



Site Visit Report

Malheur County May 22-23rd

ABSTRACT

Documentation of contacts with Criminal and Juvenile Justice service providers and recommendations on the issue of appointment of counsel for clients who qualify for state-funded representation

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Introduction

Malheur County is in southeastern Oregon, bordering Idaho and Nevada. It is the second-largest county in Oregon by area and the only county in Oregon in the Mountain Time Zone, with only a small portion in the south of the county in the Pacific Time Zone. The county seat is Vale and its largest city is Ontario. Malheur County is in the 9th Judicial District, with two elected judges.

According to the 2020 census, there were 31,571 people residing in the county. The population density is 3 people per square mile. There were 11,233 housing units at an average density of 1 unit per square mile.

Malheur County is the poorest county in Oregon. In 2008, 21% of its residents lived in poverty. The county is 94% rangeland with the Bureau of Land Management controlling 72% of the land. The county's two biggest employers are Ore-Ida, a potato processor and Snake River Correctional Facility, the largest prison in Oregon.

While the county seat is in Vale, including the court courthouse, the population center is in Ontario, 16 miles away. The only public transportation between Vale and Ontario is a bus that runs 2 times per day with a cost of \$6 round trip.

There are several Justice/Municipal courts in the district also.

Preparation for Site Visit

OPDS staff identified four agency employees to handle the site visit to Malheur County: Trial Division Deputy (K.O. Berger). The Contract Analyst (B.J. McCartney), the Legislative and Provider Liaison (Autumn Shreve), and the Executive Director (Jessica Kampfe).

The site visit consisted of a preliminary written survey and individual stakeholder meetings. No court observations were done because no hearings were scheduled while the site visit team was there. A survey was sent to public defense providers ahead of the site visit with questions to assist in understanding the issues relevant to local practice, as well as to give members of the provider community who would not be able to meet in person the opportunity to provide feedback.

Mr. McCartney and Ms. Shreve contacted all public defense providers, court staff and the district attorney to schedule meetings. Separate meetings were held with individual providers; Five Rivers law firm, and Elkhorn public defenders. The site team also met with the Malheur Co. District Attorney and one of the two judges and his judicial assistant (?).

Survey Responses

Surveys were designed to identify whether the attorney's experience was in criminal practice, juvenile practice or both and to determine approximately the extent of that experience. Respondents were also asked to identify from which jurisdiction the bulk

of their experience came and, if not Malheur Co, their level of experience with Malheur Co. specifically.

Respondents were asked which Malheur court practices facilitated and/or hindered the efficient appointment and effective practice of criminal and juvenile law. Respondents were also asked the same questions about District Attorney practices and public defense practices. Respondents were asked what made Malheur County unique, and what the biggest barriers were to criminal and juvenile practice in Malheur Co. Respondents were asked what the court, district attorney or OPDS could do to help improve practice in Malheur County.

There are overarching themes from the providers that are worth highlighting: First, providers were frustrated by the DAs inability to get discovery to them timely and when discovery is received, it is not complete. This slows down the ability of the public defense provider to do adequate investigation and discuss the investigation results with the client before the scheduled hearing. Second, providers claimed that the District Attorneys did not look at the evidence, talk to witnesses or review cases – even serious cases – until right before a matter was set for trial, thereby delaying the ability to have meaningful discussions regarding case resolution. Finally, public defense providers mentioned that the court will stack many cases for trial so multiple attorneys spend weekends prepping for trial when only one or two will be sent out to trial. This results in inefficiencies and overwork for the defense providers.

Individual Stakeholder Meetings

District Attorney

Dave Goldthorpe, the Malheur Co. District Attorney. Mr. Goldthorpe was appointed to this position in 2016 after being a prosecutor in Clatsop Co for seven years. He has successfully faced election twice since his appointment.

Mr. Goldthorpe reported that he was “holding” about 150 cases at the request of Presiding Judge Hung. He said these cases have not yet been reviewed by the office to make charging decisions and that the office was holding off until June and the beginning of the OPDS new contracting cycle to review and charge those cases.

Mr. Goldthorpe indicated he has had trouble recruiting and typically applicants do not have ties to the area.

Docket management by the court was not efficient with attorney time. He said that no defense attorney ever has their client ready for the first plea hearing setting. He takes pride in the fact that his office has full discovery to the defense attorney prior to the first plea hearing setting with discovery being handled electronically and physical discovery by request.

Due to the courthouse facilities, only one jury trial at a time can occur, which limits the flow of cases through the system.

The community lacks adequate behavioral health services such as a crisis respite center and a detox center, and those supports could reduce caseloads.

He would like the justice court in Ontario would do more with the “live-ability” crimes, thus taking those cases out of the system.

Mr. Goldthorpe acknowledged that transportation could be a problem for some but that everyone in the systems tries to make it work. The treatment court was currently searching for money to purchase a van to try to help treatment court clients to get to court.

There are not regular Bench/Bar meetings. He reported that one of the problems at LPSCC meetings is that the defense representative on the committee really is not taking criminal defense cases, much less court-appointed cases so his impact is negligible. He thought it may be beneficial for those two groups to meet more often.

Lawyers can appear remotely but not for substantive hearings. For persons who are charged with alleged felonies, personal appearance at hearings is mandatory. Persons charged with alleged misdemeanors can waive their appearance,

There are video arraignments for all in-custody persons. Sometimes a person charged with an alleged crime will appear in court in-person and the lawyer appears remotely.

The DA Office does not keep data on how many cases they decline to prosecute.

Most of the persons in the county jail are being held pre-trial rather than after sentencing.

He reported that a large number of persons charged with alleged offenses in Malheur County proceed pro se. The Court goes through the colloquy and tries to protect the record.

The Court

Presiding Judge Hung and Marilee Aldred, the Malheur Co. Trial Court Administrator.

Their legal community is a small community with many “old-timers.” The bench and the bar have a great relationship and both sides are open to ideas and suggestions on how to improve the system. They respect each other and know they have to work together.

Trial assignments are done Friday for the following Monday. Each trial jury panel is for one case since the court facilities can only handle one jury trial at a time. All negotiations are supposed to occur pre-trial. Because of the limitations of the court facilities, it is necessary to “stack” trials (have more than one trial scheduled to be tried on the same day). Judge Hung acknowledged this practice results in lawyers preparing cases for trial without knowing whether the case would be able to go to trial.

He said that they have a great group of public defense providers, and the court tries to respect their calendars.

Judge Hung stated that if OPDS was able to move to a workload model, it would be easier for a judge to help with case resolutions.

Judge Hung stated that in whole the public defense providers liked the system regarding timelines and trial management. He said that there had been some complaints about discovery issues but those had been getting better since the court spoke with the District Attorney's office. He said that the bar worked well together without a lot of finger-pointing.

He reports they do not have formal Bench/Bar meetings but operate mostly on an "open door" policy, mostly communicating via email. Judge Hung said historically when in-person meetings happened, the meetings would break down and merely became an airing of grievances.

Defense Providers

Independent law firm contractors including David Carlson, Renee Denison and Doug Rock. Kay Carlson, Mr. Carlson's contract administrator also attended the meeting.

They reported that the relationship between the Bench and the Bar was immensely better than it had been in the recent past, noting that the current Bench were willing to communicate openly with the members of the Bar. They also commented on the amount of cooperation and support was present among members of the Bar.

The providers noted that with the changes that occurred in the contracting process (moving from a case credit system to the current MAC system) resulted for them in a reduction of funding. This meant that providers needed to get rid of staff that helped keep cases moving through the system efficiently. All providers felt it worked better for their judicial district for providers to have sufficient funds to hire in-house investigators and case managers rather than go through the CSS process.

There is a community shortage in qualified and experienced investigators

There are more A&A cases and not enough qualified evaluators in the area. There has been work toward a Rapid A&A process to get folks evaluated sooner by one judge. Mental health services in the county have been terrible with little or no ability to access. Telehealth services have helped but not everyone in acute crisis can engage with a doctor for evaluation through a screen.

Another concern that was raised by the public defense providers is that OPDS has purchased all the criminal defense capacity in the area, leaving no one who can represent those persons who do not qualify for court-appointed attorneys. The local attorneys are not allowed under the contract to take cases outside of the contract and now are being asked to do so due the unrepresented person crisis. One provider pointed out that OPDS can ask providers to "break the rules' because of need but

the same provider is not allowed to represent a family member who gets charged with an alleged DUII.

Ms. Carlson brought up that the OPDS Management conference was a very good way for staff to learn new policies and procedures and to build relationships. That conference has not happened for several years and there have been significant changes in that same period. She recommended that OPDS resume with the management trainings.

Five Rivers Law

Many of the Five River Law lawyers practice juvenile law. The lawyers explained there are a high number of dependency cases in Malheur County and while there has been an increase of attorney capacity to handle dependency cases in the last couple of years, the dependency cases in this jurisdiction are staying open significantly longer than other counties around the state. The stated reason for the longer open caseload relates to disagreements between the Department of Human Services and their counsel at the Department of Justice regarding the appropriate time to dismiss a dependency case. This negatively affects every dependency caseload in Malheur County, making the local attorneys unable to have capacity to pick up new dependency cases.

The Five River Law attorneys also commented on the increase of cases where competency to stand trial is an issue. Civil commitment cases have also skyrocketed. The lawyers opined that the legalization of cannabis in Oregon has created this issue with people getting off psychotropic medication and trying to self-medicate with cannabis.

The lawyers were also very concerned about the aging of the Malheur County bar. With older lawyers retiring, OPDS assistance is needed to help recruit new lawyers into the area, noting that the location is not a “highly sexy” location to work.

Another issue facing providers in Malheur County is that over 50% of households in the county speak Spanish as their first language. The lawyers felt that they needed a full-time Spanish-speaking employee to assist in the representation of their clients but stated that Spanish speaking professionals are lacking in the area.

The lawyers are also trying to recruit and add associates to their firm. Expansion of loan forgiveness programs to include law firms that contract for public defense work would be helpful, as well as competitive salaries and benefits, especially the ability to offer full medical coverage including any deductibles.

When asked about discovery practices, the lawyers said that the Malheur County District Attorney’s Office provides all discovery on CDs; unlike Baker County which provides discovery electronically.

The providers also commented that having an additional judge in Malheur County would help move cases along and was needed in the county.

Elkhorn Public Defender

The final provider meeting was with Elkhorn Public Defender. Ms. Dunn reported that she had sat down with Judge Hung recently to discuss system changes such as allowing more time between trial assignment and the beginning of trial. He has been open to some suggestions for court efficiencies. However, it was noted that there are no group meetings of the bench and bar in Malheur County.

The lawyers expressed concern that the DA uses "Failures to Appear" charges to leverage the clients to plead in weak cases, noting that someone could live in county and still be an hour and a half away from the courthouse with no public transportation. They said that the DAs often do not look at the strength of their case until the case is assigned to trial, making case resolution discussions difficult.

The lawyers spoke about how economically disadvantaged Malheur County is but noted that when barriers to come to court are removed, the persons charged with alleged crimes appeared in court.

The lawyers had many questions about the new contracts noting that the monthly caps need to be dispersed more evenly, the contracts should be based on a workload model and cases that stay on caseloads for long time periods (serious felonies and juvenile dependency cases) should count against the caseload again when over a year old. They advocated for continuation and expansion of the training and supervision money, pointing out that training and supervision is actual work.

They expressed an interest in being able to recruit interns and new attorneys but stated that intern stipends, training and supervision funding is needed. Ms. Dunn noted that because she cannot guarantee a law student a job upon graduation, they lose out on recruiting opportunities. They asked for funding support to be able to more aggressively recruit and to guarantee a job once they come to Oregon to retain them in the state. They also felt that continuation of retention bonuses was important as well as adequate pay.

The providers felt that the drug court in Malheur County was less beneficial, and further, required significant attorney time.

The meeting concluded with further discussion about SB 337 and the OPDS budget with the OPDS staff explaining to the providers the status of both pieces of legislation.