Gary Listening Tour
Indiana Public Defender Commission
Taskforce on Public Defense
March 31, 2018

Public Attendees:
Marce Gonzalez
Kelly Lavin
Michaela Spangenburg
William Schaefer
Bernice Corley
Gojko Kasich
Norman Bailey
Kim McGee
Mayor Freeman-Wilson
Rev. Homer Cobb
Tammi Davis, USCCR
Barbara Boling-Williams

Taskforce Member Attendees:
Judge John Tinder
Dr. Jeff Papa
Larry Landis

Public Defender Commission Staff:
Kathleen Casey
PRELIMINARY STATEMENT

JUDGE JOHN TINDER

JUDGE TINDER. - Scheduled this as a Listening Tour, so we’re here – we’re here to
listen. As you may be familiar – oh about a year and a half ago or so, the Sixth
Amendment Center issued a report that analyzed the public defender system in Indiana
in many, many respects and had some things to say that weren’t so positive and some
positive things as well. But following that and other reports have been issued, the
Public Defender Commission ha – impaneled a Task Force which includes Dr. Jeff Papa to
my left and Mr. Larry Landis to my right. I’m John Tinder. We have fourteen other
members. A wide variety of backgrounds, and we’ve had contact with the court system,
legislature, governor’s office as well, and so forth, and Mr. Joe Heerens from the
Governor’s office is on the phone with us. So –

MR. HEERENS. - Good afternoon.

JUDGE TINDER. Good afternoon. And, for the benefit of our other Task Force members,
we will be recording the event and later transcribing it, and a transcription will be
available on our website as is the minutes of all of the meetings we’ve held at this
point about five meetings at this point. We’ve got about four to go. This will be
our sixth listening session. We’ve had them in various parts of the state. We’ve had
them in Indianapolis, Evansville, Clarksville, Fort Wayne and here. And we have also
been acquiring information in other means. Through surveys, through focus groups,
through discussions with individual groups, individuals and so forth, and we continue
to gather information so that we can report back to the Public Defender Commission our
assessment of the public defense – not just in the criminal arena, not just in the
juvenile arena, but also in the very important area that we’ve heard so much about
lately involving the Department of Child Services. Situations leading to the
termination of parental rights as well as CHINS proceedings as well as involuntary
commitments to – for mental health reasons, and a variety of other circumstances. So,
we’re taking a look at the big picture, and we want to make recommendations to the
Public Defender Commission that they can take and – and perhaps to legislative
purposes and other organizational changes to improve the public defense throughout the
state. So, that having been said, it is a listening tour; not a talking tour. We
look forward to hearing what you’ve got to say. As we go forward as well, if there
are things that you forget to mention in your comments, feel free to send information
to us later in writing or contact us – Katie Casey’s cards are back there with a good
number to call, and we can follow up and have a later interview with you if you’d like
or anyone else you think we ought to talk with. So, with that, I’d like to start with
the Chief Public Defender here in Lake County, Marce Gonazalez. Mr. Gonzalez, thank
you so much for coming today, and we very much look forward to hearing your comments.

MARCE GONZALEZ, LAKE COUNTY CHIEF PUBLIC DEFENDER

MR. GONZALEZ. Thank you. And, I can’t tell you how great it is to have you folks
involved, giving of all of your time and effort in this. It’s critical to the Sixth
Amendment that we make a lot of changes, you know. So many years after the Gideon
case and - it reminds me a lot - the public defender work reminds me a lot of race
relations, you know. It’s a start – but where are we after all of this time, and so -
I think that - that this is a great way to start the ball rolling with the state. So,
I’ll give you a little bit of background with me and that might help with my comments,
and of course, I’m open to questions. I know a lot of the topics you want to talk
about. I’m born and raised in Gary actually. I’m a product of Gary - Gary Public
School System. And, I’ve been a lawyer for thirty-five years, I was a public defender
for thirty-two years, and then eighteen months ago, I became the chief public defender
here. Now, in Lake County, we’re part of the forty percent reimbursement plan. I’m
particularly – there’s always the question, I know of – I’ll talk about that in a
minute - about the validity of a public defender board versus not and how much the
State - control should the State have versus the counties and what have you, but I
think there’s some basic principles that all of us I think who take time to - to look
at public defense services recognize. Number one is there has to be a distinction -
you have to be separate from the judiciary. There’s no question about that. You
cannot have an effective public defender staff or even part-time lawyers who are hired
and work for their judges. That’s my first comment that I’m going to make, and I mean
the reasons for that is clear. It’s very difficult to argue with all the zeal you
have in your heart against a judge when that judge is the person who controls your
paycheck. Okay? That’s number one.

JUDGE TINDER. We’re certainly going to circle back to that because -
MR. GONZALEZ. Right.

JUDGE TINDER. — there are a number of courts within Lake County that are not in the reimbursement system and where the employment is directly by the judge (inaudible). And, we’re going to talk about that.

MR. GONZALEZ. And, I think we should. And I — And I know — and I think that needs to be fixed number one. Number two, of course, is the need for experts. When the purse strings are also controlled by the judge and you tell the judge, you know, Judge, I need an investigator in this case. How much is it going to cost? Well, I don’t know. Probably a few grand to start with. I need a ballistics expert in this case. I need a shaken baby expert in this case. It just real — where is this money coming from, you know. And, you have to ask again. You’re asking the judge to basically fund or help you fund the — the case. So, the first principle that I think that we hafta — everybody has to agree with in Indiana is that judges cannot be in control of public defenders. That’s my — my first point. I happen to like our board, and, from what I’ve learned about in our public defender board, I have some comments and suggestions for you for setting up of other boards throughout the state.

JUDGE TINDER. And, we look forward to hearing that. The Lake County system is different than any of the ninety-one other counties.

MR. GONZALEZ. It is.

JUDGE TINDER. So, we’re very much interested in hearing your response on that.

MR. GONZALEZ. When — when Lake County was lobbying — when they were lobbying for the independent public defender office, there were some things that — that were — that Lake County politicians and judges wouldn’t give up and — and that was — there were two things. Number one the juvenile court would not come under the purview of the public defender office, and the reason for that is political. One can understand why. The juvenile court employs the most employees of any department or subdivision of Lake County government. Okay. So, you’ve got basically all the employees and you’ve got the largest budget. So, we don’t do — we don’t do the termination of parental rights. We don’t do any of the juvenile court cases. The second thing was the misdemeanor courts, and what I mean by that is that we have four county courts that have jurisdiction up to a level six — used to be a level D felony — level six felonies and below — all the misdemeanors — they opted out. They would not agree to become part of...
the public defender system, and, so, for example, their particular lawyers didn't get
health insurance like we have. They wanted to keep - the judges keep control of who
they - who they have on their staff, and so they are still independent.

JUDGE TINDER. That includes the city and town courts that are in Lake County?

MR. GONZALEZ. They were never - I think approached with this. They also have a
similar makeup where the judges - I mean - where they don’t have their own office -
you know - a public defender office. One thing I think is - is important to recognize
about that - I know we’ll get to that - is when I talked about the forty percent
reimbursement, there - a lot - a lot of things boil down to money, and - and, in my
office I’m impacted by the county courts and the city courts not being part of the
forty percent reimbursement. Now - you know - the statute doesn’t - doesn’t provide
for misdemeanors to be part of the reimbursement, so I’m up for the amendment bringing
in misdemeanors for - as part of the forty percent reimbursement, and let me explain
why. Let’s say that I have a felony public defender and he has a case or she has a
case and there happen to be down in the county courts or the city courts there’s a
couple of open cases that - you know, the public defender, being a diligent person,
recognizes - well - this person is going to be sentenced, and there’s a really good
opportunity for this person to have a certain type of sentence that would allow for
drug treatment, you know, some type of benefit within the DOC. You can’t have open
cases when you’re sentenced to get into these programs, so what will happen is the
public defender says, I’m going to move to transfer or maybe the judge will see these
- let’s transfer them to a global plea agreement - clean up all those other cases so
your client can get the best result in this courtroom. But, what the judges didn’t
know and what most people don’t know is that when that happens it hurts us financially
in the forty percent reimbursement. We get charged $1500 to $1700 per misdemeanor
that gets added into our - our caseload because they’re not on our plan. So, what
that does is - you know - it doesn’t take a lot of math - you think about how many
there are, and then you multiply that and that money is lost - for it. In other
words, when you take the figures of we’re going to get forty percent of at the end of
the year, you’ve got to deduct the misdemeanors and it reduces the - the amount. So,
that’s a very good reason financially for - economically to include the misdemeanors
in the - in the program. Back to the board. I got a little bit off, but I wanted to
I didn’t want to lose my thought on it. So, we have a five person board, and the reason I think that that’s important is this, it goes again to control of the judiciary. On our board, the judge has two – makes two appointments of lawyers – there are two lawyers appointed by the judge. My office appoints a lawyer, and then a county council person and a county commissioner serve, so that’s how we have five – five people.

JUDGE TINDER. And, those appointments are required to be lawyers with the court’s appointment and with your appointments?

MR. GONZALEZ. Yes.

JUDGE TINDER. Those appointments, those are required to be lawyers?

MR. GONZALEZ. Yes. So, we have three lawyers. Now, why that’s important is because the judge then – the judge does not have the majority vote. The judge cannot persuade people to vote one way or the other and control a decision that needs to be made by my office. So, my point is that in the counties that have boards – let’s say a three-person board – if a judge appoints two of the three, then no matter how you look like – you look at it, ultimately, the judge still has – ultimately could have control over decision making with – with the board and with office rather – the public defender.

So, I think that five is a – is a – is a good number. Whatever number that one would come up with, it’s important that judges’ appointments never are the majority in number because again, that just takes us back and we lose the idea of independence from – from the judge. Why is reimbursement important for the county? This past year – my first full year, we brought back over two million dollars to Lake County because of the forty percent reimbursement. Now, that is important because when I am trying to negotiate for a new public defender position or I’m trying to negotiate for an IT person with the county council, I say look, and they say well that’s another – that’s another $42,000 plus insurance. And, I say, but wait a minute – you get forty percent back, and they say, oh yeah – we get forty percent back. And, so there’s an attractive aspect to it – we’re the only group that’s bringing them back money. And, we have to play that up all the time when I’m negotiating for new positions. Another thing that I think is important, and I bring this up – I bring this up from past experience here – is I think that when we look at – if you promulgate rules as to what the qualifications for chief should be, I think that we should have a rule – a statute
- a statute that says that the chief public defender cannot be married to or related
to a certain degree to a sitting judge in the same county. (PAUSE) Without getting
into too many specifics, the – that type of situation prevented – prevented change in
the past on at least two occasions in my – with my predecessor, and it’s easy to see –
remember, that we have – if you have three lawyers on the board and you have two
appointed by the judges and one is not, but they’re practicing lawyers and that’s
three out of five people, and if the public defender’s spouse is a sitting judge in
that county, it’s going to be very difficult to attempt to remove a public defender or
have change in the public defender’s office. And, that brings up a point that – that
I think is interesting that – I don’t know – I haven’t seen – I’m probably the only
person that read all of the transcripts for your listening tour, you know. And, so, I
can’t recall how much in depth this – that we got into this – but there’s an
interesting question of what happens about – Tinder, what should be done about removal
of a chief – what happens when a chief needs to be removed? I had the pleasure of
being on the disciplinary commission – Supreme Court Disciplinary Commission from ’94
to ’99, and when I was thinking about this, it brought to mind a Supreme Court
admission and discipline rule 23. Supreme Court admission and discipline rule 23
governs the ability of the disciplinary commission and the Supreme Court to
temporarily suspend by of course sanction and discipline a lawyer. Some of the
conversations we’ve had have been – what were the appropriate – what is the
appropriate body for that? What if – what if I for some reason am – I’m not
performing my tasks, I’m under a disability, but I won’t voluntarily leave my position
and everybody knows that I should be removed. Should the Supreme Court or should the
Public Defender Commission control? And, I think if you use – we use as a prototype
the admission and discipline rule 23, what should happen would be the Commission would
have the ability – and I think perhaps they’d be coming from a recommendation from the
local board if there’s a local board – to the Commission, and the question would be –
and I mean the Commission would have the ability then to seek to remove the chief in
an emergency basis and have somebody come in and take that chief’s place. And, in
that respect, I think the petition needs to be filed in front of the Supreme Court
because we’re dealing with a lawyer – we’re dealing with the public defender office,
and I think that the Supreme Court is the best equipped to make that type of decision
because they make that - those decisions all the time for sitting lawyers - for
sitting judges. Now, so, I think that the Commission could serve basically as the
prosecutor and ultimately for due process purposes we’d have the Supreme Court be the
body to make the ultimate decision. That’s my suggestion on - on the - if the chief
needed to be removed. I’m also a big advocate of increasing the reimbursement to
fifty percent. I would ask that be strongly considered by your group. I know that
Larry Landis has pushed for that and we’re pushing for that. The more money that we
can - as I said before it goes back to - to - money and politics and the more money
that I could show that’s being brought back to Lake County, the more I’m going to be
able to keep my office up to date and running the way - that I get the funding that I
need. Question always is - well, I had this thought - okay, Marce, so the
Commission’s now going to be the prosecutor and as far as the removal of chief. Where
do they get the funds? You know I have two - I have two comments about that. I
remember when Chief Justice Shepherd wanted raises for the Indiana Supreme Court and
for the judges. The question was where is that money going to come from? Well, they
greatly raised the filing fees and costs up, so litigants and people that were coming
to court basically were paying. When the Supreme Court Disciplinary Commission needed
more money to prosecute lawyers, they raised our annual fees. So, we fund our own
investigation and prosecution. Couldn’t we - couldn’t we suggest that we raise their
- the reimbursement to fifty percent, but part of that money is kept back for the
Commission. Part of that - a percentage of that money from all the counties is kept
back for the Commission to increase their funds to do the type of things that they
need to do in their daily efforts.

JUDGE TINDER. Part of the fifty?

MR. GONZALEZ. Part of the fifty percent. Oh yeah. I don’t want - oh yeah - I don’t
want to be too generous, but I think - I think - I mean - we get more than forty
percent we’re in a good position and some of the money goes back to the - to the
Commission because - I mean it’s necessary. If - if we have a chief or chiefs that
for whatever reason aren’t performing their duties and they need to be removed, then
we have to have a mechanism to do that, and we have to have the funding to do that.
And that was simply something I thought about the other day. So, those are the points
that I would like to make - that I - that I see here in my first eighteen months, and
I’ll take any questions if I have inspired anything or I’ll sit down and I’ll be in the audience and talk more. Larry?

JUDGE TINDER. Larry Landis?

MR. LANDIS. So, what do you – what do you do? What do you suggest the Taskforce do in order to help you get more money? Let’s say that you – that Lake County suffers a – an economic down turn, and that the county council says look we’re going to have to cut your funding by ten percent and you don’t have enough funding to do the cases that you project to do. What – what do you do, and then what do you – what do you think the council – or the Taskforce should recommend to help counties like you?

MR. GONZALEZ. I think that – I think that probably implicit, inherent in my budget each year would be an estimate of what the costs are going to be to defend. I mean clearly we have a capital case and we ask for “X” amount of extra dollars. Based on this year – that year we have some many f – cases coming up, it’s this amount of money. I’m in favor of – and I know we – we’re working now with the Commission in attempting to look at the length, amount of time and cost it takes to complete a case as each level of felony is (inaudible). Ultimately I think we need to determine – you know – how much money we need based on our – on our caseload – each particular county, and then if we can’t get the money from the county, we look to assistance from the Commission. And, I think it’s almost a result of a mandamus. We ask the local judges to – to mandate our county to give us the extra funds.

MR. LANDIS. Okay. So, how do you trigger that mandate? What’s the triggering mechanism of – let’s say – the council appropriates “X” amount, and you say, that’s clearly inadequate based upon our projected caseload?

MR. GONZALEZ. We have to litigate.

MR. LANDIS. But you litigate by saying that’s an inadequate amount? Or do you –

MR. GONZALEZ. – We say –

MR. LANDIS. – stop taking cases somewhere along the way?

MR. GONZALEZ. Both. I think there comes a point if you look at the other – if you look at the other states and counties – I mean – states that have gone through this that have been overworked – there comes a point where you have to say we can’t do any more to do the competent, quality work the system now requires. My office cannot take
any more cases unless we get "X" amount of dollars, and then we ask for the judges to mandate.

MR. LANDIS. Do you think they would?

MR. GONZALEZ. You know, they mandate for - they mandate for - they just w - they just were threatened with a man - well they mediated - this one they mediated - but - but -

I think it’s our best shot. I think that - I think that - that if you have the respect of your sitting judges and you have change - we have - we have to change the culture. Not only in Lake County, but all over about the Sixth Amendment. We have to change the culture of how important it is to provide competent legal representation to - to indigent folks. We have to change that culture. And, so, part of my job - as I see it - from day one was to educate the judges, keep a dialogue with them, and let them know where we are and what we need. So, if you ask me do I think in Lake County would the judges support me with a mandate? The answer would be yes.

MR. LANDIS. Do you now have adequate money for the experts, investigators, any variations of which services you’d need?

MR. GONZALEZ. Yes.

MR. LANDIS. How about social workers, paralegals?

MR. GONZALEZ. That’s the next thing that I need. My next step that I’m looking at - I mean, I’ve got an IT person. I only went through one budget is my (inaudible). I got involved late. I got three new positions so far. I got an IT slash trial lawyer now dedicated to assist us all with the trials. I’ve - I’m not bragging about this, but when I talk about getting the county council to recognize what my vision is, we’re the only office wh - my budget was approved one hundred percent by the county council. One hundred percent. I got one hundred percent of everything I asked for. That’s basically unheard of, but I’m proud of that because I took the time to speak to them individually and let them know what we need. You know, and before they didn’t even know we had a plan. They didn’t know that Lake County had this plan when I got raises for our - our public defenders. Our plan which is pas - is quantified as an ordinance. Our plan says that the public defender shall be paid comparably to the pub - to the prosecutors. I had to pho - I had to photocopy that - I had to get the budget to the prosecutors, highlight in yellow what our adversaries are making and then meet me individually and four out of seven were with me on it. But you have to
educate them. When I brought them the plan, they said what is that? We’ve never seen
that before because it - it - it was put into place before these particular
politicians were elected. My next thing I need are social workers. I know Marion
County has a few. Just the other day, we had a situation where it was - it was a - it
was a terrible situation where we - we had worked out a result for a - for a man - a
gentleman who was homeless where he could be released that day from jail but he had
nowhere to go, and so he didn’t want to take the plea - you know. He’d rather sit in
jail than be released. Well, we need somebody there with us to say we can - we can
bridge this gap here. These are the services this person needs - this person needs
this - I mean. Our office - everyone knows about the tragedy of addiction - whether
it be opio - opioids - it be - it be alcohol. Whatever it is, I mean - it’s a
revolving door - you know. And, mental health people - I mean - catch and release.
Catch and release. So, that’s the next step for our office is full time social
worker. That’s what I’ll be go - what I’ll be asking for next year.

JUDGE TINDER. Dr. Papa?

DR. PAPA. You talked about maybe raising the reimbursement up to fifty percent. Do
you have any thoughts about where that money would come from or are you just talking
about general funding from the legislature?

MR. GONZALEZ. Yeah, general funding. I have to say - I mean - I - I - I don’t have
the expertise that you do - that other people do - Larry with the lobbying. I don’t
know the answers. I don’t know where to come up - I just gave two examples - you know
- creative ways that I saw how -

DR. PAPA. - Yeah. -

MR. GONZALEZ. - how it’s done in the past. I mean - I don’t know - I - I would bet
that the misdemeanors went - the statute wasn’t amended for misdemeanors this year was
a financial analysis - you know - financial issue. You know, they wanted more time to
study it - if I - if I cla - if I remember correctly. So, I can’t say to where it’s
come from. That’s something that’s out of my expertise.

DR. PAPA. Yeah. I just wondered.

MR. GONZALEZ. Yeah.

DR. PAPA. We’ve talked about that a lot.
MR. GONZALEZ. Yeah. I’m sure you – I’m sure you ha – I wish I – you know – I only
know what I know.

DR. PAPA. What about training and quality control for individual public defenders?
Maybe from the state planning commission perspective. Do you have any thoughts about
that?

MR. GONZALEZ. Oh, I think it should be mandatory. I mean – there should be – in my
office, you know, we do in-house CLE’s – you know – we run whatever we need – we need
to talk about double-jeopardy, we need to talk about this, we need this – we make it –
we make it free – you know – in-house CLE’s for our – for our public defenders and
then the CLE’s that the State puts on public defenders are some of the finest that –
that you’ll ever find. And so, I think that – my suggestion is – is number one is –
you know – that there are certain – certain contin – well you know we have mandatory
CLE’s in Indiana, and so, a lawyer has to go and continue and keep up. And so, a
public defender should have a certain amount of CLE’s that exclusively directed to
what we do, and in my opinion, one thing that this state needs is – you know – when I
came on, it was basically – you know – let’s throw Marce in Lake Michigan and see if
he can swim. You know – and so – you know – I wasn’t wading, I was drowning – you
know – so what happens is we need to have a training for chief public defenders.
Especially if you’re new and coming on, we need a state wide type of training where
people have been doing this for a long time can come in and talk about things because
- I mean, let’s face it, sure I’m familiar with the law, I’m familiar with how to run
a law office – having done that for years, and so, I try to treat this office as me
being the senior partner of a law firm. But, you know there are some differences, but
- the – the quality of what we do has to be – I think – increased. I think that we do
need more mandatory CLE’s.

DR. PAPA. That’s a good – that’s a good thought about the CLE’s because we are
required to take a certain number of CLE’s but you don’t have to take them in your
expertise area.

MR. GONZALEZ. I mean – you know it’s December and people are scrambling, and – you
know – a guy who’s never done a probate is in there for three hours –

DR. PAPA. - Right. -
MR. GONZALEZ. - Because - I mean - what does that do? It does nothing - it does nothing for your skill level as a lawyer; it does nothing for the clients that you’re going to - that you’re going to represent, and so, I think - it needs to be - it needs to be streamlined for what we do. I mean - I - I - I can’t remember taking anything that wasn’t either involving criminal law or ethics in the last thirty years.

DR. PAPA. If you want to come, I can teach you some immigration law.

MR. GONZALEZ. (Laughs) Well, actually, you know, that’s a good point because there are critical aspects of immigration law that every PD should know because you don’t want to plead somebody into a -

DR. PAPA. - That’s true. Yeah.

MR. GONZALEZ. That’s something to think about.

DR. PAPA. I was only partially joking.

JUDGE TINDER. And, especially in the misdemeanor.

MR. GONZALEZ. Right. That’s - that’s - that is a Pandora’s box. You know – we may think that a class A misdemeanor - I think the distinction was - 364 days or less wasn’t it? Our statute is 365 days, and so all of a sudden, you’ve knocked down a huge felony for a person and you want a pat on the back, and the next thing you know, you’re getting a complaint from the disciplinary commission or you’re getting sued for malpractice because of that one thing.

JUDGE TINDER. The CLE’s that you’ve talked about - that you do in-house, do you ever share those opportunities with PD’s from nearby counties?

MR. GONZALEZ. We do. We offer them to - to - we offer them to attend. We make it exclusively - for us to be pre-approved for the CLE’s in-house it has to be exclusively public defenders. So, I have - I have reached out to contiguous counties and asked them - you know - tell them that I’m going to do more of that. I don’t see that going on in - in my neighboring counties. I don’t see that going on. We’re doing it - my - my goal is - there’s a minimum of CLE’s you need every year to keep current, and my goal is for our PD’s to give enough free CLE’s related to our practice so they don’t have to pay because of the amount of money that - you know - that - that we make. And, that’s another thing our - our funds. I’m fortunate, and I’m in a keep - I’m going to keep hitting our council. I’m fortunate in Lake County that our plan -
you know – expressly says that we should be paid comparable to our adversaries. Now, in other counties, they don’t have – they don’t have that to – to rely upon.

JUDGE TINDER. One of the things that we’ve heard a lot about are the – the appellate lawyers in your office –

MR. GONZALEZ. – Yes. –

JUDGE TINDER. – that they do a very fine job. Do you have a particular section of your office that’s devoted to appeals?

MR. GONZALEZ. Yeah. I – I – that – I was part of that for – for my thirty-two years, and in fact that we do is – this is – so le – that’s a good point, Judge. So, let me say this. I’ll answer that. Yes we do, and secondly in the event that – that there would be a state-wide office for appellate, I would ask that Lake County and I think Marion County – we’re the only two counties I believe that have our own appellate division. You know – I would, at least for myself, I can’t speak for Mr. Hill, but for myself I would ask that we be grandfathered out and we be allowed to continue ours, and it’s very important because what I have is I have a supervising appellate attorney and then I have three other appellate attorneys, so we have four. And, the reason they’re important to us is for example what I started this year is if a trial lawyer is going to file a motion to suppress, the contacts are the appel – our office the appellate will put the – an appellate lawyer on – or if it looks like it’s going to be interlocutory, we’ll put the appellate lawyer on while the case is still in the trial – trial court because that way we know that this lawyer one – is one that’s going to be getting the case in the event that we have to do an interlocutory – the motion to suppress we can help write it and research it. But, we – so what we have is we have four appellate attorneys and we always have since the plan – our plan went back in 2000 – 2001.

JUDGE TINDER. So, early intervention.

MR. GONZALEZ. Early intervention, and it’s important because we get to see – I mean – we just recently – we – we – in two different cases my first assistant and I kept our – you know – keep – ears and nose – I mean ears and eyes open, and we found that there were some great, great issues that ultimately I think that the seventh circuit, and we’ve had some success with – not with the Indiana Supreme Court, but seventh circuit our habeas, we’ve won. And, we have two great federal constitutional issues, and so
we did—we made sure that the—the—the issues were preserved at trial and then we authored the motion to correct errors and asked—you know—motion to correct errors—the appellate lawyers authored the motion to correct errors, and then now we’re on appeal right now. And, so that way we—we know that the issue has been properly raised and—and preserved, and we look down the road to winning. And, so it’s because of that dialogue that we have that I think that it’s—it’s great to be able to have the appellate lawyers there and working with the trial lawyers.

JUDGE TINDER. And, I appreciate your interest in—not breaking something that—not trying to fix something that isn’t broken—

MR. GONZALEZ. —Right. Right.—

JUDGE TINDER. —for your office. But, think of some of your colleagues in smaller counties that don’t have the resources to have—lawyers devoted to the appeal function, and so forth. I’m wondering if there wouldn’t be some benefit to—to a—consolidation—a pooling of resources for appellate—to be able to emulate in many ways what you have—

MR. GONZALEZ. —I would absolutely agree with that. I think that—you know—the smaller counties are looking for somebody. What experience do you have—what are—

JUDGE TINDER. —There are counties where there are no lawyers who have ever done appeals, and that’s not—that’s not unusual.

MR. GONZALEZ. My first appeal was a—I was right out of law school, and it’s a murder case, and it’s back when the judges—it’s a Porter County case where they paid you a flat fee to do an appeal no matter how much work. And, the judge called me in—I’ll never forget—he was sitting down on the floor looking through the case, and he says, okay, Marce, I’m appointing you. You ever done an appeal yet? I said, no, your honor, this is a murder case, I just—out of law school—you know—nine months. And, he says, Marce, I just tried a two-week murder trial. If you can’t find an error, you ain’t looking.

(LAUGHING)

MR. GONZALEZ. That was my baptism by fire. And—and, I thought to myself even back then, am I qualified to do this—you know. And, so—you know—when you say, Judge—I’m a hundred percent with you. I think for many counties—you know—when they’re
all — they’re looking for some warm body that’s going to do this appeal, probably never has filed one before, doesn’t know the timing of the Notice of Appeal, doesn’t know what goes into the transcript, doesn’t know how to do it, there definitely is an advantage to having a state-wide source of appellate lawyers.

JUDGE TINDER. I’m curious about this fifteen hundred dollar charge back to you on misdemeanors. Where — where does that money go to? Does it go to the county court? What — what —

MR. GONZALEZ. No. It just is re — it reduces mine. So, if you — if for example in a given quarter — let’s make this up — I’m supposed to have $100,000 I would normally get, and there are fifteen thousand dollars worth of — let’s say a hundred thousand dollars and I’m going to get 40% back of that. And, there are ten misdemeanors at — you know — fifteen hundred a piece — okay — then you take that fifteen thousand, and you subtract it from a hundred, and I get forty percent of eighty-five percent. So, it reduces — it reduces the amount that — that we get from the pool.

JUDGE TINDER. I see. I see. So, I — I have to ask you — the Sixth Amendment Report noted a practice in this county at — at least at one time — that — that if a person made bail and they were automatically disqualified from having a public defender.

MR. GONZALEZ. That’s been remedied.

JUDGE TINDER. So, that was the fact. It’s no longer the fact?

MR. GONZALEZ. Let me — let me talk about the Sixth Amendment.

JUDGE TINDER. All right.

MR. GONZALEZ. I didn’t look at that report as chastising me, I looked at it as a — as a guidance and a godsend. And, Larry will tell you this — when I — I — I started working two weeks earlier in this job because my predecessor basically was almost on a rule to show cause to come down to Indianapolis why we shouldn’t lose the forty-percent reimbursement. So, I said, Larry, if you’ll give me thirty days, I will have this in order. So, what I had to do is do a brief for all the judges and the magistrates and then I — I copied our plan, and in our plan one of the — the — first two — the first two where it talks about the right to bail, the first thing it says is “the posting of a bond is not — does not deprive one the — the consideration of — of a bond — of posting a bond.” And there’s another one that — that — just it’s amazing what they were doing. And, so I can tell you that it took some time and what I had to
do, and wh – wh – what we were doing was – and I think we became the first county that
actually sent a lawyer to the initial hearings, and I know that because it was me.
Okay, so now we have somebody that’s there. I have a contract person that I’m paying
to do all the initial hearings, so now we have a lawyer at the initial hearings. But,
what I would have to do is number one get them to recognize me cause they haven’t done
this – that I’m there on the record because it was always the prosecutor, and then
secondly, the magistrate would start to say that if you post a bond you likely won’t –
and I had to say, “Your honor, I object.” And, I mean, I had to go through this, but
I can tell you as of – you know – I had to sit in last week, and that’s been cured.
And, I reported that back to Larry because that was so fundamentally flawed that I
couldn’t believe it, but it was just a part and a – a part of the culture. That’s the
culture we have to change.
JUDGE TINDER. I’m impressed. Cultural changes are - can be difficult. -
MR. GONZALEZ. - You have to sit there, and you just have to butt heads. I mean -
JUDGE TINDER. - So that - so that practice of denying public defenders to those who
make bail has been - has been ended.
MR. GONZALEZ. Has been ended. I mean, we had someone who had a nice bail last week,
and they asked me and we look at it, and – you know – again I reminded the particular
- this time it was a sitting judge - and I had to remind the judge of our plan that
says that Indiana Supreme Court has a case that says that the posting of a cash bond
does not necessarily deprive one of being appointed a public defender. I mean – I
told them I want the default – the default position is the appointer office. If you
have any questions about it – the appointer office - and if I ethnically see that
somebody has the ability to pay, and I’m discovering that then I have a duty in some
cases to file my motion for hearing on whether that person should continue with our
office or not, but I’d rather be – I’d rather have them – the cases come to us first.
JUDGE TINDER. So – we’ve touched on the excluded courts in Lake County. They have a
very unique system, and you touched on the need for independence in the excluded
courts that public defenders are hired directly by the judges, and that the problems
associated with that are - are pretty - pretty clear. What’s the best case to support
the whole idea of excluding the juvenile court, the county courts, the other courts
that don’t participate in the reimbursement program?
MR. GONZALEZ. The best case is the only case which is politics. It’s control. It is
the ability to give friends jobs. It is the ability to – to have control over –
control – you know – like you don’t have to necessarily put the best people in, you
put people in that you’ve known forever. It’s – it’s just too much patronage if you
ask me. It just smacks of that, and – I mean – can you imagine if – if I wasn’t
independent, me sitting in there every day and having to correct a judge about – I
mean – you know – it’s very unlikely that someone who’s – you’re going to shirk that
type of responsibility, and – and in re – and in these courts – you know – I mean – I
– I see in the – in the city and in the town, I would see this and I would see the –
the – the quality – you know – of representation and the amount of cases and – and
the way that they would just run – run people through, and I – and the same thing –
you know – no offense to the current judge, but the same thing that was started by
Judge Bonaventura when she opted out in the juvenile court. And, you just do not have
control over the quality of representation.

JUDGE TINDER. Now, who supervises those lawyers that are directly appointed by the
judges?

MR. GONZALEZ. They named one of their – they named one of their lawyers as the head
public defender.

JUDGE TINDER. Alright. Those are the things I wanted to cover. Thank you so much.
Thank you for what you do. Thank you for the – the point that you’ve made.

MR. LANDIS. May I (INDISCERNIBLE) I may have some more questions for you when we
finish –

MR. GONZALEZ. I can’t thank you enough.

MR. LANDIS. I know the mayor is here and others, so we make sure we get to hear them.

JUDGE TINDER. Yes.

MR. GONZALEZ. Okay.

MR. LANDIS. Thanks.

JUDGE TINDER. Very good. Thank you. And, Mayor. We’re very privileged to have you
here, Mayor Karen Freeman-Wilson. Would you do us the honor of coming up here. We
have recording devices so that our other Task Force members can get the benefit of
your remarks, so that’s why we are using the podium – using those recording devices.
Welcome. Thank you so much for coming.
KAREN FREEMAN-WILSON, MAYOR OF GARY, INDIANA

MAYOR FREEMAN-WILSON. Thank you, Judge, and to the members of the Commission and to the members of the public who are here. I am here as a very interested spectator for a variety of reasons. I can say without fear of contradiction that being a defender in the criminal courts is one of my first professional loves. I’ve worked with Larry and – in a variety of capacities – certainly worked with Marce and worked in the Lake County Public Defender that was the subject matter of the report or certainly was referenced in the report. I also saw this as a judge at the city court level having served as a Gary city judge, and I am here simply in an effort to provide moral support to the work of this Commission to efforts that are currently underway to ensure that not just people in Gary and Lake County but all over the State of Indiana have the defense that they need. And, what I can tell you is that in every county, but particularly in Lake County, we have some of the best attorneys in the bar that are public defenders. The issue has been in the past and remains, although not as in the many – in as many areas, resources. Do you have the resources to hire sentencing experts when that becomes necessary? Do you have the resources to have the social workers and other folks that we now know we need to provide an adequate defense? We now know that providing an adequate defense isn’t just having a good – and – and – thoughtful and diligent lawyer. It means so much more than that, and so I commend you on your work and simply say that to the extent that I can use my influence both at the local level and the state level, to ensure that you have the resources to support the findings that come out of this commission, I would certainly pledge my ability to do that.

JUDGE TINDER. Mayor, if – if you wouldn’t mind I’d like –

MAYOR FREEMAN-WILSON. – Yes. –

JUDGE TINDER. I want to push you just a little bit on that point. So –

MAYOR FREEMAN-WILSON. – Yes. –

JUDGE TINDER. You heard me ask about the excluded courts in Lake County, and you’re well familiar with that having – having worked in the system.

MAYOR FREEMAN-WILSON. Sure.
JUDGE TINDER. Those courts are walking away – they walk away from forty percent reimbursement which would be resources that would replace money that’s already expended. What’s the best case for having these excluded courts –

MAYOR FREEMAN-WILSON. – There is no case, to be frank. And, I think that especially when you talk about the ability to have re – reimbursement. I’m sure that some might argue it provides the autonomy, but autonomy is not always good. And, I think that there should be some type of lever, and I don’t know if that lever is a mandate or something legislative, but there ought to be some type of effort to ensure that everyone is a part of the same system.

JUDGE TINDER. And, of course, if a judge directly employs a public defender, and that public defender truly messes up.

MAYOR FREEMAN-WILSON. Yes.

JUDGE TINDER. Not to use a legal term, but is not – not effectively representing clients, that judge can get rid of that person right away; however, by the same means, this independence that we’ve talked about, if that lawyer is doing his or her job, and the judge is unhappy about the aggravation or what have you or if that public defender didn’t support the right person in the primary or something –

MAYOR FREEMAN-WILSON. – Sure –

JUDGE TINDER. – they can also be fired.

MAYOR FREEMAN-WILSON. And, understand that I’ve worked on both sides of the system. –

JUDGE TINDER. – Right –

MAYOR FREEMAN-WILSON. I’ve been the beneficiary of that autonomy, but at the same time if you’re talking about the Sixth Amendment and insuring that people get the best representation, and – you know – let’s face it at that level it’s less likely that a person will be harmed, but to the extent that any harm can occur then you need to address that system.

JUDGE TINDER. Right, and a perception –

MAYOR FREEMAN-WILSON. – Yes –

JUDGE TINDER. – a public perception of that –

MAYOR FREEMAN-WILSON. – Absolutely –

JUDGE TINDER. – weighs very heavily. So, let me take a little jump-shift on you –

MAYOR FREEMAN-WILSON. – Sure. –
JUDGE TINDER. - and, I’ll talk - let’s go back, and we recall our prior lives - your work as attorney general. One of the subjects that’s come up often in our listening sessions, and as well as other discussions, is the notion that I was addressing a little bit with Mr. Gonzalez, and that is the potential for pooling of resources on things like the appellate function. With ninety-two counties, there are many counties that aren’t able to have experienced appellate lawyers and so forth, and then we might see some benefit in the effective representation in the appeal if there were a state-wide or maybe even a regional appellate function or appellate section concept. As one who supervised a bunch of appellate lawyers at an earlier part of your career, do you have any thoughts about that? Could there be gains in terms of the effectiveness of assistance? Could there be gains perhaps even expense-wise from consolidating the appellate functions in some way?

MAYOR FREEMAN-WILSON. I think there certainly could be gains. I certainly support - I support Mr. Gonzalez request that Indiana - or that Lake County be grand-fathered out- you know - because it goes to the point, “if it isn’t broke, don’t fix it.” But, to the extent that you have a lot of smaller counties who have people who are much less experienced, but who may be pushed into service or encouraged to serve even if they don’t have that experience, then I think that there - you know - I like the regional concept. I like the concept of saying that maybe we’ll do this on a regional basis. And, the question remains, how many regions do they have or having a very strong, as is at the AG’s office, a strong group at the State level who can consult with each other, who can be properly trained, and who can specialize in an area that certainly would require and does require a specialty. You know - everybody just can’t come in and write an appeal. I’ve tried it, and after the first two, I referred all my appeals to more - to Marce.

JUDGE TINDER. I supervised a really fine trial lawyer years ago when I was just an attorney, and he came to me and he said, “John, you know, I’d really love to try these cases, but I’d rather be hit with a big, ugly stick than write an appellate brief.”

MAYOR FREEMAN-WILSON. Exactly.

JUDGE TINDER. It’s just not for everybody.

MAYOR FREEMAN-WILSON. Exactly.

JUDGE TINDER. All right. Well, those were areas that I wanted to cover. Mr. Landis?
MR. LANDIS. Yeah. Well, first of all, thank you very much for coming. Appreciate it.

MAYOR FREEMAN-WILSON. Thank you very much.

MR. LANDIS. One of the things we’re struggling with is the need for – for mandate for compliance with State-wide standards. Now, Commission standards are voluntary. And, the counties can comply choose and seek reimbursement or ignore those standards completely. Do you think that it would be helpful to have – to mandate either by statute or court rule that every county must comply with the Public Defender Commission standards?

MAYOR FREEMAN-WILSON. I think that there has to be a court rule. I think that if you leave it to the legislative process that we will fall short every time. And - and that’s unfortunate, but it’s true, and I think that the Supreme Court is in the best position to see the result when counties don’t adhere to the State standards and don’t meet the mandates that are required.

MR. LANDIS. Any suggestions for how you enforce those standards?

MAYOR FREEMAN-WILSON. Well, I -

MR. LANDIS. - With money -

MAYOR FREEMAN-WILSON. - you know -

MR. LANDIS. - But, now all the Commission can do is withhold that reimbursement -

MAYOR FREEMAN-WILSON. - Sure. I think that one of the places where I saw success and where the court was heavily involved was with the introduction of problem-solving courts, and they went from county to county and reviewed the courts. And, while there certainly – you know – it would require a ninety-two county review, it wouldn’t necessarily have to be annually. It could be bi-annually or at some other interval that would position someone who works for the Supreme Court - who works for the office of the court administrator to conduct those reviews of files - randomly review files and say – you know, we think this meets the standard; we think this doesn’t.

MR. LANDIS. If we – if we maintain a county-based - county-funded system - how do you - any suggestions for how to – how to make the counties adequately fund the public defender system?

MAYOR FREEMAN-WILSON. You know - I think that one of the ways that you could do it – you would think that people would support the Sixth Amendment. You know that that’s
not necessarily the case in all ninety-two counties, but I think that once you’ve made
the case of the cost of not providing adequate defense when people are not only
successful on appeal but are successful in a civil court, then I think generally when
it impacts a county’s pocketbook or just the experience of another county whose
pocketbook was experienced — was impacted, I think you might have the best opportunity
to make a case to the members of the Commission and county council and those counties
that are not in the system.

MR. LANDIS. Even if it makes no sense for them not to adequately fund, what’s the
mechanism for — for compelling compliance or adequate funding?

MAYOR FREEMAN-WILSON. There —

MR. LANDIS. — I mean, it’s what we’re struggling with. I don’t mean to put you on
the spot —

MAYOR FREEMAN-WILSON. — Well, you know —

MR. LANDIS. — You — you could help us —

MAYOR FREEMAN-WILSON. — Sure —

MR. LANDIS. — cause you’ve been on a variety of different sides —

MAYOR FREEMAN-WILSON. — I’ve seen this from just about every angle.

MR. LANDIS. — right — That’s why I’m asking.

MAYOR FREEMAN-WILSON. I would say then possibly that’s where the NAACP, and we have
our state president, Barbara Bowling-Williams here. That’s where the ACLU might have
to come in from a — from the stand point of litigation. I would hope that it would
not rise to that level, but if — if you can’t provide the mandate legislatively or at
the Supreme Court level, they might have to be compelled from a judicial process —
through the judicial process.

MR. LANDIS. Do you think we should maintain a county-based — county-funded system or
we should go more the state — state authority, state funding, state oversight?

MAYOR FREEMAN-WILSON. Well, in my most recent capacity, I’m the first person to say
that I support local government, home-rule, and — you know — I think that it doesn’t —
the only time that it’s important to have a state-wide system is when you are
convinced that home-rule does not work. I’m not conv — we know it doesn’t work in
every county now, but I’m not convinced that it can’t work in every county, and I’d
like to say if we spent some more time ensuring in those counties - in those pockets where it doesn’t work that it were, then I think we might be better served.

JUDGE TINDER. Dr. Papa?

DR. PAPA. I don’t have any questions for you there, but I appreciate you taking time to talk to us about -

MAYOR FREEMAN WILSON. - Thank you -

JUDGE TINDER. And, Mayor, I did have one other area I’d like to cover - it occurred to me while you were speaking - CHINS/TPR and the activities of DCS, we’re hearing throughout the State is having a big impact on the public defense and of course in the communities. The numbers are just exploding -

MAYOR FREEMAN-WILSON. - They are. -

JUDGE TINDER. - You’re seeing that here as well, I take it?

MAYOR FREEMAN-WILSON. Absolutely. You know - I saw it in my private practice. I am now seeing it as the mayor, and again, that’s an area of specialty that people do really need help in. So, yeah. It something that has to be addressed, and that might be something that can be addressed at the state-wide level simply because it’s a specialty area, and it’s - at the same time - a narrow area of law.

JUDGE TINDER. Very good. Well, I can’t thank you enough for taking the time -

MAYOR FREEMAN-WILSON. - Thank you. -

JUDGE TINDER. - to speak with us, and don’t be surprised if we follow back up and ask additional questions.

MAYOR FREEMAN-WILSON. Feel free.

JUDGE TINDER. By the way, I forgot to ask Joe Heerens. Joe, did you have any questions for the mayor or for Mr. Gonzalez that I - that we skipped over? Joe?

MR. HEERENS. No. The only - the only question that I’d like to have is the specific to the Taskforce - what would be - you know - the funding - we talked about the - the judges and the public defenders being there - but we talked about the social workers and investigators and things like that. Is there a rank or order of importance to address the issues that are there? What would that ranking be?

MAYOR FREEMAN-WILSON. I’m going to defer to Marce because he has to deal with it every day on that answer.

JUDGE TINDER. Right.
MAYOR FREEMAN-WILSON. Not that I don’t have an answer, but — it has to be relevant.

Thank you. It’s great to see you, Judge.

JUDGE TINDER. Mr. Gonzalez, do you have a ranking?

MR. GONZALEZ. I can’t — I can’t — Again, because — because we have that bizarre
distinction of not being involved with juvenile court, I can say that from — I would
say that simply from a public defender criminal court ranking, the number one need
that we have is for social workers.

JUDGE TINDER. All right. And, Joe, don’t hesitate to speak up if you — if you do
have other areas you want to cover that we don’t. Very good.

MR. HEERENS. No, I’m having a little trouble hearing, so I’m sorry for that. On the
funding side, where would you — I mean — where would you put that? It seems funding
is actually critical to almost every part of this process.

MR. GONZALEZ. The funding would be number one — I mean — overall. Funding is number
one. We can’t go — we can’t go to places that we want to. We can’t develop and we
can’t continue to grow and keep quality representation without — without funding, so
that would be my number one rank.

MR. HEERENS. In — in terms of the — the DCS — the TPR/CHINS cases, I’ve seen the
frenzy on that has been significant in the last couple of years — largely driven by
opioids and other problems. I know the Mayor touched on those questions there
briefly. Do you have some additional thoughts you could share with us? We are having
a consultant, as you’ve read obviously, work on that issue and work with that agency
to identify areas of concerns and possible areas of improvement. Do you have thoughts
that you could share with — with me about that?

MR. GONZALEZ. Again, I think that someone from Marion County or — you know — South
Bend, St. Joe County where they have the — the — where they have the juvenile court as
part of their public defender office, they’d be better equipped because we don’t
handle — we don’t handle any juvenile court or the type of cases that — that you just
mentioned. With parental rights, they’re not within under our office.

MR. HEERENS. Okay.

JUDGE TINDER. Joe, this is Tinder. It’s kind of a unique situation with Lake County.
All of that is in the excluded courts, so poor Mr. Gonzalez doesn’t have to worry
about that problem.
MR. HEERENS. Sorry. I’ve been having trouble hearing. All of the conversations have
been in and out a little bit on this cell phone, so just wanted to ask some questions
that I thought would be helpful in terms of how we see things and want to understand
things as best as possible.

JUDGE TINDER. Great. So, thank you, Joe.

MR. HEERENS. Thank you.

JUDGE TINDER. So now, fortunately the Mayor did my introduction of our next speaker.
President of the NAACP here in Indiana, Barbara Boling-Williams, thank you so much for
coming today and being patient. And, we’re looking forward to hearing what you’ve got
to say.

BARBARA BOLING-WILLIAMS, PRESIDENT OF NAACP OF INDIANA

MS. BOLING-WILLIAMS. Thank you so much, Judge. I just want to say that I would have
yielded my position because I was told I was going to be second. I would have wanted
to publicly yield, but you took it away from me. (LAUGHING) Well – I certainly –

JUDGE TINDER. - (LAUGHING) That was my - that was my fault. I apologize. -

MS. BOLING-WILLIAMS. I certainly always will yield to my - to my mayor. I respect
her so much. Thank you for this opportunity to speak before this - all this
Commission dealing with public defense in the State of Indiana. I am Barbara Boling-
Williams, and I serve as the state president for the Indiana State Conference of the
National Association for the Advancement of Colored People, the NAACP. I’m going to
be speak - and I’m also a practicing lawyer here in the State of Indiana, but I’m
going to be speaking from a public perspective position which - I - believe that I
heard someone mention. And, I had already jotted down policy versus the practical
because Mr. Marce was talking about - I think - Gonzalez was talking - somewhat from
the practical perspective. And, we know money is important. I mean - you know -
making sure that the system is adequately financed and what the discussion is talking
about is how best to finance that sys - that system. From the NAACP standpoint, we
certainly are signed on to an amicus brief in the Alford vs. Johnson County
Commissioner’s appeal. And, so we are kind of in there. And I thought about - you
know - we talked about - you know - here - we talked about educating the judges, but
we also need to educate the public as well because it matters not how well you’re
doing at providing a service but if the public perception is still that a public
defender is not a real lawyer then - you know - they’re not going to be able
meaningfully participate in their defense because they’re not going to trust them.
It’s like - okay I had to get this person, and so I don’t think that they’re going to
serve me well at all. And, so consequently there may be things that the attorney
needs in order to adequately defend that person that they aren’t going to provide.
So, prior to this Commission, there was one dealing with voting rights just an hour
and a half before this one started. Tammy Davis, one of the Commission - the Indiana
Advisory Commission to the US Commission is here, and we’re conducting that. Now,
someone made an announcement about this one. And, one person came up to me and said,
I won’t be able to make it, but could you make sure that they provide this kind of
information. And, I thought well this is just really telling of the perception. One
of the things that could - you know - could we find out about the procedures for
getting a public defender? What are the policies? What are the fees? And, to get a
public defender should be publicized or printed somewhere. Then they said that - and
what would cost you for not qualifying for a PD? And, I thought that that was very
telling, and I certainly absolutely wanted to bring that before you to say that that
information should be readily available so that it’s not a mystery. And, I see - you
know - when I practice in court and I hear the judges questioning a defendant about
their finances as to whether or not they qualify for a public defender, you know it’s
that - for many people it’s a mystery, this is their first time actually being in
court and it’s all - seems like it’s all a cookie cutter or a - a line - a
manufacturing line, - you know - and everybody knows what’s going on but that person.
You know - then I hear other stories where - you know - we don’t need our public
defender, and I know you’ve heard these too, until they actually get into court, and -
But those are real stories. And, it definitely impacts on that person again in the
quality of defense that they’re going to receive. So, those are my perspective -
those are my comments on this area because a lot of times you talk about the Sixth
Amendment right and they probably don’t even know what is the Sixth Amendment. And,
the Sixth Amendment says that you have a right to have adequate representation, and if
you cannot afford one that one will be appointed to you. And, so - so we’ve gotta -
you know - put it in perspective to where people who actually have to avail themselves
of the services of a public defender – you know – will feel comfortable about that.
You know – that they will feel – will have confidence in it. Then as a final note,
when you talk about the juvenile system, and here in Lake County where they opt out of
it, you know – that can cause, and does cause some serious problems for people who
didn’t know that – that they – that there was a possibility that they may be able to
get a public defender. And, I – and I practiced in juvenile court for probably for
about fifteen years from the DCF side. But, you weren’t even afforded one unless you
got to the termination stage, and that wasn’t always the case either. But, just
recently that – a complaint came before the Hammond branch of our NAACP where a young
person involved in just a – a typical school fight, the county was working
(INDISCERNIBLE) such a melee, but this person – this young – this young person was
arrested, taken to LCJC, first taken to the Hammond police, and they told them that
when the family arrive, well you’ll have to go to Lake County Juvenile Center in order
to – you know – get your child; your child will be released to you. And, it doesn’t
work that way, but this is what the police is telling the parent. The parent goes out
there, and this – and nineteen days later, this child is still there. He went to
court before the magistrate, and – you know – at that time the magistrate says we’ll
take it under advisement, but again, the child was only suspended for five days from
the school. Yet, she remained in the juvenile system for nineteen days, and at the
time when they said you can be released on a monitor, the juvenile center says we have
no monitor available, so again the child – you know – remains as opposed to being
released to their parent. So, it’s important – and I agree that the public defenders
need to be there at the beginning of a syst – at the beginning of a case so that those
rights can be protected and a child won’t – a fifteen-year-old child won’t find
themselves never having any contact with the law being incarcerated, because that’s
the way LCJC is, for nineteen days and away from school. Thank you so much for giving
me this opportunity. Any questions you may have?
JUDGE TINDER. Before we let you get away, we’re going to have to ask you some
questions.
MS. BOLING-WILLIAMS. Okay.
JUDGE TINDER. It puts – let’s go to this juvenile court and the other excluded courts
that don’t participate in the reimbursement where the judges directly hire the PD’s
and also make determinations as to who gets a PD and how the PD is performing, so essentially supervising the PD’s. What’s — that’s a long-standing practice here in Lake County, and that’s not unique in that some counties also do that exclusively in their courts, but Lake County we have the hybrid where we have some courts participating with the board selecting the PD and so forth. And then we have these others that are out there on own. What’s the best justification for that — that different — differential court system?

MS. BOLING-WILLIAMS. Well, as the Mayor said, when it’s working for you — it’s — it’s — it’s great — you know — there’s wide spread — but if it’s not working — and I think that we have now come to a time in not just in this county and in this state, but in our country where you’ve got to take some of the decisions out of the hands of — you know — some of the local government because politics will play an enormous part and if it’s reality that if you are — you know — getting up under the skin of the judge, you know the judge is going to think twice about — you know — reappointing you. You know it’s reality — it’s human nature. And, so you got to sometime — and it’s — actually a protection for the judge. I think if that decision is removed, they don’t have to second guess themselves, they don’t have to face the — the allegations that — you know — they got rid of this person because — you know — this person — you know — was speaking against or speaking out a little bit too often or this person is their — their friend or their child’s friend or their spouse’s friend, so that removes that appearance of impropriety from the judge.

JUDGE TINDER. And, that’s a very good point that it could be to the judge’s benefit to get away from that system. Perception is very, very difficult for the public to understand how it is that the judge can directly employ that person. I’d like to think that it’s done with the best of intent — that the judges intend to be — hire good, vigorous defense for — for the public — but that needed be — but in reality, there’s that concern that too many motions, too much time, is an interference, so maybe I should get someone else. That’s — that just develops a terrible, terrible perception problem.

MS. BOLING-WILLIAMS. And is that really the role we want our judges to play where now they have to be — be an HR person —

JUDGE TINDER. — Right. —
MS. BOLING-WILLIAMS. - because they’re going to have to go interview people – you
know – and try to weed them out – you know – and read all the resumes and things. I
don’t think that we want – that’s the best use of a judge’s time.

JUDGE TINDER. Mr. Landis?

MR. LANDIS. I do have a question. You said you worked – I think – for fifteen years.
Was it for DCS or for – were you appointed for parents?

MS. BOLING-WILLIAMS. No. For DCS as a staff attorney.

MR. LANDIS. Okay. What did you think of the quality of representation provided to
parents at that point?

MS. BOLING-WILLIAMS. And, see the – in – in that system, as I said, the only time
that you had the opportunity to have an attorney appointed for you was on TPR, so all
the while the whole CHINS case is – is moving forward, and that comes from – you know
– getting the case on the back end as opposed to getting it while on the front end.
You know – and it still – you know – is the state of the process today. So I – we
really didn’t have a lot of attorneys who – you know – I wasn’t involved with any of
the attorneys – who were appointed on the discipline side. Now certainly if it’s a –
if it’s a juvenile delinquency case, then they have the right to have an attorney
appointed for them as well, but not on the CHINS side.

MR. LANDIS. What did you think of the quality of the representation on the TPR cases
when they were appointed?

MS. BOLING-WILLIAMS. I thought that they served the clients well, but they – there
were certain attorneys who were regularly appointed, and – yeah – they did serve their
clients well because they – they typically had experience in handling those cases.

MR. LANDIS. Would you agree that they would have been much more effective if they
were appointed at the beginning of the CHINS case?

MS. BOLING-WILLIAMS. Oh, absolutely. Or even brought in at certain points because
they’d give they’re periodically used, and when you look at the case and know that
it’s getting ready to head down a certain road – and you know that early on – that if
at that point one is brought in, I think it would be very approp – you know – for all
the people especially when children.
MR. LANDIS. And the other area — I think — when you started you said the difference between practical and policy — do you have any policy suggestions as to how to improve the quality of representation?

MS. BOLING-WILLIAMS. No. Having, like I said, having been involved now with the Alford — you know — Reed Johnson case and I see that the system around the state is not the system that’s functioning the way it’s functioning here in Lake County — you know — on some levels, I think that the rest of the state could benefit from — from the policy change in that we would remove the decision and the hiring from the judge to some type of counsel. Also, I was going to say that — that — yeah — like I said — and parents — when they first came to me about the Alford case and then following that I received contact from your commission and I started to look at — started first with my — with my county to talk to a few — since I don’t do a lot of criminal work and I’ve never been a public defender. When I talked with a few people here, they said, oh, we’ve got a great system here in Lake County, but I’m state president; I’m not just president here in Lake County, so I had to start to look at what’s happening around — around the State of Indiana. And, far too often — you know — it’s not working as well in other places and the majority of other places as it is here in Lake County.

MR. LANDIS. How would you go about improving the system in those places where it’s not working so well?

MS. BOLING-WILLIAMS. Okay. Well, and I like what the Mayor says that if you do a periodic review especially — you know — if you institute a minimum level of standards — and you know the ones that is not working — at least — the ones that are really bad. So, you get to know the ones — you know — that really are not working for people, and those are the ones that you go and take — take some remedial action whatever that may be. But, you focus in on trying to improve the system in those counties that you are very familiar — and I — and I know as you’ve done your listening sessions and you know where those places are. So you start there.

MR. LANDIS. That’s all my questions.

JUDGE TINDER. All right. Dr. Papa?

DR. PAPA. Can you clarify your example about the fifteen-year-old student. Can you explain again how that got to nineteen days?
MS. BOLING-WILLIAMS. That’s a good question cause that’s wh – we’re – we’re doing our investigation now trying to find out how it initially – she initially was arrested was that she was accused of battery on a police officer. Now they’re (INDISCERNIBLE) and there’s a melee of – of – of activity going on. There – I – I have questions that – that there weren’t even enough law enforcements there to maintain order. Nobo – there really were only two with a cafeteria full of children, and everybody had all these different fights that are going on. There really was no way for this police officer to even know that – you know – that – you know – who had – struck him. And, even in striking him, it looks like it may be that a student just fell – just lost – fell – just lost their balance and fell on this officer. But, clear – it was clear from my perspective that this wasn’t even a child that was involved in it because the child was on the other side of the room, but nobody – I guess – looked at the tape early enough. Nobody – because they – everybody else wants to put things later ‘til you get to the evidentiary stage, but you’ve got to remember that we’re talking about juveniles. We’re not talking about adults, and we may need to go into the evidentiary stage first and that we make sure that a child – you know – is – is not held longer than need be. And, again, why this child hasn’t been – wasn’t released to – to – to their parents – you know – much earlier in this process. Especially when this child has never had any kind of discipline and everything – either with school and certainly law – not with the justice system or lack thereof.

DR. PAPA. And then there was an issue with they didn’t have a monitor so –

MS. BOLING-WILLIAMS. – Right. Well they finally, I guess, maybe had been there about fifteen days, like I said – they were saying well no you can go home on a monitor. Well, that was a Friday, and I guess nobody wanted to do the paperwork, but they said that there was no monitors available, so now you got to wait ‘til Monday before your release.

MR. LANDIS. Do you know if the child had a – had an attorney appointed?

MS. BOLING-WILLIAMS. No. They didn’t have an attorney appointed. The family did hire an attorney, but again, when the judge is not willing to hear any type of evidence on this whole issue in the beginning, nothing happened.

JUDGE TINDER. Is that case a – are you finding other cases like that? Is this an isolated case or is this a pattern on –
MS. BOLING-WILLIAMS. Right now, this is the first one that's come to us, and so it's like I say, we're looking at it.

JUDGE TINDER. Joe, do you have any questions?

MR. HEERENS. No, I don't at this time.

JUDGE TINDER. All right. Well, thank you so much.

MS. BOLING-WILLIAMS. Thank you.

JUDGE TINDER. You know - you know about our website and you can send additional information there or by call us or what - whatever.

MS. BOLING-WILLIAMS. Okay.

JUDGE TINDER. Thank you so much for your time.

MS. BOLING-WILLIAMS. Thank you.

JUDGE TINDER. And, we have Michelle Spangberger?

MICHAELA SPANGENBURG, GRADUATE STUDENT AND MENTAL HEALTH PROVIDER

MS. SPANGENBURG. Michaela. Michaela Spangenburg.

JUDGE TINDER. Michaela.

MS. SPANGENBURG. It’s okay.

JUDGE TINDER. Sorry.

MS. SPANGENBURG. It – it’s an awful name to have to write down and it’s –

JUDGE TINDER. – And – and –

MS. SPANGENBURG. – worse to have to try to pronounce.

JUDGE TINDER. Do us a favor and spell it so that it’s recorded.

MS. SPANGENBURG. Okay. Sure thing.

JUDGE TINDER. We’ve got to transcribe that. That would be very helpful.

MS. SPANGENBURG. Okay. Last name is S-P-A-N-G-E-N-B-U-R-G. First name is M-I-C-H-A-E-L-A. And, I don’t know a lot about the legal system. I’m just a concerned resident, but I also am a graduate student, I’m a mental health provider, and I tend to see clients who are very, very low income, clients who have extensive trauma histories, often serious mental illnesses and often have interactions with the legal system. Originally, I wasn’t planning on speaking today, but when I heard the first gentleman from the PD’s office come up and talk about the need for social worker that’s actually employed by the PD’s office, I just had to like jump on board with
that because there’s definitely a need for that, and I’ve seen that again and again and again
and again and again with my clients. Especially Lake County since I’ve moved here two
years ago, I - I’ve seen a lot of that. I’ve seen clients who, frankly, just weren’t
even fit to - you know - participate in their own defense, who for instance like had a
cash bail, was never appointed a PD, had no idea what was going on. And, of course,
on the mental health side, here I am in my office trying to figure out from them how I
can help them, but, frankly, as someone who used to work for one of the larger
providers of mental health care in this county, no one has any idea on our side how to
interact with the legal system at all. We don’t know how to help these clients with
these issues. On top of it, especially in like juvenile court for instance, where
sometimes there’s an attorney appointed - sometimes not, sometimes there’s an attorney
who’s involved - sometimes not, it’s also interesting because even there’s logistical
issues. In our courthouse for juveniles down in - down in Crown Pointe for instance,
lawyers are the only ones who can have their phone in the courthouse, so if I have a
client there who needs a referral for something - if I’m there with my client and I’m
there with, for instance DCFS, DCFS w - the case worker can’t have his phone - he
can’t bring his phone in, I can’t bring my phone in, if there’s no attorney there with
that client, we now have no ability to provide resources until we get out of the
courthouse, and that’s not helpful. There’s a lot of non-helpful things about the
system here. And, in terms of me - I just lost my train of thought completely. This
happens to me all the time. I apologize. But, yeah. There’s just -

JUDGE TINDER. - Wait til you get older.

(LAUGHTER)

MS. SPANGENBURG. Yeah. When I get older, I’m just going to be standing here blank
like - there won’t even be words at that point. So, yeah like there’s -

JUDGE TINDER. - Let me back you up. -

MS. SPANGENBURG. - Sure -

JUDGE TINDER. - Maybe this will give you -

MS. SPANGENBURG. - sure -

JUDGE TINDER. - time to catch that thought that’s trying to escape.

MS. SPANGENBURG. - Uh huh.
JUDGE TINDER. The courts that you’re dealing with are principally the juvenile
courts, criminal courts, or are these he – clients who are involuntarily committed at
that (INAUDIBLE)?

MS. SPANGENBURG. So, not clients that are envi – not clients that are at that moment
are envi – are involuntarily committed, so they don’t have a 5150 when they’re in
these courts. This is maybe after they –

JUDGE TINDER. - A 5150 is –

MS. SPANGENBURG. - That’s one of the types of involuntary mental. It’s basically
like a seven – forty-eight or seventy-two hour hold. I forget; I don’t work with in-
patient, so –

JUDGE TINDER. - But these are – so these are –

MS. SPANGENBURG. - These are clients –

JUDGE TINDER. - These are clients who are facing criminal –

MS. SPANGENBURG. - Yes.

JUDGE TINDER. - juvenile charges?

MS. SPANGENBURG. Well, some of it’s criminal adult, some of it’s juvenile. I - I’ve
had a smattering of both, but, of course, I don’t work with or in the courts all of
the time. Sometimes I get pulled into these cases because I have a client who’s
struggling with issues around the court or has been referred for therapy or a case
where it’s a juvenile and the family feels that it would be supportive to have the
clinician there or that the judge may have questions for me. So, those are the ways
that I show up in - in a space like that. What I was going to say was - particularly
for Gary - we have - there’s a way - the gentleman brought up earlier this idea that a
lot of clients who are homeless often times would rather go to jail because they have
no place else to go. I think that’s becoming more and more true, and I think that’s
going to become more and more of an issue. In Gary we have a group of - of private
business owners who are pushing more and more for criminalization of homelessness -
who really want these folks to - you know - they’re bothered by panhandling, whatever.
These folks have nowhere to go. I mean, when it’s thirty degrees or less outside and
someone’s standing in front of your business, you’d think people would realize that’s
not by choice. But a lot of times these clients have no idea that there’s
alternatives to going to jail - that they - you know - that there might be a shelter,
that there might be an opening somewhere. And, frankly, like the mental health system
in this county cannot adequately deal with that especially when it’s a client that’s
in court. We definitely need social workers and people who can provide referrals to
people who are connected and can see if there’s any beds here, there or some other
place for our clients so that the client can – you know – adequately represent their
case and not make – you know – these kind of choices based on is sleeping in jail
tonight better than sleeping in an abandoned house or sleeping out in the rough in the
woods cause we have a good number of that and it’s something that people aren’t often
aware of. And, I think, so – you know – we have a new police chief; I have no idea
what his stance on things is, so we may be seeing more of these cases where homeless
clients – you know – are getting arrested and thinking well, great – you know – I get
to actually have food, I get to sleep in a warm building tonight, and a lot of times
these people have mental health issues and the jail system doesn’t really know how to
deal with that either, so. It’s a very dangerous situation for people, and whatever
we can do to make sure that social work is part of the public defender’s office and to
make sure that public defenders are being appointed when they should be the better.
So – that’s all I had to say.

JUDGE TINDER. Terrific.

MS. SPANGENBURG. Thank you.

JUDGE TINDER. Don’t go –

MS. SPANGENBURG. - Oh. Okay. Not going away.

JUDGE TINDER. Mr. Landis?

MR. LANDIS. Go ahead. As your question first.

JUDGE TINDER. I don’t.

DR. PAPA. How do – how do you get drawn into a pers – a particular person’s case?

How does intersect with what’s going on in the courts?

MS. SPANGENBURG. So – like when – So I generally work in community mental health, so
a lot of times these clients have either been referred for therapy either by like a
judge or by DCS – DCFS. Sometimes it’s because they’re stressed out about their court
case, they come in – they may come in for other reasons. They may be a person that
was on an involuntary hold and got a referral to be seen outpatient in the community
mental health setting and I discover they have a court case, and obviously out here
away - there is very poor communication between the courts and the mental health
system too because I have clients that come in and I don’t even know they’re court
referred, no one’s told us anything, they just show up at the door sometimes. And, a
lot of times it’s clients that have an active DCFS case, so often the juvenile but
sometimes the parent as well. So, sometimes I become involved often through DCFS, but
it might be - you know - and sometimes it’s even just hearing client’s experiences
when they come in to talk to me about everything going on in their lives or their
struggles with - I mean - I’ve had clients that are very obviously psychotic who will
have no idea what’s going on with their court case, and there’s not a public defender
involved and there should be, and you’re like why is the judge not doing this and
their essentially homeless and their spouse paid their cash bail and - you know - it
just - honestly no one has any idea how the court system works - that’s another
problem too. No one has any idea how to get a public defender. When you talk to the
client about a public defender, they have no idea what’s going on, so a lot of it is
just folks not knowing too. And, like people on the mental health side are not
trained to know how to deal with courts. I don’t know how to deal with courts.

MR. LANDIS. All right. And, you work for a community mental health center?
MS. SPANGENBURG. I did, and I’m going to. I’m in between two jobs. My next one is
not in this county, but previously I did work in this county. Yes.

MR. LANDIS. So, how would you change the public defender system to – to try to bridge
this gap of - and do a better job of representing the people that you’re talking
about?

MS. SPANGENBURG. I mean - you definitely need social workers present; you need –
because a lot of times I think also public defenders may not know how to identify
which cases are people that may have mental health difficulties that may need extra
support or things like that. I think it’s like not always obvious; people think it is
- it’s not always obvious. And, social workers generally have - you know - that level
of mental health training where they can assess for things to a degree informally.
Like they can - you know - and they can provide referrals and that’s the important
part. The linkage because frankly - like - having worked with some of the people on
the mental health side, even mental health people - I mean - way overloaded system. I
mean - it’s awful, but we don’t even have linkages between each other. So, it would
be very difficult for it to be coming from our side. It definitely needs to be
something in house. It needs to be something that there’s funding for. Yeah.

JUDGE TINDER. So, the simple - maybe simple matter of communication from within the
courthouse, it seems to me that if judges were presented with that that they - they
would understand the need for social workers - mental health workers to have that
ability to communicate out as well. Has there been any sort of concerted effort to -
to let the judges know the difficulty that that presents?

MS. SPANGENBURG. I mean - like when the DCFS caseworker can’t even - you know -
communicate out - yeah like, it’s pretty extreme. Like they take your phone at the
door, and it doesn’t matter if - if you’re not the lawyer, it doesn’t matter who you
are. And I have no idea what the mechanism - but especially in juvenile cases - you
know - like the kid may tell you something like really important like their family may
- you know - cause you’re sitting there waiting for - you know - to be called in and
they may - you know - we need help with food, we need help with housing - you know -
things that may impact the way that they want their case presented or may present
their case to - you know - an attorney or the judge. You know - I’ve seen a lot of
people - you know - basically just do what whatever not - you know - to just try to
get housing or - or a warm bed for the night. So, yeah - like - I have no idea how to
go about changing those systems because I - I don’t know anything about the legal
system. I’m about in the same boat as my clients when it comes to that, so.

JUDGE TINDER. All right. Thank you so much for your -

MS. SPANGENBURG. - Sure -

JUDGE TINDER. - time and your points. Very - very interesting and very helpful.

MS. SPANGENBURG. Thank you.

JUDGE TINDER. So, that exhausts the number of people who have indicated - indicated
to us in advance they wanted to speak. Is there anyone who has something they want to
tell us that we need to know about who did not sign up in advance? Come on up. Tell
us who you are and what we need to know.

KIMBERLY MCGEE, BLACK LIVES MATTER ORGANIZER FOR GARY, INDIANA

MS. MCGEE. Hi. My name is Kimberly McGee.

MS. MCGEE. Right. There’s no H.

(LAUGHING)

JUDGE TINDER. Okay.

MS. MCGEE. Sometimes there’s an H. And, I volunteer as an organizer here in the area with the Black Lives Matter Gary, and we had come in contact with a – well, first of all, a lot of the information here – that’s been shared here is really, really useful.

I definitely think there is an issue with people not knowing their rights going into the system, and I don’t think there are enough – you know – resources and information – you know – for people that are – are charged with a crime. So, a – a young gentleman we knew – he – the police killed his dog at his home and then I think at some point invited him to come to the station to talk to them about it here in Gary.

And, he went to the station – I know he had his phone – he was kind of recording the interaction on his camera and the cops at the front desk or whatever. And, then at some point the recording stopped. I think they stopped him or whatever – I think they ended up charging him with some kind of intimidation. So – you know – he was charged and arrested, and since that, he’s had multiple court dates over – it could have almost been a year by now. And, they keep just pushing the date up. It’s like nothing really happens. I don’t know the pre-trial hearings or how long their supposed to go on. But, I – I’m not sure if they just want him to plead – they just hope he’ll plead guilty which he doesn’t plan on doing or just eventually miss a court date cause nothing really happens as these dates and they keep moving the date up.

And, his lawyer, a public defender – there’s not much communication between them and I know that at his last court date in the last couple weeks, I know he was there and he was going to talk to his lawyer after – you know – they once again pushed his case up.

JUDGE TINDER. Do you know which court his case is assigned to?

MS. MCGEE. Offhand? No. It’s just Lake County in Crown Pointe. And, so – what was I saying – but so I guess so his – his lawyer has never like asked for a dismissal or anything of that nature, and there’s not much communication between them. And, I think that – and I guess after the previous – just after that last trial date he wanted to hang around and just talk to his lawyer, and he said well he’ll talk to him – you know – after all of his cases are done. So, there’s really not an opportunity for them to communicate, and I think this is just an example of – you know – once
again people not knowing what’s going on with the case, not knowing their rights, and the public defender not – probably having the time or whatever the issue is – so.

JUDGE TINDER. I bet Mr. Gonzalez would like to talk with you to find out some names and numbers and maybe he can look into this to see what the status of this is.

MR. GONZALEZ. You read my mind, Judge.

JUDGE TINDER. Okay. He is the Chief Public Defender, and he would be supervising whoever the lawyer for this. Perhaps. –

MR. GONZALEZ. – We don’t know. It could be a county court –

JUDGE TINDER. – Right –

MR. GONZALEZ. – You don’t know if it’s a county case or a –

MS. MCGEE. – No –

JUDGE TINDER. – Make your point to get with Mr. Gonzalez before you leave, and he can follow-up on this. We would certainly appreciate doing that. And, let us know – perhaps you could get in touch with Katie – let us know where it is. We’d appreciate that.

MS. MCGEE. Okay.

JUDGE TINDER. Yeah.

MS. MCGEE. And, so yeah I – I don’t have an incredible amount of information about that particular case. I do want to put that out there and if anyone had – you may have an idea why this process has gone on for so long. You know – people have jobs – it’s just really hard to just continually have court dates where almost nothing is happening and whoever is coming to testify against you – you know – the police are not there to testify, so why – why is the case continuing? And, so –

JUDGE TINDER. What about – and you mentioned the – important concept that people – it’s important to communicate to people what their rights are –

MS. MCGEE. – Yes –

JUDGE TINDER. – So that they know about the right to defense if they are indigent and so on. Are there – other bigger picture issues or general issues that we should know about relative to public defenders that you’ve observed or that you’ve heard talked about –

MS. MCGEE. I mean – I guess just the fact that so many people find themselves in a situation where they – you know – they plead – they plead to crimes or whatever they
may not be guilty of. You know I think that there’s – there are structural reasons why that happens, and so I think it’s important I guess that we keep talking about it and keep seeking answers. I’m glad that you – you know – had this forum here today to get feedback from folks, and I wish more folks knew about it ’cause I just found about it in the last couple of days from a relative. So, you know – that’s involving the process, so I think that’s about it –

MR. LANDIS. – Why do you think people plead guilty to things they’re not guilty of?

MS. MCGEE. I mean – I – I definitely think that there’s pressure from within the process – you know – to do that. And, I know that if people keep giving you dates and you keep coming back – I mean – you’ll feel pressured to – looks like things aren’t working in your favor. I think there are a lot of reasons that – and a lot of it’s economic, but – so that’s it. Thank you.

JUDGE TINDER. All right. Very helpful. Thank you. All right, anyone else have comments for us? Yes, sir. Come on up.

GOJKO KASICH, ATTORNEY AT LAW

MR. KASICH. Alfred please.

JUDGE TINDER. Yes.

MR. KASICH. Alfred.

JUDGE TINDER. Okay.

MR. KASICH. My name is Gojko Kasich. G-O-J-K-O K-A-S-I-C-H. I want to thank you for coming to Northwest Indiana in general, and specifically for coming to this building that my father-in-law helped build as a bricklayer. I’m very disappointed that with the lack of participation here today from other lawyers. I was very disappointed to have Valpo cancelled last week. I’m not blaming you or the Taskforce; it’s just an observation. I’ve been on the Public Defender Council for I think now for almost six years, and nothing has frustrated me more than listening to all the – and since I’m the son of a steel worker, I’m going to talk like the son of a steel worker – all the bitching I hear from public defenders and lawyers and what have you about we got to fix this or we got to do this and then nobody shows up to go ahead and say anything.

JUDGE TINDER. You know I’d like to think that the Valpo one was merged with this one –
MR. KASICH. - Yeah. Well, I’m the only one from Porter – the two of us are from Porter County.

JUDGE TINDER. I’m going to look on it as being merged.

MR. KASICH. Yeah, well, you can look on it that way, Judge –

JUDGE TINDER. - We – we only had –

MR. KASICH. - And, I love you dearly because you were one of my trial practice professors at IU.

JUDGE TINDER. Right. Back in the day –

MR. KASICH. - but besides that. Anyway –

JUDGE TINDER. That turned out pretty well though, didn’t it?

MR. KASICH. Oh, yeah. Yeah well. I don’t know how I turned out. My boss is here. Of course, Larry’s here.

UNIDENTIFIED MALE VOICE. Doing a great job – great job.

MR. KASICH. I’ve attended – I attended the one in Indy and got to meet Dr. Papa there too. I’ve read – I read the transcripts –

JUDGE TINDER. - And, I’ve tried to be very transparent –

MR. KASICH. - Well, you are!

JUDGE TINDER. - and those who haven’t been to any – of our sessions or haven’t – they can go on our website and see everything that we’ve done and – and we’re making –

MR. KASICH. - Marce probably didn’t see me, but I was one of the ones who read all the transcripts too. I was disappointed that we didn’t have the last two posted yet. We just had the first two.

JUDGE TINDER. Soon – soon.

MR. KASICH. Well, it doesn’t help me today.

JUDGE TINDER. Right, right.

MR. KASICH. I’m curious, how many e-mails and comments and letters have you received?

JUDGE TINDER. Well. Not nearly as many as we would have hoped.

MR. KASICH. Uh huh. Uh huh. Yeah.

JUDGE TINDER. Only a handful at this point, but we’ve had – we’ve had pretty vigorous participation at some of the other listening sessions, and really lots of information’s come in that way.

MR. KASICH. Well –
JUDGE TINDER. – And, we have done a pretty large survey effort where nearing four
hundred survey responses already to various groups including – there’s community
groups, judges, even prosecutors, public defender, and so on. So, we’re – and we’re
doing focus groups talking with clients and former clients and public defenders, so
there are lots of sources that we’re pursuing. This is but one, and the scheduling is
not ideal, but – and we’re doing the best we can.
MR. KASICH. You’re right. And, again, that’s why I wanted to thank you. I’m a son
of Eastern European immigrants. I was born here in Gary, I grew up here in Gary, I
went to school here in Gary, then I moved to Porter County. I had the distinct
pleasure in – in trading life experience in working for Jim Wetsinger for a couple of
years as his – as a court-appointed public defender, and then later I slid right into
the office as we created it – I believe – in the year 2000 when David Schneider took
over. Having said that just kind of as an introduction, it came to the top of the
list basically – kind of what Marce said and what some of the other individuals said –
we need a bridge in mental health. You know – we have recovery works, and to me to
this day – and I’m on the Public Defender Council – recovery works is a mystery to me.
I don’t know how it operates. I don’t know where that damn money goes, but it sure as
hell isn’t getting to where it should be enough in my opinion. Maybe we have someone
appointed as a liaison in the Public Defender Commission or – or whatever we create to
work with recovery works, monitor it, make sure its services are being delivered. I
have a couple of quick stories regarding anecdotally I had a client who had severe
mental issues, charge with – coming – he was a work release, he came back late from
looking for a job, they wouldn’t go ahead and feed him because it was – the kitchen
was closed there in work release, he got upset, he punched the water cooler, and she
told one of the workers there – security officers there – told – said something to
him, and he says you know I’m going to get out and I’m going to kill you. Everybody
knows he’s mentally ill, and he gets charged with intimidation. And, it got to the
point where it was winter, and ethical or not, I delayed things to make sure he didn’t
get out because he had nowhere to go. He had an aunt and a cousin that would take him
in. He refused to go live with them. He wanted to walk out the doors of Lake County
Jail in a short – in shorts and a t-shirt and walk forty-five blocks to his uncle’s
house who he had not talked to in years who was a convicted sex offender and a
convicted drug dealer. And - and I couldn’t get help for him. And, I tried and I
tried. I had him examined for competency. He was found to be competent. Finally, I
went to the judge, I filed a sp - special motion with the judge. And this is the
second story - we have our own mental health division in jail that the sheriff runs,
and I still don’t know how that operates myself. Apparently they do a good job most
of the time, but there’s a lady in charge there and she calls herself a doctor, and my
particular judge once asked her what are you a doctor of and she said theology.
Theology. So, he doesn’t really respect her. So, when you have a judge not really
respecting the person who’s doing the operations in the mental health division of the
jail, you’re kind of having some problems. So, I’d - would just like to ask that we
go ahead and try to - I know you guys have a broad purview here to consider and a lot
of things to discuss, but at least at some length there between the millions that are
in recovery works that I keep getting told about and the public defender system.
State-wide oversight, and we talked about - you know - not fixing what isn’t broken
and we’ve talked about coordinating counties and maybe doing a state-wide thing for
appellate or maybe doing a regional thing for appellate. It has to be done. I’ve
lived in Porter County since 1974. They look at me like I’m some kind of pariah
because I was born in Gary, so I’m really not embraced very well by the lawyers there.
I’ve tried to go ahead and communicate with the Porter County Public Defender, and
whenever I ask him - and Ken’s a nice guy - and whenever I ask him do you need
anything, yeah, just tell Larry to leave us alone. Tell Larry to leave us alone.
We’re fine like we are. I have no idea what they’re doing. Maybe it’s none of my
business, but I am on the board. I kind of would think that maybe they would go ahead
and give me some input. Never get anything. I emailed them a couple days ago asked
them are you coming Saturday. If not, is there anything you want me to throw out for
you. I got no response. Maybe forty-eight hours wasn’t enough notice for him; he’s
in Florida. I don’t know, but it’s - it’s been a pattern. And, I think that the only
way you get around that is requiring every county to opt into a state program.
JUDGE TINDER. So, you pay your property taxes in Porter County?
MR. KASICH. Yes, I do.
JUDGE TINDER. And, Porter County -
MR. KASICH. - And usually on time too. -
JUDGE TINDER. – Porter County spends how – how much a year on –

MR. KASICH. – I have no idea –

JUDGE TINDER. – public defense services? –

MR. KASICH. – I have no idea. They don’t tell me.

JUDGE TINDER. Hundreds of thousands of dollars.

MR. KASICH. And, there – you know – again, the four ju – the judges there appoint the public defenders.

JUDGE TINDER. Right. Yeah. Of all the money they spend on public defense, forty percent of it can come back to them.

MR. KASICH. I think they are getting reimbursed.

JUDGE TINDER. No.

MR. KASICH. They’re not getting anything?

JUDGE TINDER. They’re not in the system.

MR. KASICH. They don’t want to be –

JUDGE TINDER. – Why not? –

MR. KASICH. – They don’t want to be involved.

JUDGE TINDER. Why not?

MR. KASICH. I – I would – If I’m the Chief Public Defender and the judge gave me the job, I sure as hell don’t want someone else interrupting and looking over my shoulder when the judges have given me free reign to hire whoever I want. It’s kind of a cool thing to be. Right? That’s my personal thought. I have no idea if that’s what Mr. Ellett does over there, but I think it would be difficult if I was the pet choice of the judges to go ahead and now – kind of lean back and let someone else come in and tell me what to do and look over my shoulder. That’s just my impression.

JUDGE TINDER. Those standards are important, don’t you think?

MR. KASICH. Well, I – they (INDISCERNIBLE)

JUDGE TINDER. As a public defender

MR. KASICH. As – and as – as a former judge, that was one of the things I was going to come up to. At some point in time, someone’s got to step in and say there’s a sixth amendment thing and we have this bulletin that came out, we have this whole review that came out, and again – maybe I’m easily shocked – I just don’t understand how few people aren’t as concerned as some of us are about some of those findings and
about where we have come from and where we’re going. And, maybe I’ll jump to that
right now. We talk about sometime about – we’ve talked about several times here how
do we go ahead and get counties to participate? How do we get them to comply? Well,
our – our jail’s been under a federal – federal monitor many times over the past
twenty-five years. Well, the seventh circuit finally said, just shut-up. We’re going
to appoint someone, they’re going to monitor it, and they’re going to report to us,
and here are the standards you have to maintain, and if not, we’re taking over. And,
maybe we can do something like that with the Public Defender Commission or maybe we
can sign a consent decree with the Seventh Circuit and have the federal courts come in
and tell – or tell the counties if you don’t want to do this, we’re going to go ahead
and piggy back on the lawsuits that have been filed, and we’ll get a decree of some
sort from the federal courts, and you’re not going to be happy then. You know – if
you’re not happy with what we’re planning, it could be much worse if the Seventh
Circuit comes in and says okay, fine guys – now we’re going to do it this way. I
don’t know. How to make counties comply – I mean – I guess I didn’t jump too far
ahead. Fifty percent reimbursement I think helps. Maybe the forty percent’s not
enough for Porter County. Maybe once we get to fifty percent, now they say gosh, we
can’t really give that up. That could be it. I don’t know – that – that could be it,
and I – I’ve been here almost thirty-four ye – I’ve lived here my whole life. But,
I’ve been a lawyer since July 5th, 1984, and in the last twenty years – seventeen
years, I’m being baffled at how the juvenile court has their public defenders and the
misdemeanor courts have their public defenders. I – Early on when I was an eager
young board member of the boar – of the Public Defender Commission – even though I was
probably fifty years – fifty-two-years old since I’m fifty-eight now – I put together
an e-mail list of lawyers in Lake County and Porter County, Jasper, Newton, tried to
get LaPorte County, and maybe some of the other outlying counties. I had a list of
like a hundred people who I had been told were public defenders. And, I go ahead and
ask them for their input or any questions, and besides Mark Bates who’s the head of
our appellate office and maybe one other lawyer, I never get any responses. I have no
idea what’s going on in juvenile court in Crown Pointe. I have no idea – unless I’m
in misdemeanor courts – what’s going on. I know someone observed the – the – you come
to one of those courts, and the justice – the perceived justice is almost non-existent
because it’s just running them through, and the public defenders have no time as if
they spent five minutes with each of their clients and if they have fifty clients in
one day, it would be impossible for them to spend five minutes with each of their
clients. So, the juvenile court, anecdotally I heard that Judge Steffaniac was going
to go the State and ask the State to fund his public defenders. Why are we
reinventing the wheel? Why when we have a system already in place is that allowed to
happen? Now, I know initially Larry was eager to have Lake County Felony Division at
least involved, so I think we made some compromises there. But, enough’s enough. I
think it’s time to stop those compromises and let’s get in line with the twentieth
century if not twenty-first century and go ahead and do it right. And, again there’s
no rational reason that defenders in those systems – the juvenile and misdemeanor
courts in Lake County shouldn’t be part of the system. Hybrid delivery system – I
think it would be an easy thing to do and it’s probably the right thing to do. We
talk about home rule. We talk about don’t fix what ain’t broke. Okay, so – we leave
Lake County, we do Porter County, we do St. Joe County, and Allen County, whoever else
who has a system that’s working, we’ll leave them alone. The other ones, we give them
six months to go ahead and combine two, four, six, eight counties, and the ones that
don’t – we just have a State office that go ahead and run those counties, and if they
don’t like it, too bad. You know – so – are we going to have a bastard system? Yeah.
But we’re going to go ahead and deliver indigent services the way they should be
delivered. How do we fund this? I know Dr. Papa brought that up in Indianapolis a
month or two ago and brought it up again, and he has to bring it up again. Increase
court costs. We already have a public defender fee in court costs. Let’s increase
it. Do we increase property taxes? I don’t know, but we have to do something. I
mean it has to be funded somehow. I don’t think it’s going to be up to the
legislature to decide how it’s going to be funded, but what – what are our sources?
Well, we can’t have bake sales – well, I mean – I guess we could, but we’re not going
to raise a lot of money. So, we’re going to either increase the cost to the people
who use the system or we’re going to increase the costs from everybody because it’s
important for all of us to go ahead and have a system that works. So, I think those
are two suggestions – property taxes, but increase court costs certainly. Increase
that PD portion of the fee. And, I think that’s it. Those are some things that
popped up into my head –

JUDGE TINDER. Very – very notable performance for us. I’d like to see what you could
do when you’re actually prepared to make a presentation.

MR. KASICH. I never prepare. I’m too old to prepare.

JUDGE TINDER. So, I asked you about Porter County’s non-participation. I think we’re
both mystified by that.

MR. KASICH. Well, no. I’ve been told. And, I flat out asked him. And, it’s – you
know – I just don’t want Larry bugging me, and we think we’re doing a fabulous job and
we don’t want you gu – anybody looking over our shoulder. And, I don’t think that’s
right myself, but I’m just a – I’m just a taxpayer in Porter County.

JUDGE TINDER. I think you – you’d really rather have Larry bug you than have a
federal judge devise your system.

MR. KASICH. Well, Larry bugs me enough, but over the years – yes, I would. I’d much
prefer to have a Larry Landis – you know – take me off to the side and –

JUDGE TINDER. Federal judges can get some crazy ideas sometimes.

MR. KASICH. So I hear. Present company excluded of course.

JUDGE TINDER. Of course. Of course. I’m a recovering judge.

MR. KASICH. That’s right. It’s a process.

JUDGE TINDER. Do you have some – ?

LARRY LANDIS. Who should appoint chief public defenders? Any idea?

MR. KASICH. Not the judges. Not the politicians.

LARRY LANDIS. Alright. That’s going to be one of the issues that we’re struggling
with. How do we make them more accountable?

MR. KASICH. In some – in some states they’re elected.

JUDGE TINDER. Like county – just like a prosecutor is. What do you think of that?

MR. KASICH. It worked out real well in Cook County, Illinois. I – I mean – again,
you might have to go to some hybrid mish-mash of the Council. Our – Our – I like our
system because at least our office gets one guy on – you know. But, it should be
lawyers with some knowledge, but it shouldn’t exclude laypers – laypeople either
because sometimes we have blinders as lawyers and to have a council of all or have a
commission or group whatever of all lawyers appointing a chief public defender might
not be the wisest thing. I – I don’t have – that I didn’t give any thought to, and
off the cuff I can’t really – I mean I’d given thought to it over the past few months,
but I don’t know what the answer is because of the political problem that you have,
the judges pushing back. That’s something you guys can go ahead and hash out I guess
in committee.

JUDGE TINDER. If you have a stairwell thought about that later –
MR. KASICH. – I’ll send it to you –
JUDGE TINDER. – send it to us.

MR. KASICH. I – It would have to be – you know – I think a five person committee is
going to have – you know – one person a layperson, the other four people lawyers with
some experience and at least one of those people being voted on by the people who
actually provide the services – the public defenders. But then again, who are the
public defenders going to be until the public defender is chosen. So, maybe that
initial appointment might just come from the Commission. A local lawyer from the
Commission and then subsequent ones will be voted on by the public defenders who are
in that office.

JUDGE TINDER. You know what a stairwell thought or an elevator thought is, right?
MR. KASICH. I think.

JUDGE TINDER. It’s after you’re out of the courtroom and you’re going back to your
office –
MR. KASICH. – I usually get mine –
JUDGE TINDER. – and you think of the best story you could have –
MR. KASICH. – it’s usually a bathroom thought for me.
JUDGE TINDER. – or a driving thought down. Dr. Papa?

DR. PAPA. Any suggestions on how to – what’s the – what’s the enforcement mechanism
on how to make the counties comply with State standards?
MR. KASICH. The fed – the monitor thing was one. I had like Marce’s concept to make
the Supreme Court might act more quickly. If someone’s not doing something and a
complaint’s filed and there’s some mechanism there where the Supreme Court looks at it
and might issue a temporary monitor to come in and take a look at it or temporarily
take over. That might be the best process, but again, ultimately a federal monitor
gets appointed by the Seventh Circuit and says this is a Sixth Amendment right. That
may be down the line, but again if you hold that over their heads and suggest that
that might be something you’re looking at. And, I guess we can’t put that in a
statute or rule, but at least we can – you know – ”nudge, nudge, wink, wink” like we
sometimes do – you know – or maybe all too often do.
JUDGE TINDER. Okay. Thanks for the thought (INAUDIBLE) – Do we still have Joe with
us?
MR. KASICH. Joe?
MR. HEERENS. Yes, I’m still here.
JUDGE TINDER. Do you have any questions?
MR. HEERENS. Not at this time.
MR. KASICH. Thanks, Joe.
JUDGE TINDER. Very good. Alright. We have this impromptu presentation. Anyone else
like to speak to us before we adjourn for the day? Our website will remain open and
our office – the phone number is available. And you’re welcome to fol – we’d be
delighted to follow up on anything if you think of something later like driving home
or walking home or in the elevator or wherever – bathroom – in the shower. Thank you
all for your time and participation and your thoughts. Very – very helpful to us.
Have a great day. Have a great Easter.
(ADJOURNED)