**Summary of Indianapolis listening session, 2/9/18 Transcript**

**Jonathan Little, attorney for plaintiffs in suit against Johnson, Hancock and Hamilton Counties regarding systemic Public Defender problems (Tr. P. 9) (he also made a written submission)**

* He has personally observed that in Hancock County, on Mondays and Tuesdays, guilty pleas are done by video without defense counsel or public defenders of any sort present. No interpreters are present and it is difficult for foreign nationals to call consulates. Some of his clients have gone as long as 7 weeks between arrest and initial appearance without ever seeing a judge. He observed a deaf woman proceed without either an interpreter or counsel.
* On numerous occasions, he saw prosecutors directly negotiating with a defendant, making misrepresentations about, if you plead guilty today, you will be let out of jail. He has observed judges backing up those statements by prosecutors, even when a quick check would show that a hold from another county would prevent release; they would just be transferred to the hold county.
* In Hamilton County, where PDs are also direct contract employees of the judges, some defenders contract with several judges simultaneously, so that when the several contracts are added up, they will exceed 100% of the limits of the PD standards, but the contracts are reported separately so the figures for that defender are not accurate. On top of that, the contracted defenders also have private practices. In Allen County, part-time defenders were found to be carrying at least 1200 misdemeanors a year, plus having a private practice. In Johnson County, there are direct contracts between the judges and defenders, no interpreters, and direct negotiations between the prosecutors and defendants. If you appeal in Johnson County in a felony case, the appellate public defender assigned is the daughter of the trial level public defender.
* The problems in Johnson and Hancock counties have been recorded by reporters from National Public Radio. Their audio, notes and court transcripts will be included in his written submission. (Tr. P. 11)
* In response to questioning, Mr. Little indicated that central Indiana counties set the cases of all defendants with Hispanic surnames on the same date, and notify Immigration and Customs Enforcement (ICE) of the dates, so they are deported before they can talk to counsel. At guilty pleas, they are not advised of collateral consequences of their pleas. NPR and he have observed multiple times in Hancock County, on Mondays and Tuesdays, that a judge would say, via video, that if you plead guilty today, I’ll go easy on you. When they indicate that they will plead guilty, they are brought over in person and a guilty plea is taken, again, without counsel present.

**Jill Johnson, Chief, Juvenile Division, Public Defender Agency, Marion County; also works on contract for the Indiana Public Defender Council and the Indiana Juvenile Defense Project (Tr. P. 13)**

* Marion County is now able to provide high quality juvenile defense despite facing a high volume of cases and many of the problems faced by other counties in the state. There has been substantial improvement. In 2004, there were 5 full-time juvenile PDs with enormous caseloads. On recognizing that, 11 additional PDs were hired to bring the county into Commission standards. Investigators, paralegals and social workers were also hired as critical parts of the defense team. The administration, led by Robert (Bob) Hill, recognized that help was needed both in and out of the courtroom. But more than just a numerical increase, there has been a cultural change in the office. Attorneys are staying longer in the PD Agency, so the experience level is high, 10 years on average. And instead of just first meeting clients at the initial hearings, it is expected that counsel will meet with clients in advance of the hearings to get information and prepare for the hearings. Ten years ago, PDs would only be able to make arguments about what the children needed; now, they can present evidence that includes information about the child and what they want to have happen. They can present psycho-social assessments and safety plans from their own social workers. They can support those with reports from experts and psychologists that they can hire. With that evidence, they can present sound arguments on waiver and dispositional hearings. (Tr. PP. 14-16).
* In the past, the participation of their office ended at disposition or sentencing. A child would go to probation or residential treatment with no more representation. There was no one to sit with them when they came back to court for progress reviews. There would be no more lawyer appearance unless a violation report was filed. (Tr. P.16) But now, all children are represented until the juvenile court case is closed. The office is able to intervene and prevent many violations from being imposed. Contact with children in facilities continues and there is advocacy for their early release. (Tr. P. 16).
* (Tr. P. 17) These are examples, and you may think, isn’t this just what lawyers are supposed to do, meet with their clients, presenting evidence, hiring experts, consulting with their clients and representing their needs. Unfortunately, PDs in other parts of the state are much more challenged in doing these things. I believe that this results from the lack of resources and support, not the lack of desire to help and provide effective representation.
* Through the Juvenile Defense Project, she has spoken to over a hundred attorneys in various parts of the state and meeting with people who are highly motivated to provide effective juvenile representation. But they don’t have paralegals or investigators and don’t have funds to hire experts. For some, juvenile defense is just a small part of their practice and they are overwhelmed with the serious felony criminal clients, as well as increasing CHINS and TPR cases. So often, juvenile defense cases come last in priorities. (Tr. P.18)

**Victoria Bailey, Assistant Appellate Division Chief for the Marion County Public Defender Agency**

* Ms. Bailey recommends Public Defender Commission standards for representation of criminal defendants and in delinquency cases be adopted in two particular areas: first, in legal writing; and second, in negotiation and conflict resolution. (Tr. PP. 22-23). In response to a question from the Chair of the Task Force, Ms. Bailey stated that this training could either come through the local board which hires the public defender or through localized training through the Public Defender Council. (Tr. PP. 24-25). Another possibility would be for the state agency that handles CLE to approve distance learning. Her agency does a lot of lunchtime or brown bag training. (Tr. P. 26).

**Rhiannon Edwards is a representative of P.A.C.E., which is the Public Advocates in Community Re-Entry, a not-for-profit organization that serves ex-offenders in Marion County.**

* P.A.C.E. opines that it would benefit its mission if ex-offenders actually understood their sentences, especially in relation to the parameters for sentence modification. (Tr. PP. 27-28). P.A.C.E. also believes that there should be greater “engagement” between community organizations and public defenders. (Tr. P. 29). This would permit P.A.C.E. to be more effective in making public defenders aware of certain resources being available to mitigate the consequences of “technical” violations of conditional release (Tr. P. 29) and in assisting ex-offenders in the actual computation of their sentences. (Tr. PP. 30-32).

**Chris Shema is a practicing attorney in Vigo County.**

* Mr. Shema represented as proxy from practitioners of CHINS cases that often time attorneys only become involved in a CHINS case after the most important decisions have already been made, because an attorney is not present at the initial hearings. (Tr. P. 33).
* He expressed dissatisfaction that there is delay—often as long as seven days—between the time a person is arrested and the time they are appointed counsel. By the time counsel is appointed, the arrestee may have lost their job and may have lost their home. Additionally, law enforcement officers exploit this passage of time to obtain incriminating statements without the benefit of counsel. These are injustices, occurring right at the start, at the very beginning, because there is no counsel appointed. (Tr. PP. 33-34).
* Mr. Shema also supported the concept of merit board commission protection for public defenders. He explained the value of such protection by stating that “no one, no one who does this kind of work should ever find themselves in a position where they have to make a choice or feel like they have to make a choice between doing their job and keeping their job.” (Tr. P. 34). He favors an appointment process in which the professional independence of the public defender is respected. (Tr. P.36).
* In response to a question from a Task Force member, Mr. Shema explained that in Vigo County the representation *vel non* of sentenced inmates seeking modification of their sentences is handled on an *ad hoc* basis, but in many situations representation is deemed to be concluded once sentence has been imposed and public defenders are not aware of sentence modifications sought thereafter. (Tr. P. 37). This *ad hoc* system distorts the caseload measurement. (Tr. P. 38).
* Mr. Shema added that in practice the term “initial appearance” does not have a consistent meaning among various courts. (Tr. P. 47).

**Stacy Uliana is a public defender in Johnson County.**

* She stressed the need for independence on the part of public defenders. (Tr. PP. 39-41; 43)(“But the more independence from the judiciary the better”; “we need a better environment for public defenders to find the courage to stand up and say what they think is wrong”). In response to a question from the Task Force Chair, Ms. Uliana noted some of the advantages of a state public defender, citing the Kentucky model. (Tr. P. 40).
* Ms. Uliana also represents persons on appeal. She opined that the present system for appeals does not work “at all” and that a statewide public defender to handle appeals “would be a wonderful way to do it all over the state and to bring some consistency to appeals.” (Tr. P. 43).
* Ms. Uliana also favors judicial education to the effect that (a) a transfer petition is part of an appeal and (b) guilty pleas at initial hearings should be discouraged. (Tr. P. 44).

**Laura Pitts is the major felony supervisor for the Marion County Public Defender Agency.**

* Public Defender Commission standards for caseload limits are one area in which great improvement can be made. Currently, obviously, there are no standards for misdemeanors. So there is no caseload requirement for how many misdemeanors somebody can carry. That’s a big deal in a county like Marion County where there are thousands and thousands of misdemeanors. (Tr. P. 48).
* Another area in which improvement can be made is in the weighting of felony cases. Major felony cases are all weighted the same. And I don’t think that’s fair or that’s right because so much more work is going into higher level cases. (Tr. PP. 49-50).
* Another area of concern is probation cases because usually probation violations do not count toward a public defender’s caseload. (Tr. P. 50).
* Her agency has just started covering initial hearings in all the major felony courts. These appearances do not count toward the attorneys’ caseload. (Tr. P. 51). In response to questions from a Task Force member, and in relation to these initial hearings, attorneys are able to meet with the defendant in advance of the hearing and a bond hearing in a case with a victim would not be held at the initial appearance. (Tr. PP. 52-53).

**Marianne Halbert is the Criminal Justice Director at NAMI (National Alliance on Mental Illness) Indiana.**

* NAMI Indiana is a non-profit that advocates for the improvement in the lives of people impacted by mental illness, as well as their family members. Ms. Halbert stated there is a disproportionately high number of people with mental illness in the criminal justice system compared to the general population and that such people spend an average of five times longer in jail than people without mental illness. (Tr. P. 55). This is the foundation for her view that a public defender cannot engage in public defense without having clients with mental illness and that a public defender having a basic understanding of major mental illnesses is beneficial; from this point, lawyers could dig deeper in terms of how those conditions may have impacted behavior at the time of the offense and may also impact their representation. (Tr. PP. 56-57).

**Ann Sutton works for the Public Defender Council.**

* Ms. Sutton related that attorney CLE programs are offered twice a year for either no cost or for a nominal fee and that in the initial hearing court in Marion County a caseload of 300 misdemeanors for a public defender is “extremely doable,” that public defenders are now assigned clients rather that whatever comes in on any particular day, that the number of misdemeanor trials is increasing, that jail numbers have declined because of earlier releases and that a social worker is now available to contribute to decisions made at initial appearances; she recommended that these measures in Marion County by adopted for the entire state. (Tr. PP. 63-64).

**Lucy Frick is an attorney with the Marion County Public Defender Agency assigned to Major Felony Court 3.**

* Ms. Frick addressed the fact that probation violation cases are labor intensive and take time from her regular caseload. (Tr. P. 66). When a deputy public defender in misdemeanor court, Ms. Frick had a thousand clients a year. (Tr. P. 67). Her experience is that misdemeanor convictions “are catastrophic for people that are trying to get by.” (Tr. P. 67). She adds that social workers are valuable in working through mental health issues. (Tr. P. 70).
* In response to a question from a Task Force member, Ms. Frick stated that a shocking number of defendants stay in jail because they could not make bond (Tr. P. 70) and that probation for misdemeanor defendants, except for those convicted of drunk driving, is a mistake. (Tr. PP. 71-72).

**Mark Russell is Director of Education and Advocacy for the Indianapolis Urban League. (Tr. P. 72).**

* Mr. Russell related that the Urban League has “some serious concerns about the state of the public defender system in Indiana. (Tr. P. 72). One of the major human services offered by the Urban League is workforce development. (Tr. P. 73). Between 40 and 60 percent of the Urban League’s clients have criminal records, but it does not serve people who have sexual offenses or violent criminal histories. (Tr. P. 73).
* Mr. Russell related that a person’s lack of income should not drive access to justice and to competent equitable legal representation. (Tr. P. 73). He explained that “[t]he need for structure, uniform, and ongoing training with universal standards, and to have a means of evaluation for those providing legal services needs to be addressed.” (Tr. PP. 73-74). He added that many of the offenders served by the Urban League struggle with literacy and that the current system “accepts and indeed encourages by default system discrimination driven by income” and “has a disproportionate impact on persons of color and non-English speakers, as well as the poor.” (Tr. PP. 74-75). Because of these circumstances—“legal complications that are not addressed by competent counsel” (Tr. P. 75)—the Urban League endorses recommendations limiting the potential for conflicts of interest, having a set training curriculum for public defenders, and independence for public defenders. (Tr. PP. 75-76).

**Rachel Roman-Lagunas, attorney, Juvenile Division, Public Defender Agency, Marion County; also collaborates with the Indiana Juvenile Defense Project of the Indiana Public Defender Council.** (Tr. P. 77).

* As part of the Juvenile Defense Project Ms. Roman-Lagunas interviewed 25 children at the Department of Correction (DOC) in Pendleton. (Tr. P. 77). She highlighted six conversations with juveniles currently held at the DOC, of which two were positive and four were negative. (Tr. PP. 77-81). The two positive experiences involved attorneys who fought for their clients and listened to their clients. (Tr. PP. 77-78). The four negative experiences of juveniles included: 1) a juvenile who believed his attorney was friends with the judge and did not vigorously argue his client’s case on behalf of his client; 2) an 18 year old juvenile defendant without attorney representation, parents, or DCS involvement, who did not know the conditions of his release; 3) a juvenile whose attorney offered to plead to the maximum sentence; and 4) a juvenile whose attorney missed a hearing during which he was sent to the DOC. (Tr. PP. 79-81). The same attorney in No. 4 did not meet with his client outside of court and did not give notice that he would miss the hearing. (Tr. P. 81).
* Of the children interviewed, they would either characterize the attorney as “good” or “bad,” and described the characteristics of a good attorney as attorneys that met with their clients outside of the court, knew their cases, communicated well, and fought for them. (Tr. P. 81). Bad attorneys would fail to call the child by the right name and assert that they knew what was best for the client. (Tr. PP. 81-82). Many clients were told to “just plead” and would plead at initial hearings or pretrial with inadequate or no discovery done. (Tr. P. 82). Good representation led to children stating the system was fair, bad representation the opposite. (Tr. P. 82). The children suggested they want to build relationships with their lawyers, they want their lawyers to listen to them and not their parents, and they want their attorney to help and explain the situation. (Tr. PP. 82-83).
* In answering a board member’s question, Ms. Roman-Lagunas stated that the system needs more oversight, as there is not much oversight for juvenile defense attorneys. (Tr. P. 83). Due to the fact that juvenile law has an entirely different code section, defense attorneys should have expertise in that area of law. (Tr. P. 83). Additionally, adolescent development should be incorporated into almost every case. (Tr. P. 83). Adolescent clients and adult clients cannot be treated the same; for example, one-third of 11 to 13 year olds in the system are incompetent, and 40% of 14 to 15 year olds are as incompetent as a mentally ill adult would be. (Tr. P. 84). Lastly, Ms. Roman-Lagunas stated that keeping caseloads down would help the system. (Tr. P. 84).

**Jack Gay is a practicing attorney and chairman of the Jennings County Public Defenders’ Board.** (Tr. P. 85).

* Mr. Gay is “appalled by the state of public defense work” in Indiana, and states that “cost has always been a problem in the public defense work.” (Tr. P. 85). However, he believes that now is the time to advocate for full-time public defense offices throughout the state of Indiana. (Tr. P. 85-86). Mr. Gay further stated that this decision would be cost-effective as less criminals would spend months in jail for drug addiction issues, more would be directed to treatment, and this would make the public defender’s office “pay for itself many times over.” (Tr. P. 86). Specifically, he stated that a conservative estimate shows addiction treatment accounts for 40% of the cost to incarcerate. (Tr. P. 86).
* Mr. Gay stated that Jennings County seeks to build a new jail at a cost of $25 to $40 million, and that this money should be spent elsewhere. (Tr. P. 87). The criminal justice system’s negative effects on defendants and other issues should be avoided by providing drug rehabilitation. (Tr. P. 87). Hiring full-time public defenders would help make this possible. (Tr. P. 87-88).
* In response to board members’ questions, Mr. Gay stated that public defenders were more involved in their cases when they served on a volunteer basis, but acknowledged that this would not be feasible with today’s caseload. (Tr. PP. 88-89). Furthermore, he stated that Jennings County’s reimbursement program for public defenders consists of ten part-time public defenders and that more are needed because a number of those attorneys “are way over their caseload requirements.” (Tr. P. 89). His number one solution for indigent defense is fully-staffed public defenders’ offices. (Tr. P. 91). When asked whether it would be difficult to fill positions for public defenders, Mr. Gay affirmed that there are probably one or two persons per county willing to fill these positions. (Tr. P. 94).
* Mr. Gay also stated that the board system is inefficient and does not generate much oversight as the judges primarily deal with public defenders, and the board’s oversight consists of quarterly reviews and stories from defendants. (Tr. P. 90). Additionally, Mr. Gay does not believe full-time regional public defender offices would be an efficient solution, as getting lawyers to court would be difficult, but believes that regional oversight may be beneficial. (Tr. P. 91). Lastly, Mr. Gay stated that he believes there is no supervisory oversight for the ten part-time public defenders in his county. (Tr. P. 95).

**Heather Edmands, Assistant Division Chief, CHINS/TPR Division at the Marion County Public Defender Agency. (Tr. P. 95).**

● Per Ms. Edmands, Marion County’s Public Defender Agency is the largest in the state with 23 full-time attorneys, 14 part-time attorneys, 8 paralegals, 8 social workers, and an office manager; CHINS/TPR is the largest division. (Tr. P. 96). Marion County has 38 dockets across 8 courts, and attorneys have additional off-docket trial settings, mediations, and settlement conferences. (Tr. PP. 100-101). Nine years ago, the caseload per attorney was approximately 125 cases; it has now grown to 150-170 per attorney. (Tr. P. 96). Serving as a PD is a calling and the office is deeply impassioned and willing to do the work. (Tr. P. 96). However, with CHINS/TPR being below Commissions standards, a new training program was developed for attorneys to become CHINS/TPR qualified. (Tr. PP. 96-97). Training consists of formal Commission requirements and informal training by using other attorneys at the PD office as resources. (Tr. P. 97).

● In response to questions, Ms. Edmands affirmed that a statewide system for CHINS/TPR would not work because of differences in state courts in terms of volume, caseload, and the way cases are handled. (Tr. P. 98). Marion County PDs are appointed at the initial hearing, appear at the first pretrial, and continue their representation until custody is regained, a guardianship is established, or a termination trial occurs. (Tr. P. 99). CHINS/TPR cases in Marion County closed within the last year and a half were open for an average of 713 days, and Ms. Edmands’ current open cases have been open on average 1,068 days. (Tr. P. 99). Other counties handle CHINS/TPR cases from either the initial hearing or pretrial and finish their representation after disposition. (Tr. P. 99). Per Ms. Edmands, representation through actual completion of services is essential for the clients to resolve their problems until the case closes as they need an advocate on their behalf to ensure additional requirements for the defendant are reasonable. (Tr. PP. 99-100).

● Also in response to questions, Ms. Edmands recommended a regional series of offices coupled with statewide resources and training. (Tr. PP. 101-02). Ms. Edmands’ idea consists of a LISTSERV accessible to PDs statewide, the ability to discuss cases, and informal lunch-and-learn sessions. (Tr. P. 102). Her recommendations are based in part on constant changes within the CHINS world in the last seven years as well as constant changes that appear to occur on a day-to-day basis. (Tr. PP. 102-103).

**Abbie Rust, Supervisor of social workers at the Marion County Public Defender Agency. (Tr. P. 103).**

● Ms. Rust stated that a lot of the work done by the 19 social workers at the PD Agency consists of communicating with the attorneys regarding mental illness, substance abuse, and indigency needs. (Tr. PP. 103-04). PDs who learn and mimic social workers’ skills have the most positive effects and interactions with their clients. (Tr. P. 104). Even though social workers cannot be present for all clients, attorneys who learn these skills can properly advocate regarding the client issues mentioned above. (Tr. P. 104). Social workers at the Marion County PD Agency try to provide training for attorneys on an informal basis, and would like to see similar training in other counties, as well. (Tr. PP. 104-05).

● In response to questions, Ms. Rust affirmed that a working paper shows how the Marion County PD office is structured and how it interacts. (Tr. P. 105). Additionally, Ms. Rust declared that it is “hugely important” for PD offices to enlist the services of social workers because their training is intended to help identify any barriers and to help the defendant succeed. (Tr. P. 106). Also, attorneys and social workers can share information to help better defend the person in question. (Tr. P. 107).