county. But more significantly, we advertise it in the District Attorney Association's monthly newsletter. For an entry level position, I will typically get somewhere between 50 and a 100 resumes or applications. Of those, there might be 20 percent --
- 491 Chair Ellis People that are in district attorney offices elsewhere?
- 492 J. Sewell Some of them will be in other district attorney offices that are interested in a move. Some of them are recent graduates from law school that just know through the grapevine that the District Attorney's Association publishes job openings.
- 499 Chair Ellis That is a pretty large number of responses.
- 501 J. Sewell Sure. It is not uncommon to get 50. That is pretty typical. It was a different time economically, but the first time I ever had to hire a deputy right after I became the elected district attorney, I think I got 110.
- 506 Chair Ellis You would describe it as a buyer's market?
- 508 J. Sewell It still is for district attorneys. That is changing. Every time I have an opening, and I don't have openings every day, I get a few less: from 110 down to 60 down to 50 down to 40. It is dropping. I think there is less interest because of the economic factors in being a prosecutor. I think philosophically there is still more interest in being a prosecutor than there is in being a defense attorney. That is just my take on it.
- 519 Chair Ellis When you were going through that process, did you develop any information on comparable incomes for entry-level district attorneys and defenders?
- 522 J. Sewell Every year the District Attorney's Association does a salary study. From that I know what every district attorney office in the state is paying. I have just the rudimentary knowledge of what is going on out in the private sector. I think state secrets should be guarded as well as private attorneys guard their income figures.
- 531 Chair Ellis So, to put it out on the table, what do you pay an entry-level district attorney?
- 534 J. Sewell I am embarrassed to admit that, right off the top of my head, I don't know. What are you getting?
- 537 C. Rasumussen For a four-day work week I am getting \$45,000.

- 539 J. Sewell She is paid as well as I am. It is just that she only works four days a week, so she gets \$45,000. That is just about what we pay an entry-level deputy to be here five days a week. You know what I make? I make \$67,000 and some change. For kids just out of law school with stars in their eyes, we can compete very well with a private law firm. Then you get some people like me that just stay on because they don't know any better. In terms of where they are, a couple of years into this game and we can't compete.
- 559 Chair Ellis Can't compete with the private firms doing defense work or the private firms doing –
- 561 J. Sewell General work; the civil work. The first deputy district attorney I ever hired left after four years to go to Clackamas County to do the exact same job that he was doing here for a 50 percent pay raise at the district attorney's office there. That is another way we can't compete, and by "we" I mean the smaller counties. We cannot compete with the district attorney offices in the I-5 corridor in terms of what they will pay for an experienced prosecutor. I could leave tomorrow and get a job working for one of my buddies and make substantially more money.
- 575 Chair Ellis Within this area of Hood River and The Dalles, which way do you think the parity pipe runs? Are the entry-level district attorneys doing better or not as well as the entry-level defenders?
- 581 J. Sewell They are very, very close. The district attorney and I make the same salary and I think the deputy district attorneys are very close. We might just pay a little bit more.
- 585 Chair Ellis You are comparing prosecutor to prosecutor, and I am trying to get a handle –
- 586 J. Sewell Defense attorneys? In the private sector?
- 587 Chair Ellis You don't know?
- 587 J. Sewell Might as well be where they have nuclear weapons stashed in terms of what I know about what they make. I have suspicions, but I really don't know. I'm sorry I can't address that. I tell you where one of my windows of knowledge comes from. For years we have had a program where new associates from private firms in Portland come out and do some misdemeanors –
- 603 Chair Ellis Get some courtroom experience?
- 603 J. Sewell Yes, with a real judge and a real jury. I know what they make from talking to them, these entry-level associates.
- 608 Chair Ellis They make more than you make?
- 609 J. Sewell Oh yeah, by 40 percent. Even though we are working with a bit smaller firm now, and principally because a couple of associates moved on, they still make substantially more than anything I can pay; and for that matter, more than I make. The gal that comes up here right now to try a drunk drive once in awhile, makes more than Judge Hull.
- [Tape 2; Side A]
- 001 Chair Ellis . . . He announced that some of the Trail Blazers were making more than the President of the United States. But I pointed out to him that the President didn't

have a very good outside shot. I do want to say that one of the things that happened in the last few years has been much better, and in many ways, very healthy communication between the Commission and district attorneys, and between the defense community and the prosecution community, in our common interest of getting adequate legislative support for the criminal justice system as a whole. I want to commend you, as an individual, and your group within the district attorney community. I think that this has been a very healthy thing. It used to be almost a cannibalistic process, and now it is the opposite. I really think since the crisis of 03, both sides have recognized that we are part of a broader system and, if either function is under-funded, neither function can work very well.

- 019 J. Sewell I apologize for digressing into a discussion about what I make or what my deputies make. I know that is not your purpose here, and it is not that I think anybody in this system makes too much. I think there are some of us that don't make enough. I did want to make one observation, and this is not any reflection on how law is practiced here, the people involved or how well services are delivered. But I worked in counties that have had both kinds of systems and, in terms of the big picture, or where indigent defense might be going in the future, from having worked with both systems and seen both up close, it is my opinion that a delivery system that involves public defender offices is more efficient and more effective than the contract system or the consortium system, in terms of how the services get delivered.
- 031 Chair Ellis Are you comparing service provision from an office that is distinguished from appointed individuals? Is that the point you are making?
- 032 J. Sewell If I want to annoy Jack Morris, I refer to him as the Public Defender's Office because, the fact is, that is what they do here. They are the primary contractor and that is really what they do. I worked in Coos County where they had a public defender's office. Working there, I think I had a very intimate knowledge of how it was organized and how it was operated; and I saw the results in terms of how their clients were defended. I worked in Lincoln County for three years before the days of this Commission, of course, and before the state had actually taken over indigent defense. It was the judge sitting up on the bench going down the list, trying to figure out who was available to take the next case for \$40 an hour, which was a very ineffective way to do it. That is where we have problems here in this community. Once we have been through the primary contractor and the secondary contractor, it is who is next on the list. I just think that, in terms of who is first up to do the work, I think it works more effectively and efficiently when it is in a public defender's office in a community, rather than a contract firm or consortium.
- 050 Chair Ellis Treating Morris Olson as a public defender?
- 050 J. Sewell I tend to believe that, much to their irritation. But they are; that is what they do.
- 052 Chair Ellis You are a specialist and your two deputies also specialists. Do you feel that the degree of specialization that you're seeing in your counterparts is comparable to your own or less? How would you describe it?
- 056 J. Sewell I would say it is comparable. Not to belabor this, but how they operate is basically as a public defender's office. It is because of that that I see that level of expertise, if you will. It is difficult, and this is no comment on the individuals, but it is difficult to see that level by others. I guess a better way to put it is, it is difficult for individual practitioners to maintain that same level of

expertise while they are also trying to practice law in a number of other areas, particularly when you are talking about the firms in town that still have somebody that participates in indigent defense. It is usually the youngest, newest member of the firm. You are not going to see the same level of expertise as in a the firm where that is pretty much all they do.

- 070 Chair Ellis Any questions for John?
- 071 S. McCrea I just have a comment, because you covered pretty much the questions that I had. John, I wanted to compliment you. I am sort of the designated criminal defender position on the Commission and I want to compliment you on the programs that you have with the domestic violence diversion and the conditional discharge on drug offenses. What I am inferring in terms of the effort at rehabilitation of offenders is that, if there are other disclosures, those don't get charged, which would encourage people to be able to disclose and hopefully move on. Those are wonderful programs, and I hope that you can persuade some of your colleagues around the state to take a look at them.
- 078 J. Sewell One thing that is encouraging is the statewide efforts now to promote drug courts, for instance. I think that would be a help. I would echo what Judge Hull said with respect to what meth has done to our caseload.
- 084 S. McCrea We appreciate all your comments.
- 084 J. Sewell Well, hopefully they were helpful. Thanks a lot.
- 095 Chair Ellis Let's break for a half an hour and will resume again at 1:00.
- [Break at 12:30 p.m.]
- 101 Chair Ellis [The meeting was called back to order at 1:10 p.m.] Jack, if you would step forward and share your perspectives with us.
- 104 J. Morris I have been looking forward to this meeting, particularly since about 11:00 this morning when it looked like the meter was going toward favorably, rather than the other way.
- 107 Chair Ellis Was that in doubt?
- 108 J. Morris Well you never know, Barnes. With some of the folks on this Commission, anything could happen. Thanks for coming and visiting with us in Hood River. We appreciate it. Those of us who are in eastern Oregon living and working here sometimes feel a little neglected. So it is nice to have you here. I think all of you know me. I want to tell you a little bit about the firm. We have two offices, and there are seven attorneys and seven staff. I want to deal with a couple of things that have been mentioned with respect to the staff makeup. But let me introduce some folks first. John Olson, the 25-year wonder with that trial several weeks ago, is my senior partner. John is 40 and he has been with us about seven years. Prior to that, he was a public defender and head of the office in Twin Falls, Idaho. Lonnie Smith is just a hair over 50 and has been with us five years. He was a civil lawyer in Florida. He was also, in a prior life, a CPS worker for child protective services. That has led him into being our secret weapon when it comes to juvenile law. He is our resident expert. Just two years ago, he received the blue ribbon award for person of the year from the CRB. And rumor is, and I'm not sure if I believe this part or not, that is the first time it has ever been awarded to a criminal defense lawyer. We are pretty pleased with

that so we can have a little sound bite we can point to to say, “Hey, juveniles, that is our specialty.”

126 P. Ozanne Jack, we frequently get complaints from CRBs about lawyers not showing up, so that is especially noteworthy.

128 J. Morris I don't think we ever miss them. Brian Starnes is the other shareholder. He is here in the front row. He is 34-years-old and he has been with us eight years. He was from Nebraska and we felt sorry for him because of that and I gave him a job. We have three associates. Heather Clark, who has been with us five years and she is 30. Jennifer Robins is 31 and has been with us a year. I should mention Heather Clark is our drug court specialist out in Wasco County. Jennifer was a court clerk in Multnomah County. And we have our most recent addition, Conor Sullivan, who is 27 and an alumnus of Lane County Public Defender, having been a certified law student and clerk there. I think I forgot to mention, John, in addition to myself, were both alumni of Metro in Portland. He was a certified law student there. I have been here 15 years. It has been a fun ride. Prior to being here, I was a trial lawyer at Metro under Jim Hennings, which was a unique opportunity that I am still appreciative of. I was a felony group leader and I dabbled in Senate Judiciary Committee in the '85 and '89 sessions. That is where probably, originally, I know most of you from. It may seem a little odd that I mention ages and length of time with the firm, but I am doing that for a reason. The reason is there was a mention in the preliminary report that a comment was made that seemed like we had a lot of turnover. The fact is I don't believe we do. We went back and checked and we have had, since 1993, about one vacancy per year with seven attorneys, and two of those were due to the BRAC problem. I think that is just about right. That is subject to disagreement, but any of you who have ever run an office similar to ours know that there has to be a certain amount of turnover. We can't have seven people all with 10 years of experience simply because we can't afford it. The other thing that is good about that, and I think it addresses one of the Commission's concerns, is it has given us the opportunity to get some new attorneys in and get them trained. Probably the stranger thing I mentioned is ages. I have done that on purpose as well because there is constant concern voiced to the Commission and elsewhere about the graying of the defense bar. Our average age is 38 and we have a wide range of ages. So we are only a little tiny bit gray. We can still serve this Commission and indigent defense for a good 20 to 25 years, I think.

162 J. Potter I didn't catch your age, Jack?

162 J. Morris Well, 50 is fast approaching, but not quite as fast as your Vice-Chair.

165 S. McCrea Two months is not that big of difference.

166 J. Morris When I received the preliminary report on Monday I was, as you might expect, very pleased. It was extremely complimentary, and I appreciate the work that Peter did. As some of you know, I have been at several of the Commission hearings. I think I have read all of the reports that have been done so far. With probably some room for disagreement, I think the things that were said about our firm are probably about the most complimentary passages that have been found in those reports, and I appreciate that very much. Peter is obviously a fine judge of legal talent and I think the Commission should keep him on for at least awhile. The one area of disagreement that we do have – and I'm not really clear if we are still even disagreeing on this – but you saw from the e-mails that were included the objection that I made to Peter's language about the Commission being skeptical about whether a private firm can play this role. I know, when

we spoke last toward the end of the conversation, you said something to the effect of “Jack, I think you have convinced me of your position.”

- 181 P. Ozanne Yes. In fact the report didn’t say “the Commission;” it said “OPDS.” And most people know that, when I say “OPDS” in the context of these preliminary draft reports, it is really mostly me.
- 184 C. Lazenby Then why are we here?
- 185 P. Ozanne That is just in the preliminary report, Chip.
- 185 J. Morris So I am hoping that I changed your mind; and I am hoping that I have changed your mind to the degree that you will feel it is appropriate to perhaps delete that language.
- 187 Chair Ellis Can you share with us the dialogue you are referring to?
- 188 J. Morris I believe you have copies of a couple of e-mails in your materials.
- 190 P. Ozanne We sent Jack’s survey of court staff with that.
- 191 Chair Ellis I am not starting with any agenda, but it is a subject that I find interesting because you have had experience in an MPD office, and because you have the private firm model you are using here. How would you describe the differences between an MPD model and the private firm?
- 196 J. Morris Barnes, I am really glad you asked that question; and the reason for that is because, as John Sewell acknowledged a little while ago, we are in fact basically a de facto public defender’s office. Having had the good fortune of working for Jim Hennings at Metro, I think there are very few differences between our office and a public defender. The differences that we do have are all positive ones. That is the theme of what I want to tell you and my response to the questionnaire. What we have done is combine what I think is the best things of a public defender’s office with some of the advantages of a private firm. I really think that is where we are at, and that is the primary message that I wanted to give to you folks today. To the extent that I need to address that, I don’t know how big of an issue that is. Does that answer your question?
- 208 Chair Ellis That is the conclusion, give me the buildup.
- 209 J. Morris What we do have, partially out of just good fortune and partially out of our structure, is a core group of experienced, talented lawyers. As I said, we have five people who have been here longer than five years. The other three shareholders are all extremely talented. We work on the team concept model, as we did at Metro with respect to our support staff. None of our support staff is simply a clerical worker. When they are hired, they are told they are going to play a lot of different roles such as trial assistant, social services hunter and all of those types of things. That is what we have. What we have done is combine the best features of a public defender. We have the zealotry of not just a public defender’s office, but a good public defenders’ office. We have the commitment to indigent defense that might typically be found in a PD’s office and, as I think I have pointed out in the questionnaire, we participate in the system as one might expect.
- 225 Chair Ellis What percentage of your firm’s revenues are public defense versus private?

- 226 J. Morris The little bit of retained work that we do over the last couple of years resulted in an average of about another 15 percent of income for our attorneys. Our salary scales --
- 229 Chair Ellis Let me see if I understand that. Does that mean 85 percent of your revenues are indigent defense services and 15 percent are private?
- 232 J. Morris About 11 percent of our revenues is private and that results in about a 15 percent increase for the attorneys.
- 235 Chair Ellis Private revenues, is that all retained criminal work?
- 235 J. Morris Yes it is.
- 236 Chair Ellis So you guys are 100 percent criminal defense but, of the 100 percent criminal defense, 89 percent is public defense --
- 238 J. Morris Criminal and other areas that are connected, like juvenile and that kind of thing. So it results in about a 15 percent increase on average. It also results in us being able to have things that we probably wouldn't have otherwise. It gives us some flexibility. If we are over budget and we have a little bit of extra money from retained work, that helps a lot. It helped us get through the BRAC experience and, as I said, it helps us have some extra things that we probably wouldn't have otherwise. An example is, when we have an attorney or staff that celebrates their fifth year anniversary with us, we buy them a plane ticket to someplace within reason as a reward. It has allowed us to do some other things, and this one might resonate a little bit better with you. One of the things we were able to do two years ago when we started drug court is we contributed \$1,000 from the firm toward drug court start-up costs. If we were strictly state revenue, we wouldn't be able to do those kinds of things.
- 253 Chair Ellis I should know this, but what is your contract configuration? Is that on a bulk basis or a unit basis?
- 256 J. Morris It is on a unit basis with differing case values and caseload projections for a two-year period. Is that what you are asking me?
- 258 Chair Ellis Yes.
- 259 J. Morris A typical contract, as I understand it. It is fairly uniform around the state. I have told you what we have and what we have done and how we see ourselves. Again, I think at least in some part, I have Jim Hennings to thank for this. We see ourselves as having responsibility to indigent defense that extends outside our firm. We play the role that Jim does in his shop in Multnomah County or that Greg does in Lane County. We see ourselves as being responsible for participating in policy decisions that are made. We do that on a regular basis. I myself am involved in a number of different things like the LPSCC Committee and the drug court. We had a juvenile work group not too long ago. We see ourselves, probably to our detriment, being responsive to the needs of indigent defense and the Commission, probably even more than we should be at times. I'll return to that in a minute. As I said, the little bit of revenue that we get allows us to do other things. The other thing it does is it helps us avoid the stigma of being a public defender. When I say that, I suspect that you all know what I am talking about. There is a stigma that is completely undeserved by clients who don't know any better; who when they hear the term "public defender" count it against you. I was present at the Lane County meeting and I

thought Doug Harclerod, the Lane County District Attorney, put it real well. He was asked a question along the lines of who gets the most complaints, the PD's office or the court-appointed list. His response was, "Well it seems to be the PD's office," which he found somewhat amazing because he found them to be by far the most skilled and talented group of lawyers in Lane County. My point is it allows us to kind of sidestep some of that stigma that makes it easier to deal with our clients. Again, the stigma is completely and totally undeserved in every area of this state that I am familiar with. A moment ago, I told you that we probably put indigent defense's needs above our own to a degree that we shouldn't. I guess the best example of that is a few years ago the state, I think it was Ann Christian, asked us to cover the eastern counties, what we call the "eastern front." That is Gilliam, Sherman and Wheeler. We stepped up to the plate and we have been doing that ever since. And believe me, it does not pencil out cost-wise. We do it because somebody needs to do it, and it might as well be us. For those of you who are geographically challenged, from The Dalles, and the attorneys in The Dalles are the ones primarily responsible for those counties, the county seat, Morrow, is 80 miles round trip; Condon is 140 round trip and Fossil is 180 miles round trip. We get a little bit of a travel allowance, but we still come out on the short end. Again, the reason we have always done that is because you guys need somebody to do it, and it is us. So we shoulder that burden with some hesitation I suppose, but I think in return we have been treated well and it works both ways. So we are happy to do that. That brings up another issue. Until the BRAC crisis, I was naïve enough to think that all the contractors had wonderful relationships with indigent defense like we do. I found out during that crisis that this is not the case. I mention that only as an example of the cooperation we have, for instance covering the eastern counties; but also because you can't say it too often: we have had the best luck of the draw with indigent defense analysts that we could ever hope for. We had Larry Craig to begin with, we had Lorrie Railey and now we have Laura Weeks. Our relationship with the state has probably been the least troublesome and the most mutually beneficial of any contractor in the state. Maybe that it is an exaggeration, but I don't think so. That is the way I feel about it. Our willingness to help out has almost gotten us into trouble at times. Ann Christian approached me a few years ago and asked me if we would be willing to help out in another jurisdiction and open an office if the need arose. I almost committed ourselves to doing that. It wasn't until a few months later that we ran into each other and I raised the issue again that she mentioned: "You know Jack, I might have neglected to mention that, if you open that office, it is going to be doing PCR work and nothing else." So what I learned from that is sometimes you have to watch your good friends the closest. I really do strongly disagree with the idea that there is any reason for skepticism. We not only can fill a niche as the primary contractor that might typically be done by a public defender or a consortium; I think we are already doing it. And I think we are meeting most of the best practices that the Commission is interested in pursuing. I do agree, as Peter wrote in the preliminary report, that, given the percentage of income that we have from the state contract, it is probably appropriate for indigent defense to be a little bit more involved in our affairs than in a typical law firm. To the degree that there is any hesitancy, and perhaps there is not as much as I think, I think the hesitancy of having a private law firm is this idea that here is a firm with 10 attorneys and maybe a couple of guys are doing criminal defense and some appointed work and everybody else is doing divorce and that kind of thing. That is not us because we are strictly criminal defense. The only difference is we do a little bit of retained work on the side, which is basically the icing on the cake. Our salary scales for staff and attorneys both – and one of the side benefits of this hearing is I went back and looked at the salary scales for Metro again – our attorney's salary scale was right on the mark. They are virtually

identical. Our staff salary scale was lagging a little bit behind, so just this last week I made some adjustments to that so both the scales are basically identical now. The beauty of it is we have the same salary as our colleagues in Metro; but on top of that, there is a little icing, and that little bit of icing makes the difference. I think it has made the difference in being able to retain the really talented lawyers that I have, so it has worked well. In any event, I guess I do agree with Peter to an extent that perhaps you guys should be a little bit more involved with us. I think personally the way to do that is when there is a question you pick up the phone and ask. One of the things that Peter mentioned was that historically, for instance, salary scales haven't been available. If you want to know what we make, pick up the phone and ask. It was just up until a few years ago that part of the contract, the RFP, included a budget; and it also included salary figures that were dropped for some reason. I'm not privy to why that was but I never had a problem with that. We are doing the job that you want us to do, and the fact that we are a private firm shouldn't cause you any concern.

- 384 Chair Ellis It sounds like your hiring has been more lateral than entry level.
- 386 J. Morris I don't think that is accurate.
- 387 Chair Ellis How do you handle training?
- 388 J. Morris As I mentioned in the materials, one of the ways that we handle training is that there are always colleagues talking to each other in the office. When I started at Metro, I was one of six misdemeanor lawyers. I learned real quick that it is nice to have a trainer and all that kind of stuff to look to. But you learn from each other the most, so we encourage that. The biggest red flag that I ever see with a new attorney in the office is somebody that doesn't ask questions. If they are not asking questions, I am asking them why they are not asking questions. The other thing – again this is partly because we have a little bit more leeway budget wise than other folks – we send our lawyers to probably more OCDLA conferences than anybody else. We typically go to at least four a year. Those registration fees are paid by the firm and there are usually or sometimes a little bit of a housing allowance. I think you will see us at more conferences than just about anyone else.
- 408 Chair Ellis One question I have is, I'm not sure I know the percentage, I think your firm does the majority of the defense work in the two counties –
- 411 J. Morris I'm just guessing about 80 percent.
- 412 Chair Ellis As a firm, you are subject to the unit rule for conflicts. Judge Hull seemed to believe you are doing okay. You are able to identify these conflicts early and resolve them; but I want to get your take on that.
- 416 J. Morris I think Judge Hull's comments were right on the mark. I think we identify them early and, a good portion of the time, we identify conflicts before we ever pick the case up and we simply don't pick the case up. We take a look at the possibility of conflicts when we get the in-custody list in the morning. Hood River is particularly easy to deal with that issue because we are extremely fortunate to be able to get discovery at the first appearance. We go up, we get a charging instrument, we get discovery on the spot. If we have a conflict, often times we are aware of it before we ever leave arraignments. One thing I would disagree with Judge Hull on, he was saying maybe that day or maybe the next

day. Often times it is addressed before we even leave the courtroom. Conflicts are just not a big issue for us.

- 429 Chair Ellis Apparently, not at the stage of identifying the conflicts early in the process but, given the high percentage of the volume that your firm does, what is your observation on the ability of the system to represent the conflicted party?
- 437 J. Morris Are you talking about co-defendant situations?
- 438 Chair Ellis Could be a co-defendant or a key witness; or it could be any number of things that created a conflict. In your observation, does the system have enough alternatives in it that the party you can't represent gets decent representation?
- 443 J. Morris That is kind of several different questions. I don't think we have any more problems with conflicts than we would, for instance, if we were a public defenders office. The same rules apply in the same situations.
- 447 Chair Ellis That is true. I'm more concentrating –
- 448 J. Morris You are asking me about resources?
- 450 Chair Ellis Right.
- 451 J. Morris I don't think there is a shortage of attorneys in Hood River, but Wasco County is another matter. It is difficult to get good people in Wasco County. And it is also difficult to get them anywhere, but Wasco County is a little bit tougher. I was kind of surprised to hear some of the figures that John Sewell tossed out as far as applicants. Ten, twelve, thirteen years ago when we had a vacancy and ran an ad, we would get 30 or 40 resumes. The last vacancy, I think we had fewer than 10; and that has been the way it has been for several years. That has changed dramatically. I don't think you can under-emphasize the fact that there has been a huge philosophical change with people coming out of law school. It is not just a money issue. The pool of people who are interested in doing criminal law and the sub-pool, which is much smaller, of people wanting to do criminal defense has shrunk dramatically. Out of that shrunken pool, it has narrowed even more by the fact that people are coming out with huge student loan debts and they can't afford to accept an offer. We have also in the audience, and I am so appreciative of the fact that she reminded me of this, Ginger Mooney, who actually has a home in Hood River and commutes to Salem. Last time we had an associates position open, we made her an offer – and again, our salaries our commensurate, almost identical with public defender offices. As much as it made sense for her to accept that offer and work for us, and we would have loved to have had her, she had to turn it down simply because of money. So it is an issue. Does that answer your question?
- 484 Chair Ellis Partially. The issue I am trying to make sure I am comfortable with is the percentage of the volume that one firm is doing and whether that creates problems.
- 489 J. Morris Well, I think we do about 80 percent, and I think that is a huge advantage for indigent defense.
- 490 Chair Ellis It is, unless you have this problem of conflicts and an inadequate ability to represent the conflicted parties.

- 493 C. Lazenby You live in a small community and you are doing 80 percent of it. You are bound to come up with a lot of witnesses in some of the cases that you have represented.
- 499 J. Brown That provokes me to wonder about the Judge's comments on the impact of your freeway. How many of your clients are actually county residents? Is that a factor?
- 501 J. Morris It is, and we get a fair amount and it has changed dramatically since I first started up here. We used to get a whole bunch of folks that were here seasonally. These were folks coming up from Mexico to work the orchards. That population has been assimilated quite a bit and they are here more year round. But we do get a lot of folks from out of the county. You have to remember that, geographically, these are tiny counties. So it is not uncommon to have folks who have no relationship to a county here. It is not like we are in Lane County and you have a population that never crosses the county line. It makes sense that it might seem to be huge issue, but isn't hasn't proven to be one. I think Judge Hull's comments were completely accurate.
- 517 Chair Ellis I asked him and I'll ask you, any suggestions how we can do our job better? Any thoughts on how Kathryn and Peter can do their jobs better?
- 523 J. Morris When I was asked that question in the questionnaire the answer was, you could always do things better. I guess the one suggestion that comes to mind is, you have already in most areas identified key people or key persons, or someone you can talk to find out what the situation is locally. I think maybe that should be pursued a little bit more. If you are going to think about bringing somebody else in, or something of that nature, make a phone call and find out what is going on. Other than that, I can't think of a lot of things that I would suggest. I think PDSC is doing a decent job.
- 541 Chair Ellis You strike me as one who really has your lines out around the state –
- 542 J. Morris My lines out? Is that like a fish analogy?
- 543 Chair Ellis Your trap lines. You seem to have pretty good communication. Are you getting advice, help, or ideas from other public defender groups around the state?
- 550 J. Morris As to management?
- 551 Chair Ellis Just straight criminal law practice.
- 552 J. Morris Barnes, I am glad you asked me that too. That ties into the fact that we spend a lot of time at conferences. As most of you know, at the annual conference, I make it a point of meeting people out by the pool and getting advice. No Barnes, seriously, every one of my newer lawyers I have ever had is told, "Go to the conference, we are footing the bill. I expect you to go to classes but not every one. It is really important, and this is on a serious note, that you meet lawyers from other areas." I make it a point to try and introduce my new lawyers to other lawyers around the state. That way, when they get a case where there is someone that needs particular expertise, instead of having to reinvent the wheel, or feeling kind of lost if they pick up a sex case, I can say: "Call Shaun. She had that issue three weeks ago in a case of hers." Or if it a traffic case, "Call David McDonnell." That works out real well. I am a firm believer that informal training and informal passing of knowledge really works better than formal.

- 577 C. Lazenby Go back to the private law firms. One of the things the Commission has been wrestling with, and it permeates a lot of our conversations, is: what is the best form to deliver the services and how do we structure those in different places? We have obviously learned that every county is different. What strikes me about this conversation today regarding private law firms is that it really is a matter of form over substance because, substantially, you function as the local public defender. And I appreciate what you said about the private sector part, allowing you to build a little bit of a cushion. Do you think that that is a unique development with your law firm and this location, or is it something that might be transplanted elsewhere – where you have a private law firm that predominantly provides criminal defense services with a modest amount of privately retained, but largely a publicly supported firm; or are you in a unique circumstance?
- 601 J. Morris No offense, Barnes, but I think that is the best question that has been asked so far. My feeling is, quite honestly, that in an area similar to ours that, what we have been fortunate enough, in all honestly to kind of stumble into; it works well enough that I think it should be copied in other parts of the state. We are in a sense a de facto public defenders’ office will all the good things that go along with that, and we get a little bit of extra money. What can possibly be wrong with that? I consider ourselves really fortunate.
- 615 Chair Ellis How do you handle cases within your group? Is it who is available or by subject matter specialty?
- 619 J. Morris It is a little bit different in the two offices. In The Dalles office, we have four attorneys and they rotate a pick-up week and then adjustments are made. So, if the new attorney picks up a serious case, of course, it goes to a more experienced attorney, and vice versa. That is a little bit of a variation from one of my goals, which has always been that the attorney who actually picks up the case sees it all the way through. In the Hood River office, there are three of us. Usually, two of us are here, if not all three of us, for in-custody arraignments; and we pick them up as they come down the pike. One of the things that has been really nice with my experience and the other attorneys in the office is, if there are three of us there, there is never any of this “you pick it up, I’ve got too many cases.” I have lawyers that are willing to jump up and take a case, and I am real appreciative of that.
- [Tape 2; Side B]
- 052 J. Morris One of the things we have always done is to be present at first appearances. Years ago, when I first got here, that was a challenge in Wasco County because they never did arraignments at the same time every day. We fought for a couple of years, at least to get the court to set it at the same time so we could be present. Before that, attorneys had not been present at a first appearance. The compromise position that we originally reached was they would still do arraignments whenever they wanted to, but they would call us. That didn’t work out all that well. Sometimes when they called us, arraignments would already be starting and we would have to drop everything and run over there. But we finally got a system now where they are at a set time; so we are there. I could be mistaken about this, but I brought this up before. I thought the contracts before provided that a contractor had to be present at first appearances. Maybe I am imagining that, but I thought they did. I think that should be in there now. I think it is important to be there at first appearances.

- 066 Chair Ellis If there is a particularly serious case and you got someone less experienced who happens to be at arraignment, does that find its way to the more experienced lawyer?
- 068 J. Morris Every time. And usually we know if there is a serious case on the docket. “Serious” is a relative term, but we take a look at the dockets before arraignments and we have a pretty good idea of what is on before we ever go to court. So the appropriate attorney is there.
- 071 Chair Ellis You heard the district attorney’s response to my question about cases being tried and cases being pled. Do you have any thoughts on that? I thought he gave a very interesting answer.
- 075 J. Morris I would like to think that we are trying the right amount of cases. That is one of those things that you debate internally all the time. I think John and I both give a lot of thought to that. Are we being too easy or are we being too hard? I think we’ve struck a pretty decent balance. John [Sewell] and I have, on occasion, beaten the hell out of each other in court. I think we have both learned that the other one can do some harm if we let them. So I think that helps resolve cases. In Wasco County, I think we may try a few more cases; but that varies by lawyer, of course. John [Olson] probably tries more cases than any of the other folks, and I think that is partly due to the unbelievable success that he has. Looking at him, he never says a word; but when he tries cases, he wins.
- 090 Chair Ellis The Chauncey Gardiner of the trial bar. One of the things that we are interested in on the appellate side and the LSD group handles that –
- 093 J. Morris You know, I just can’t get past that analogy.
- 094 Chair Ellis I can’t either. I am interested from your perspective on the trial side how that relationship works. Are you okay with how the appellate part of the practice is being handled?
- 097 J. Morris You know, we don’t have all that much contact. But I guess the thing that strikes me is I am impressed with how efficiently they take on cases. You make a call down there or go to their website and you get an immediate response, and that is real nice. I think they work really well from what I see, and I know there are some real talented people there.
- 104 Chair Ellis A lot of lawyers, at least on the civil side, hate to give up cases when they go on appeal. Do you feel we should continue this relationship we have now where the appellate work is all done or primarily done by FTE in Salem, and trial lawyers kind of lose touch with their cases when they go on appeal?
- 110 J. Morris I think that is the best system because I think appellate work is real specialized just like trial work, and I don’t think the two necessarily lend themselves to cross-pollination or whatever.
- 112 Chair Ellis You don’t feel like they screw up your case?
- 112 J. Morris I have found the appellate counsel in Salem to be extremely helpful. If I have a particular issue that I want to talk to them about, I get the impression that they are real appreciative of that.
- 115 Chair Ellis Even before the appeal is started and you have a hot legal question in a case that you are dealing with, do you get support from them?

116 J. Morris Absolutely. I always thought there has been a real good exchange.

117 Chair Ellis I had actually not heard of much of that occurring.

119 J. Morris Well, technology isn't my strong suit. I don't like to e-mail stuff down there. I like to talk to a human being. Maybe that is why I feel there is a good exchange. But I found that they have been really receptive to ideas and, if I have a case or issue that I am excited about, then they get excited too.

123 Chair Ellis I should know this, but has your office been involved in the site visit program?

126 J. Morris As a recipient?

126 Chair Ellis Either as a recipient or as a participant.

127 J. Morris I participated on the site visit team that looked at the PDC consortium in Multnomah County.

130 Chair Ellis Would you welcome a site visit, or would you resent it?

133 J. Morris In a jurisdiction where we are the primary contractor, I see this as a site visit, basically. There is not very much difference from what I did in Multnomah County. So if you want to do it again, sure, come on down.

141 J. Potter The line of succession: can you do a little historical review for us? You took over from Pitcher & Wright?

143 J. Morris I did.

144 J. Potter They were the primary provider here before you took over?

145 J. Morris The reason that I am here is because Paul Crowley went on the bench back in 1989 or 1990 and Ken and Ellen had an associate position open. I applied for it, they gave it to me and I had to turn it down because they couldn't pay me enough.

148 Chair Ellis You were at MPD at the time?

149 J. Morris It was actually even less than MPD, so they had the same problem back then that we have now. There was some competition for that judicial seat. There were actually four people in the firm there was Wright and Pitcher, who were the partners and two associates. Paul Crowley was one of the associates and he got the judicial seat. Understandably, there were some feelings that you might not want to appear in front of your former associate, so they decided that they wanted to make a change and called me up and asked me to take over the firm. Initially I said "no," but they eventually talked me into.

158 J. Potter If we were to ask you -- were there any hiccups in the system between the transition of Pitcher & Wright and the new Morris firm?

160 J. Morris Oh, I would have to say there were. But that was a real unique situation too because what happened is Ken and Ellen left and moved to the Metropolitan area. Paul went on the bench and the other associate was his wife who, for whatever reason, didn't want to be there anymore. So basically, all four people left. I took it over, but how often is that going to happen?

- 165 J. Potter You understand that some of these questions that have been asked before about private law firm and public defenders is about continuity. We just saw this in another county: a long-time public defender there leaves and gets replaced by someone else; but there is not a hiccup in the system. The public defender office was still intact. So what happen when you decide that Mexico calls?
- 173 J. Morris Oh, you are on thin ice there. I don't see a problem because I have three very capable shareholders, and I think any one of them is capable of stepping in.
- 176 J. Potter Have you talked about that? Would that be something that would be the most feasible scenario? It would seem to be to me, but have you talked about it? When you say, "I have had it and I'm done with this," and you ask the shareholders if they are interested in taking this over, is there is a succession plan?
- 180 J. Morris Have we sat down and written out a plan? No. Do I have three capable attorneys, all of whom I am confident could step in and take over? Yes. We make management decisions together, at least to some extent, even though physically we are in two offices. The attorneys get together every Wednesday morning and talk about management issues, as well as other things. I just don't envision a problem there at all.
- 187 J. Potter Is it reasonable for me to be asking the question? Is it one of the things that should be addressed by a Commission like this when we are looking at service delivery in a community?
- 189 J. Morris Is it a reasonable question? Sure. Have we got it covered? I think so.
- 191 J. Potter Who is going to be the head?
- 192 J. Morris Well, that would be decided by a democratic process among the three of them. I have always considered John to be my senior partner and I suspect it might be him. But there is always room for democracy.
- 195 J. Potter There is going to be a buyout, right? This is a private law firm. It just wouldn't be turned over to someone.
- 198 J. Morris Would there be a buyout? That would nice.
- 200 J. Potter I'm trying to help you, Jack.
- 201 J. Morris I don't know, John. Like I said before, you have to watch your friends the closest. So far, these three folks that I call shareholders have not had to buy anything. It is basically their status, for whatever it was worth, in recognition of their contribution to the firm.
- 208 J. Potter I think it is a legitimate concern for the Commission. What happens when we have a major provider, who is doing a great job in the community; and then the lead partner goes on to do other things?
- 211 J. Morris Number one, I don't think it is clear that I am the lead partner. I am up here by myself because Peter took the other chair. I was thinking of having John come up as well; but I don't see that as an issue. I like to think that I have created an

office or culture where the way we do things now follows with the other people. You have probably noticed that I have referred to Jim Hennings' office a couple of times. I do the things the way I do things in large part because of the experience I had there. I would like to think, and I feel relatively comfortable with this, that things would continue in the same vein here because of the fact that we have worked together as long as we have, and because we have done things the right way for a long period of time.

- 224 C. Lazenby Is your concern, John, springing from the perception that perhaps Jack is the key to this and, if he were suddenly to decide that he was going to have his new address, that we would be left with having to grapple with succession; or are you moving that the Commission should start thinking about, in some of these circumstances where there are key people, that we contractually require them to give us a substantial amount of notice before there is any significant management changes? Is that what you are asking?
- 231 J. Potter I am not even suggesting a solution. If Jim Hennings leaves, they will go out and recruit a replacement for Jim Hennings. When Jack Morris leaves, it seems to me to be different. Do we now have one of the partners, who steps in, takes over and buys out; or does the partnership go up for sale and somebody else steps in?
- 238 J. Morris I guess the way I envision it is – to kind of answer that scenario – if Jim drops dead on the way home today, there is a recruitment process that is going to take some time. There is an application process that is going to take some time. If I drop dead walking down the steps of the courthouse, I have got three guys who can pick up the ball tomorrow. That is the way I see it.
- 243 S. McCrea It is really a philosophical question that we have talked about previously: that is, who is our contract with? Is our contract with the person or with an entity because whoever signs the contract is doing so on behalf of the firm, right?
- 249 J. Morris Right.
- 250 S. McCrea So it comes down, I think, to a philosophical question for the Commission. Are we going to insist that the entity be the same entity that we contracted with, or is it up to that entity to fill the requirements of the contract? I am not claiming that I have an answer to this, but this is what we went through with some of those other contracts that we have dealt with at our last meeting. I'm not sure how far involved with our providers we need to or should get.
- 258 Chair Ellis Jack, the answer to that is you have been doing this for 16 years and there is not a whole lot of indication of instability here. I am sure you will give us indications if there are going to be some major shift, and then we will just have deal with it. One of the largest assets your firm has is the goodwill and the relationships you have with us. If things take any wild or drastic turns, then we will have to look at what we do.
- 267 J. Morris I would agree with that.
- 268 Chair Ellis I am interested in the fact that to practice at the level you do there is a fair amount of capital investment required. I am sure you have computer systems. I gather that such an asset is essentially yours?
- 274 J. Morris John is also a part owner as well.

- 276 Chair Ellis That creates its own complication when we get to transition.
- 278 J. Morris Are you asking for a bequest in my will or something?
- 278 Chair Ellis No, I am just stating an observation and will leave it at that. Any other questions for Jack?
- 280 J. Brown Judge Hull reminded me of the days many years ago when I thought I had an impact on the criminal justice culture in a county. A couple of years we went in that county and, as far as I could see, there wasn't a trace of it left. I think as we look at building on the effort and energies of folks that have gone before us – Barnes and the study group he chaired and all of that – it seems to me that part of what we have to be looking at is how do we imbue a statewide system with persisting values? I would be curious about your thoughts, now or in the future, about how you see what is going on here and how in your absence you would have a sense that, when there was an issue of a client that thought he or she got less than a real defense – and we are all very, very mindful of how many of those complaints are groundless and one of the things that a client gets told is go to the law library and file a complaint against your lawyer – in terms of the quality of services, how in a small operation there can be a feeling of both comfort and candor in terms of whether people are free to tell the leadership that the services aren't quite what they should be, especially in a small community. How do you stay in touch with community values? What I am leading up to is, when we look at the model that has the board of directors outside the organization that represents different interests in a community, or even an advocacy of different parts of a community, how does that sustain itself when you are gone?
- 326 J. Morris I don't think by any means that I am not irreplaceable, particularly with the other partners that I have. I am just really, really valuable, but not irreplaceable. I think again, if I were to leave tomorrow for some reason, I think they would pick up where I left off. And I think that is a certainty because, if you have a good practice and do things the right way, I think that carries over. Again, I guess the thing that I can point to is that I got my legal education, and John did to some extent too, at the PD's office where things were done a certain way. You can find pieces of Jim Hennings all over my office in the way that we do things. From our team approach with staff to just the way we feel about clients. I think there is a carryover and I think that, when you have a positive culture in the office that it can't help but carry over. I'm not sure if that actually answers your question.
- 345 J. Brown I think I am sort of answering with your help my own question – that a culture is created and maintained by associations, through relationships. By selecting people that you are comfortable working with, you have confidence that you have the capacity, talent and commitment and the same kind of values. Maybe that is enough of an answer. If the leadership of your firm got wiped with one drunk driver – maybe we will all agree not to travel again, but Barnes is in the will so it is covered – then maybe the staff works closely with a successor, try to remind them of the way it used to be and trust for the future, rather than look to an institutional thing.
- 362 J. Morris Well, I think the relationships that we have in the office and the fact that we share the same values will carry over. I think that is more effective than any outside influence. We know what the day-to-day thing is and I think that is what is important. More importantly perhaps, we know what the attitude is.

- 371 S. McCrea I have a question as part of the scenario of wiping out the firm. What I want to ask you about, Jack, is what Jim is talking about: imbuing values. One of things that you talked about here today is your concern about being able to attract applicants and good people to the firm. I am looking at the response that you made on page five of the questions that we gave you. You said: “We have found over the years that, while an opening in the firm may attract a number of applicants, many of those applicants are applying simply because they need a job and have been unsuccessful in finding one.” You go on to talk about looking for people who have an interest in criminal law –
- 385 J. Morris A demonstrated interest –
- 387 S. McCrea Is it getting harder to find those people; is that what I am correct in inferring from what you have written?
- 389 J. Morris Absolutely, it is much harder. As I said before, ten years ago if we ran an ad, we would get 40 or 50 responses. Now we typically get less than 10. Things have changed dramatically, and I think there is a natural assumption to think that it is all money. Money is a big part of the issue, but it is not all money. Law school, back when some of us went, was sort of a culture in itself for people that had a commitment to ideas. I am painting with too broad of a brush but, just for purposes of looking at it, it seems to me that it is much more of a substitute anymore for an MBA. Those same social values aren’t there to the same degree. There has been a huge drop off in interest in doing criminal defense. I think what John [Sewell] was saying is that there has been a huge drop off in interest in criminal practice period. But it has been more extreme on the defense side.
- 405 S. McCrea So what can you suggest to us that we can do? Obviously, money would be one thing. Are there any other suggestions you can give as to how the Commission can attempt to generate interest in criminal defense?
- 410 J. Morris I think programs like the program at Lane County Public Defender are good. The Certified Law Student Program that Jim has at his office is good. But I think the reality is that you can try to come up with a lot of different ideas to stir up interest; but really, to a large degree, that interest is either there or it is not. What you are left with, and I think it is just a fact, is a much smaller pool of applicants. And you cannot afford to have a situation where those applicants who are interested cannot accept jobs for monetary reasons. I think that is what is happening. We have a much smaller pool of applicants and some of those folks, based on the stories that I hear, have student loan balances that are just frightening. They are like house mortgages and they can’t go to work for \$37,000 or \$38,000 a year. They shouldn’t have to. Indigent defense will always be under-funded. That is just the nature of the beast. But it has always been subsidized by idealism and that idealism, for the most part, is gone. For those few people that are left, there is going to have to be a monetary situation where they can join in, and it is just as imbalanced now as it ever was. I heard from a good source that one of the district attorney offices in Central Oregon is starting people right out of law school at \$60,000 a year. I know people who have been doing criminal defense for 20 years that aren’t making that.
- 437 C. Lazenby I think there is another unspoken piece that I know I experienced early in my career when I tried to make the transition out of being a criminal defense lawyer into doing other kinds of law. It was much more pronounced twenty years ago when I was doing that, but it still exists. There is just this sense that, if you choose to do criminal defense, then there is either something inadequate about your skills as a lawyer or you have inadequate values to make the transition. I

have seen other criminal lawyers in Portland having a difficult time making a transition out of criminal defense into other kinds of litigation. They almost end up trapped there. That is a little inarticulate, and I see the Chief Justice shaking his head, because I know he made that transition. But I think you are probably the exception rather than the rule. I have watched a lot of criminal lawyers in Portland, young criminal lawyers, struggle to get out of that field. It is sort of unspoken, but there is this resistance to them migrating over to places where maybe they can make more money. Out of the prosecutor's office, I have seen prosecutors that I started out practicing with easily make the migration over to insurance defense, and then on to other more lucrative types of civil work. I think that is unsaid, but I think the law students and younger lawyers coming out of schools feel that. It is a resistance for them going into this practice as a career path.

- 461 J. Morris I agree with all of that. I also think there has always been an attitude on some fronts that, if you make the choice to do criminal defense, then you should be prepared to make a sacrifice. Why should we have to make a sacrifice if want to do criminal defense? Why should I get paid \$40 an hour doing criminal defense, when the guy that cleans my drain from Roto Rooter makes \$80? It doesn't make any sense. We shouldn't be expected to make that sacrifice. We make sacrifices in terms of our families, time with them and our emotional and mental health. We make enough sacrifices as it is without having to make monetary ones.
- 473 Chair Ellis Do you have good relationships with your legislators?
- 475 J. Morris I can't honestly say that. I have been involved in a number of things on the state level.
- 482 Chair Ellis Other questions for Jack?
- 483 J. Potter Are we brainstorming here a little bit?
- 483 Chair Ellis I thought we were philosophizing and we were doing estate planning. We were doing virtually everything.
- 484 J. Potter I want to get into the will too. Jack, you had mentioned that maybe what you are doing should be a model for the system and that we should use your model around the state in other places. Take that a little bit further. Do you think it would be constructive to have the legislature allow public defense or public defenders to do retained work and still maintain a non-profit status, so that they can –
- 499 J. Morris That wouldn't be possible if they were a non-profit.
- 500 J. Potter But if you could change the way that it was defined, would you advocate for a system that did allow public defense to move to a model like you have? You would have Jim Hennings' office doing what they are doing, except they could take up to 11 percent of privately retained work, thereby paying their people more and letting the legislature off the hook.
- 510 J. Morris I don't think that would work in a number of respects. One, the first that comes to mind is the size of the office. I just don't think, as a practical matter, it would work. The beginning of your question, would it be political suicide? I can't answer a hypothetical involving non-profits because that is pretty far-fetched. But would I advocate that something like my firm be copied and would that be

political suicide? I don't think so at all. I think it could be presented as: "We can pay these people enough because indigent defense is under-funded. We have to give them and we want to give them the opportunity to have at least a small part of their caseload at the going market rate." If you use the \$40 figure – and I realize we are not using that a whole bunch around the state anymore – then that is 20 or 25 cents on the dollar. I think the system that we have set up works, and I think it works well. Can you apply it to Lane County Public Defender? No. Can you apply it Jim's shop? No. If it can be presented the right way, and the right way is saying that we can't pay these people enough and they have got to be allowed to make a living some other way.

- 534 Chair Ellis What percent of your personal time is spent on direct lawyering versus management? How do you divide your time?
- 538 J. Morris All seven of the attorneys, including myself, has a full caseload.
- 542 Chair Ellis The management that you do?
- 542 J. Morris I do that in my spare time.
- 545 Chair Ellis I think it is pretty obvious that one of the talents you have brought to this process is management skills that not every lawyer has.
- 547 J. Morris I have never been accused of that before.
- 548 Chair Ellis This is an important day in your life. Anything else? Thanks a lot.
- 551 J. Morris Thank you very much.
- 551 P. Ozanne Barnes, there are a number of people here I think the Commission would like to hear from.
- [Tape 3; Side A]
- 001 P. Ozanne Tom Cutsforth has come here from Wheeler County.
- 004 T. Cutsforth I hate following Jack because he is so astute and has so much experience in this area, that he is so hard to follow. Mr. De Muniz, Your Honor, and others – I think I met Mr. Potter somewhere because he looks familiar -- but the rest of you I have no clue. Mr. Lazenby I have heard your name, but I don't believe I have ever met you.
- 009 P. Ozanne Well, we can go down the line and provide introductions.
- 010 J. Brown Jim Brown, I am a lawyer out of Salem.
- 010 Chair Ellis Barnes Ellis, nice to see you.
- 010 S. McCrea Shaun McCrea, based out of Eugene.
- 011 J. Potter John Potter from the Oregon Criminal Defense Lawyers Association.
- 012 T. Cutsforth And Justice De Muniz. I'm Tom Cutsforth and I am one of three part-time attorneys in the State of Oregon – or at least we are called part-time, although none of us carry a private practice now because we don't have time – to serve as a district attorney. I think I may be preaching to the choir here. I have already

heard all of the things that I was really going to talk about. And even though the \$40 per hour that Jack said wasn't used around the state much, I know we are using that figure, and it is insane. If you use that figure, and let's say you can bill eight hours a day – and we all know better than that; you are not going to bill \$40 an hour for eight hours a day – you make \$1,600, \$6,400 a month and \$76,800 a year. And guess what? That is \$2,000 less than John Sewell makes and John Sewell's secretary is paid for and his office is paid for –

- 022 Chair Ellis I was going to say, you hadn't talked about overhead yet.
- 023 T. Cutsforth All of his overhead is covered and his medical benefits are paid for. This guy, who just spent all of his time doing criminal law and made \$76,800, has to come up out-of-pocket for his secretary, for his office. It isn't right and, if there is anything I can do to support the defense bar and get that number changed, I am all for it.
- 027 Chair Ellis I understand you have been hard at work with Senator Wyden recently?
- 028 T. Cutsforth How do you know that?
- 029 Chair Ellis Well, I have my sources.
- 029 T. Cutsforth I have been trying to get some forgiveness for student loans because I know that these people are coming out of law school with a \$100,000 debt and they can't come work for us. They can't come to work for the district attorney. Not in my position. I only make \$53,000 and some change. In this part of the state, 15 years ago, I would say, was one of the most stable. If you were a DA in this part of the state, you were probably a lifer. Boy, has that changed. We have got a DA in Gilliam who came practically right out of law school without any trial experience and still has none or very little. We have a DA in Sherman County who has very little law practice and very little trial practice. In Grant County, you can't put a DA there and make them stick. In Morrow County, he gets a \$36,000 stipend and he has so much to do that he threw his hat out. He is gone and going back into private practice. You are paying them that. What about the poor defense attorneys?
- 041 Chair Ellis Is he going back to private practice there?
- 042 T. Cutsforth He is going back to the private practice there. He is going to take on the County Counsel, which is going to pay him a little more, and then he is going to do a private practice on the side.
- 044 Chair Ellis You describe yourself as a part-time prosecutor –
- 045 T. Cutsforth I did private family law practice for 10 years. I gave it up in 2000.
- 046 Chair Ellis How do you divide your time now?
- 046 T. Cutsforth Well, right now I am doing almost all criminal and county counsel work. Back when I was doing private practice, it was a very difficult. There were lots of conflicts because most people who I was representing either got beat because they were the woman or they were beating them because they were the man. Then I would have to prosecute one or the other. It just wasn't working because the conflicts were incredible. I didn't have a Chinese Wall or somebody else I could go to when the other offices became unstable. It would be like Jack having a serious murder case and turning it over to his new graduate from law

school, who is an associate. So I go to the AG. If you go to the AG, you lose your home court advantage. Now you have a Salem attorney and maybe John Olson shows up. You have a Salem attorney against somebody the jury might know. If you lose your home court advantage, you lose a lot of ground.

- 061 Chair Ellis We are obviously interested in the defense side. From your prospective, how would you describe the quality and adequacy of defense services in Wheeler County?
- 064 T. Cutsforth Okay, let me just back up a bit. I have been doing this for 19 years. I started in Lane County as a law student. I prosecuted Jesus Christ and John Lennon on the same day, at least that is who they said they were. But, of course, then they went to the mental hospital. They had a public defender there and it was a meat grinder. Then I went to work for Union County. What I did in Union County is they had a bunch of private attorneys that had a law practice, and they would just go down a list and pick one. They did it that way and sometimes you got good services and sometimes you got bad, and it just wasn't necessarily their main area of practice. They weren't necessarily really experienced in that area. When I came here, except for maybe two occasions when they threw somebody brand new at me, and I know it wasn't intentional and they didn't last long, I have been very, very pleased with the people that show up for criminal defense. I feel that the defendant has his constitutional rights adequately represented and that the defendant has been adequately represented.
- 079 Chair Ellis How is it handled at the early stages in the less populous county where you have remote providers?
- 080 T. Cutsforth Well, it is a problem. I run two justice of the peace courts and neither one of the justice of the peaces are attorneys. Gilliam County has one justice of the peace court and she is not an attorney. Sherman County has one and he is not an attorney either. Then I also have a juvenile judge who is not attorney. He is my county judge; same in Sherman County and in Gilliam County. So you end up in the original proceedings with no attorney except me on those cases. On circuit court cases, if I get lucky and I happen to already have somebody on the docket so that John is out there – and he is good about coming out there; it is 110 miles from here – I am lucky, and then we can get that case rolling. If not, we are stopped. “I want an attorney here.” “Fill out the form.” A month later we are back for a re-arraignment with an attorney. So now we have already lost a month. Then a month later, we do an entry of plea. The case is three months old now. The victim isn't interested in the case. Age is not good for the prosecutor and the victim; and the defendant may be in Mitchell and Mitchell is 160 miles from here. So the ability for attorneys to contact their clients is difficult. They do well, considering the hurdles they have to get over.
- 100 Chair Ellis What advice do you have for us as to how we should be looking at the Eastern Oregon low population counties?
- 102 T. Cutsforth I think what I see with Jack Morris and his law firm is they have done and handled what the legislature thought they would do. They should be allowed to do criminal practice as a public provider and then carry a private caseload on the side to make up the difference. The reality of the situation is, I wish our crime rates hadn't gone up, but they have gone up tremendously over the last 15 years. I have been the district attorney in Wheeler County for 16 years now.
- 109 Chair Ellis Is that all drugs?

- 109 T. Cutsforth It is drugs, domestic violence, sex offenses that you wouldn't believe could happen in small communities. And it is transients that are going through mainly for drugs. But in that entire 16 years the defense attorneys' rates have remained the same. I don't know how they drive and make it work, unless they subsidize the practice. I use to subsidize mine that way, until it got to the point where I just couldn't handle it anymore. I don't know whether Jack will burnout on his core group, but they at least have the ability to say "I would like to go to Hawaii for a week." If I go to Hawaii for a week and I come back, everything that happened that week is right in the middle of my desk. If somebody was in custody in front of John and has to be arraigned in 24 or 48 hours, good luck. They have to release them, unless they can get a hold of me and do it by telephone. We do a lot of telephone work and, with this video thing, I have seen more of the judges in the last two months since they put that in than I had in the last five years. I don't know whether that is good or bad, but that is how it is. The video thing has really helped and I want to thank Chuck Wall for that. I don't know why, and maybe it is not in the court budget, to set up one of those in a room where the defense can use it, and then I could just leave the room. The defendant is in the room, so they can have a face-to-face over this couple of miles, so that John doesn't have to drive. I don't just mean John either, because Mr. Hashizume drives out there and he has volunteered to do some of our juvenile cases; which is wonderful because we have to appoint those straight out of the bar book. John comes and does one of those for \$40 an hour, I can't believe he would do that, but he does sometimes. That should be pro bono. He should get a big plus for pro bono because that is what that is for him. It is outside the contract for \$40 an hour. Like you said, you can't get the Roto Rooter man for \$40 an hour. I think what Jack has is working. I just hope he doesn't burn out a bunch of his people. I hope they can get some money for this because it is a mess.
- 141 Chair Ellis Well we have already decided to take out a new life insurance policy. Any other questions for Tom?
- 144 T. Cutsforth Somebody was talking about wages and I brought a list of all the entry level deputy district attorneys for the State of Oregon. I brought how many deputies each county has and also how much they pay the office managers, which exceeds my salary. Thank you.
- 149 Chair Ellis They don't have the prestige that you have.
- 150 T. Cutsforth Oh, prestige, that is what I have. I'm all for that. There are only three pay scales for the elected DA's. One is roughly \$54,000. The other is \$78,000, and the last is \$92,000. They are subsidized variously by various counties.
- 155 Chair Ellis Is Senator Wyden ready to help us get relief on the student debt?
- 156 T. Cutsforth Yes, he is ready to push that one.
- 157 Chair Ellis We're ready to push him. We'll tell him you said that.
- 159 T. Cutsforth Good.
- 161 P. Ozanne Tom, thank you for traveling all this way.
- 161 T. Cutsforth You're welcome. Thank you for having me.

- 165 Judge Kelly My name is John Kelly and I am one of the four judges in the district. I can't tell you how much I hate being a witness.
- 168 Chair Ellis I can't tell you how much we enjoy being judges.
- 169 Judge Kelly I came without remarks, but I am happy to answer your questions.
- 171 Chair Ellis Maybe you can give us an idea of how Wasco County varies from Hood River?
- 172 Judge Kelly It is prettier. Very little, I would guess. I think the spread is a little broader here. There are more secondary contractors, and I'm not sure if that is even the appropriate term. We all have the same primary contractor, Morris Olson Smith & Starnes. We in Wasco County then go to a secondary contractor, which is the Wasco/Sherman Indigent Defense Corporation and Mr. Hashizume primarily the attorney there. It has been other folks over the years. Then we just start looking around to see who will do the indigent defense work. In The Dalles itself, there are only three or four other lawyers who are willing to take appointments. We often go to them looking for a lawyer and, when that fails, we are off to Portland, Salem or wherever we can find somebody.
- 186 Chair Ellis How often does it happen that the two principal providers either are conflicted or for some reason not available?
- 188 Judge Kelly Daily to weekly we are looking for a third lawyer where there are co-defendant and conflicts. The inability to find someone for a single defendant, that doesn't happen very often. When it tends to happen, conflicts seem to be greater for both. So the more difficult the defendant and the more difficult the case, I think the more likely you are to find a conflict. But that doesn't happen very often. I would guess a few times a year where we are actually going further than Hood River to find a lawyer. I am not sure I addressed your question.
- 198 Chair Ellis Well, you are close to it. When you say a few times a year we are talking five times?
- 199 Judge Kelly I would think that is a fair guess. I don't have a number, but I could probably get you a number.
- 201 Chair Ellis It is almost always in the multiple-defendant case category?
- 201 Judge Kelly To go further than Hood River? No, I would say it is mostly in the type of the case, especially if Morris Olson has had a conflict, a significant Measure 11 case, a murder case or a extraordinarily difficult defendant case; that tends to be when we have to go further.
- 207 Chair Ellis The latter group you are talking about are defendants that reject their lawyers?
- 207 Judge Kelly Turn them into the Bar. I may be wrong about this, but my experience is that an affidavit of prejudice against your lawyer is a conflict because you can't stay on the case with that.
- 211 Chair Ellis Have you had many instances where you have had to have substitutions part-way through the prosecution?
- 213 Judge Kelly Yes, less than 10 percent of the time.
- 213 Chair Ellis I would hope so.

- 214 Judge Kelly Sure, defendants will dislike lawyers and all of a sudden – and I’ll pick Jack because he is here – everybody will decide, and it gets round our local jail, that Jack is not the guy you want. So all of a sudden everybody wants a new lawyer. We are not required to let lawyers out simply because a defendant doesn’t like that particular person. But eventually, that reaches the point where the lawyer wants out and, generally, when the lawyer asks to be excused, it is allowed.
- 230 Chair Ellis How you would describe the communication between the court and defense counsel? We have been in some communities where that is not going well.
- 233 Judge Kelly My sense is it is good. Now, if I left the room and you asked the defense lawyers, you might hear a very different story. Now let me ask you a question that will probably give you a better answer. What do you mean by communication?
- 236 Chair Ellis We have had some instances where lawyers are not appearing on a timely basis and there are defaults on cases.
- 240 Judge Kelly We have that problem and I will begin that by saying, when I look around the room, I don’t see anybody in this room who I have that problem with. There are certain lawyers who are chronically late, not only by not being to court on time, but by not making pleadings on time and not seeing their clients on time. That is a problem. It tends to be a greater problem the further you go from the contractor defense lawyers, like Morris Olson or Wasco/Sherman. Generally speaking, I think we have a fairly decent relationship between the judges and the defense bar. One of the characteristics of being a judge is everybody tells you you are funny and wise. They never tell you how poorly you are doing. So we may not be doing as well as we think, but it seems okay.
- 256 Chair Ellis Other questions for Judge Kelly?
- 256 P. Ozanne I don’t suppose the Commission knows this fact but I understand that you do most of the juvenile work in Wasco County. We have found, though we haven’t found anything like this in your county, around the state that the quality of juvenile practice varies. While there are many able lawyers, sometimes there is an attitude that you take juvenile cases because you have to or, when you become a “real lawyer” you will leave this practice and become a criminal defense lawyer. How do you feel about the quality of work in your court?
- 266 Judge Kelly It is very high. There are primarily three groups of lawyers that we are using for juvenile work. Morris Olson usually gets one of the parents. The Wasco/Sherman group gets the other parent and Jennifer Hinman gets the child. That is the way we have worked it lately. I don’t see any problem with the level of service and the level of dedication. It is very different because it is less technical. There is less procedure and tends to be less motion practice and usually a faster time limit. In dependency cases, we are federally mandated to get things done at a certain speed. The lawyers that I am dealing with have a really good sense of significant differences between what juveniles need and what adults need and what resources are available. I am really pleased with what I see in the court.
- 291 C. Lazenby You mentioned the further you get away from the established firms that there was chronic lateness. Are those lawyers compensated by our system?

- 294 Judge Kelly Yes, and I don't mean this as a criticism of indigent defense. But retained lawyers are usually punctual. Yes, these are lawyers who are being paid on the indigent defense budget. In small communities, I don't think it is any surprise that lawyers are a limited resource and lawyers who are willing to do criminal defense are a really limited resource. People who have done trial work for years and years don't want to do criminal defense. I'm sure that is no surprise to you. They don't want appointed criminal defense and, if you have your choice of working for a guy who is middle class and has a good income and kids like yours, and went to schools like you did, or working for some crack addict out of a trailer park, you will favor the middle class client even if the money is the same.
- 314 Chair Ellis When you have that experience, do you know how to find us and let us know that is happening?
- 315 Judge Kelly Well the honest answer is "no." I am aware of your existence.
- 318 Chair Ellis Peter give him a card. That is an invitation to let us know.
- 318 Judge Kelly I will, but let me tell you what my reservations might be about that. I am talking probably about a group of three to five individual lawyers. It is a small community and, if all of sudden I don't have those three to five individual people available, I don't know where I would go next. Then I would have to get a lawyer from Hood River and, frankly, Hood River lawyers never get the nice cases. They get the dogs and usually the mean dogs too. They burn out and they don't want to drive to The Dalles, if they can stay in Hood River. So then I have to go to Portland probably. That would be the next closest lawyer, and that creates more problems than having a lawyer that is late from my point of my view. But I'll call.
- 342 J. Brown Speaking totally for myself, one of things we have struggled with, in terms of dealing with the legislature and seeking adequate funding for indigent defense, is from time-to-time there have been statements made that have been derogatory about indigent defense. Some relate to inappropriate use of funding and excessive or unneeded experts. Believe it or not, there are actually people in the political community that enjoy being critical of the indigent defense function. I am sure that is a shock and is appalling. But when we express a concern about lawyers being punctual and the like, it is from that kind of perspective, again not speaking for the Commission.
- 358 Judge Kelly I don't mean to make light of it. Obviously, it is unprofessional to not show up on time and not file pleadings on time. I try not to give folks a free pass on that. These folks are underpaid, making \$40 an hour. My primary practice 20 years ago was criminal defense, and I think then I was making \$40 an hour. It is a bargain. Experts can be used and they probably are overused at times.
- 378 P. Ozanne Judge, what you identified poses the same problem for us when you call Kathryn or me and ask for a solution. We are faced with the same shortage of lawyers that you identified. It is a supply issue again and, of course, that is related to inadequate defense funding. I have learned over the three years I have been here that, when I see unacceptable lawyering from time-to-time and I say, "This has got to end," Kathryn or someone else on our staff says "There is no alternative!" So I certainly appreciate your perspective. And we can't magically create a new supply of lawyers in the district when you call us.

- 388 Judge Kelly Let me back up one step. The fact that some lawyers are late or not punctual, actually, they are pretty good advocates for their clients. They know the law, they know the facts and they do a good job. I don't want to leave the impression that these people aren't good lawyers. That isn't fair to them.
- 396 Chair Ellis Thank you very much for driving over here. Let's take about a 10 minute break.
[Break at 2:45 p.m.]
- 403 Chair Ellis [The meeting was called back to order at 2:55 p.m.] The Chief Justice said he wanted to meet with some of the court staff people, so that is why he will not be here for the rest of our session.
- 407 P. Ozanne Kevin, do you want to come up, and your colleague too?
- 416 Chair Ellis Welcome. Maybe you can tell us a little bit about yourself and your background.
- 417 K. Hashizume My name is Kevin Hashizume and I'm not sure how I got in charge of Wasco/Sherman Indigent Defense Consortium. I think it is because the other attorneys left and I was the one that was left at that point in time. Prior to that, my first job was working with Jack Morris, doing work in The Dalles. After a little bit of time, I went off and started working for Meredith Van Valkenberg. At that point in time, one of the attorneys that was working there had just left and gone to the district attorney's office in Wasco County and was working there as a deputy district attorney. Shortly thereafter, one of the other partners left and went down to California.
- 433 Chair Ellis So how many years have you been in practice?
- 433 K. Hashizume Since October of 1999; so maybe five or six years, somewhere around there.
- 435 Chair Ellis How many of those were with Jack?
- 436 K. Hashizume Right around a year or maybe a little less.
- 439 Chair Ellis Describe where you are now?
- 439 K. Hashizume When I went to Meredith Van Valkenberg's office, part of what their work was involved in a share of Wasco/Sherman Indigent Defense. Wasco/Sherman Indigent Defense is a separate corporation that has the contract with the state to provide public defense services when Morris Olson has a conflict. In the past, that was made up of a lot of different attorneys from different firms. When I first went to Van's office, there was basically Van's office and one other office. Andy Carter worked there. He took half of the contract and our office took half of the contract. In the past, it had been split up among other offices as well. About a little over a year ago, Andy decided it was no longer financially feasible for him to keep the contract and he wanted out. Right around that time, I had actually left Van's office and gone out on my own. So for a short time, we were splitting up the contract work with my own office, Van's office and Andy Carter's office. I ended up going back to Van's office to help out and Andy left the contract. Now, Van's office is the only office that is taking any cases from Wasco/Sherman Indigent Defense. We have tried approaching some of the other attorneys in the community that take the hourly appointments, but none of them were interested.

466 Chair Ellis So you are functioning essentially as a two lawyer consortium?

471 K. Hashizume Yes, right now.

471 Chair Ellis You are the manager?

471 K. Hashizume Yes, I ended up with that.

473 Chair Ellis What percentage of your personal time is spent on this? 100 percent?

476 K. Hashizume I would say probably 60 percent of my time.

477 Chair Ellis The other 40 percent is private?

477 K. Hashizume I am one of the only people that will take the cases in the municipal court in The Dalles. That probably takes up another 10 or 20 percent of my time. The remainder of it is private retained work.

482 Chair Ellis How is the municipal court funded?

482 K. Hashizume It is out of the city's budget and they pay us \$40 an hour.

486 J. Potter Private retained criminal work?

486 K. Hashizume No civil.

487 Chair Ellis How are you able to keep current from a CLE point-of-view.

489 K. Hashizume I let my membership in the OCDLA lapse. Then about a year ago, I got back on again and am starting to go to the seminars again. In the meantime, I subscribe to the newsletters to get the updates on criminal law. Van's office has a season ticket for the State Bar CLEs, so we go to those CLEs; although, granted, there are very few of them that have anything to do with criminal law.

499 Chair Ellis One of the things we have been talking about with Jack and others is the difference between a public defender structure and a private firm structure. The PD model, certainly it's true with Metro and Lane County and I believe it is true with the other PDs, that they often will share their resources with the other practitioners. How does that work here?

509 K. Hashizume Whenever I have an issue that I wasn't familiar with or I felt another attorney had more experience with, the attorneys in The Dalles office of Morris Olson have always been very welcoming to me when I have questions. Other attorneys in private practice have also always been willing to assist me as well, when I hit a point that I don't know the answer.

517 Chair Ellis Given your experience, which is good but not as much as some others, the cases you end up doing, do you feel comfortable doing?

522 K. Hashizume I feel comfortable because, through the years, whether I liked it or not, I ended up involved in cases. I think it was real early on and it was a retained case, I ended up with Meredith Van Valkenberg co-counseling a kidnapping, robbery and a few other charges out in Pendleton. I think it was second or third year and I was assisting at the trial. When I was at Morris Olson, right away I jumped in with both feet doing trials in the first month. I think all along I have always been used to having to try cases and kind of learn on the run and ask a lot of

questions. Quite honestly, Mr. Van Valkenberg doesn't do a lot of criminal law anymore. In the past, he did work for the district attorney's office and he did do criminal defense work. Judge Kelly used to be one of the partners as well. The office has always done a certain extent of criminal defense work. But when I needed moral assistance or somebody to sit there with me and help me with clients, he has always been willing to do that. And he has been very good about working through personality problems, when one develops between a client and myself.

- 556 Chair Ellis Did you grow up in the area?
- 556 K. Hashizume I grew up in Los Angeles.
- 558 Chair Ellis When did you move to the Northwest?
- 559 K. Hashizume I moved to Portland after I finished law school and took the Bar and then I happened to really like the way the Gorge looked.
- 564 Chair Ellis Other questions?
- 567 K. Hashizume One of things, and I am very new to this idea and process of meeting with all of you, but I did find the initial report – I guess it wasn't everything I would have liked for it to say about us. But at the same time, I appreciate seeing the comments and I was going to talk to Peter more about it in the next week. After seeing the report, one of the things I did today was I saw that there were some concerns, so I went ahead and made phone calls to both of our local judges to see if I could sit down and find out what their concerns are explicitly, and then figure out how we can try to address them.
- 579 Chair Ellis We have actually had the experience in two or three communities that it helps to have us come to a county. I think it gets people talking.
- 585 K. Hashizume The court has been good because they have had some concerns in the past about certain things. They brought it to my attention and I have tried to address them. I think there has always been a very comfortable and open relationship there. I have always been very open to listening to what they are trying to implement. I have been trying to work very closely with the court when there are areas of concern.
- 601 Chair Ellis We would obviously continue to encourage you in that direction. Any other questions? Thank you very much. We appreciate it.
- 609 B. Aaron I am one of the lawyers that is doing the conflicts contract; and is transitioning out, primarily because of the money. I have hired a new associate and I am embarrassed to tell you what I am paying her right now. I would really like to be able to go back to my office and tell my staff that she is getting a raise. I can't do that. It is driving me out right now. My retirement plan is to work until I die because that is what I am going to do.
- 624 Chair Ellis Give me a little of your history.
- 627 B. Aaron I was born in Southern California. When I was very young, I moved to a town that was smaller than Hood River, so I have always wanted to live in a rural area. I went to law school in the Bay Area at Santa Clara and did undergraduate there as well. My first job was with the Metropolitan Public Defender. I worked there just about two years starting in 1990. Then, in 1992, I came out

here and worked briefly with Jack Morris' office. In 1993, I hung out my own shingle and contracted with the state to do conflicts and have been doing that ever since.

- 641 Chair Ellis So currently you are in private practice here in Hood River with one associate. What percentage of your work is indigent defense?
- 645 B. Aaron For about the first six years of my practice, I had an associate with me at the time, but I was doing strictly contract work or privately retained criminal work. You get by on it. The \$70,000 would be fine, if I didn't have an office and support staff. I was doing predominantly criminal defense work. I dabbled in a little bit of domestic relations, but my heart was with criminal defense and I am sad that I am leaving it now. I am transitioning out if it.
- 663 Chair Ellis What will you transition to? Will it be predominantly retained criminal?
- 666 B. Aaron I will still be doing retained criminal, but the associate I was working with most recently, before I hired Sherri here, did the civil end of the practice. He went out on his own and many of those cases stayed at my office. So I am going to be focusing on the civil end. Working at the contract rate of \$320 per case, or even outside the contract at \$40 an hour, I look at that and say, "I could be doing that, but I can make \$150 to \$200 in civil." I would rather stay doing criminal work, if you guys give me some more money.
- 692 Chair Ellis Don't be surprised if we use you as an example of what the state is facing?
- 697 J. Potter Brian, is your associate going to be doing court-appointed criminal work?
- 699 B. Aaron Yes she will. She is an '05 graduate, and right now she is handling some juvenile and some misdemeanors. I also have her doing some court appointments. I have her signed up for some CLEs coming up. I have to echo what Jack says and that is, if she wasn't there asking questions every day, I would be very concerned. She has been real good about asking questions.
- 718 Chair Ellis Will she do that as an associate for you? So your firm will still be taking the cases. Who is taking the work?
- 722 B. Aaron For the next year, I will be transitioning out of my caseload.
- [Tape 3; Side B]
- 002 B. Aaron What I am reading is there is a problem with some of the conflict attorneys and you are not getting the quality of attorneys. There were some attorneys here in town that quit taking court-appointed work because why would they continue at \$40 an hour work when there is \$150 an hour work out there? You are losing money to do that. What you should probably do is set up a consortium, where there is a group of attorneys who are doing criminal work and, where there is a minimum requirement, have standards set and then pay them a decent amount of money to come in and take these cases.
- 011 C. Lazenby I don't want to put you on the spot, but I will. Earlier, Tom Cutsforth was talking about the possibility of a federal program, and he didn't flesh it out. But it sounded like Americorp for law students. Basically, they would get some sort of federal compensation to cover their law school debt in exchange for working in the criminal field either on the defense side or the prosecution side. On the

defense side what concerns me about that idea is the supervision piece. Do you think that practitioners such as yourself, that is where I get you off the spot, practitioners such as yourself would be willing to sort of pro bono supervise those law students or would you want to be compensated for supervising them and teaching them the ropes.

- 021 B. Aaron We do that pro bono as it is. Of course we would love to get compensated for that. I know Jim has offered his office to new attorneys coming to train them. If there could be compensation for it then yes and I am certainly more than willing to answer any questions. Jack's office has always been very good about that. When I have had questions his attorneys have always had an open-door policy that I can call them and ask them questions and I think most people that do criminal defense are that way. I think you can go to the bigger public defender's offices and get the mentoring and training there.
- 031 C. Lazenby I think I just saw Greg volunteer.
- 031 B. Aaron The philosophy has been changing as noted earlier. I think there are more recent grads coming out and I don't know whether it is television or what it is the philosophy now that they want to be prosecutors. Twenty or thirty years ago it would have been public defenders. I think some sort of forgiveness program, and I don't know what pull you have, but it would certainly be beneficial to talking to state law schools about some sort of program for them to forgive student loans.
- 037 Chair Ellis Thank you very much.
- 037 B. Aaron Thank you folks for being here.