TASK FORCE ON PUBLIC DEFENSE
LISTENING TOUR - INDIANAPOLIS
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JUDGE TINDER: Good afternoon. Welcome, everybody. Thank you so much for coming.

I will try to be brief because we've labeled this a listening session, not a talking section, so we're here to listen. Most importantly, perhaps, we've got coffee and some treats up here, including Rice Krispies bars, which are very good, by the way. You are welcome to them at any time.

I'm John Tinder. I am chair of the Indiana Task Force on Public Defense. And with me we have Justice Goff to my left, Jeff Papa to my right, Larry Landis, and we've got Mary Willis, Judge Willis with us here today, as well as Professor Joel Schumm, all task force members, and there are about eight others. I think a total of 17 of us were appointed to this task force by the Public Defender Commission.

The appointments were made I think sometime in the middle of August, and shortly thereafter meetings were set to take place over the course of about the next nine months, the target being getting a report back to the Public Defender Commission by August of 2018.
I came on the scene a little bit later. Originally, Judge McKinney from the District Court was going to chair the committee, but his tragic death, quite unexpected, left that seat vacant. I decided to sit in for him on this, and it's been a very interesting process.

We've had about four meetings so far, and this would be really the second of our listening sessions. On February 9 we met with, gosh, it was about 25 or so chief public defenders from large, medium, and small counties. And we plan to, after today, have about four more of these listening sessions, as well as I think we've got four or five more meetings ahead of us, all of which you're welcome to.

What was the cause for this task force? What was the initiation? It was a series of reports that came from different sources, one from the Sixth Amendment Center that you may be familiar with, issued in I think 2016, raising some very serious questions about indigent defense in Indiana, funding for it, adequacy and so forth, as well as a planning grant from the Office of Juvenile Justice and Delinquency Prevention, raising questions about how youth in the
delinquency system in Indiana are being represented, and in some cases not being represented. And a series of other criticisms have raised concerns by the Public Defender Commission on ways that we can improve the Public Defender system. So that's our goal.

We were appointed by that commission to take a big look at all aspects of public defense, not only in the criminal sector, but as well in matters of CHINS and termination of parental rights, involuntary civil commitments, in any respect where a person's life or liberty is at issue and public defense is necessary.

So we are taking a big look at a big picture we have divided into a number of subcommittees, focusing on certain areas, and we've been hearing from experts in the area.

Each of you, by the way, will be emailed after this with a link to our website that has many resources listed, as well as an opportunity for you to make written submissions. And they can be sent by email, and that will be part of our records. So that we consider, for example, if today you don't get enough time to say everything you want to say, or you think of things you want to say later, we
would love to receive written submissions as well. So please keep that in mind.

I think our experiences as task force members, it was intended that they come from a wide range of experiences, and it is just that. We have some on the task force who have been public defenders. We have some who have sat as trial judges, appellate judges. We have practicing attorneys. We have state legislators. We have a representative of the Governor's office. So it's a very diverse series of backgrounds, and we come together to try to make the public defense system better.

So today's session is an opportunity for you to help us do that, and don't be surprised if we make an effort to get back with you to have you elaborate on things that you tell us.

I want to give everybody a chance to say what they want to say today, but keep in mind written submissions are strongly encouraged and can be even more elaborate than what you might be able to say here.

Now, we do have a court reporter, the very talented Kate Andrews, who will be taking things down not for purposes of so you can take an appeal from what we do. The main purpose is for any task
force members who can't be here, so they can get the information that's provided, as well as sort of keeping track of things so we can go back and follow up.

So as you speak, you're welcome to identify yourself. We would appreciate that. But if it's something you want to tell us in a confidential way, you can do that. So if there is a particular judge or particular practice you want to criticize and not attribute to you or your office, we understand that. It's not to put you in a bad spot. It's to help us gather and obtain information.

So with that we have a number of people who have indicated they do want to speak, and there will be open mike time as well and questions and dialogue. But I want to be able to get through everybody who signed up first, and then we'll open it up to anyone else who might want to speak.

So with that I'd like to call on Jon Little first. Jon, where did you go? Jon and I spoke just a little bit. He may have a more elaborate written presentation to follow, but he had a number of things he wanted to say today.

MR. LITTLE: Yes. Thank you, members of the
committee. My name is Jonathan Little. I practice here in Indianapolis. We filed a complaint about the Johnson County case that's on its way to the Supreme Court right now. I just want to summarize some things that I've observed in my practice around Indiana in different counties.

In Hancock County, on Mondays and Tuesdays guilty pleas are done at initial hearings via video with no defense attorneys present or public defenders of any sort present in the room. Foreign nationals have no ability to call consulars. There is no interpreter present.

I've had clients go seven weeks between arrest and initial hearing without ever seeing a judge. I've watched a deaf woman proceed without counsel and without an interpreter.

On numerous occasions I've witnessed prosecutors directly negotiating with defendants, making misrepresentations about, you know, if you plead guilty today, we'll let you out. I've seen the judges back the prosecutors up on those statements, when a quick check of my case shows that those people are in fact held in other counties, and they won't be getting out. They will just be getting transferred.
My concern there, a lot of these initial hearing guilty pleas excuse the numbers of appointed counsel that are reported to the Supreme Court. Because those people are in fact never appointed counsel, so it will never show that Hancock County needed "X" number of defenders.

In Hamilton County, another county where judges hire public defenders as direct contract employees of the judge -- and I'll include contracts in my written submission. They have contracts in all the counties -- the public defenders who are employed by the actual judge will contract with more than one judge. So they'll have contracts in excess of a hundred percent of their time, and then they'll have a part-time practice, you know, private practice on top of that.

In Allen County, part-time public defenders we found carrying at least 1200 misdemeanors a year and then having a private practice.

In Johnson County, direct contract with the judges, no interpreters, direct negotiation with defendants by the prosecutors. And if you appeal in Johnson County in felony court, you are assigned the daughter of the public defender that you had in your cases.
So that's just a quick rundown. All of these things in Hancock and Johnson County have been recorded by reporters from NPR; so there's audio available as well. And their notes and our audio and the court transcripts, and I will include that stuff in the written submissions.

JUDGE TINDER: Thank you, Jon.

Questions from task force members? All right. Thank you. We look forward to your written submission as well.

MR. LITTLE: Thank you.

JUDGE TINDER: We have followed the paper on the litigation. Kim, if I'm not mistaken, we've got copies of briefs and things of that nature.

MS. TANDY: Yes, we have.

DR. PAPA: On your point about the foreign nationals, are you saying they've never had a chance at any point to contact the consulate from their country?

MR. LITTLE: Right. What they do in central Indiana in all the counties, they set the Hispanic last names on the same dates, and then they have ICE come at that time. And so when the person is arrested, between the date of arrest and then when they are deported, so it varies in counties as to
when they set them up, they never get to talk to
anybody from their consulate.

DR. PAPA: At any point?
MR. LITTLE: At any point.
MR. LANDIS: What about on the guilty pleas?
Are they advised of doing guilty pleas without
being advised of the collateral consequences of the
guilty pleas?

MR. LITTLE: Right. And what NPR and I have
witnessed in Hancock County numerous times was the
judge would say if you plead guilty today, I'll
take it easy on you. And those people are in
custody in jail via video court. And so then they
plead guilty, and they are brought over, and they
do the formal guilty plea without counsel. And
that happens on Mondays and Tuesdays in Hancock
County.

JUDGE TINDER: Thank you.

Jill Johnson. Jill, you indicated that you
have ideas about juvenile justice reform that you'd
like us to know about.

MS. JOHNSON: Thank you, yes. Thank you to
the members of the task force. I'm Jill Johnson.
I am the Juvenile Division Chief in the Marion
County Public Defender Agency. I also do
collaborative work with our agency and the Indiana Public Defender Council. I am able to assist with the Indiana Juvenile Defense Project in providing statewide training to juvenile court defenders.

I know you heard this morning, most of the members of the Task Force heard from Tim Curry and Amy Korozos regarding the importance of specialization in juvenile defense. I'd be happy to answer any questions or talk about that, but I think for purposes of your time I'd like to talk some this afternoon about how in Marion County we've been able to move the scale of justice by providing high quality juvenile defense representation, and what I'm seeing and what I'm hearing from my colleagues through the statewide work that we're doing about the challenges that they are facing.

Tim Curry mentioned this morning the Indiana assessment on juvenile defense that took place in 2006, and a lot of information was brought to light about children, the large number of children proceeding without counsel and concerns that were raised as it related to the representation they were receiving.

I'll be the first to say at that time Marion
County was not an anomaly to that. We were facing a lot of those same challenges and those same struggles. So I just want to talk a little bit about how we got from that point to where we are because I think that's important to the task force when making a decision about what juvenile defense should look like.

In 2004 our office had five full-time public defenders, who were drowning in the highest caseloads that we had in a very long time. Our office recognized that and came into compliance with commission standards by bringing on eleven full-time public defenders.

JUDGE TINDER: In addition to the five?

MS. JOHNSON: Yes. But it didn't stop there. Our staffing needs weren't just attorneys. We also were able to bring on investigators, paralegals, and social workers, who remain a critical part of the juvenile defense team. That took place by recognition of our administration, led by Bob Hill, in seeing that we needed that support both in the courtroom and out of the courtroom in order to provide high quality representation.

But I do have to say that it wasn't just increased staffing alone that allowed us to push
the envelope. We also had to have a cultural
change within our division. I work with colleagues
who our average length of time in the juvenile
division is ten years; so these aren't people that
are just coming and using it as a training ground.
But our representation now looks very different
than it did ten years ago.

I'll just give you a few examples of that.

Ten years ago -- I've been with the office eleven
and a half -- so around that time frame we would
show up for initial hearings. We'd sit in the back
of the courtroom. The court would appoint us. We
would sit down next to a child and say "Hi. I'm
your public defender." And then we would proceed
with the hearing, with no additional conversations
and paperwork in front of us.

Now we meet with every child in advance. I'm
not talking just outside of the courtroom door. We
meet with every child in advance before hearings to
gather information about them, provide information
to them, answer their questions, and help prepare
them for their hearings.

Ten or eleven years ago we would sit in the
courtroom, and we would make arguments about what
the child needed in relation to their care and
rehabilitation. Now we present evidence, not arguments, evidence, that includes information about the child and what their express interests are, what they want to have happen. We support that with psycho-social assessments and safety plans from our social workers. We support that in testimony and reports from experts and psychologists that we're able to hire. We are able to present evidence to the court and make sound arguments for waiver and for dispositional hearings.

In the past our participation terminated at the point of disposition; so a child would go on to probation or go into residential treatment, and their representation would end at that time. They had nobody who would sit with them when they would come back for review hearings. We wouldn't appear again until a violation was filed.

We've changed that. We represent all children until their case closes in juvenile court. So what we're able to do is we're able to intervene. We're able to prevent a lot of those violations from coming about. We are able to remain in contact with children who are in residential facilities and advocate for their early release.
So I point out these examples, and you may be thinking, well, isn't that what attorneys are supposed to be doing, meeting with their clients, present evidence, hiring experts, consulting with their clients and representing their needs? But, unfortunately, I am finding as I'm talking to colleagues throughout the state, they are much more challenged in being able to do that.

I don't believe, from most of the folks that I'm working with, that it has anything to do with the lack of desire to provide high quality representation. It has to do with lack of resources and lack of support.

Through the Juvenile Defense Project I've talked with over a hundred attorneys in various parts of the state, and I'm meeting with people that are very interested and motivated in providing specialized juvenile representation. But I'm also meeting with people that don't have paralegals, that don't have investigators, that don't have funds to hire experts. I'm meeting with people that juvenile defense is a small part of their practice, and so they have to manage representing these juvenile clients while they are overwhelmed with their criminal clients and clients with
increasing CHINS and TPR cases. So often our juvenile clients, who come to you with cases with these consequences, come last.

So I just, I just point all of this out and would just like to give a few comments as it relates to ways that we can equalize indigent defense representation for children in our state. I think we need to have training requirements, and we need to have standards in place for attorneys who provide representation to children. Right now we have commission standards that are pretty broad.

For example, to represent a child facing waiver to criminal court, perhaps the most severe consequence a child in the juvenile system could face, the requirement is you've been a attorney for three years, and you've gone to trial in two or more cases of that same level. That doesn't mean you've ever represented a child in juvenile court.

I believe that we need to have in place support so that attorneys can meet these standards. We need to have some financial motivation for attorneys to want to specialize in juvenile court defense and want to continue in this area of practice and not just view it as a training ground to move on.
We need to have access to resources, those support staff that I talked about that are critical to our work -- paralegals, social workers, investigators. And then we need to continue to build our community of juvenile defense.

Up until this last year, when I've been working with the Indiana Public Defender Council, we were a very scattered group. If you were to ask me who the attorney is who does juvenile defense in the next county, I would have no idea. But we've reached juvenile attorneys in over 50 counties, and we are really growing our community.

And I think of those juvenile defenders that I've been in contact with in rural counties, where they are the sole practitioner in that county, they have nobody to reach out to and talk to about their case and come up with different ways to approach the challenges that they face. And, fortunately, I feel we are providing some support and resources there, and so I am hopeful that we can continue in that work as well. Thank you.

JUDGE TINDER: Ms. Johnson, within your office do some of your juvenile clients later need CHINS/TPR representation, or do they come to you after that? How does that work?
MS. JOHNSON: Are you talking about whether they are also a child who is deemed to be a child in need of services?

JUDGE TINDER: Right, yes.

MS. JOHNSON: Yes. We do have many clients that are, we call them dual status; so they are active in a criminal case and they are active in a CHINS case. Unfortunately, children in Child In Need Of Services cases are not appointed attorneys in my jurisdiction. In those unique cases where they are in dual status, our court has developed a unique court where their cases will be heard together; and, therefore, our attorney is present, representing them on the delinquency case and can advocate for them.

JUDGE TINDER: You don't represent on the CHINS.

MS. JOHNSON: But if the child is no longer active in the delinquency case and has a CHINS case, those children don't have express attorneys representing them.

JUDGE TINDER: Other questions?

MS. JOHNSON: Thank you very much.

JUDGE TINDER: Thank you. And, of course, written submissions would also be greatly
appreciated as well.

Vicky Bailey.

MS. BAILEY: Thank you for the opportunity to speak to you today. I am as of yesterday the Assistant Appellate Division Chief for the Marion County Public Defender Agency, so a bit of a promotion.

JUDGE TINDER: Congratulations.

MS. BAILEY: Thank you very much. So I've worked as a federal public defender. I've worked as a federal public defender representing death row inmates in federal habeas. I've worked as a child attorney, representing parents in CHINS and TPR cases, and as an appellate attorney representing litigants in criminal cases, OAPs, delinquencies. You name it, I've done it. And so it's with that broad experience that I wanted to share my thoughts with you on some things I've seen that would be relatively cost effective ways to improve the quality of representation for some of our clients.

So as I'm assuming most of you know, under Criminal Rule 24 attorneys representing clients in capital cases have ongoing training requirements. Every two years they have to attend 12 hours of training related to their work as capital
litigators.

There are no ongoing training requirements for public defenders in other areas of representation. For example, appellate attorneys, to be qualified under commission standards, have to attend one six-hour training program once ever, and that's it. I can tell you that the appellate rules have changed so much in just the last five years that they are virtually unrecognizable. And so if you did your six hours of training a decade ago and haven't updated it since then, you're going to really be behind the times, and you're not going to be the best advocate for your client. And so I think that needs to change.

One way I thought this perhaps could be accomplished would be to change the commission standards to write additional training requirements so that people could be in compliance that way. Of course, that may require additional resources from the legislature, but our clients deserve it.

In terms of the trial attorneys, both representing criminal defendants and in delinquency cases, as an appellate attorney, when I get the records in these cases, I get to review, of course, everything that was done by the trial attorneys.
And I can tell you there are two particular areas where I have seen deficiencies and where I think, perhaps it might not be the most obvious areas, but where I think additional training would be really helpful.

First, in legal writing and research. Appellate attorneys, we do that all day every day; so that's not unusual for us to do. But attorneys file substantive motions. They have to be up on the current laws. And, frankly, there's no training, there's no real focused training for trial public defenders on legal research and writing in this state. It's certainly not a requirement, and I think it should be.

Another area that I think could be really helpful to our clients is if training was required in the area of negotiation and conflict resolution. The reason I think that is this: Most cases in this state are resolved through guilty plea or admission. And so for most of our clients, what we're going to be able to do to help them is help them get the best possible plea agreement and best disposition or sentence on their case.

We're not trained as public defenders how to do those sorts of things. And I think that
including that in part of the training, we would see better results for our clients. We get people who, the plea agreements that we see or that I see in a lot of my cases, they are just boilerplate. They are boilerplate printed out by the state. There is no counteroffer, no negotiating, no nothing. This is what the state offered, and this is what the client signed, and it's a done deal.

I think we can do better, and I think we need to teach our attorneys how to do better. And I think that this task force could encourage the commission to improve the training standards and requirements for public defenders.

You asked me to keep it to five minutes.

JUDGE TINDER: I did.

MS. BAILEY: So I can submit the rest to you in writing, if there are no questions.

JUDGE TINDER: I do have a question. In terms of who should provide the training, where should public defenders look for that type of training, both writing, research, as well as conflict resolution, mediation, negotiation?

MS. BAILEY: Well, so I think there are two possibilities. I mean, the commission standards require, my reading of them, that when a county
board is set up, one of the things that the agency or office is to do is to provide training. So that could be a requirement put on the local agency, if there is one, to provide specific areas of training. Because now it's just training in general. No specific requirements about what type of training has to be offered.

I know a lot of counties are outside the commission standards, so another option would be to do localized training through the Public Defender Council. I know they are doing some of that. They are going around to counties with different types of localized training. Which is a really good idea because local practices and mores are different; so what works in some places isn't going to work in others.

Another option would be to approach the state agency that handles CLE and see if we can get a waiver of some requirements for distance learning so that public defenders could do more online training in terms of research and writing. Those are some thoughts I had.

JUDGE TINDER: Great.

PROF. SCHUMM: Does your office have resources for training to send you places outside of
Indianapolis or even outside of Indiana?

MS. BAILEY: Not so much. We are the biggest office in the state. I attended a training last fall in Long Beach, California, that I had to apply for a scholarship for. It was a great opportunity. I took what I learned there, and I came back, and I passed it along to all my colleagues.

But if it's not an in-state training, where we can drive and hopefully don't need a hotel, the resources are just not there. We do a lot of brown bag training. We have lunchtime trainings. We do so many a year so that everyone can get their CLE requirements met.

JUDGE TINDER: Do you make any of your training available to public defenders in other counties?

MS. BAILEY: I don't know that. I do know all our training is available to our contract attorneys. I think it's possible that other public defenders can come for like just a nominal fee. But, no. And perhaps that's something we can look into making it more broadly available.

But cost is an issue. And so, again, the distance learning, remote learning requirements imposed by the CLE requirements, it's very small.
You can only do a few hours a year. So if those were changed or modified or some sort of exemption given for public defenders, I think it would open up a lot more cost effective opportunities for training in more areas that could save counties a lot of money and provide better representation.

Thank you.

JUDGE TINDER: Again, we look forward to your written submission as well.

From P.A.C.E., Rhiannon Edwards.

MS. EDWARDS: Hello. Thank you very much. I'm from P.A.C.E. That stands for Public Advocates in Community Re-Entry. We are a not-for-profit that only serves ex-offenders here in Marion County.

I just want to speak to you all today just to kind of give a perspective from the clients that we serve what changes we think would be effective for the clients that we serve.

Everyone that we see has a felony conviction, so they've already come through the system. What we see with a lot of them is the majority of them don't understand their sentence, their plea agreement, whatever they've signed. They really have not a lot of understanding of what that means,
in particular around modification. They all want to modify. They all feel like they are jailhouse attorneys, and they feel like they have the knowledge to do so.

JUDGE TINDER: They are on parole status at this point or work release?

MS. EDWARDS: They are on work release. They are on parole. They are on probation. Most of the ones that we see modifying are not parole. They are on work release or on PTSD from the Department of Correction, and they are all modifying. They are all modifying on their own.

I don't know whether or not all of them are even eligible for a modification. I don't think they even know that. So I know there is a lot of time and resources spent on their transport to court, the clerk, all that time around modification.

It's very hard to understand, you know, sentencing and the time cuts and all that just for a regular person, let alone for them. But I would just love to see a little bit more focus around making sure they actually understand their sentence, making sure they actually understand what that means, so that us, as community providers,
we're not going to do any legal assistance, but at least if we know a little bit, we know how to direct them, we know what to do with it.

The other thing that I think is really important is engaging the community organizations with public defenders more. We do that a lot only because we have certain contracts where we're working within, you know, behavioral health court or reentry court. But for the most part that does not happen on a regular basis.

So my client gets a technical violation, for example, and they are back with their public defender, and they are fighting that. We'll never get contacted about that. So there is information we may have about services that they are provided, services that they are eligible for. I'm speaking specifically around technical violations. Not so much new charges, but around technical violations, how can we help to mitigate.

JUDGE TINDER: Technical like failure to report an address change?

MS. EDWARDS: Yes, address change, or probation, they've not been compliant with probation. This is again primarily probation, community corrections. Not so much parole because
that's a whole different process, obviously. Just seeing how we can kind of work together a little bit better for the betterment.

I know a lot of counties don't have an organization like ours. But especially for Marion County, we are serving at least 1500 people a year. And so if there is a way we can help with information or sentencing. You know, why did this person go to a work release when we know his history of drug abuse, and we know the amount of drugs that are in the work release center, can we maybe help give some information so maybe a different sentence is applied.

That's pretty much what all I wanted to share, kind of our understanding from our perspective.

JUDGE TINDER: Questions?

Ms. Edwards, in terms of sentencing clarifications, so say a client is confused about the effect of a condition or something like that on a probationary term. What do you do? Do you send them back to their PD? Do you send them to the court? What do you do with it?

MS. EDWARDS: We have staff that are IRAS certified; so we can go into the system and try to look a little bit. We will try to contact the work
release probation to figure it out. The biggest question that they have is they are in work release. How much time do I have to stay in work release before I can modify home detention, or how much time am I on probation at the end of my sentence.

So I think they understand the big bulk of it. I got 365 days. That's my sentence. But they don't know what that means. They don't know how much time is in each area and when they're eligible to kind of drop down.

We see this a lot. We have a contract with the work release here in Marion County, and all the gentlemen in the work release believe they are eligible for a modification. They are all modifying. And, honestly, I don't really know how many of them really are, if they need to wait a while. We don't know. We're not lawyers. Some of them do get their modifications that they do on their own, but not all of them.

JUDGE TINDER: Maybe there are some to whom it was explained, but they are looking for maybe a better explanation?

MS. EDWARDS: Some of them, yeah. But most of them, they're just dead set. "Yeah, I've got 25
more days." Well, how do you know that? And then they find out that they have a year longer. So there is a definite disconnect.

A lot of them, I think they think they know it all; they've been in the system for a while. But I do think for many of them there is a definite disconnect in their comprehension of what they're signing onto.

JUDGE TINDER: Other questions?

Thank you so much. And if you want to submit anything in writing, please feel free to do that as well.

MS. EDWARDS: Thank you.

JUDGE TINDER: All right. Chris Shema from Vigo County.

MR. SHEMA: Judge, I promise you I am not stalking you.

JUDGE TINDER: That's all right.

MR. SHEMA: Thank you, Your Honor. Actually, I'm here more by proxy dealing with the CHINS issue. I was listening very closely to Mr. Little. I would say that one of the concepts that I was asked to bring to your attention on behalf of the people doing CHINS was somewhat similar to him in that when you're dealing with an agency that has
far more resources than we do, and you get to the
game late, the decisions have already been made.
The most important decisions have already been
made, which is removal of the child. There's not
an attorney present at those initial hearings.

And I think that parallels the concept that
we've been talking about in the Public Defender
Council for a while, this issue of, unlike in
federal court, Your Honor, where it would be
unheard of for somebody to lose their liberty
without being promptly brought before a magistrate
and have a detention hearing with counsel present,
the way it tends to work in state court is a
decision is made to take that person into custody.
The state will be given three days to formalize
charges, and many courts are of the mind that
there's no obligation to provide counsel until
charges are formalized.

If you are dealing with a holiday weekend or a
period like Thanksgiving, you could have someone
sitting in jail for seven days before they are even
appointed counsel. By then they've lost their job.
They may have lost their home. And more
importantly perhaps even than that is their local
friends at the drug task force, or whatever, have
had them marinating in the jail for three or four
days where they can come have them make
incriminating statements without the benefit of
counsel.

I think that the worst injustices I think I've
seen over the 20-some years I've been practicing
here all happen right at the start, right at the
very beginning because there is no counsel
appointed. There is nobody there to protect their
interest.

I don't do CHINS cases. I was asked to bring
that to the attention of the board; so I'll leave
it to the people who do that to address that
concern further.

And I did want to follow up, Judge, with the
question I raised last time about the concept of
merit board commission protection for public
defenders. I do find it amazing that firefighters
and law enforcement officers have more statutory
protections as far as doing their job than we do.
And 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.
And as a member of the Public Defender Council who was on the outreach committee, I've heard from attorneys throughout the state where they feel like that's their biggest problem. They are trying to do their job. And whether it is a perception they have that is flawed, or whether it is real, they perceive that sometimes, if they are too strong an advocate, if they are fighting for experts, if they are fighting for the resources, they are going to be penalized because they are like Oliver Twist, asking for too much. Thank you.

JUDGE TINDER: So the commission that selects public defenders should be independent of the judiciary; so it's not the judge actually hiring the public defenders?

MR. SHEMA: I think judicial input is important, but it should not be controlling.

JUDGE TINDER: What would be, from your perspective, the ideal appointing authority? What would that consist of? What would that look like to us?

MR. SHEMA: Judge, I can only tell you that there are two models that I think are worthy. I wish Monica Foster was here. I always enjoyed practicing in front of Your Honor, and I enjoyed
immensely practicing in front of Larry McKinney. I hope you don't take offense to that.

JUDGE TINDER: Not at all.

MR. SHEMA: I never felt like if I got into a situation, and you know, Your Honor, sometimes as a public defender you feel like, gee, there's a prosecutor over there, but the guy I'm really doing battle with is up on the bench. Okay? And having that degree of professional independence I think is important, and I sort of felt like I had that with the CJA panel. Obviously, you guys had a lot of authority.

But I can tell you that doing merit board work in Terre Haute, I have had firefighters and police officers who were up for being fired for purely political reasons. And we were able to protect their jobs successfully because the merit commission said, no, we're not going to demote this person or fire this person because of the local politics of the land. And they do have statutory protections that we don't have.

So with that I'll pass it on. Thank you, Your Honor.

JUDGE TINDER: Any questions?

PROF. SCHUMM: I have one. So in Vigo County,
how would you all handle the situation Ms. Edwards
mentioned? If someone wanted to modify their
sentence, and they were former clients, are they
still your client? Or after sentencing are they
not your client?

MR. SHEMA: That is such a great question. It
dePENDS ON WHO YOU TALK TO, PROFESSOR. MOST OF THE
time we don't even know about it. A lot of the
times the appearance of the attorney is withdrawn
once the sentence is entered.

It is a hole in the system that has not been
fixed because some people are filing modifications
on their own. Occasionally, a judge will pick up
the phone and say, hey, do you want to come over
and handle this modification.

It does not factor into our numbers as far as
our caseload requirements. Many public defenders
sort of chafe at the idea of being asked to do more
and more and more. And we are supposedly under the
system that monitors our caseload, but you are not
counting a lot of what we do. And that would be a
perfect example of one.

So it depends. It's just ad hoc. There is no
system in place to deal with modifications. And I
would say that while there is a system to deal with
probation violations, that's a similar issue, because we talked about how numbers are counted. It's one thing for the chiefs to say, well, we're in compliance. We're in compliance. But we get no consideration for probation violations. And since Level 6 felonies will not go to the DOC, in Vigo County our judges try very hard not to send people to DOC. I personally have been involved in as many as ten and eleven probation violations on the same Level 6 or Class D felony for which I get zero credit.

Now, I don't mind doing it. You know, it's my job. I'm going to represent the person. But it does seem like it's a flaw that that is not taken into consideration when you are measuring caseload restrictions.

Does that answer your question?

PROF. SCHUMM: Yes. Thank you.

JUDGE TINDER: Any other questions for Mr. Shema from Vigo County?

I'd like to call on Stacy Uliana now, who has submitted a written submission on part of the very subject of Mr. Shema's comments regarding the need for independence by the public defender and the courage it takes to be aggressive for your client
when your appointing authority may be the person
you're making that argument to.

MS. ULIANA: Thank you, Judge. First of all,
I wasn't ready to speak, but that's all right. I
submitted a written submission for a reason.

JUDGE TINDER: I have never met a public
defender who wasn't ready to speak.

MS. ULIANA: I will sum up the courage.

I agree with everything I've heard thus far.
The biggest issue that stuck out to me, as I've
helped public defenders around the state for the
past 20 years, is the independence. There are so
many times I've had public defenders call me on the
phone and be upset. You know, "I have this person
that really needs help. I need a mental health
expert, but I can't do that." I'm like "Well, why
can't you do that? Here is the case law. Go to
your judge. I'll even give you a motion. Fill in
your client's name. Go to your judge and ask."

"I can't do that in my county. We don't do
that in my county." And they are really afraid of
their job. And I don't know if it's their own
perception or it's a reality, but this happens
mostly in rural counties where people know one
another, and there is an environment there that you
get along to move along. And the person who gets
the cases going, who costs the least, is the person
who is going to get the public defender job. And
they are going to stay in that public defender job
forever, and then their children are going to get
that job. And nothing is ever going to get better.
Nothing is ever going to change.

I'm in Johnson County, and that's happened in
my county, too.

JUDGE TINDER: So how do we get to that level
of independence? What sort of array of appointing
authorities should there be rather than having the
judges make direct appointments, direct contracts
with counsel?

MS. ULIANA: That's a hard question. I mean,
right now we have the boards, which I think work in
a lot of places. But in some places they may end
up doing the same thing that judges do, especially
when it comes to being cost efficient.

I think the boards is where it starts. There
is always the idea of a state public defender
system. I don't know if you all are thinking about
that. I know Kentucky has one. And I'm sure
there's a downside to it, but the upside may be
they are completely independent.
Also, another upside is training. I heard from Victoria Bailey about the training. The one thing they've got going in Kentucky, before you even become a public defender, you have to go to a week or two-week long training where you stay there, and you learn.

You go through all these different segments. For instance, you'll have a two-hour segment on bond hearings, and you stand up and pretend you are in a bond hearing. Same thing with a suppression hearing. That's some amazing training, and it's required to be a public defender because they have a state public defender system.

I can't tell you that I am versed enough on the subject to say that that's where we should go, but I think it's something that you should consider. But the more independence from the judiciary the better.

I think there are a lot of good, fine judges out there, but I think we all get used to the environment we're working in. And if you have someone who's constantly making it more difficult to get a case to completion, then they are going to be cut out of the system.

And you need public defenders to be that thorn
in the side. I mean, I don't know why we all chose this profession, but there is something about us that likes to be a thorn in the side, and you need us.

So I guess my observation would be we need a better environment for public defenders to find the courage to stand up and say what they think is wrong. And we need better caseloads, always better pay, but also to feel free and safe that you can stand up and say "objection," and the most you're going to get is maybe an eye roll and an overruled.

Do you have any other questions?

PROF. SCHUMM: I do. You've done appeals all around the state, different places. So what do you see as the problem or solution for appeals? Do you think it works the way it is now, where you get an appointment from whatever county? Do you think that allows feedback and resources for those lawyers in those counties to ask you for help, or they don't really get to you until after you get the cases? What do you think is the answer for appeals? Do you think it works well now the way it is?

MS. ULIANA: I think appeals should be the first place we should get a state public defender
system. The system now, I don't think it works at all. I think appeals is the first race to the bottom. They give the contract to the lowest bidder, and the lowest bidder is going to do the least amount of work. So that's the first problem with appeals.

There is a wide array of competency in appeals. I've read a bunch of appeals, helping other attorneys. I think Marion County does a great job, but there are some other counties out there where you don't even know it's an appeal when you read it. And that's not, that's not right.

And, also, if you get a system of statewide public defenders, they can reach out to the trial attorneys who can get a system of coordinating with them.

Marion County does that really well. If they have an issue they want to raise up, they'll talk to their trial attorneys and say, hey, start raising this issue in this situation. And then they work with the appellate attorneys to preserve the record and to create that record. I think that would be a wonderful way to do it all over the state and to bring some consistency to appeals.

Another problem with appeals is that a lot of
judges won't even pay for a transfer. So I have had so many attorneys call me and say, "Well, I don't want to do a petition to transfer, but my client wants me to do one, and I'm not going to get paid for it. What should I do?"

I'm like "Well, you have to do it. It's part of the appeal." But a lot of the judges out there don't think that's part of an appeal. So, yes, I don't think the appellate public defense system is as good as it could be right now. I think it could get a lot better.

JUDGE TINDER: So maybe some judicial education on the idea that the petition to transfer is part of that appeal?

MS. ULIANA: Well, that would be great. And maybe some judicial education on that people shouldn't plead guilty at initial hearings, too. That's another thing I've seen a lot. It's so painful to sit in a courtroom, waiting for your turn to be called, and see these people on video who need to get out because they need to go feed their families and get back to work, and they say "Do you plead guilty or not guilty?" Which they shouldn't even ask that in an initial hearing. And they say, "Well, I'll plead guilty if I get out
today."

I've seen that so many times. They get out today, but then they have a conviction forever, and they never have an attorney look at it. So that's another thing that if you were going to have judicial education, it would be on that people should not be pleading at the initial hearing.

PROF. SCHUMM: So what's the solution to that? Part of the problem is the bail problem; right? If someone is out, they are going to be less likely to think they have to plead guilty. Is the solution something like Criminal Rule 25 for adults? If you are not going to hire a lawyer, if you're indigent, that you can't plead guilty before you have a lawyer appointed for you?

MS. ULIANA: No. I think it is not encouraging people to plead guilty at initial hearings, which is what's happening. Judges are asking "Do you want to plead guilty or not?" I think getting rid of bond, first of all, is one way to get people out when they are dealing with misdemeanors or low levels, but No. 2 is to not encourage it.

If somebody really, really wants to plead guilty, and you go through all the proper steps, I
guess that's their right and wait their turn. But
I see it going a step further, and it's a way to
clear your dockets. And if we're going to start
doing that and giving the people the option to
plead guilty and encouraging that at the initial
hearing, you need a public defender there.

Does that answer your question?

PROF. SCHUMM: Yes. I think you started with
hostility, but I think you maybe kind of agree that
it's good to have a public defender, especially in
felony cases before somebody pleads.

MS. ULIANA: Right. So you either have a
public defender or you jump start giving bond more
often to people who are put in that position.

MR. LANDIS: Since you go around and see a lot
of courts, how many or how often do you see public
defenders at the initial hearing prepared to be an
advocate for their clients?

MS. ULIANA: I don't think I've ever seen
that. Things may be changing with, you know, the
pilot project.

MR. LANDIS: But the right to counsel attaches
when?

MS. ULIANA: At the time of arrest,
Mr. Landis. It's in the Constitution.
MR. LANDIS: I'm just curious.

MS. ULIANA: Yes. It's not happening, and it is a problem. I heard Mr. Little talk about it, and I've seen it often.

JUDGE TINDER: Mr. Shema?

MR. SHEMA: Thank you, Your Honor. I just want to point out, too, many judges around the state, when you use the term, initial appearance, they consider that to be the appearance after charges have been formalized when people sometimes have been sitting in jail four or five days. I consider the term, initial appearance, to be the first time they show up in court. But there is a semantic problem.

Perhaps we need to, talking about judicial education, if we call initial appearance the first time they are brought into court after charges are formalized, what are we calling that hearing that we used to call a probable cause hearing that a lot of judges don't even have anymore? I've seen people pleading guilty the very first day they are brought into court because they don't want to lose their job; and they're told if you plead guilty, we'll let you out today. So I just want to point out that term, initial appearance, means different
things in different courts.

JUDGE TINDER: All right. Thank you.

Laura Pitts?

MS. PITTS: Good afternoon. Thank you very much for letting me speak. I am one day into being the major felony supervisor for the Marion County Public Defender Agency.

JUDGE TINDER: Congratulations to you.

MS. PITTS: Thank you. I wanted to talk a little bit about commission standards because I think that's one area that great improvement can be made. Currently, obviously, there are no standards for misdemeanors. So there's 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. We can never, never fully staff misdemeanor court the way it should be because there are no commission standards. There's no reimbursement, so we do what we can.

But a lot of people, I think, perceive misdemeanors to be not such a big deal. But it is a big deal because there are so many collateral consequences to misdemeanors.

JUDGE TINDER: Are there standards such as ABA
standards or standards of a PD system in another state or area that you could point to that audit the misdemeanors that you look to?

MS. PITTS: It's not something that I've personally researched.

JUDGE TINDER: Okay.

MS. PITTS: The other area that I think is a problem with commission standards is major felony cases, which obviously is primarily what I do. Major felony cases are all weighted the same.

For example, a Level 5 felony counts as one case, and a murder counts as one case. To sort of illustrate why this shouldn't be and why this is a problem, I looked at some of my cases that I recently closed out.

I looked at two of my last murder cases of how many hours I spent on those cases. I spent 62 hours on one and 45 hours on another. I looked at two Level 5 cases that I recently closed out. One was a pretty run-of-the-mill domestic. One was a habitual traffic case. I spent 5.9 hours on one and nine hours on the other.

There is a huge difference on how much time I'm spending on a murder case versus a Level 5 case, but they count the same. They are one case
in my limit of how many cases I'm allowed to carry.
And I don't think that's fair or that's right
because so much more work is going into higher
level cases.

JUDGE TINDER: So, again, what should the
ratio be, or what other ratio should we look to
that aren't currently being used as the standards
here?

MS. PITTS: I think one way that you may be
able to look at it is we, and I don't know that
everybody does this, but in our county we keep
track of how many hours we spend on our cases; so
we actually have those generally by level. I think
you could look at using our data to see how much
time are you spending on a Level 5, how much time
are we spending on a Level 1, to sort of see what
that ratio is. And that could be a way to sort of
come up with a calculation of does a murder count
as two cases versus a Level 5 as one, or what have
you. I think that's something you could use.

JUDGE TINDER: Thank you.

MS. PITTS: The other thing I wanted to say,
which was kind of said earlier by Mr. Shema, is
probation violations. Those don't count. The only
time we get counted for those is if private counsel
represented the person on the underlying. Then we'll count the case. But all of our PDs in all of our courts have to do probation violations.

On the issue of modifications, we don't do modifications, and I wish that we could or that we did. But, again, that would be something that if we did, it's not going to count in any way. And at this point we don't have the time or the resources because of the other things that we're doing.

We actually have just started covering initial hearings in all the major felony courts. We are slowly rolling that out where we are going to have an attorney at each initial hearing. That's another time commitment for our attorneys, but we don't get any sort of case count for that.

So our attorneys do, I think, an excellent job with what they have, but we could always use more attorneys, more time, which we can only have if we have less cases and less things to do.

JUDGE TINDER: So if a probationer comes back, indigent client, wants a modification of the terms, your office says, "Sorry. We don't do those. You have to do that yourself"?

MS. PITTS: We generally don't do modifications. I personally sometimes will do them
for a client, if I have time, but sometimes the
time is not there.

JUDGE TINDER: Other questions?

PROF. SCHUMM: About covering initial
hearings, what does that entail? Does that entail
being able to talk to the person ahead of time?
Jill had mentioned sort of what it used to be like
in juvenile versus what it is now. Are you able to
get appointed, able to do things at the initial
hearing, or is it just you are able to be there and
start doing your work later?

MS. PITTS: We'll talk to the clients ahead of
time, obviously trying to find out if they are
asking for a PD or not, go over the charges, go
over the penalty ranges, go over the rights with
them. We are asking the judges then to do the
indigency determination first, as opposed to a lot
of judges will go through everything else first and
do the indigency determination last.

And so once they do that and are more
acquainted, they are with the client throughout the
rest of the hearing. If the court will allow us to
waive formal reading, we can do that. We can ask
for a bond hearing. If we believe there is a
probable cause issue, we can address that.
PROF. SCHUMM: And the bond hearing is later? There is no way bond can be addressed at that time?

MS. PITTS: It depends on the offense. If it is an offense with a victim, then the court judges are generally not going to address bond at that moment. Otherwise, it would probably be a judge-by-judge thing as to whether they are willing to address it at that moment or set it for a bond hearing.

JUDGE TINDER: Other questions?

Thank you, Laura.

From the National Association of Mental Illness, Marianne Halbert. Good afternoon.

MS. HALBERT: Good afternoon. Thank you for the invitation to speak to you today. My name is Marianne Halbert. I'm the criminal justice director at NAMI Indiana, National Alliance on Mental Illness. We are a nonprofit that advocates for the improvement in the lives of people impacted by mental illness as well as their family members.

I was formerly a public defender in Marion County. It's so nice to see a lot of my colleagues that I used to work with here today. And in that role for 14 years I represented only clients with serious mental illness. Luckily, they have a
unique specialized position there just to really focus on that.

I represented people at involuntary civil commitment hearings as well as in what is the PAIR program, which is our pretrial mental health diversion program that a group of us developed. So the last seven years, as criminal justice director at NAMI Indiana, my role is to try to reduce the number of people with mental illness in jails. We also have a help line where we get a lot of calls from people from across the state.

Part of the concern I wanted to share with you today, we hear from a lot of, it seems to be particularly mothers who call, and they have a loved one in the jail. And fortunately we don't hear many complaints about Marion County because we have a really robust system there. But it seems, the impression is a lot of public defenders in the smaller communities don't understand mental illness. They don't understand the impact that that might have on a person they are representing. They don't want to hear information about it, and they want to just sort of treat it business as usual.

I'm probably preaching to the choir when I say
that there is an overrepresentation, a disproportionate number of people with mental illness in the criminal justice system as opposed to the general population, and that they spend five times longer in jail on average than people without mental illness.

So I think having just a basic understanding of mental illness and some core competencies in that regard as a public defender is critical. You can't really engage in public defense and not have clients with mental illness, even if that's not something you are comfortable with.

I know you guys have a lot of different issues you are going to be looking at, but as far as representing clients with mental illness, I hope that part of what comes out of this task force is finding ways to make sure that every public defender understands how to represent a client with mental illness.

JUDGE TINDER: Would you go to our website and look at the resources we've got listed and see if there is some publication that NAMI has or some other organization that would be helpful to us to give us a background about the effects of mental illness on indigent defendants?
MS. HALBERT: Yes. I would be happy to. Thank you.

MR. LANDIS: What other resources would public defenders need to be effective in identifying, screening mental illness?

MS. HALBERT: I think, first of all, just a basic understanding of what the major mental illnesses are. A lot of attorneys, unfortunately, don't even understand what schizophrenia is, or what's happening to a client when they are experiencing symptoms like that, let alone other things like mania, symptoms of PTSD or TBI. So I think just a basic understanding, an overview of major mental illnesses, and then digging deeper into that in terms of how that might have impacted their behavior at the time of the commission of the offense and how that would impact their representation throughout the course of the process while they are resolving the case one way or the other. So I think it's a few different levels that we want to tackle there.

MR. LANDIS: I'm just trying to identify, I mean, it's difficult to say we are going to take 1400 public defenders and like that make them experts. Is there some way to bootstrap that into
saying if they have these amount of resources, this kind of additional, whether it be social workers or mental health experts that can help when they think there is somebody that they don't know if they are just in an acute state or there is a mental illness or something, what would be the good next step to take as a resource to say can you screen this client to see if you think there is a mental illness?

MS. HALBERT: I think that that's a really good point. I think the challenge will be apparently in the smaller communities, where you may not have a social worker that you have access to. So that may be something you guys can come up with, maybe some sort of regional resource or something. Because I do think that we don't want public defenders diagnosing clients, obviously. We need a mental health professional to do that. But at least to understand, as you said, to identify is this someone I should have screened or assessed and look a little deeper potentially even before going as far as entertaining a defense of mental incompetence, if that's appropriate depending on what they're seeing.

Yes. I think to have some opportunity for
that assessment to guide what direction it goes would be helpful.

JUDGE TINDER: I suppose there are sentencing dimensions as well that mental health factors weigh into.

MS. HALBERT: Yes. And I think there is a lot of confusion about that, too, because I think some people think that if the client gets a guilty with mental illness, they'll go to a state hospital or get treatment. There are some people who think we can have the judge order them to get treatment if they go to prison, and you can't really do that.

So I think there is a lot of misunderstanding about, as you said, the sentencing and the consequences of various resolutions to the case in terms of what's going to happen to the client.

PROF. SCHUMM: I have a question about something that we've shared in our lives. Representing people -- not in our lives.

MS. PITTS: Yes. You did an appeal for me on a client.

PROF. SCHUMM: So does NAMI, do you have an understanding of other counties, how things work? In Marion County someone is always going to get a public defender. In other counties it's my
impression that sometimes judges don't appoint public defenders. Even though the statute says right to counsel, I think some think that means you have to be indigent. Which it's really hard, if you have a commitment sought against you, to go out and hire a lawyer, if you don't have the resources to do it.

Do you get calls about that, or do you have an impression of how that works in other counties?

MS. HALBERT: I have tried to find out how that works in other counties. I actually contacted Indiana Court Services before they changed their name to see if they tracked civil commitments in different counties and how that works. I've not gotten -- they have a lot of great people there who work on different things, but I don't think that's something that's been made available.

I don't know the answer to that. I would like to know that as well because I have heard I think the same impression that you have that not everyone who goes through involuntary commitment gets to have a lawyer.

PROF. SCHUMM: Could you talk just real briefly, since we have a court reporter here, of why it's important, having done those things, that
someone have a lawyer at a civil commitment?

MS. HALBERT: Absolutely. Even though a civil commitment is not criminal in nature, there are a lot of things about it that certainly feel criminal in nature. They can be handcuffed while they are being brought there, depending on the security people that are transporting them.

Their civil liberty interests are at stake. They can be involuntarily held at a local acute assisted care facility and not be allowed to leave. They can be sent to a state hospital where they can be held indefinitely; although there are periodic reviews.

They can be forced, if a judge finds that the evidence warrants it, they can be forced to take medication that they may not want, that may have side effects for them. They can be forced to undergo electroconvulsive therapy or ECT treatments.

So there are a lot of things where they can have their liberty, their freedom, their bodily integrity, those rights impacted. So it's really important to have a public defender who can help advocate to make sure that they get due process through that proceeding.
JUDGE TINDER: You used an acronym, TBI.

MS. HALBERT: Traumatic brain injury.

JUDGE TINDER: Traumatic brain injury.

MS. HALBERT: Yes. I apologize.

JUDGE TINDER: All right. Other questions?

Very helpful. Thank you. Again, any written submissions when you see our website, we would be delighted to receive anything.

MS. HALBERT: I'll follow up with that. Thank you very much. I appreciate it.


MS. SUTTON: I don't really have any formal remarks, but I guess I can answer a few questions on what's gone on before me today. Regarding CLEs, we do usually open up our CLEs at least twice a year. We have a couple on holidays.

JUDGE TINDER: How would other PDs know what you are offering and what is available?

MS. SUTTON: The Public Defender Council has a LISTSERV, and we send out notice on the LISTSERV. Sometimes we charge and sometimes we don't. If we do charge, it's usually $25 for three credits, which is pretty reasonable.

Then misdemeanors, the caseload under commission standards is 300. We think that
would probably be fine. What we would be asking for is the legislature to include that in their commission standard reimbursement.

I think right now our misdemeanor attorneys are probably averaging around 400 a year, with the exception of traffic court, which is over a thousand, but that's another whole separate issue.

If we are fully staffed in misdemeanor court, I think 300 would be extremely doable for our attorneys. We sort of changed the way we represent misdemeanors. We used to just have attorneys assigned to a day, and whatever cases came in, that's what they have. That means you could come in and have a file handed to you and do a bench trial of a client you never met before.

We no longer do that. Our attorneys are assigned clients, and those are their cases. And when the clients return, they have the same attorney.

We've seen quite a rise, and our appellate division can attest to this, quite a rise in trials being done in misdemeanor court where previously that was pretty unheard of.

And then the initial hearing project, we are starting to do them in major felony, but back in
October we started doing initial hearings in all misdemeanor and Level 6 cases in Marion County.

I was just recently at a Criminal Term meeting, and the courts have declared a success because our jail numbers have gone down significantly with the assistance of public defenders in an initial hearing courtroom and able to secure people's release at an earlier time.

We're also able, we have a social worker in the initial hearing court, and that person is able to identify mental health issues, addiction issues.

We've been able to help people with placement. We get a lot of people arrested, sadly, from group homes. We are able to figure out another group home for them to go to because we don't want them let out onto the street to fend for themselves because they are just not able to.

We've been able to argue cases. We've had cases dismissed in there. The courts have issued sort of a pretty hardline rule about how much time the prosecutors are going to have to file charges. And if they are not filing them within that time, we've had cases actually dismissed.

So far preliminarily it's been, I would say it's going in a positive direction. Our controller
has just allowed us to hire, has promised to hire another attorney and another social worker and hopefully another support staff person down there.

It's very fast paced, and it's a very heavy volume, and right now we just have two attorneys and a social worker. So that's not enough staff for that. But it has been very positive, and I would advocate for that for the entire state.

You know, we have a lot of hopes and wishes with that initial hearing court. We would like to be able to direct refer people in the problem-solving court from that. One of the big problems with problem-solving court is there is quite a delay for people who need to be in problem-solving court to get from their regular court into those programs. So we kind of see the initial hearing court as a possibility of a means to get people directly into those problem-solving courts.

So I know you have many committees within this task force. I would love it if you formed a committee to come over and look at Marion County. We've done a lot of really great things.

JUDGE TINDER: We do plan to visit a number of public defender offices, and certainly the largest
one is one we would definitely be looking at.

MS. SUTTON: Well, we would welcome you. We have social workers on staff that we have found really alleviate a lot of issues regarding clients and client contact and resolving client issues and go towards more of a holistic client representation model.

We would love for you to come and see our appellate division, our juvenile division. Everybody is doing remarkable work. We're limited by funding, and that's where we need help.

JUDGE TINDER: Other questions? Thank you.

As Mr. Shema alluded to, I ran a problem-making court. Judge McKinney had a problem-solving court.

Lucy Frick.

MS. FRICK: Hi. Thanks for having me. I'm Lucy Frick. I'm now in my third year of practice with the Marion County Public Defender Agency. I have been in Major Felony Court 3 since Labor Day weekend. I am going to change my comments a little bit. I had some prepared, but I don't think it's actually need now, because I know it's going in the right direction. I agree with what everyone has said so far.
It's really hard to articulate probation. Probation is so labor intensive. I don't know how to organize it better. I know we need more time. Probation is more sort of you fly by the seat of your pants the day you're assigned to probation, and you hope it works out.

I end up having so many clients that aren't going to contest delegation, but they aren't people who really should be violated. I had a client who was a 17-year-old kid on home detention, so we could, of course, talk about the problems of putting teenagers on home detention, but he was definitely not compliant.

Is that really who you want to assign to DOC, a 17-year-old kid who just like can't deal with home detention, doesn't have support at home, is a teenager with a teenager brain?

I could tell when I was talking to him in jail it was almost like talking to -- it was just wild talking to a teenage kid about why he can't comply with home detention. So I had to work on him, and how do you do that? My job was to do it, but I also had to take time from my regular caseload to help keep the 17-year-old kid out of prison.

So probation is just so labor intensive. It's
the least amount of time, it's the time that I feel
I'm willing to prepare. I come to court, do my
best. And I think every single person has
basically a complex problem that needs a lot of
work. And it's really hard to feel like I'm
actually serving my probation clients. Probation
is rough.

I also echo Laura Pitts' comments about
misdemeanors. I could carry on about misdemeanors.
I really like misdemeanor court. My first year as
an attorney in misdemeanor court, I had a thousand
clients that year. I may have had more. That's a
rough estimate. I had to count them one time for a
motion I was filing actually, and I was shocked by
how many I had at one time. And misdemeanors, boy
do they matter.

At all levels they matter, but at the
misdemeanor level I was amazed at how many of my
clients, they kind of get by. They basically have
housing. They have some kind of work. But just a
day or two in jail, and they lose their job. Then
they don't have money for housing or health care.
Misdemeanors really are catastrophic for people
that are trying to get by.

JUDGE TINDER: And there could be potentially
deportation results.

MS. FRICK: Yes, of course.

JUDGE TINDER: And domestic violence convictions can result in a felony, carrying a firearm, et cetera.

MS. FRICK: Right. I've only been in major felony for a couple of months, and they're easing me in on Level 5, which is real nice. So my colleagues that are in major felonies can speak more to those issues.

To me, when I was in misdemeanor court, it was breathtaking how many people are there. And it's a colossal waste of time and taxpayer dollars. And there are so many people that get swept up in misdemeanors.

Does everyone know that this is going on? I mean, I have so many clients, group home clients, people who have really just untreated trauma, and so now we're criminalizing them for not being able to access meaningful therapy.

Drug abuse, boy, I could carry on about that. We are treating it like it's a one-time deal. You can get rehabilitated, and you're fine. Really, we should be treating it like a chronic disease, which is what it is. It's an addiction you have to be
dealing with for the rest of your life.

So misdemeanor court, to me it was breathtaking. That experience was really wild to see how many people get swept up so fast in the criminal legal system and then ultimately never see justice, and then they have a conviction.

And if you're getting people who it's their first offense, they're screwed. In Indiana, I say lovingly, it's pretty darn contorted. So the folks who get swept up on a misdemeanor charge, like a marijuana charge, or you know what, petty theft, I don't care about someone who stole something from Walmart. I don't think that person should be excluded from the social network because they have a misdemeanor theft.

I can't tell you how many clients that say to me, well, now I've got a theft, so I'm never going to get hired again. And so then is it any surprise that that person reoffends and reoffends and reoffends? We're cutting them out of access to any type of meaningful life.

So I really feel very, very strongly about misdemeanors. And I think our attorneys at that level need more support, fewer clients.

Our social workers are worth their weight in
gold. They have been awesome. I have a lay understanding of mental health issues, but that's not my training. My background is in the law. Our social workers are wonderful at that level.

I could carry on. Does that help?

JUDGE TINDER: Thank you. Any questions?

PROF. SCHUMM: So 300 was a number put out. Do you think you could have handled 300 clients in a year, misdemeanors?

MS. FRICK: If I had had 500 a year, that would have felt like a dream. A thousand was bananas.

MR. LANDIS: How many of your, roughly a percentage of your misdemeanor clients stayed in jail because they couldn't make bond?

MS. FRICK: Most of them. I mean, I was really lucky I was before a judge who really cared about our clients, and I felt her to have a true social worker heart. So she let a lot of people out, appropriately so. But I was amazed when I would talk to my colleagues in different courts how many people are in custody for -- you would be shocked. They are there for marijuana. They took, you know, a CD from Walmart. You'd be surprised how many people stay in custody in misdemeanor
MR. LANDIS: I wouldn't, but I wanted you to say that for the record.

MS. FRICK: And the other thing I'll say about misdemeanor court that I think should change is that I think that misdemeanors are a trap. I think people get hooked. And I also was shocked by how many people go on probation.

No one in misdemeanor law should be on probation. Our clients can't afford it. It's a trap. Probation I think is trying their best but they -- I say this kindly. I don't want to point fingers. I've had so many clients feel like they are in an adversarial relationship with their probation officer.

At the misdemeanor level, why are we wasting taxpayer money? Somebody has a marijuana conviction, why are we putting those people on probation? Then, again, they can't afford it. They miss a drug test. You know, they are people who have stressful lives and untreated trauma, and so of course they smoke pot sometimes. Are we shocked that those people need some kind of escape?

So then they fail a drug test that they are getting charged for, and then they get revoked on
probation, and they go to home detention. And then they screw up on home detention for all those reasons, and then they go to jail for a misdemeanor. We shouldn't be putting people, maybe the drunk driving, but basically everything else in misdemeanor court shouldn't be on probation. So that's that.

JUDGE TINDER: Any questions? Thank you so much. And the point that you had intended to, you are certainly welcome to submit in written form as well.

MS. FRICK: Sure. Thank you.

JUDGE TINDER: Mr. Mark Russell from the Urban League. I'm sorry, Mr. Russell, I didn't call you on earlier. You had not made our list somehow.

MR. RUSSELL: No, that's okay. I do appreciate the accommodation. It's a crazy week.

Members of the task force, my name is Mark Russell, director of education and advocacy for the Indianapolis Urban League. We were founded in 1965 by the late Sam Jones, who I was privileged to have hire me several years ago.

The reason we're testifying today is we have some serious concerns about the state of the public defender system in Indiana. For those of you that
may not know, the Indianapolis Urban League, on behalf of our thousands of clients, we have a variety of human services that we offer.

One of the major ones is workforce development. We just had a new class start this week. There were about 90 people that came to the orientation for that ten-day session. We do ten of those a year. Anywhere between 40 and 60 percent of our clients have criminal records. We do not serve folks that have sexual offenses or violent criminal histories; so reintegration is extremely important to us. We have a network of over 130 employers that we work with to help people transition back.

And we also recently became a center for working families, so we are not just doing Band-Aid approaches to serve the needs of these clients.

So I wanted to lay that background yet before I make these other comments in that we're very cognizant that all lawyers and their competencies are not created equal. We're very cognizant of the fact that income, or more specifically the lack thereof, should not drive access to justice and to competent equitable legal representation. The 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. And we also need to keep in mind
that many of the offenders that we serve, for
example, struggle with literacy. You give them the
test of adult basic education, many of them are
coming back. And I believe my friends from
Community Action and from P.A.C.E. would verify
that many folks function between fifth and eighth
grade levels of literacy. Obviously, that has
major implications for being competently
represented in the legal system. So we want to be
aware of that.

And we should also note the fact that we are
concerned that the current system accepts and
indeed encourages by default systematic
discrimination driven by income. And we know that
income -- I'm not an attorney, but I know many of
them -- we know that income --

JUDGE TINDER: We won't hold that against you.

MR. RUSSELL: Okay. We know that income is
not a protected class under our civil rights and
other laws but, again, we are concerned that the
current system accepts and encourages
discrimination by income, by class. But it also
has a disproportionate impact on persons of color and non-English speakers, as well as the poor.

So we would highlight the fact that there are real consequences for low income, non-English speaking Hoosier citizens, who can lose their job, lose their homes, lose their spouse, lose child custody because they are caught up in legal complications that are not addressed by competent counsel. This is especially true in misdemeanor cases, which many of our folks have drug convictions, and they don't have access to legal representation because they are misdemeanors.

So we just want to say I looked up several resources, but probably the best I saw as a lay person was this article from Indiana Lawyer that talked about and quoted several of you in there. So we wholeheartedly agree with their recommendations, particularly limiting the conflict-of-interest potential, having a set training curriculum for public defenders.

Limiting the ability of indigent folks to have access to competent attorneys is one of ours. And we would like to see an independent system that prohibits contracts and financial disincentives to providing effective representation. We don't
believe that a public defender should be attorneys for hire, subject to the whim of judicial
discretions or indiscretions that may negatively impact their clients.

JUDGE TINDER: Mr. Russell, would you do me a favor of checking out our website to see the resources we've got listed, and if you're aware of publications of the Urban League or other organizations that we're lacking that we ought to have as a resource?

MR. RUSSELL: I'd be glad to do that. We are not a legal services provider. We are a human services provider.

JUDGE TINDER: Sure. Things we ought to know that you don't see and feel should be on there, please let us know about them, and we can get them. Also, any additional supplemental responses you would like to make, we would love to receive them in writing.

MR. RUSSELL: We will get something in writing to you. And we do want to commend you for taking this time to hold this important forum and paying attention to it. We live in a state constantly where we're told local decision-making is the best, that government which is closest is the best and
most sensitive. But we cannot continue to hold up
justice and remain blindfolded as an ideal, if
we're not ready, willing, and eager to commit the
resources to make it a reality. So we thank you.

JUDGE TINDER: Thank you.

Task force members, any questions for
Mr. Russell?

MR. LANDIS: Thanks for coming.

JUDGE TINDER: Thank you so much.

Rachel Roman-Lagunas.

MS. ROMAN-LAGUNAS: Thank you for being here
today. I'm happy to be here. I'm an attorney
representing juveniles in the Marion County Public
Defender Agency, and then I also work with the
Juvenile Defense Project with the Indiana Public
Defender Council.

So as part of the project we interviewed
children at the Department of Correction at
Pendleton, and we interviewed about 25 children.
And I wanted to just share their stories because
they are not here today to tell you what they want
in a good attorney. I'm going to use just a letter
instead of their name, obviously, and also just
kind of tell you about the stories and then some
overall themes that we saw.
To start with some good stories, "S" is a 17-year-old from a mid size county, and his lawyer met with him multiple times, met with him in the detention center and not just right outside court before going in court. His lawyer talked to him about the charges, talked to him about possible placements that he could go to other than the Department of Correction. His lawyer listened to him about what he wanted to have happen on his case, and he felt like his lawyer was on his side; and probably because of that, he felt like the outcome was fair.

"L" is a 16-year-old young man, and he was also able to mention many things his attorney did well. He said she talked to him. She talked to his mother. She tried to get him into placement other than the Department of Correction. She talked about the strength of the evidence against him. She explained possible outcomes. He mentioned that, I quote, "She fought for me." His advice to other attorneys: Try your hardest. Make sure you know about your client. Make the prosecutor see him as a person; that he was not always like this.

So those were lovely to hear, but
unfortunately we talked to many clients who did not have such a good experience with their attorney. A couple of examples:

"E" is a 15-year-old boy in the Department of Correction. He is from a large county, and he's in the Department of Correction for a second time, and he had two different defenders represent him throughout his cases. And he said they would meet with him, they would explain what would happen, but they never argued for what he wanted to happen.

He believed that the attorneys were friends with the judge, and he attributed them not arguing or not making an argument to them being afraid to talk in court. He honestly believed they were afraid to make an argument because they would make the judge, their friend, mad.

Obviously, he was in court quite a bit to see this. He didn't believe they were on his side. Or at least one of them he said he didn't believe was on his side. His advice was to care about what you're doing and don't be afraid to talk in court.

"C" is an 18-year-old from a large county, and his case is interesting because he currently has no legal guardian, and he is 18. But DOC wants to release him to a person. He has no place to go
because his parents' rights were terminated when he was very young, and his guardian, his grandmother, who he was living with, passed away over the summer.

So he doesn't know where he's going to go, what's going to happen to him. He is 18. No DCS. He has no attorney involvement. He said his attorney said they would look for other places, but never argued for one in court. And so because he currently has no representation, he has no idea how he's going to get released and where he will go.

17-year-old "M" said he just started declining having an attorney because he said they never did anything I wanted. He had multiple attorneys. He said one of them asked for him to go to the Department of Correction. Now, in juvenile court that's maximum sentence. There's nothing worse than that other than waiver to criminal court. So an attorney asking for maximum sentence would be pretty unheard of in criminal court.

He tried to argue for himself. He said he needed job training and other services, and he felt like the lawyers needed to be more knowledgeable.

And then finally "T" is a client I found particularly compelling. He is 18. He normally
had an attorney sitting with him at his hearings. However, at the hearing that he was sent to the Department of Correction, his attorney wasn't there. He doesn't know why the attorney wasn't there. He didn't talk to his attorney about not being there. The judge didn't continue the case and went forward with the hearing, and obviously he ended up in the Department of Correction.

He said his attorney didn't meet with him outside the court, never talked to him about potential defenses. And when he suggested a way to handle his case, the lawyer told him he didn't know what he was talking about. Which he may not have, but that's not an appropriate response.

There are children who could say I had a good attorney and a bad attorney. That's how they would say it. They would say the qualities of a good attorney: They met with me. They returned my phone calls. They fought for me. They believed in me. They knew me outside of just this court setting.

And then the attorneys who also, twice we heard from kids who said the attorneys called the child by the wrong name; so they were too busy with too many files that they didn't know their name.
To a child that's really offensive.

We also met with lots of children who felt like the attorney knew what was best for them. So the attorney would say, "Well, I know your grandpa's beating up on you, so you need to go to the Department of Correction. That's what's best for you." That's not how a client feels, and that's also not the lawyer's job.

We heard from many clients where the attorney just told them to plead. Many clients didn't know they had the option to go to trial, never talked about evidence. Many clients plea at the initial hearing or at a pretrial; so they're not really having an attorney get discovery.

And, obviously, children who felt like their attorney fought for them and were on their side, they tended to say the system was fair; versus children who didn't feel like they had an attorney fighting for them did not.

So just a few other bits of advice. These are quotes from the children: Build a relationship with your clients. Fight the case. Don't go off what the parents say. Work for the kid, not the parents. Focus more on the kid's side in evidence. Try to build a defense. And listen to their side
of the story, and don't have your mind made up ahead of time. Finally, help us at least. We don't know what is going on anyway, so at least help us and explain.

And I'm happy to follow up in writing.

JUDGE TINDER: I would appreciate that. Let me ask you this: What are the systemic things that should be done, should be improved to make lawyers perform more like the ones that "S" and "L" had, and less like the ones that "E", "C", "M" and "T" had? What are the generic or systemic things that ought to be done and ought to be enhanced?

A. Well, an oversight because a lot of the attorneys don't have much oversight, especially in juvenile cases. So there needs to be a community that you belong to, if you've received expertise in juvenile law. We have a whole different code section, and we have Adolescent Development, which is hours and hours of training and should be incorporated into probably almost every single case.

So you really need somebody who has expertise in juvenile cases. And then with Adolescent Development, how to talk to your client. Because I cannot talk to a 16-year-old client the same way I can talk to a 40-year-old man who has been in the
system for a long time.

First of all, we know that children ages 11 to 13 that we have in our system, one-third of them are going to be incompetent. Then we know 14 to 15-year-olds, 40 percent of them are going to be as incompetent as a mentally ill adult would be.

And so we need to have attorneys be able to recognize that and not to say, "Well, they're young. That's why they act like that." We need to either explain better, or we need to ask the judge for a competency hearing.

So I guess oversight and training. And then I don't know what caseloads are around the county or around the state, but making sure that caseloads are reasonable because juveniles take more time. It takes a lot more time to explain things to them.

MR. LANDIS: I'd like to follow up on that. What kind of state oversight do you recommend?

MS. ROMAN-LAGUNAS: I don't know that I'm equipped to answer that question. I know I've missed a lot of the testimony. I apologize.

I think some kind of regional system. That would make sense. I wouldn't want to take power away from the current people who are doing it well, but I guess I'm sure most people hope that they are
doing it well. So I really don't know if I'm equipped to answer that question. Thank you.

JUDGE TINDER: Thank you.

I think we've reached the end of the list that I have. We had another 15 minutes or so set aside for today, but some of us will stay as long as anyone has something they feel they need to tell us, or we can follow up with you at a later time.

Is there anyone who has a presentation that they would like to make or comments?

Yes, sir. If you could come up to the mike and clue us in.

MR. GAY: Introduce myself.

JUDGE TINDER: That would be great.

MR. GAY: My name is Jack Gay. I am a practicing attorney, have been for over 40 years. I'm also the chairman of the Jennings County Public Defenders Board.

Quite frankly, I'm appalled by the state of public defense work in the State of Indiana. I think we are at a unique time, though. I think, well, I was shocked to hear that it was a surprise that cost was a problem. But cost has always been a problem in the public defense work.

I think, though, now is the time that we can
argue that it's not only cost effective to go to full-time public defense offices throughout the state, it's just so obvious to me that the social costs associated with the drug addiction problem and managing to divert from the criminal justice system those people that don't need to be in it. We have to recognize that many of these people are ill. They made a bad choice. They became addicted. And they are not going to get over it by sticking them in jail. That seems to be our answer.

Instead, I see people who sit in jail for months, literally months, that haven't even met their court-appointed attorney. That's unacceptable. If we can get them in and out of jail in two or three days, and that's possible in a lot of cases, if we can get them into rehabilitation, if we can follow up on them, we can make the public defender's office pay for itself many times over.

I think the most conservative estimate I've seen is that it costs about 40 percent of the cost of incarcerating someone to treat them for their addiction. That in and of itself would pay for the cost of the public defenders.
In Jennings County the county council and county commissioners are pushing to build a new jail. We are going to do away with our 19-year-old jail that was going to last us forever because it's at double its capacity. Jennings County can't afford $25 to $40 million for a jail. They need to spend that money elsewhere.

Drug rehabilitation works. I don't want to leave it at opioid addiction because we've got a huge meth problem down there too. But the key of all this is managing to get people out of the criminal justice system, the long-term effects of which everybody in this room I'm sure is aware. They can't get jobs. They can't pay child support. They can't take care of their families. All of that falls on the taxpayers.

We need to create a system where people get represented from the moment they are brought into custody. That way we can avoid a lot of these problems and push forward to returning these people to a productive life.

And I have seen these people go from being drug addicts, from getting NARCAN two or three times, to being very productive members of our society. They go to work every day. They are
there on time. They work hard. They bring home a paycheck. They take care of themselves. That's a big difference from where they are now.

I think now is the time to push for this, and I would urge you to do so.

JUDGE TINDER: Mr. Gay, you mentioned that you are kind of an early starter in your career here, about four decades into it.

MR. GAY: Yes.

JUDGE TINDER: That's a pretty good start. And you're appalled at the present state of indigent defense. Was there a time when it was better?

MR. GAY: Well, I suspect there may have been, but that was back 35, 40 years ago when public defenders a lot of times were on a voluntary basis. The judge says can you take this case for me. And the judges seemed to be, or the lawyers who were appointed that way seemed to get involved, and without any kind of remuneration for it. They would take it on as if it were a paying case and represent these people to the fullest of their abilities.

Now they get appointed. Maybe they wait until they bring the client back from the jail weeks,
months later, and they haven't met them yet.
They've got a plea offer though. They don't really
have any idea what --

JUDGE TINDER: You're not suggesting that we
go back to the old voluntary system?

MR. GAY: No, not with today's caseload. I
quit doing public defense work after I had a
conspiracy to commit murder case, and I was getting
paid for it. But what I got paid was, when I
worked out the hours I spent on the case, it worked
out to be about $5.43 an hour that I got paid. My
secretary wasn't going to live on that.

So, yes, there was a time when things were
better, but we can't do it with today's caseload.

JUDGE TINDER: So Jennings County participates
in the reimbursement program?

MR. GAY: We currently have ten part-time
judicially appointed public defenders, which is up
three from the start of last year. We went up
three in the middle of the year once they got a
supplemental appropriation. And I'm afraid we're
going to need to get some more because I was just
looking at the numbers on the report to your
commission, and we still have a number of attorneys
who are way over their caseload requirements.
So I have the county council and the county commissioner there considering this plan, and we're trying to move it forward. I think I have the support of one judge, and I know I don't have the support of the other judge in the county, and that's going to make it a little difficult. But I'm willing to push forward with it to try to get people the representation they need.

JUDGE TINDER: What are the backgrounds of the other board members? There are two other board members in your county; is that right?

MR. GAY: One is the mayor of a small town in the county, and the other one is a realtor.

JUDGE TINDER: Just overall, what do you think of the board system, how it's being utilized to try to put some independence between the judges and the public defenders?

MR. GAY: In our county it doesn't really work. The judges are the ones that deal with it. I get to review the reports quarterly. I get to hear the stories of the defendants. It's not a good system.

I know Judge Webster in circuit court would be happy to get rid of it because it takes up too much of his time and his court reporter's time to deal
with it. And Judge Smith deals primarily in misdemeanors, and I won't tell you what he had to say about the commission. I'm afraid it would get out in public.

JUDGE TINDER: Well, we can talk about that off the record as well. What are the top three things you think we could do to improve indigent defense?

MR. GAY: I think we really need to go to full-time public defenders. That's number one. It needs to be supervised. There needs to be somebody over it, and it needs to be fully staffed.

JUDGE TINDER: What do you think about the notion of a regional office where there would be multicounty responsibilities, not limited to what Jennings County needs, but maybe the surrounding counties as well?

MR. GAY: That's interesting because I had that question presented to me by the county council. I have a little bit of a problem with it primarily because of the lawyers in their offices and getting them to and from the courts. Jackson County, a neighboring county to us, has a public defender's office.

JUDGE TINDER: It's fairly new, isn't it?
MR. GAY: It's fairly new. It's been there a couple of years now. It's fully staffed, I believe. And it works very well there.

When they asked me about it, they were asking if I would agree that we should go in with Jackson County to do a public defender's office, and my primary concern is getting the lawyers to court. I don't want them to have to report to an office in one county, and then go back to their own county to represent their clients. And I'm afraid that's kind of the operation that I see developing if you've got a regional office.

Now, if there is a regional supervision of it, that might be a different perspective on it.

JUDGE TINDER: Regional supervision of county based attorneys.

MR. GAY: Yes.

JUDGE TINDER: What do you think prosecutors offices would think about regionalization of the defense function?

MR. GAY: You know, I haven't talked to the prosecutor. I've talked to him about the public defender's office, but not about the regionalization. I have no idea what their idea would be.
JUDGE TINDER: Very good. Other questions?

PROF. SCHUMM: How long have you been on the board there?

MR. GAY: Since its inception 23 years, 22, 23 years ago.

PROF. SCHUMM: And so it's always been all part-time people?

MR. GAY: Yes.

PROF. SCHUMM: Why did you all make that decision? Because of the cost?

MR. GAY: It was because of cost. It's all driven by cost, every decision that's made about hiring. And it's a big deal to go to the county council there and ask them to turn over some money to represent criminals. They haven't caught the idea that they are not criminals until they've been convicted. It's just like pulling teeth.

So everything has been developed around this idea of the county not wanting to spend much money. Originally their pay was extremely low. The Public Defender Commission has caused them to push it up to at least now they can pay their office expenses with it, and then they turn to their private practices to make money. That's essentially the way it works down there.
JUDGE TINDER: Are there lawyers in Jennings County who would want to be full-time public defenders?

MR. GAY: I think I could find enough to do it. We don't have enough lawyers to fill the part-time jobs. We're hiring lawyers from out of the county to come in and be part-time public defenders. Like I said, there's ten of them now. I think there's only about ten practicing attorneys in the county right now.

JUDGE TINDER: I don't know this to be a fact, but I could imagine it to be a fact, when you take 92 counties, there might be a fair number of counties where there are no people who would want to be a full-time public defender.

MR. GAY: I think that's probably true. I would guess there's probably one or two in most counties that would be willing to do that, but it's a hard, hard decision for them to make to do that. The pay is not that great. But there are people that fill the prosecutor's office, so we ought to be able to find the people who will do the public defender's office.

JUDGE TINDER: Despite the low pay, you get to spend a lot of time in jail, so there's that.
MR. GAY: It's always enjoyable to hear those doors clink shut behind you.

JUDGE TINDER: But you get to go home. Other questions?

MR. LANDIS: You have ten part-time public defenders. Who supervises the quality of the work that they do?

MR. GAY: I don't think anybody does. I mean, I don't, and I would probably be the one most, closest to it. It's just not something that's feasible. I've got ten public defenders running around from four different counties. It's hard for me to keep track of what their caseloads are, let alone what they're doing. I know some of them have some pretty bad nicknames down at the jail.

JUDGE TINDER: Any questions?

JUSTICE GOFF: Thank you.

JUDGE TINDER: Thanks for your interest, and don't be surprised if we're back in touch with you.

MR. GAY: I'm available just about any time. Thank you much.

JUDGE TINDER: Anyone else? Yes, back here.

MS. EDMANDS: Hi. My name is Heather Edmands. I am the assistant division chief of the CHINS/TPR Division at the Marion County Public Defender
Agency. Marion County, as I understand it, is the largest public defender agency in the state, and right now CHINS/TPR is the largest division. We currently have 23 full-time attorneys, 14 part-time attorneys, 8 paralegals, 8 social workers, an office manager, a partridge in a pear tree.

We've been growing by leaps and bounds within the past three to four years. When I started with the office nine years ago, it fluctuated between five and six of us. And we were all very busy, and we all had about 125 cases.

Now we have 37 in various levels of engagement. I think at one point last year I had 170 cases. Almost everybody in my office has about 150 cases, and we're still all very busy. I think we do have the advantage of our size. We have the advantage of the rest of the agency and kind of mentality trench work area camaraderie. I think that helps a lot.

JUDGE TINDER: You probably have a higher experiential level than you may have had a few years?

MS. EDMANDS: I do, yes.

JUDGE TINDER: But your office does as well.

MS. EDMANDS: The office does as well. I
mean, we've all kind of grown together for the most part to the credit of the other 36 attorneys that I'm working with. Everybody wants to be there.

Most of the people who are working in my office are not working in CHINS/TPR because it's a stepping stone to something else. They are deeply impassioned and want to do this work.

Being a PD is a bit of a calling. I think somebody else noted we all probably ask ourselves at various times why we're doing this. But CHINS/TPR really is very much a calling because there is a certain amount of social work involved in all of the legal work that we're doing.

Because of the explosion of cases, and also because within I think five years ago, my numbers might be off a little, but we did go over to CHINS/TPR being under commission standards, we have by necessity developed training. We've developed our own six-hour education course, which we've done once and then revised once; so we have a newer one that is what allows our attorneys to become CHINS/TPR qualified.

One of the commission standards for termination of parental rights cases, you have to sit through another termination of parental rights
case with an attorney who's done one before, before you can be pushed out on your own, which helps a little bit. But, also, we have a significant amount of informal training, just being able to bounce ideas off somebody else, finding out if somebody else has encountered these problems before.

And from speaking with other CHINS/TPR attorneys around the state, I don't know that a statewide CHINS/TPR system would work simply because my practice in Marion County is going to be vastly different than someone's practice in Vanderburgh County, in Lake County, in Allen County, even in Hamilton County.

JUDGE TINDER: In terms of volume? In terms of caseload?

MS. EDMANDES: In terms of volume, in terms of caseload, in terms of how things are handled. As much as our eight courts that we currently have running out of 25th and Keystone vary from room to room and judge to judge, the way things get handled in other counties are very different there, too.

JUDGE TINDER: Your clientele is probably more diverse than, say, in Noble County?

MS. EDMANDES: I would imagine so, simply as a
numbers game. But the way cases are funneled through, just anecdotally speaking, with others, it's different in Marion County in terms of whether there is somebody -- I represent my clients from the time I'm appointed. We are appointed at the initial hearing, but we don't appear until that first pretrial. And I represent them until it's done, until they either have their kids back, their kids are in a guardianship, or we've gone through a termination trial.

On average, I was looking it up, the cases that I've closed within the last year and a half were open on average 713 days. The cases I have open right now have been open on average 1,068 days. These people, I've been working with them for two or three years.

In other counties sometimes they start either at the initial hearing or at that first pretrial, and once they get through disposition, they are done. They are not guiding their clients through the actual completion of services, which is the key part of the CHINS case. Once the child is adjudicated, if the child is in need of services or not, some counties, that's it. And I think the representation, as difficult and emotionally
challenging as it can be helping a client through all of their problems until the case closes, I think clients glean a lot, they glean a lot more from that, because otherwise it's them against the world.

If they still have a public defender who is working with them as they are going through drug treatment, as they are going through domestic violence classes, as they are going through parenting classes, as they are jumping through all the hoops that are being put before them by the Department of Child Services in the State of Indiana, to have somebody who can help advocate, who can help make sure that what is being put before them is reasonable.

Even something as simple as saying, you know, my client is ordered to do drug screening. My client doesn't live on a bus line, and the drug screening agency is on the west side of town, and they live on the east side of town. They can't get there. Somebody to advocate and make sure that they are not painted into a corner is essential.

It is very emotional work on both sides, both for the client and for the attorneys involved; so it does take time. Right now Marion County is
running 38 dockets. We are very busy with those 38 docket settings. That's across eight courts. Plus everybody has off-docket trial settings, also mediations and settlement conferences. So we are running around like mad, but that's not going to stop at any point of time.

Rather than perhaps a statewide system, I think what might be more helpful, given that a lot of the smaller counties don't have the resources that Marion County does, is to have, perhaps as part of the regional system that you mentioned, statewide resources. The ability to have colloquy between attorneys who have been there before and come out the other side. How do you deal with a client who desperately wants to get into rehab but can't. How do you deal with a client who is a domestic violence victim and none of the services are getting through, or they are still in a dangerous relationship.

So just to have an ability to bounce things around, to have statewide training, to have statewide resources I think would be very helpful.

JUDGE TINDER: Questions?

MR. LANDIS: I'm just curious. You're saying you don't recommend a statewide system, but you
recommend statewide resources, statewide training, and maybe regional offices. So that could be a statewide system.

MS. EDMANDS: That could be a statewide system.

MR. LANDIS: A statewide system means many things.

MS. EDMANDS: Right. It could take many forms.

MR. LANDIS: I'm interested because you have so much experience in a very high-performing office, what do you think is the best way to try to improve that quality in the other counties that don't have the same resources, don't have the same experience? How can we boost the quality up in those counties?

MS. EDMANDS: It could be something as simple as a LISTSERV or just the ability to discuss cases, traveling-lunch-and-learn type of thing. Because much like in the appellate world, CHINS has changed a lot, even just within the last two or three years, let alone in the last seven.

The policies that you're seeing from the Department of Child Services, from the guardians ad litem, are changing it feels like on a day-to-day
basis sometimes. So just to have community I think
could be a very, very helpful way to go about it.

JUDGE TINDER: Other questions? Thank you so
much.

I noticed there was one other person who had
their hand up, but I'm either going to have to give
Ms. Andrews a break -- she's been at this a long
time -- or we need to wrap it up. Other than this
young lady, does anyone else want to make a
presentation? If so, raise your hand.

Why don't we see if we can wrap this up on
this presentation.

MS. RUST: Hi. My name is Abbie Rust. I am
the social work supervisor for the Marion County
Public Defender Agency. I did not plan on
speaking, but then some of my co-workers said some
nice things about our team, and so I just wanted to
offer some input from our perspective to this
issue.

So we have 19 social workers across three
divisions in the agency. And for the sake of time,
I'll kind of keep it brief to our criminal social
workers. And so a lot of the work we do is
consulting with the attorneys on issues related to
our clients, so mental illness, substance abuse,
their indigency needs.

And those attorneys who take the time to really kind of learn the skills that we have and mimic those are the ones that I see have the most positive effect and interactions with their clients. They really, I think, then model for other attorneys how to work with these individuals. Because like someone said earlier, this is not a skill-set that is necessarily taught in law school. And that's wonderful, and we're happy to continue offering that.

But also there are a lot of people being served, and we are not always available to assist all the time. And so those PDs, who are able to follow our lead with some of this stuff and some of the skills that we have, create a huge impact. And they have an understanding. So whenever they are able to speak with prosecutors, go to court when it comes to sentencing, things of that nature, they have an understanding of the barriers that we can speak to very well. They are learning to be able to speak to that and advocate for their clients in that way.

So I don't know if that would, I'm saying all this to say I don't know if that means it would be
a nice standard to have some general education on these areas that are most commonly seen among the clients that are being served by public defenders. We try to incorporate training in our offices on some topics that we see that come up frequently, and we are very lucky that we have a lot of attorneys that take advantage of that.

But that's in our agency. So it makes me wonder about what's happening with those other counties, if that's something they could benefit from as well.

JUDGE TINDER: Is there a written description of how the Marion County office functions, the various divisions? Has anyone ever put together sort of a working paper on how that office is structured, interacts?

MS. RUST: Yes, uh-huh.

JUDGE TINDER: And so if Kim or Kathleen would be in touch with who in that office, we could get that in writing? If we don't already have it. I don't think we do.

MS. CASEY: We don't, but I'll get in touch with Ann and make sure we do.

JUDGE TINDER: Questions anybody?

MR. LANDIS: Based on what you've seen in the
Marion County office, how important do you think it is to have social workers in a public defender office?

MS. RUST: Huge. It's hugely important. From my perspective as a social worker, we have the ability, I mean, we are trained to not only be able to identify needs within individuals, we're also taught different perspectives in school than what attorneys are. So we come at things from a strength-based perspective usually, and so we are looking at what are the things that are going to help this person to succeed based on the strength ideology.

We are also trained to identify barriers and how that affects maybe not just one person but a system in itself, family systems. Systems can look like their probation, how are these needs, I mean kind of what Heather just spoke to, drug testing being offered and no one taking the time to consider they live on the east side, they are not on a bus line, they need to go to the west side. How do you problem solve around that.

I think it's huge for identifying, it's huge for consulting with attorneys with what we kind of see.
We get calls weekly or emails weekly that say I have this client. I'm not real sure what's going on. Can you come and sit with us and give your impression. And so even just with that, it's kind of a quick in and out to meet with a client, but then that attorney has some additional knowledge and information that we have that hopefully they can use to better defend that person.

MR. LANDIS: Thank you.

JUDGE TINDER: All right. Thank you.

Thank you all for your time, your thoughts, your patience. Please visit our website. It will be emailed, the link will be emailed to you. Keep the cards, letters, emails, and comments coming. We will get back in touch with you.

We have additional listening sessions starting in, is it Fort Wayne?

MS. CASEY: Yes. February 15 is our next one in Fort Wayne.

JUDGE TINDER: And our next board meeting or task force meeting is April 20 at ten o'clock, is it, in the public defender office?

MS. TANDY: It's on the website.

JUDGE TINDER: It will be on the website.

Thank you all. Have a great weekend.